

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 11 December 2002**

**The Council met at half-past Two 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.

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

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

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

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

THE HONOURABLE NG LEUNG-SING, 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

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, 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

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

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

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 ABRAHAM SHEK LAI-HIM, 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

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:**

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

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

**PUBLIC OFFICERS ATTENDING:**

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

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.  
THE FINANCIAL SECRETARY

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

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

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

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 FREDERICK MA SI-HANG  
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

**CLERKS IN ATTENDANCE:**

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

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**TABLING OF PAPERS**

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Nurses (Registration and Disciplinary Procedure) (Amendment) Regulation 2002 .....	196/2002
Enrolled Nurses (Enrolment and Disciplinary Procedure) (Amendment) Regulation 2002 .....	197/2002
Airport Authority Ordinance (Map of Airport Area) Order .....	198/2002
Airport Authority Ordinance (Map of Restricted Area) Order .....	199/2002
Appeal Board on Closure Orders (Immediate Health Hazard) Rules.....	200/2002
Securities and Futures (Client Securities) Rules .....	201/2002
Securities and Futures (Client Money) Rules.....	202/2002
Securities and Futures (Associated Entities — Notice) Rules.....	203/2002
Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2002 .....	204/2002
Securities and Futures (Registration of Appeals Tribunal Orders) Rules .....	205/2002
Securities and Futures (Registration of Market Misconduct Tribunal Orders) Rules .....	206/2002

Securities and Futures (Collective Investment Schemes) Notice .....	207/2002
Chiropractors Registration Ordinance (Cap. 428) (Commencement) Notice 2002 .....	208/2002

### Other Papers

- No. 35 — Annual Report on The Police Children's Education Trust and The Police Education and Welfare Trust for the period from 1 April 2001 to 31 March 2002
- No. 36 — Emergency Relief Fund  
Annual Report by the Trustee for the year ending on 31 March 2002
- No. 37 — Queen Elizabeth Foundation for the Mentally Handicapped  
Report and Accounts 2001-2002
- No. 38 — Hong Kong Sports Development Board  
Annual Report 2001-2002

### ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. First question.

#### **Women Health Services**

1. **DR LAW CHI-KWONG** (in Cantonese): *Madam President, regarding the woman health services provided by maternal and child health centres (MCHCs) and woman health centres (WHCs) under the Department of Health (DH), will the Government inform this Council:*

- (a) *given that the respective estimated numbers of attendances and enrolment for woman health services for this financial year are 36 000 and 18 000 only, whether it plans to promote woman health services extensively; if so, of its target;*

- (b) *whether it has set any indicator according to the population for planning the respective numbers of MCHCs and WHCs to be established in each district; if so, of the indicator; and based on such indicator, whether the current numbers of MCHCs in various districts and their present scope of services should be adjusted; if no such indicator has been set, how resources are allocated in response to the demographic changes in various districts; and*
- (c) *of the progress of the work to extend woman health services to MCHCs, and the utilization of such services in the first 10 months of this year?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese):  
Madam President, the DH set up the Woman Health Service in 1994. The aim is to promote the health of women and address their health needs at various stages of life through:

- enhancing the awareness and encouraging the practice of healthy lifestyle in women;
- educating women on the prevention of important health problems; and
- providing women with specific screening services.

The scope of the Woman Health Service includes: (i) health education and counselling and (ii) screening which covers physical examination, laboratory services including cervical screening, mammography screening and other investigations as clinically indicated.

- (a) The DH provides women health services through its three WHCs at Chai Wan, Lam Tin and Tuen Mun. The service was extended to five MCHCs in 2001 and further to another five MCHCs from November 2002. This will bring the maximum number of enrolment for women health services to 23 200 annually. To promote the women health service, the DH has distributed posters and leaflets at the DH clinics, hospitals, District Offices, women's groups and concerned parties.



In addition to the women health services at WHCs, the DH provides a comprehensive range of promotive and preventive services covering child health, maternal health and family planning in its MCHCs. The maternal health service provides preventive and promotive services through antenatal and postnatal care. Women of child-bearing age are provided with family planning services, including contraceptive advice, cervical smear screening test and infertility counselling.

Apart from the DH, women health services are also provided by the private sector and non-governmental organizations (NGOs), such as the Family Planning Association of Hong Kong which receives subvention from the Government. The Government will continue to work in collaboration with other health care providers, offering a full range of preventive programmes and review regularly the coverage of women health services.

- (b) The DH will take into account the population profile and local needs in the planning of health care facilities including MCHCs and WHCs. In the light of decreasing birth rate and a corresponding reduction in the demand for conventional MCHC services, the DH has enhanced the service scope and work processes of MCHCs which, coupled with redeployment of resources, produce overall improvement in service quality. These include:
- Extension of women health services to 10 MCHCs;
  - Enhanced group counselling such as breastfeeding counselling to provide individual assessment and coaching;
  - Implementation of the universal and intensive parenting programme from September 2002;
  - Standardization and enhancement of professional services and support through the use of manuals and protocols; and
  - Enhanced health education programme through provision of comprehensive health educational information in the form of leaflet, video and workshops.

Preparations are being made to implement the territory-wide cervical screening programme in 2003-04 to increase the population coverage of the screening test. Further refinement to service scope will be considered in the light of changing population needs.

- (c) The extension of women health services to the first five MCHCs went smoothly. The second batch of five MCHCs has started providing women health service from November 2002. The utilization rate of the three WHCs in the first 10 months of 2002 was 98%; whereas the utilization rate in the first five MCHCs which provide women health service has increased from 57% in November 2001 to 76% in October 2002. The DH will closely monitor the service utilization to facilitate review and fine-tuning of service scope and content.

**DR LAW CHI-KWONG** (in Cantonese): *Madam President, in part (c) of the main reply, the Secretary mentioned that the utilization rate of MCHCs which provide women health service had reached 76% by October. However, I believe many people are still unaware of the availability of this government service. As stated in part (b) of the main reply, MCHCs are already providing parenting education and women health education. Will the Secretary consider formally renaming MCHC as Family and Women Health Centre?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): *Madam President, just as I have said in the main reply, the DH would take into account the changing needs of women health service of the community and constantly review the mode of service delivery. We consider that priority should be given to cervical screening, as evidence has already shown that this is an effective way to prevent cervical cancer. As for the inspection of other body parts, this is indeed a matter of personal choice, and this service may not necessarily have to be provided by the DH. We will be responsible for promoting health education, and should women like to undergo other check-ups, they may approach NGOs, as this is not the major duty of the DH.*

**MR HOWARD YOUNG** (in Cantonese): *Madam President, I think the reason for Dr LAW Chi-kwong raising this question is that he considers not many people*

*are using the service. In the main reply, the Secretary said that WHCs in Chai Wan, Lam Tin and Tuen Mun were providing women health services. Is it true that most women who need the service do not live in these three places, thus resulting in a low utilization rate? Or is it true that studies conducted by the DH indicate that most women in need of the service live in these three places, thus prompting the DH to establish WHCs in these three places?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, maybe I have to clarify once again. The services mentioned are in fact divided into three types. The first type, which is a major task of the DH, is provision of preventive services and health education. The second type is the development of effective preventive services which all women of the territory should enjoy. As studies reveal that cervical screening is an effective preventive measure to reduce the risk of cervical cancer, the Government has thus effected co-ordination, though this work will not be entirely done by the Government. The third type is women health services. This is not the major task of the Government, but a general service. The Government would only provide the relevant information to the community and interested parties may undergo check-ups in the private sector. The Government will only take on a supporting role in providing the mode, rather than territory-wide services to women in Hong Kong.

Regarding the locations of the three WHCs, we have not deliberately chosen the places with the largest women population. Instead, suitability of the site and its surrounding environment for the establishment of WHC, and the availability of such facilities at the time are our considerations.

**PRESIDENT** (in Cantonese): Mr Howard YOUNG, has your supplementary question not been answered?

**MR HOWARD YOUNG** (in Cantonese): *No, Madam President, I just wish to queue up for a second turn.*

**PRESIDENT** (in Cantonese): Fine.

**MR WONG SING-CHI** (in Cantonese): *Madam President, in 1999, the Government conducted a survey on women health services, and subsequently introduced women health service as a new service in 50 MCHCs. However, the Secretary indicated earlier to the media that the number of MCHCs would be reduced because of the decreasing birth rate. Even so, the Government can still provide the relevant service. Does the Secretary imply that the Government will stop the expansion programme of MCHC services?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): *Madam President, as I have said in the main reply, given the dropping birth rate and the varied demand for women health services, we have to keep the existing services under constant review to see if they can cope with the prevailing needs of women. Moreover, if the utilization rate of certain services is low, we may have to reorganize our services to enhance the cost-effectiveness. Currently, we are conducting a review, and there is no decision yet.*

**DR YEUNG SUM** (in Cantonese): *Madam President, this service is in fact very important, as early screening may help to save the lives of many women. Will the Secretary inform us, other than those set up in Chai Wan, Tuen Mun and Lam Tin, if the Government plans to establish a WHC in each of the 18 administrative districts within a certain period?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): *Madam President, the work of MCHCs and WHCs are in fact similar. Therefore, started from last year, and in this year, the DH would provide comprehensive women health services in MCHCs. We certainly intend to provide services convenient to the public and that is why we are considering the provision of women health services in the MCHC of each district.*

**MR FRED LI** (in Cantonese): *Madam President, I believe many women, being exposed to an array of "lose weight" and slim-up advertisements, are health conscious. At present, the services provided by the MCHCs and WHCs are centre-based and relatively passive in nature. Will the Government consider*

*conducting more outreach work? It may liaise with community centres and women organizations to provide more health education and counselling services in an outreach manner to bring such services into the community.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, in fact this is one of the duties of the DH. The DH also has to perform outreach work in the course of implementing health education, and it has made an effort to work in collaboration with different bodies in the community. I will ask the DH to review its current work to see if there is a need for enhancement.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, we can see that the Government has been promoting women health services. The DH used to provide women health services through only three WHCs, but the service was extended to five MCHCs last year and further to another five MCHCs from November this year. However, figures show that not many women have undergone health check-ups at those centres, there were only several tens thousands of them; I think the utilization rate was rather low compared to the 3 million female population of the territory, excluding children and teenagers. Given this utilization rate, has the Government considered stepping up its promotion work in the numerous housing estates in the territory to enable women to receive such service in their districts or through other channels? I hope the Government will consider establishing a network to assist women to receive screening service which is very important to them.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, as I have said in my earlier reply, the DH must undertake outreach work in order to implement health education. Success of the programme relies on co-operation with district organizations but not the professional staff of the DH alone. I have said that I would request the DH to review the current measure to see if such services need to be enhanced.

Screening service is the other aspect. Health check-ups are a matter of choice, and health education is not limited to check-ups only. Such services can be divided into two aspects. The first one, which the DH must undertake, is the

provision of cervical screening that I have just explained. We think this type of service must be co-ordinated by the DH, as studies indicate that successful implementation of the screening programme may reduce women's risk of contracting cervical cancer. As to other check-ups, they are optional; members of the public may decide on their own whether to undergo such check-ups or not. We would only encourage them to undergo a general check-up. The DH will conduct studies with community bodies in the future to identify the mode of primary health education as well as screening services.

**MR MICHAEL MAK** (in Cantonese): *Madam President, I am wondering if the low utilization rate has anything to do with women's awareness of health and disease prevention, but I think they are probably related. Furthermore, as I know that women have to pay for such screening service. Has the Secretary considered conducting a user survey in respect of the relation of these two factors to examine whether the utilization rate is so affected?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): *Madam President, we have not conducted any survey. Hong Kong women are becoming more health conscious, and we have been encouraging them to undergo health check-ups. With regard to fees charged, every service provided has to be charged. As this service is not a preventive service, and there is no academic proof that this is a positive and effective preventive measure, thus we will not waive the fees for this service.*

**PRESIDENT** (in Cantonese): *This Council has spent more than 16 minutes on this question. This is the last supplementary question.*

**MRS SOPHIE LEUNG** (in Cantonese): *Madam President, this question reflects that the awareness of many women of their health is far from satisfactory. At present, there are over 300 grass-roots bodies assisting women. Has the Secretary considered organizing volunteer activities like Women Health Ambassador Programme through such bodies or work in collaboration with them to disseminate to the community that "health are in their hands" and to encourage women to be more health conscious? Health centres may thus be able to provide services to their target clients.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I agree entirely that this is an effective way. The DH must co-operate with women bodies of the community to have the message delivered to every woman in the community. As I have said, I would request the DH to review the current practice to see if there is a need for enhancement.

**PRESIDENT** (in Cantonese): Second question.

### **Procedural Requirements for Compilation of Drafting Instructions**

2. **MS CYD HO** (in Cantonese): *Madam President, the Government's General Regulations stipulate that before giving approval in principle to a drafting proposal, the Policy Secretary should consider whether it is necessary to consult the various interested parties outside the Government, and that the compilation of drafting instructions should commence only after such approval is available. In this connection, will the Government inform this Council of whether:*

- (a) *there were any cases in the past five years in which, before the public consultation period for the legislative proposal in question expired, the Policy Secretary concerned had already given approval in principle to a drafting proposal so that the compilation of the relevant drafting instructions could commence right away; if so, of the details and the rationale of the Policy Secretary concerned for adopting such a course of action;*
- (b) *it has assessed whether the Administration's act of commencing the compilation of the relevant drafting instructions before the completion of the public consultation on the proposal for legislation in respect of Article 23 of the Basic Law has deviated from the provisions of the General Regulations; if it has, of the assessment results; and*
- (c) *it has assessed whether the course of action referred to in (b) above will give the public an impression that the Administration has already finalized its decision on the legislative proposal in question, and is not conducting a comprehensive and genuine public consultation; if it has, of the assessment results?*

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

- (a) The General Regulations (GR) make no specific reference to the timing of compilation and issue of drafting instructions *vis-a-vis* public consultation exercise, if any, that may be conducted on the legislative proposals in question. For this reason, the Government does not keep the kind of statistics as required under part (a) of the question.

(b) and (c)

The Government is conducting a public consultation on the proposals to implement Article 23 of the Basic Law. As I have explained at the meeting of the Legislative Council on 23 October, the Security Bureau and the Department of Justice have begun the preparatory work for the drafting instructions, which includes the reviewing of the public submissions that are being received. Since all the views and comments submitted during the public consultation period will be taken into account, we have not issued nor finalized any drafting instructions at this stage.

**MS CYD HO** (in Cantonese): *Madam President, the reply of the Secretary was even shorter than my main question. Let me to read out the following section from "Legislative Drafting in Hong Kong" issued by the Department of Justice: "Inadequate or ill thought out instructions can lead to a number of unsatisfactory results, including legislation that has an effect that is different from what was intended, or involves a considerable waste of time on the part of all concerned." Madam President, the consultation period has not yet expired, and some people even opine that it should be extended, yet the Secretary told us on 23 October that the Government had begun the preparatory work for the drafting instructions. Will it be ill thought out for the Bureau to begin the relevant preparatory work despite public views are not yet collated under the consultation; or has it been considered that no consultation should be conducted after thorough deliberation?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have explained in response to the question raised by Ms Cyd HO in October that we



had only begun the preparatory work, which included reviewing and analysing the public views being received, and consulting with our legal adviser. For that reason, drafting instructions have not been issued for the time being. In fact, our procedures are meticulously thought, therefore the circumstances described by Ms Cyd HO are unlikely to arise.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Secretary stated in parts (b) and (c) of the main reply that only the preparatory work had begun and the compilation of the relevant drafting instructions had not commenced yet. May I ask the Secretary whether it is a common practice to carry out the preparatory work before expiration of the consultation period? If the answer is positive, may I ask whether it is indispensable and necessary to conduct the preparatory work at this moment, instead of commencing it upon the expiration of the consultation period, so that all of the views could be examined?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, perhaps Mr LEUNG Yiu-Chung has some misunderstandings about the compilation of the drafting instructions. Provisions in relation to the drafting of new legislation under the GR stipulate that the Government Secretariat may decide whether it is necessary to conduct consultation. However, this procedure should be conducted before approval in principle is given to a drafting proposal, that is, the consideration for a public consultation exercise should be made prior to the giving of approval in principle to a drafting proposal. For example, before giving approval in principle to a proposal of amending the legislation on the minimum age of criminal responsibility, we may take a number of factors into account, which include whether a public consultation should be conducted. Under GR 454, when a Policy Secretary has approved a proposal in principle and, where necessary, obtained clearance in accordance with paragraph (I) of GR 453 or from the Committee on Legislative Priorities, he will inform the proposer and the Law Draftsman. The proposer should then proceed with compiling the formal drafting instructions. In other words, there is no provision in the GR that rigidly requires a public consultation before proceeding with the compilation of formal drafting instructions, thus we have not violated the procedure.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, I have not said that a public consultation should not be conducted: I agree that it should be*

*conducted. The Secretary said the preparatory work had begun, and I asked why it should start that early. Why should the preparatory work not begin after all public opinions are collated, that is, will it be more prudent and comprehensive to begin the work upon the expiration of the consultation period? Why should it not be carried out in that fashion? Why should it be started that early? Is it the usual practice?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, actually I have answered this question in my previous reply to the supplementary of Ms Cyd HO. The preparatory work included an examination of the public views being received. For example, since the media is of the view that a defence of "public interest" or "prior publication" should be put in place in order to protect press freedom, we have to study whether such a proposal is practicable. Upon receiving these views, we have to scrutinize them together with our legal experts, examine the documents and refer to overseas precedents. This is the kind of preparatory work in progress.

**MS AUDREY EU** (in Cantonese): *Madam President, may I ask the Secretary what the progress of the consultation is? How many submissions have been received? In the Secretary's opinion, how long will it take to have them sorted out upon the expiration of the consultation period on 24 December? The Secretary said the Government had not finalized any drafting instructions at this stage. May I ask how long it will take to finalize the drafting instructions after sorting out the submissions? When will the Government publish the relevant bill?*

**PRESIDENT** (in Cantonese): Ms Audrey EU, please take your seat first. The scope of this main question is relatively narrow, which is on compliance with the GR. You have just raised several questions and one of them is about the number of submissions received by the authorities, which I consider irrelevant to the main question.

**MS AUDREY EU** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that all the views and comments submitted would be considered, and that the authorities had not issued or finalized any drafting instructions at*

*this stage. My supplementary was specific to this reply, as I wish to know how many submissions and comments have been received and how long it would take to consider them. Besides, when would the drafting instructions be finalized? Upon the finalization of the drafting instructions, a draft bill should be made, then, when would the relevant bill be published?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, in relation to the consultation on the proposal for legislation to implement Article 23 of the Basic Law, so far we have received over 3 000 submissions. Since the consultation period will expire in 10-odd days, therefore Honourable Members should be able to imagine that we would receive piles of submissions in the next few days. I do not have the latest figure at hand for the time being, but it should have exceeded 3 000. As to when the formal drafting instructions would be issued, I think we need some time to analyse the opinions received after the consultation period has expired.

**MS AUDREY EU** (in Cantonese): *Madam President, in fact what I wished to ask was mainly about the time. Now that there are 3 000-odd submissions, I would like to know how long the Secretary considers it will take to complete the deliberation and analysis on all of the views and comments before the drafting instructions can be finalized and the bill is published ultimately. All I wish to ask is the time of three processes, that is, the time for completion of the consideration, the time for completion of the drafting instructions, and the time for completion of the Blue Bill or bill in whatever colour.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, we can issue the drafting instructions only after the end of the consultation period. Our objective is to complete by January the analysis of the submissions. I remember having assured Honourable Members on the last occasion answering a similar question that we would publish the results of the consultation and conduct an analysis of the specific views. I hope to complete this work in January.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary mentioned earlier that the authorities were reviewing and analysing views being*

*received, but is the compilation of drafting instructions being conducted concurrently? Let me put it in another way, is the compilation work already started despite the drafting instructions are not yet issued?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, "not yet issued" means "not yet compiled". We are just conducting the discussion and review.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I think that "not yet issued" is not necessary equal to "no yet compiled". I asked whether the compilation of drafting instructions had already been started.*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have nothing to add.

**MS EMILY LAU** (in Cantonese): *Madam President, I also wish to raise a supplementary on the issue of compilation, but my question is about the compilation of the bill. Is it possible that the authorities have begun the compilation of the bill under certain circumstances? If that is not the case, then how can it be passed by July? Madam President, I hope you will allow me to raise this supplementary, despite your consideration that the scope of the main question is rather narrow. However, the Government has set a timetable and stated that July is the target. At present, over 3 000 submissions have been received and the figure may rise to over 4 000 or 5 000, and subsequently the drafting instructions should be issued and the bill published. All of these arouse our association to the question about whether the contents of the bill are being drafted so that it can be passed in July.*

**PRESIDENT** (in Cantonese): Ms LAU, you should be glad to know that your supplementary is not deviating from the subject, because the replies of the

Secretary to the supplementaries raised by Ms Audrey EU and Mr LEE Cheuk-yan have already touched upon that aspect.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, my reply is that we have not begun drafting the bill. It is because according to law drafting procedure, a Policy Bureau should issue to the Law Drafting Division of the Department of Justice the drafting instructions before that Division begins drafting the bill. Since we have not issued the drafting instructions, there is no question of the Division drafting the bill now.

**MS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not answered the latter part of my supplementary. That is, if the bill has not been drafted by now, how can it be passed by July?*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think different people always hold different views about that.

**MR ALBERT HO** (in Cantonese): *Madam President, the Secretary said that the preparatory work for the drafting instructions had begun, but that did not include any drafting instructions. May I ask what is included in the preparatory work? Will it include views of the Secretary we hear from time to time, or views of the Acting Chief Executive, Mr Donald TSANG, only expressed a few days ago, about protection of the information of the press? Will the preparatory work include some amendment proposals? Will these amendment proposals be published before the compilation? Or when will they be published?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I did actually answer that question a while ago and cited similar examples. For instance, we attach great importance to the concerns of the media. One of the media's concerns was the disclosure of official secrets, for which they wished to

be granted more protection in order to prevent media from breaking the law inadvertently. Examples include the granting of public interest defence or prior publication defence, or just like what the Acting Chief Executive and I had mentioned, giving specific protection to journalistic materials. Another example was reducing the power of the police such as the exercise of power to search a premises in case of great emergency. All of the views involve numerous legal and practical issues. For this reason, we should discuss the views being received with the Department of Justice and relevant departments. These are the kind of work we are doing currently.

**MR ALBERT HO** (in Cantonese): *Madam President, my supplementary was whether these amendment proposals would be published before the compilation of the drafting instructions?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, we plan to finish analysing in January the submissions received, then we will publicize the results. We are of the opinion that after analysing the views from all sectors, we should also explain to the public certain areas we consider modifications could be made to the proposals advanced in September, then we would have the bill published.*

**MISS MARGARET NG** (in Cantonese): *Madam President, can the Secretary clarify one point? She told this Council previously that the Security Bureau had begun the compilation of drafting instructions, but it seems that she has told us today that only the preparatory work of the compilation of drafting instructions has begun. Nevertheless, the relevant preparatory work merely includes the analysis of public views, but such analysis is not equivalent to the compilation of drafting instructions. Does it mean that besides analysing public views, the authorities have not begun the compilation of drafting instructions? In fact, the authorities have to analyse public views before deciding whether it should make legislation, then they should proceed with the procedure of compiling drafting instructions. If the compilation of drafting instructions has already begun, then will it be tantamount to putting the cart before the horse? Madam President, I fail to catch the point, therefore I would like the Secretary to clarify it.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not have the copy of my reply to the question on the previous occasion. However, I have read the relevant papers before attending today's Council meeting and checked what I have said. I can remember clearly that I said we had not issued the drafting instructions, as we were only conducting the preparatory work. The position has not changed presently. But as a couple of weeks have passed, more and more practical legal issues have emerged. We are currently reviewing all sorts of issues with our legal experts.

**MISS MARGARET NG** (in Cantonese): *Madam President, the Secretary has not answered my supplementary. I did not ask whether the drafting instructions had been issued, I asked whether the compilation of drafting instructions had begun. If the work is underway and unfinished, then of course they would not be issued. However, the fact that they have not been issued does not mean that they have not been compiled, therefore I would like the Secretary to clarify that point.*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have nothing to add.

**PRESIDENT** (in Cantonese): This Council has spent more than 18 minutes on this question. This is the last supplementary.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the consultation has been going on for some time, and it has aroused heated debates in society and specific suggestions about some provisions have been made. Among the supporting or disapproving voices, there is one unanimous voice which urges the prompt publication of the detailed provisions. May I ask the Secretary whether she could undertake that the Blue Bill would be presented to this Council expeditiously for scrutiny after all the processes in question are completed?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I agree with Mr LAU Kong-wah's point, that is, voices in society have been urging us to publish the bill as soon as possible in order to dispel concerns, notwithstanding the colour of the bill is blue, white or yellow. Mr Martin LEE also stated in a political party forum that the colour of the bill was insignificant, as the most important thing was seeing the relevant bill. Our target is to have the analysis and review of the views received completed in January and have the relevant bill published as soon as possible in February after the Government has announced the areas that require reconsideration or modification.

**PRESIDENT** (in Cantonese): Third question.

### **Funding for Sub-degree Programmes**

3. **MR WONG SING-CHI** (in Cantonese): *Madam President, the Government announced on 27 November that it had accepted the final recommendations of the University Grants Committee (UGC) regarding higher education in Hong Kong, including the recommendation that funding for the institutions' sub-degree programmes, subject to specified exceptions, should be switched from publicly-funded to self-financing gradually. At the same time, the Government made no mention of the future development of higher diploma programmes, which are of the same concern as sub-degree programmes. In this connection, will the Government inform this Council:*

- (a) *of the reasons for accepting the proposal that sub-degree programmes should operate on a self-financing basis, while substantially subsidizing degree programmes; whether it has assessed if this is unfair to students in the sub-degree sector; if so, of the outcome of the assessment;*
- (b) *given that the Administration has undertaken to raise the level of the financial assistance for students enrolled in sub-degree programmes to that similar for university students, of the average increased amount of grants that each student in the sub-degree sector will receive; and*



- (c) *whether it plans to replace higher diploma programmes with sub-degree programmes, and of the measures it will take to ensure that the academic standards of sub-degree programmes can receive the same recognition by the relevant professional bodies as for higher diploma programmes; if no such measures will be taken, of the reasons for that?*

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

- (a) To ensure the more effective use of limited public resources to benefit more sub-degree students, and to provide a level playing field for non-publicly-funded institutions offering self-financing sub-degree programmes, the Government accepts the recommendation of the UGC in the higher education review that the current allocation of resources for sub-degree programmes should be rationalized. The Government will continue to subsidize three types of sub-degree programmes, including courses that require high start-up and maintenance costs or access to expensive laboratories and equipment; courses that meet specific manpower needs; and courses which are regarded as endangered species (that is, those that lack market appeal to the provider and the average student).

In deciding whether to subsidize certain categories of programmes, the Government will consider the nature of the courses and the needs of the community. Sub-degree programmes meeting the above three criteria will continue to be funded by the Government. While some sub-degree programmes will have to operate on a self-financing basis, the Government offers grants, low-interest loans, non-means tested loans and travel subsidies to eligible students; as well as assistance to institutions in the form of interest-free loans, accreditation grant, land for the construction of campuses, and so on.

Notwithstanding the different mode of assistance given to institutions offering self-financing sub-degree programmes, the Government remains fully committed in using its resources to

support the sector. There is no question of sub-degree students being treated unfairly.

- (b) The Government undertakes that savings achieved from the review of funding of sub-degree programmes will be used primarily to benefit students in the sub-degree sector. This could be in the form, for example, of enhancing the financial assistance scheme for sub-degree students. The level of financial assistance that can be raised will depend upon the outcome of the review which is not yet available at this point in time. We cannot estimate the average increase in the amount of assistance for each student for the time being. We will work with the UGC and the Student Financial Assistance Agency on the specific arrangements.
- (c) Sub-degree programmes is a general term covering mainly higher diploma and associate degree programmes. Higher diploma and associate degree programmes are generally of equivalent standards although their positioning and nature are different. Both associate degree and higher diploma programmes can cover general education and vocational oriented subjects, that is, students will be equipped with generic skills as well as professional knowledge and practical skills. Generally speaking, associate degree programmes are more broad-based, while higher diploma programmes are more professionally focused. The Government has no intention to replace one qualification with another.

The Government attaches great importance to the quality of sub-degree programmes. Programmes offered by the universities are subject to their own internal quality assurance mechanisms, while those offered by other institutions must be accredited by the Hong Kong Council for Academic Accreditation to meet the Government's requirements. Associate degrees and higher diplomas conferred by these institutions are recognized by the Government, local and overseas universities, academic organizations and professional bodies. To ensure that the community has a better understanding of the qualifications, the Government, in collaboration with the institutions concerned, will continue to promote a better understanding of sub-degree programmes among students, parents, teachers, employers and other members of the public.

**MR WONG SING-CHI** (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary said it is hoped that a level playing field could be provided for non-publicly-funded institutions that offer self-financed sub-degree programmes. In fact, since the sub-degree programmes were launched in 1994, full-time students of publicly-funded sub-degree programmes account for 15% to 21% of the total number of UGC-funded full-time students. Furthermore, publicly-funded and self-financed sub-degree programmes concurrently offered by the institutions have operated smoothly over the past eight years. Why has the Government now decided that funding for most sub-degree programmes should gradually be switched from publicly-funded to self-financed? Has such a decision been made because it has received complaints from university students against assistance granted by the Government to students of sub-degree programmes? If not, why has the Government accepted this recommendation?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, first of all, according to the relevant data, there are 9 000 Year One places for self-financed sub-degree programmes this year, which is more than the 7 800 publicly-funded places. In other words, more places are offered by private school sponsoring bodies. Moreover, the tuition fee for programmes operated by private non-profit-making organizations ranges from \$30,000 to \$50,000 while that for publicly-funded institutions is about \$31,595, so there is not a big gap in tuition fees between the two. However, apart from offering subsidies for the tuition fees of such institutions, the Government also offers a subsidy of \$110,000-odd on average for each subject, that is, the cost for each place is almost \$150,000. Compared with the cost of \$30,000 for each place offered by non-government school sponsoring bodies, there is a great gap between the two and this is very unfair to non-government school sponsoring bodies. Therefore, it is not true that the Government is no longer subsidizing such programmes, for subsidies are actually provided for the operation of such programmes, though not in the form of direct allocation to institutions. Instead, students are offered direct subsidies so that they could have an option. The students can thus choose to enroll in such programmes with private institutions or with subsidized institutions, and they are given autonomy to make their own choices.

**MR WONG SING-CHI** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question just now. My supplementary question*

*asked whether the Government had received any complaints from university students against assistance granted by the Government to students of sub-degree programmes. What does the Government think about this?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we have not received any complaints from university students against this.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, the Secretary said in his main reply that the Government attaches great importance to the quality of sub-degree programmes and in collaboration with the relevant institutions, the Government will continue to promote a better understanding of sub-degree programmes among students, parents, teachers, employers and other members of the public. Can the Government promulgate sub-degree programmes that are not publicly-funded or offered by non-profit-making organizations, so that students and parents can make their choices?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as regards government recognized sub-degree programmes, they are all listed on the website <<http://www.postsec.edu.hk>>, whereas non-government recognized programmes are not listed on this website. There are 13 civil service grades at present in which the minimum entry requirement is an associate degree.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the Government explained in the main reply that the purpose of withdrawing subsidies for sub-degree programmes is to provide a level playing field for other self-financed institutions. Speaking of fairness, the degree programmes of the eight Hong Kong universities are publicly-funded while that of the Open University are self-financed and some degree programmes of the Shue Yan University are even privately-operated, but all these institutions offer comparable programmes. By the logic of the Government, does it mean that funding for all eight universities has to be withdrawn before a level playing field could be provided? Moreover, why would a level playing field suddenly be no longer available if the Government only offers subsidies for degree programmes but not*

*sub-degree programmes? Can "fairness" be manipulated and different standards applied?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, there are different considerations for different types of programmes at different levels, and there should not be any generalization. The Open University offers distance learning programmes, which are different from those in ordinary institutions. As regards the issue of fairness, that is, whether it is unfair of the Government to offer subsidies for degree programmes but not sub-degree programmes, I believe I have already explained this point very clearly.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, in which part of the Secretary's reply has he given a very clear answer to my supplementary question? Speaking of fairness, it is obviously unfair to the youngsters if they are offered subsidies for degree programmes but not sub-degree programmes. May I ask the Secretary in which part of his reply has he given an answer to my supplementary question?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have already made a very clear reply. I said sub-degree programmes are different from degree programmes, and should, therefore, not be discussed in the same breath. The Government should spend public funds on the most appropriate areas, in particular, on areas that are not catered for in the private market. Since it is an area that is catered for in the private market and private institutions have got more places than government institutions, then should we offer them a level playing field? We think it is both necessary and fair to do so. Mr CHEUNG questioned the fact that the Government has not offered subsidies for sub-degree programmes but this is not the case. We do actually strongly support sub-degree programmes but only in a different way. Why did I say "strongly support"? This is because sub-degree programmes that meet three criteria would continue to be funded by the Government: Firstly, courses that require access to expensive laboratories and equipment; secondly, courses that meet social needs; and thirdly, courses that are not very popular but should be retained in the Government's opinion. Therefore, such subsidies do still exist. Furthermore, subsidies would also be offered to institutions. For

example, this week, the Government would allocate five pieces of land for the application by school sponsoring bodies to build schools for running sub-degree programmes and this is a form of subsidy. Therefore, Members should not say that we have not offered subsidies in this area, only that it is a different form of subsidy.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, the Secretary said in the second paragraph of part (a) of the main reply and in his replies to other supplementary questions that the Government would offer different forms of assistance to students of sub-degree programmes, including grants, low-interest loans, non-means tested loans and travel subsidies and these are direct subsidies to students. May I ask the Secretary whether all students enrolled in sub-degree programmes are eligible for all four types of subsidies in the future? As far as I understand it, grants do not have to be repaid, while low-interest loans and non-means tested loans must be repaid, and travel subsidies do not have to be repaid. Could the Secretary now explain to us what kinds of assistance have to be repaid and what others need not be repaid?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, Mr Tommy CHEUNG is absolutely correct in saying that we are now offering subsidies to students of sub-degree programmes, but the subsidies offered to such students are slightly different from those offered to students of public institutions. Therefore, we think that some adjustments should be made in this respect. As regards the different types of subsidies, such as means-tested grants and low-interest loans, at an interest rate of 2.5% per annum, are subsidies for tuition fees. As regards travel subsidies, an annual subsidy of \$8.4 million is offered to students and under this category, each student can receive a maximum subsidy of \$58,980. Furthermore, non-means tested loans, at an interest rate of 4.5% per annum, are subsidies for students' living expenses. The ceiling for this loan is \$33,690, with a repayment period of up to 10 years. Students could apply for an extension of the repayment period if they have difficulties.

**PRESIDENT** (in Cantonese): Mr Tommy CHEUNG, has your supplementary question not been answered?

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, actually, I wish to clarify whether it is true that grants need not be repaid.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, grants do not have to be repaid after they are given to students.

**DR YEUNG SUM** (in Cantonese): *Madam President, during the four-month consultation period, the teachers and students of many institutions opposed the idea of changing the form of funding for sub-degree programmes, including higher diploma programmes, to self-financing. If the Government does so, then it would be offering subsidies for certain programmes on a selective basis and this is a great change from the previous manner of finance. May I ask the Secretary whether this would increase the financial burden of students and affect the quality of teaching?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, since the quality of teaching is assured by the school sponsoring bodies and the institutions, I believe it would not be affected. As regards the burden of students, I believe that it would also not be increased as a result. As I said earlier, the current tuition fees charged by institutions are \$31,000 or so while that of private school-sponsoring bodies ranges from \$30,000 to \$50,000, so this should not further increase the students' burden. Moreover, students who have already enrolled in the programmes would not be affected by this measure.

**PRESIDENT** (in Cantonese): This Council has already spent more than 16 minutes on this question. This is the last supplementary question.

**DR RAYMOND HO** (in Cantonese): *Madam President, in part (c) of the main reply, the Secretary said that higher diploma and associate degree programmes are generally of equivalent standards and both cover general education and vocational oriented programmes, but he also said that associate degree programmes are more broad-based, while higher diploma programmes are more*

*professionally focused. In this regard, members of the community would be very confused and professional bodies would be even more so. Last year, I moved a motion to discuss this issue, but in this connection, it seems that the Government is still unsure whether two qualifications or only one qualification is needed. Now, the Secretary has even said that the two qualifications can co-exist but the dividing line between the two is still blurred.....*

**PRESIDENT** (in Cantonese): Dr HO, please come to your supplementary question direct.

**DR RAYMOND HO** (in Cantonese): *May I ask the Secretary if the Government has fully consulted the professional bodies to see under what circumstances such two qualifications would not be recognized and how they would distinguish between the two qualifications? Can the Government provide the professional bodies with more information to facilitate their determination?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, associate degrees and higher diplomas are generally of equivalent standards although their positioning and nature are different. As to whether the Government could give an analysis to clarify the different natures of the two, we are now studying the manpower structure and a public consultation exercise would be conducted in the context of which discussions on this issue will be carried out with the relevant professional bodies.

**PRESIDENT** (in Cantonese): Fourth question.

### **Implementation of Fishing Licence Programme**

4. **MR WONG YUNG-KAN** (in Cantonese): *Madam President, in the Report on the Consultancy Study on Fisheries Resources and Fishing Operations in Hong Kong Waters published by the Agriculture, Fisheries and Conservation Department in April 1998, it was recommended that a fishing licence programme should be established so that the Government would be able to directly control the number of fishing vessels. However, the programme has not yet been implemented. In this connection, will the Government inform this Council of:*



- (a) *the reasons for the delay in implementing the programme; and*
- (b) *the timetable for implementing the programme?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese):

Madam President, the Government has long been concerned about the problem of depletion of fisheries resources in local waters. To address the issue, we commissioned a consultancy study on fisheries resources and fishing operations in Hong Kong waters to assess the situation and put up recommendations on suitable improvement measures. The study, completed in 1998, confirmed that fisheries resources in Hong Kong waters had been over-exploited, and recommended six priority fisheries management measures to protect and sustain local fish stocks. Three of those measures have already been implemented in phases and showing encouraging results. These include:

- (i) habitat enhancement through the deployment of artificial reefs;
- (ii) habitat restoration by means of mitigating the impact of marine works projects; and
- (iii) restocking with a fish fry releasing trial scheme.

The consultancy study's recommendation of a fishing licence programme, on the other hand, is more controversial due to its possible implications on the livelihood of local fishermen. A number of fishermen's organizations had raised concerns over the administrative burden, licence succession problems and cost consequence the programme might have on them. In response, we have taken time to conduct extensive consultation to clarify their doubts, and subsequently fine-tuned some features of the proposed programme to address their concerns.

The introduction of the fishing licence programme requires extensive legislative amendment, and the detailed operation of the programme must be well planned to ensure its effectiveness and smooth implementation. The exercise involves a whole range of complex legal and enforcement issues. We have to give these issues careful consideration in consultation with relevant government departments. Some examples of these issues are:

- (i) the licence programme's coverage and extent of control, in terms of fishing methods, gears and vessels;
- (ii) the circumstances that warrant enforcement action to be taken and the various possible enforcement difficulties;
- (iii) the question of liability in case of the offender being a person other than the owner of the vessel or the master or person-in-charge of the vessel;
- (iv) the level of penalty for relevant offences; and
- (v) the proposal's compliance with various international agreements.

We are now working on the details of the proposed programme. We intend to consult the Legislative Council Panel on Food Safety and Environmental Hygiene on a proposed framework of the programme in the latter half of this legislative year.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, the Government commenced a consultation on the relevant programme in April 1998 and completed its consultation with all fishermen's organizations in 1999. However, this matter was shelved for nearly three years afterwards and five years have elapsed since the beginning. The Government is still telling us that this matter will not be dealt with until the next legislative year, that is, six years' time will be required. Together with the time required for the development of the relevant programme and the legislative process, eight to nine years may be required. In fact, amending the legislation should not pose any major problem. Why is so much time needed? In the consultation with fishermen's organizations, apart from the objections from one or two fishermen, the industry generally accepted the Government's revised proposals after the explanations made by the Government. Therefore, I really cannot see why so much time is needed. Can the Government inform this Council if the exercise to amend the legislation will be expedited?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, as I have mentioned in the main reply, the problems involved

are actually rather complicated and fishermen also have a lot of concerns. During the consultation period, fishermen expressed different views and concerns. I understand that a working group was set up after the conclusion of the consultation exercise to examine the concerns expressed by fishermen and propose ways to address them. This year, the Government will examine the enforcement of legislation and this involves some rather complicated issues. I have mentioned the relevant problems in the main reply. However, the Government will conduct a study this legislative year as early as possible. It is expected that a general framework on the proposed programme will be submitted in the latter half of this legislative year.

**MR ALBERT CHAN** (in Cantonese): *Madam President, there are different interests even among fishermen. For example, the needs of fishermen practising trawling are different from those of handliner fishermen. Handliner fishermen hope that fishermen practising trawling will not catch even fish fry, because if there are still some fry left in the sea, there is a possibility that they can still catch some big fish. May I ask the Government if it will study the problem of over exploitation in coastal waters? At present, the mesh of the nets used by trawlers are so small that even fish fry are caught. In fact, many countries now regulate the mesh of the nets in order to conserve fry and fish stock in the ocean as far as possible. Will the Government consider incorporating this kind of requirement so that fishermen who operate in coastal waters, irrespective of trawling or handlining, will all be able to make a living?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, this is one of the concerns of fishermen. The Government will look into this matter and consider if there is a need to impose restrictions. I am also fully aware of the problems relating to trawling and we are reviewing this in the hope of finding the most appropriate way of monitoring.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, the Secretary mentioned in the last paragraph of the main reply that a proposed framework on the proposed programme will be submitted. May I ask the Secretary if consideration will be given to including the waters off public beaches in the licence programme, so that the ecological balance of the seabed in these waters can also be maintained?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, the Government will examine how our fisheries resources can be protected under the licence programme from various perspectives. We will also consider the matter raised by Mr LAU Ping-cheung just now.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, the Government commissioned a consultancy study on fisheries resources and has adopted three of the recommendations, which will be implemented in three phases. May I know by how much the fish stock will increase if plans such as deploying artificial reefs and restocking with fish fry are implemented, and how much money will be needed if these plans are adopted?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, concerning the question of the expenses required, I will give Mr CHAN Kwok-keung a reply in writing. (Appendix I) The ongoing project to deploy artificial reefs has not yet been completed and some of the work is still being carried out. The project will be completed in the middle of next year, however, as I have said in the main reply, the results so far are quite satisfactory. We found that nearly 200 types of fish were reproduced at these artificial reefs. In addition, the restocking scheme has not yet been completed and it will take one or two years before we can see the results.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, is the Secretary aware that many mainland fishing vessels are fishing in Hong Kong waters and taking away Hong Kong's marine resources blatantly and there is no law in Hong Kong according to which prosecution can be initiated against these mainland fishermen? Is the Secretary aware of such a situation? If yes, how many mainland fishing vessels come and fish in Hong Kong waters each day by exploiting this loophole in law?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, it is impossible for the Government to learn of this situation. Since we have not yet implemented the relevant licence programme, it is entirely impossible to know who is coming to fish in Hong Kong waters.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk, has your supplementary not been answered?

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, the thrust of my supplementary is whether the Secretary has tried to understand from law enforcement officers how many mainland fishing vessels come to Hong Kong and engage in fishing.*

**PRESIDENT** (in Cantonese): Secretary, do have you anything to add?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have nothing to add.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary seemed to have played down the problem in his answer to Miss CHOY So-yuk's question. In fact, the situation of fishing vessels coming to Hong Kong to engage in illegal fishing is very serious. The Secretary said that a framework on the proposed programme would be submitted to this Council in the latter half of this legislative year, but there will still be a long interval before the relevant legislative process can be completed. May I know what specific measure the Government will put in place to prevent mainland fishing vessels from fishing in Hong Kong?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, the Marine Police has all along been responsible for carrying out this kind of surveillance. Only Hong Kong fishermen should operate in Hong Kong waters. However, since a licence programme has not yet been implemented, I believe there may be some difficulty in law enforcement.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, the Secretary mentioned in the third paragraph that some issues have to be considered in implementing the proposed fishing licence programme, and one of them, as stated in item (v), is the proposal's compliance with various international*

*agreements. In fact, we would only engage in fishing in Hong Kong waters, so is there any occasion when we would fish in international waters? The Secretary may be concerned that some fishermen will fish in mainland waters, but I would like to tell the Secretary that if Hong Kong fishermen wish to fish in mainland waters, they have to apply for mobile fishermen's licences for Hong Kong and Macao fishermen from the Guangdong Province before they can operate there. We have such licences and the Mainland will issue these licences to us. May I ask the Secretary if this matter should drag on like this, would it be delayed further and further? The Secretary said that the framework would be submitted in the latter half of this legislative year, but will the industry be consulted after that? I am very concerned that if things drag on like this, the matter will be delayed further and further!*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have already explained it is not the case that the Government is dragging its feet on this matter, but that many fishermen have expressed diverse views on the future licence programme and monitoring. Mr Albert CHAN has also mentioned that different types of fishermen have different views. The issue of how to carry out monitoring in future is complicated and controversial. As regards compliance with various international agreements, we have to consider whether the licences will be issued only to Hong Kong fishermen. For example, if foreign companies operate in Hong Kong, should we issue the relevant licences to them? This is also an issue that we have to consider.

**DR RAYMOND HO** (in Cantonese): *Madam President, introducing a new system will arouse enormous concerns among the stakeholders. In countries overseas, the fishing management systems are very stringent. The Secretary also mentioned in the main reply that the compliance of the future programme with various international agreements would be examined. In fact, the scope of the relevant agreements is also very wide. In this connection, has the Secretary consulted members of the industry and carried out an in-depth study in this area?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, the Government has spent quite a lot of time to consult the

industry. Of course, the framework on the proposed programme will be discussed in the relevant panel of the Legislative Council after its submission and prior to its implementation.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that the Government is implementing three of the recommendations and they are showing encouraging results. What does the Government intend to do after implementing these three recommendations and will the plans be further expanded?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, as I have said in the main reply, the initial results of implementing the three recommendations are satisfactory. We will certainly examine if the recommendations can serve to further increase fisheries resources and if the results are found to be satisfactory, we will continue to implement them.

**PRESIDENT** (in Cantonese): This Council has spent more than 15 minutes on this question. This is the last supplementary question.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I wish to raise a follow-up on my supplementary. The Secretary has said that it is the responsibility of the Marine Police to carry out surveillance and that since no licence programme has yet been put in place, it is therefore difficult to conduct investigations. Does it mean the authorities are entirely incapable of conducting investigations? With so many mainland vessels coming to Hong Kong to engage in illegal fishing, should the Health, Welfare and Food Bureau under the Secretary not protect the interest of local fishermen and the marine ecosystem? Given such a serious situation, does the Secretary think that nothing can be done at all?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I wonder what suggestion Mr LAU Kong-wah has? Apart from making government departments responsible for law enforcement deal with the matter, what else can be done?

**MR LAU KONG-WAH** (in Cantonese): *Madam President, it is me who put the question to the Secretary, yet he did not answer my supplementary but asked me what could be done instead. If I know what can be done, surely I can become the Secretary. (Laughter)*

**PRESIDENT** (in Cantonese): Secretary, I believe you do not have anything to add, do you?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have nothing to add.

**PRESIDENT** (in Cantonese): Fifth question.

### **Foundation Strengthening Works for Housing Blocks in Tin Shui Wai**

5. **MR ALBERT CHAN** (in Cantonese): *Madam President, regarding the foundation strengthening works for Block J of Tin Fu Court and Blocks K and L of Tin Chung Court in Tin Shui Wai, will the Government inform this Council:*

- (a) *whether the works for Block J of Tin Fu Court were completed in June this year and those for Blocks K and L of Tin Chung Court will be completed by January 2003 as scheduled; and the latest estimated expenditure of each project;*
- (b) *of the reasons for delays, if any, in the completion of the projects; and*
- (c) *of the number of buyers currently waiting to take possession of their flats, the compensation which the relevant authority has offered them for delays in the delivery of the premises and its plan to deal with the unsold flats?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, my reply to the Honourable Albert CHAN's question is as follows:



- (a) Foundation strengthening works for Block J of Tin Fu Court were completed in July this year as scheduled, at a total cost of \$56 million. As regards Tin Chung Court, the foundation strengthening works for Block K were concluded in April this year as scheduled and the foundation remedial works for Block L are expected to be completed by April 2003, with a total estimated expenditure for the two blocks at \$163 million.
- (b) As compared with the forecast made early this year, the foundation remedial works for Block L of Tin Chung Court are expected to experience a slight slippage of three months. This is due to geological complexities and congested work areas, which necessitate extra caution in work processes. Moreover, additional care has to be exercised to minimize adverse impact on residents of nearby blocks all of which have been occupied. The monitoring process and works schedule have therefore been longer than expected.
- (c) At present, only three buyers are still waiting for completion of the above three blocks in Tin Chung and Tin Fu Courts. Besides accumulating interest on their deposits, the buyers will also be compensated with any price differences by the Housing Authority (HA) should the future re-sale prices of these flats fall below their original purchase prices.

Moreover, according to the sales and purchase agreements, the three buyers have the right to rescind the purchases at any time as the occupation dates are much later than originally expected. If so, the HA will fully reimburse them with their deposits plus interest. At the same time, they can also opt for other alternative housing assistance arrangements, such as purchase of other remaining Home Ownership Scheme (HOS) flats, application for other housing assistance opportunities such as home purchase loans, or reinstating their position in the Waiting List for public rental housing (PRH).

As regards the use of unsold flats in these three blocks, the Housing Department (HD) has formed a dedicated task force to proactively examine various possible options.

**MR ALBERT CHAN** (in Cantonese): *Madam President, the owners of Tin Fu Court and Tin Chung Court, two of the housing blocks with unsold flats, all do not want the Government to convert the unsold flats into PRH units. Will the Government consider the opinions of the owners of these two courts? Besides, when can the Government recover the extra \$219 million spent on foundation strengthening, and can it recover the full amount?*

**PRESIDENT** (in Cantonese): Mr Albert CHAN, since you have asked two supplementary questions, I shall first invite the Secretary to answer your first supplementary question. As for the second one, you will have to wait for a second turn.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, when we explore how we can appropriately dispose of the three housing blocks, we will carefully consider the requests of other owners.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that the foundation strengthening works for Block J of Tin Fu Court and Block K of Tin Chung Court have already been completed. In this connection, may I ask when the owners concerned can move in?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, since there are only three buyers, (*laughter*) we are liaising with them to see if they have changed their mind. Precisely because very few buyers are involved, we think we must discuss with them thoroughly before making any arrangement.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, there are only three buyers, but if they insist on moving in, the Government will have to let them do so, right?*

**PRESIDENT** (in Cantonese): Dr TANG Siu-tong, I am very sorry. Since your follow-up question is not part of the original supplementary question, you have to wait for a second turn, just like Mr Albert CHAN.

**MR ALBERT HO** (in Cantonese): *Madam President, the decision to carry out foundation strengthening works at the above-mentioned locations was made two years ago. Since the making of this decision, has the HD carried out any further foundation inspection at Ting Chung and Tin Fu Courts, covering, among other things, the lengths of the piles there? If yes, what are the findings? And, are the findings the causes of the delayed completion of foundation remedial works for Block L of Ting Chung Court?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I understand that following the completion of foundation strengthening works for Block K of Tin Chung Court and Block J of Tin Fu Court, the HD commissioned two world-famous building structure consultants and one independent foundation expert to carry out inspections, and they confirmed that the works concerned could ensure a high standard of safety for the foundations of the two blocks in the long term. Moreover, since the completion of the works concerned, the HD has been regularly gathering data about the two blocks for monitoring purpose. The data gathered can show the effectiveness of the foundation strengthening works. The data collected so far show that the works have been very effective, and the housing blocks are very safe. The HA will continue with the monitoring work on a regular basis until two years after the completion of all works, so as to ensure the structural safety of the blocks. If necessary, the HD may extend the monitoring period.

**MR ALBERT HO** (in Cantonese): *Madam President, I have asked the Secretary very clearly whether any further foundation inspection has been conducted since the decision was made to carry out foundation strengthening works, and I have also asked for the findings and enquired whether the lengths of the piles have been measured again. It appears the Secretary has failed to give any direct answer to my supplementary question on all this.*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I understand that when the HD decided to carry out this foundation strengthening works, it at the same time appointed a registered engineer to design the works procedures and ascertain the amount of work required. Therefore, as far as I am aware, they did carry out such work.

**MR ALBERT HO** (in Cantonese): *Madam President, the other part of my supplementary question is about the findings. May I ask the Secretary whether he can tell us the findings of the foundation inspection?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I do not have the relevant information now. In the interest of prudence, I will furnish the correct information to Mr Albert HO in writing at a later time. (Appendix II)

**MR LAU PING-CHEUNG** (in Cantonese): *The Secretary said that there should be no problems with structural safety, but he did not talk about the usability of these two blocks. Although there will only be three households in these two blocks, we must still be concerned about their usability — water and power supply, lifts, and so on. For instance, because of the uneven settlement that occurred previously, will the lifts there stop suddenly? Are the lift shafts straight enough? The Secretary focused on the question of safety in his earlier reply, but what is the case with usability?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I understand that the uneven settlement of these two blocks was up to the acceptable safety standards. Therefore, the lifts will definitely function normally, and so will be the water supply. Although there are only three buyers now, we will let the other flats or use them for other purposes in future. For this reason, we will definitely ensure the normal functioning of all facilities.

**MR ALBERT CHAN** (in Cantonese): *Madam President, I wish to follow up the recovery of the extra expenditure. The total expenditure on the foundation*

*strengthening works was as much as \$219 million, all being paid from the public coffers. Has the Government tried to recover the money from the parties concerned? How much has been recovered? If nothing has been recovered yet, is there any possibility of recovery?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I suppose Members are aware that the HD has already taken legal and disciplinary actions against the building contractors of Blocks K and L of Tin Chung Court, and one of the disciplinary actions is to strike them out from the HD's list of approved contractors. Since the relevant claim for compensation has been filed with the Court and there is not yet any ruling, it is not appropriate for me to make any comments here. As for the building contractor of Block J of Tin Fu Court, the HD is considering whether legal or contract-enforcement actions are required.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Secretary said that the blocks concerned would be subject to constant monitoring. May I ask the Secretary what he means by monitoring? If settlement is again detected in the course of monitoring, or if problems with the lifts or water supply are found, will the Government assume full responsibility for the continued repairs and maintenance works required? If the Government will really do so, why is the maintenance period just two years long? Can the Government explain why the period is just two years in length, not any longer?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I said "two years" a moment ago because there is a buy-back period of two years for HOS flats. That was what I meant when I said "two years" just now. As for the structural guarantee of the blocks, there is usually a warranty period of 10 years for HOS flats. However, in view of the special circumstances in the Tin Shui Wai case, we have extended the usual 10-year warranty period to 20 years for the blocks concerned. This is meant to offer extra protection to the residents, and we think they will thus have more confidence in the structural safety of their blocks.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, has your supplementary question not been answered?

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, no, not answered. I want to know whether monitoring would cover maintenance and repairs. In other words, I want to know whether the Government would assume full responsibility if problems are found. Also, the Secretary said that the structural guarantee period for HOS units was two years. But what is meant by "two years"? Can the Secretary explain that in detail?*

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, it seems to me that the latter part of this follow-up question is not part of the original supplementary question.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, by repairs and maintenance, the HD will carry out the routine, normal structural repairs and maintenance for all HOS flats. Since uneven settlement once occurred in the site concerned, there is the worry that the problem may emerge again. However, according to the information now available, we can say that uneven settlement will probably not occur again. Just in case the problem really occurs again, as I said just now, we have extended the structural warranty period from 10 years to 20 years.

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary was somewhat contradictory. He said just before I spoke that he worried about the recurrence of uneven settlement, though the possibility was small. But before that, he said that there was no problem with the structural safety of the blocks. I estimate that there should be more than 1 000 unsold flats in the three blocks concerned because there are only three buyers — unless these three buyers have purchased many flats. It is mentioned in the last part of the Secretary's main reply that "the HD has formed a dedicated task force to proactively examine various possible options". I reckon that because of confidence problems, there should not be too many buyers unless the authorities can draw up a great number of contingency measures such as super-low prices or super-low rents. But I do not think that the authorities will do so. What contingency measures does the Government have? Has it ever considered the demolition of all these blocks?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, we have actually explored whether we should demolish the blocks. As explained in the main reply, the total expenditure on foundation strengthening and remedial works is about \$220 million. The authorities estimate that the costs of demolition and redevelopment will be roughly more than \$1 billion, which is far higher than the costs of foundation strengthening and remedial works.

**PRESIDENT** (in Cantonese): This Council has spent more than 15 minutes on this question. This is the last supplementary question.

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, according to the Secretary, following its studies, the Government is of the view that the safety standards required have been attained. May I ask the Secretary whether the extent of settlement is correct or incorrect according to the report and studies?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I do not quite understand what is meant by "correct or incorrect". I think if we find the reports and studies useful, then they should be correct. *(Laughter)*

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, what I wish to ask is this: While the report may estimate an extent of settlement at 10 ft, for example, there may not be any findings showing that the overall extent of settlement has really attained this standard. So, is the computation of the safety level of the blocks based on the estimates of the report, or the actual settlement of each pile?*

**PRESIDENT** (in Cantonese): Secretary, do you understand Mr Abraham SHEK's question?

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I think I do now. *(Laughter)* The engineers in charge of the

foundation strengthening works have explained clearly to us that there were inaccuracies in estimation in the past, but the extent of these inaccuracies have now been ascertained. That is why they are now able to incorporate design flexibility into their foundation strengthening works. For this very reason, the safety levels of the blocks will not be affected.

**PRESIDENT** (in Cantonese): Last oral question.

### **Illegal Activities in Victoria Park**

6. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, it has been reported that, because of its concealed environment, a pavilion located inside Victoria Park in Causeway Bay near the Gloucester Road Flyover has been used by people with triad background to operate illegal gambling dens as well as illegal money-lending and drug-dealing activities. Foreign domestic helpers are also found engaging in prostitution there. In this connection, will the Government inform this Council:*

- (a) *whether the police have investigated if criminal activities take place there; if so, of the investigation results;*
- (b) *of the measures taken by the police to combat criminal activities that take place there and whether prosecutions have been instituted in respect of such activities; and*
- (c) *whether the police will step up enforcement actions to prevent the breeding of crimes at Victoria Park; if so, of the details?*

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

- (a) The police received a similar complaint about alleged illegal activities in Victoria Park in mid-September this year. The complaint has been investigated and the situation closely monitored. Investigation and intelligence to date have not indicated any triad control of gambling or other activities in Victoria Park. Except



some occasional illegal gambling activities and a narcotics offence, the police did not find any usury or prostitution taking place in the Park.

- (b) The police maintain frequent patrol of all areas of the Park to prevent illegal activities. A total of five raids have been conducted in the past six months, resulting in the arrest and conviction of 17 persons for "gambling in a place other than a gambling establishment".
- (c) Crime trends in the Park are closely monitored and enhanced police patrol is provided during Sundays and Public Holidays. Close liaison is maintained with the Park Management, namely, the Leisure and Cultural Services Department (LCSD), with a view to adopting effective measures to prevent the breeding of crimes at Victoria Park. Joint operations with the Food and Environmental Hygiene Department, Immigration Department and LCSD have also been mounted to control illegal hawking activities.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, in the main reply the Secretary said that there was not any triad control of illegal activities in Victoria Park. Does the Secretary know that staff of the LCSD responsible for enforcement in Victoria Park are often intimidated and verbally threatened by triad elements, but the police have refused to institute prosecutions on the ground that Victoria Park is under the management of the LCSD and they are only willing to walk behind staff of the LCSD? As the Secretary has given this answer in the main reply, is it that her subordinates have pulled wool over her eyes or did she actually intend to hide the truth from the public?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, according to the information on hand, in 2001, the police received two reports on triad offences in Victoria Park and this year, no such report has been received to date. As for criminal intimidation, that is, offences similar to threatening LCSD staff, there were two cases in 2000 and none last year, and there has been one such case this year. In other words, perhaps the staff of the LCSD had only complained to Miss CHOY, without taking their case to the police. It is

because if such incidents have taken place, as long as they are criminal offences, the police are duty-bound to follow them up, disregarding whether the place where such incidents took place is under the management of a particular department. Indeed, in respect of crimes in Victoria Park, I have inquired of the Eastern District Office about whether this issue had been discussed in the District Council (DC). The answer that I have been given is that DC members are concerned about a considerable number of foreign domestic helpers gathering and engaging in illegal hawking in Victoria Park, which has resulted in complaints about untidy city appearance and dirty environment. But the DC has not received complaints about prostitution, usury or gambling. But since Miss CHOY has raised these problems, we will keep a closer watch on the situation.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary mentioned that five raids had been conducted by the police in Victoria Park in the past six months, resulting in the arrest and conviction of 17 persons. I think such a high rate of successful prosecution by the police is commendable. Will the Government tell us whether consideration will be given to using high technology for surveillance purposes when conducting patrols at Victoria Park, which covers a large area, in the future, thereby obviating the need to deploy excessive police manpower in just one park?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, patrols at Victoria Park are conducted mainly by uniformed officers. But as Victoria Park covers too large an area, sometimes the "blue beret" officers will be deployed or police patrols will be accompanied by police dogs. Moreover, patrol cars and motorcycles will also be deployed to conduct patrols at the outer skirts of the Park. As for high technology, I wonder if Mr NG was referring to close-circuit television (CCTV). The installation of CCTV is a rather sensitive and controversial issue. I remember the police once suggested the installation of CCTV at Lan Kwai Fong, but this led to public panic, fearing that the police would keep a watch on the people there. In fact, the cost of installing CCTV is exorbitant. While this may reduce the need for manpower, the cost involved would be substantial. So, the police do not have plans to install CCTV at Victoria Park for the time being. Furthermore, since the area of Victoria Park is very large indeed, careful studies are warranted as to where in the Park CCTV would be installed.

**MR HENRY WU** (in Cantonese): *Madam President, I am very glad that Miss CHOY So-yuk has asked this question, because being the Chairman of the Fight Crime Committee (FCC) of the Eastern District, I am very concerned about the situation in Victoria Park. In fact, I have not received in the FCC any message about these crimes either. All that we have received are reports about gambling. I do not wish to talk about the work of the FCC here. I only wish to ask the Secretary some questions. Earlier on, Mr NG Leung-sing also asked the Secretary for ways of tackling the situation. The Secretary said in the main reply that crime trends in the Park were closely monitored and that enhanced police patrol would be provided. Can the Secretary, based on the information available, tell us the frequency of enhanced police patrols conducted on Sundays and public holidays? As the triad elements normally operate at night, will the Secretary tell us what measures are in place to step up police patrol at night?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, I do not have the specific information on hand showing how police patrol is enhanced at weekends and on Sundays and public holidays. But as far as I know, other than patrols by uniformed officers, investigations are also conducted by crime detectors, including plainclothes officers who collect intelligence undercover. In fact, if there are really cases of illegal "usury" or gambling syndicates, the collection of criminal intelligence is very important. The police have been carrying out work in this area, but I do not consider it expedient to disclose the details here.*

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, in her reply to Miss CHOY So-yuk's question, the Secretary appeared to be concerned about Victoria Park only. I would like to extend the question to other parks, because I know that these illegal activities also take place in other parks. May I ask the Government if the police and LCSD officers will step up enforcement actions?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, as there are many parks in Hong Kong, we do not have the crime figures of individual parks but we do have the general crime figures of all the parks in the territory. From January to October this year, there were six cases of serious gambling offences, of which five took place in Victoria Park, which means that only one such case took place in other parks; and for loan-sharking cases, the number was*

zero. Co-operation between the police and the public is a must in monitoring all parks throughout the territory. Therefore, the FCCs and DCs in various districts as well as all police districts must pay attention to the crime trends in their respective districts. For the time being, the police have not identified any of the parks as a blackspot of crimes. But in any case, the police will, in the light of the conditions of different districts, co-operate with the FCC and DC of that district, and will keep an eye on and monitor the situation.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I wish to follow up an earlier reply by the Secretary. She said that there were only six cases of serious gambling offences in all the parks in Hong Kong, five of which took place in Victoria Park. However, my impression is that similar situation does exist in many parks. Will the Secretary tell us how a case is defined as "serious"? Why have more of such crimes taken place particularly in Victoria Park?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, those six cases were cases of serious gambling offences. Certainly, there were other crimes in the parks. Crimes that occur in parks in the territory include indecent assault, rape, criminal intimidation and serious drug offences. However, the police have not identified any particular park as a blackspot of crimes. As regards why there have been more cases of serious gambling offences this year, that is, there are six cases this year compared to a record of zero last year and in the year before last, those cases may be individual cases, and this may be due to a number of reasons: changes in the method used by the police to collect intelligence, greater effectiveness in combating crimes or increased reports. If more reports are made to the police, the police can certainly mount more operations.*

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, the police have refused to institute prosecutions in the Park and they have only followed or walked behind LCSD staff. As the staff of the LCSD work in the Park permanently, they are prey to the triad elements. I wish to ask the Secretary this: Are the police willing to change its practice by instituting prosecutions and make arrests on finding triad elements in conduct of illegal activities in the Park?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President. My thanks to Miss CHOY for providing us with the information. According to Miss CHOY's information, staff of the LCSD may think that the police will dismiss their complaints. As I said earlier, disregarding where the crimes take place, it is the responsibility of the police to receive complaints. If criminality is involved, the police are duty-bound to follow up the case. They cannot say that as the Park is managed by a particular department, so they can only walk behind the staff of that department, just as Miss CHOY has said. If this is what happens in reality, I will take this matter up with the police. I also hope Miss CHOY will tell the staff who have complained to her to take their case to the police direct. I think the Commander in every district will certainly address this matter squarely. Of course, the police can take other actions. As I said earlier, apart from deploying uniformed officers to patrol the Park, plainclothes officers can also be sent to the Park to collect information or to check out what crimes have taken place in the Park.

**MS CYD HO** (in Cantonese): *Madam president, the Secretary said in the main reply that there was not any triad control of illegal gambling activities in Victoria Park, but 17 persons had been arrested and prosecuted for "gambling in a place other than a gambling establishment". Will the Secretary tell us whether these 17 persons were convicted? What penalty did the Court impose on them? Is the penalty imposed on individual citizens too harsh?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not have the information on hand. I will give Ms HO a reply in writing. (Appendix III)

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary mentioned earlier that foreign domestic helpers were also engaged in some illegal activities. Will the Secretary tell us whether there are signs indicating control by syndicates or triad involvement?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the answer is no. I believe Members have also seen illegal hawking activities by foreign

domestic helpers; similar activities are also found in Central. Those stalls or services provided to their compatriots will affect the city appearance or even constitute offences of illegal hawking. However, the situation is not serious, and there is no sign of control by triad societies or other syndicates.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, can the Secretary find time to pay a visit there? Anyone who walks near the stalls operated by foreign domestic helpers will be threatened by somebody immediately. Can the Secretary "pay a visit there in plain clothes" and see for herself what happens in the Park? (Laughter)*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I can certainly pay a visit there, but it makes no difference as to whether or not I am in "plain clothes", because I am recognized by too many people. *(Laughter)* From the information that I have obtained, there is no sign of triad control of gambling and hawking activities, or cases of intimidation. But anyway, I will look into it further.

**PRESIDENT** (in Cantonese): Oral question time ends here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Dispersal of Asbestos During Demolition of North Point Estate**

7. **DR YEUNG SUM** (in Chinese): *Madam President, it has been learnt that carcinogenic asbestos has been found in the building components of the housing blocks in North Point Estate which is being demolished. This has aroused concerns among residents in the neighbourhood, who fear that asbestos may be released in the course of demolition and disperse outside the Estate, thus posing a threat to their health. In this connection, will the Government inform this Council whether the demolition works of the Estate which have been completed and are in progress have led to the release and dispersal of asbestos outside the Estate, and of the measures in place to prevent the dispersal of asbestos beyond the Estate, hence posing threats to nearby residents?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): Madam President, the demolition project in North Point Estate is currently at the stage of erecting scaffolding and site hoarding. Actual demolition has not yet commenced and there is absolutely no question of asbestos dispersal.

The Air Pollution Control Ordinance (Cap. 311) imposes strict control over the demolition of structures containing asbestos. The Housing Department has made explicit provisions in the demolition contract for North Point Estate mandating the contractor to comply fully with all statutory requirements. An independent asbestos consultant registered with the Environmental Protection Department (EPD) has been engaged to conduct field investigation, assess the nature and content of asbestos components, draw up procedures for enclosing structures with asbestos, arrange for their demolition and proper disposal, and install air monitoring equipment, and so on. The consultant will submit a detailed asbestos abatement plan to the EPD for approval. Asbestos removal works cannot proceed until such approval is obtained.

Demolition works will be undertaken by a registered asbestos contractor. Professionals in the Housing Department and the independent consultant will closely monitor the removal process to ensure strict compliance with the asbestos abatement plan and the requirements of the EPD. The EPD will also carry out site inspection from time to time to ensure proper handling and disposal of asbestos materials.

### **Execution of Court Orders by Bailiffs**

8. **MR ANDREW CHENG** (in Chinese): *Madam President, regarding the execution of court orders by bailiffs, will the Government inform this Council:*

- (a) *of the number of occasions on which bailiffs executed court orders, the types of execution orders and the success rate in the past two years;*
- (b) *of the mechanism in place to monitor the work of bailiffs; and whether it has assessed the effectiveness of their work; if so, of the assessment results; if not, the reasons for that; and*

- (c) *whether it has considered if it is necessary to amend the existing legislation and measures so as to increase bailiffs' powers and the success rate of their execution of court orders; if it has not, the reasons for that?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Chinese): Madam President, we have consulted the Judiciary on the question and have received the following information and response:

- (a) The numbers of attempts made by bailiffs in executing court orders for the past two years and the relevant success rates are as follows:

	Year 2000		Year 2001	
	Attempts	Success Rates	Attempts	Success Rates
Warrant of Distress	8 550	30%	8 011	27%
Writ of <i>Fieri Facias</i> , Magistrates' Warrants and others	13 675	14%	11 234	15%
Writ of Possession	15 560	98%	13 497	98%

In the cases of warrant of distress and writ of *fieri facias*, the execution is successful where there are sufficient goods and chattels on the premises to justify a seizure, or if the judgement debtors settle the debt on the spot. If the defendants are penniless, or have left on the premises goods and chattels of no value or insufficient value to cover the execution expenses, or their whereabouts are unknown, the execution is classified as not successful.

- (b) The performance of bailiffs is monitored both internally within the Judiciary and externally by judgement creditors and landlords.

In the Judiciary Administration, senior bailiffs are responsible for monitoring the daily performance of bailiffs. Regular reports on the performance of the bailiffs service is submitted to the management of the Judiciary Administration for review and monitoring.



As regards external monitoring, judgement creditors and landlords are encouraged to accompany bailiffs in executing court orders. About 70% of the execution work is done in the presence of the judgement creditors or landlords who would have an interest in ensuring that the court orders are being carried out satisfactorily.

- (c) The authority of the bailiffs service is derived from section 38A of the High Court Ordinance (Cap. 4). The section already provides for bailiffs to effect orders for committal and for service and execution of the process of the Court, in accordance with rules of court. Obstruction to the discharge of duties by bailiffs is contempt of court and shall be liable on summary conviction to a fine at level 5 and to imprisonment for 12 months; or on conviction on indictment to imprisonment for two years.

As noted in part (a) of the reply above, the execution of court orders by bailiffs is considered not successful if the defendants are penniless, or have left on the premises goods and chattels of no value or insufficient value to cover the execution expenses or their whereabouts are unknown. The Judiciary considers that the success rate of execution of court orders may not be enhanced by amending the existing legislation and measures to increase bailiff's powers, and has no plan to so propose.

### **Plan of Shenzhen Authorities to Construct Logistics Park Regions**

9. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, it has been reported that the Shenzhen authorities plan to invest RMB 65 billion yuan in the construction of six major logistics park regions between 2001 and 2005, with the aim of developing Shenzhen into the largest logistics park region in Southern China. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed the impact of the above plan on the development of the logistics industries in Hong Kong; if so, of the outcome; and*
- (b) *of the measures it will take to reinforce the position of Hong Kong as the logistics centre in Southern China?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President, with China's accession to the World Trade Organization, its external trade will increase and the amount of cargo flowing through South China, in particular the Pearl River Delta (PRD) will continue to rise. The demand for logistics and related facilities will increase in the PRD. As Shenzhen plans to upgrade its logistics facilities, it will increase its competition with Hong Kong and at the same time offer business and co-operation opportunities for our logistics providers.

The policy objective of the Government of the Hong Kong Special Administrative Region (SAR) is to strengthen Hong Kong as an international and regional transportation and logistics hub. We established the Hong Kong Logistics Development Council (LOGSCOUNCIL) last year to provide a forum for the public and private sectors to exchange views, co-ordinate issues and to take forward co-operation projects for the logistics sector. Project Groups have been established under the LOGSCOUNCIL to develop and implement programmes on five key areas, including:

- (i) promoting the development of inter-modal transportation services, and improving the arrangements for cross-boundary cargo flow in collaboration with the mainland authorities;
- (ii) exploring the feasibility of establishing a Digital Trade and Transportation Network System, a neutral e-platform for the exchange of information and data among participants in the supply chain, thereby enhancing speed and reliability;
- (iii) upgrading the service quality and professional standards of logistics practitioners by encouraging local professional bodies to introduce internationally recognized accreditation systems;
- (iv) proposing measures to enhance the competitiveness of small and medium sized logistics enterprises in the light of their mode of operation and cost structure; and
- (v) organizing local and overseas marketing activities to promote Hong Kong's logistics capabilities to potential customers.

We will continue to strengthen our co-operation and co-ordination with other parts of the PRD in developing inter-modal transportation links to maximize our respective competitive advantages for our mutual benefits. At the Mainland/SAR Conference on Coordination of Major Infrastructural Projects meeting held in September this year, we agreed to conduct a joint study with the State Development and Planning Committee on logistics projects and areas of co-operation between the Mainland and Hong Kong. The study is scheduled to be completed in the middle of next year.

### **Funding Arrangement of "Operating Expenses Block Grant" for Aided Schools**

10. **MR ERIC LI** (in Chinese): *Madam President, regarding the funding arrangement of the "Operating Expenses Block Grant" (OEBG) for aided schools which was introduced in the 2000-01 school year, will the Government inform this Council of the following as at September this year:*

- (a) the respective amounts of reserves held by the aided schools with the highest and the lowest cumulative reserves;*
- (b) the number of aided schools without any cumulative reserves; and*
- (c) whether there are aided schools whose extra-curricular activities for students have been affected by the early exhaustion of the grant; if so, how the authorities deal with the problem?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, as the 2001-02 school year has just drawn to a close, the Education Department can only provide the requested information on OEBG based on the audited account of aided schools for the 2000-01 school year:

- (a) The highest cumulative reserve is held by a bi-sessional aided primary school operating a total of 48 classes. The cumulative amount is \$3.88 million. The lowest cumulative reserve is held by a whole-day primary school operating 18 classes. The cumulative amount is \$0.

- (b) There is only one aided school without any cumulative reserve.
- (c) Under normal circumstances, the OEBG disbursed to schools should be sufficient to cover the recurrent operating expenses. Actually, according to the information of the audited account of aided schools for the 2000-01 school year, except for one school, all aided schools have cumulative reserves: over 60% of them have a cumulative reserve within \$1 million; over 30% of them have a cumulative reserve between \$1 million and \$2 million; less than 7% of them have a cumulative reserve exceeding \$2 million.

Regarding the funding for extra-curricular activities, the Education Department has been actively encouraging schools to organize diversified extra-curricular activities for students. Besides the provision in the School and Class Grant under the OEBG for various extra-curricular activities, support has also been provided for specific types of activities such as the Community Youth Club, the Hong Kong Award for Young People, the Hong Kong School Drama Festival, the Chinese Cultural Projects Incentive Award Scheme and uniform group activities. As such, the OEBG is not the only source of funds for extra-curricular activities. Moreover, the OEBG allows schools to have greater flexibility over their operating expenses in the achievement of school-based objectives. Under the spirit of school-based management, the School Management Committee has the responsibility to establish a proper framework to ensure that government subventions are applied in accordance with the ambits of the grants and the objectives and priorities outlined in the school plan. Schools have to exercise due care in the management of resource to avoid early exhaustion of funds and to ensure that funds are appropriately spent on students' learning and extra-curricular activities.

### **Changes to Services of Water Supplies Department**

11. **DR TANG SIU-TONG** (in Chinese): *Madam President, it has been reported that the Director of Water Supplies has indicated that the Water Supplies Department (WSD) will have difficulty achieving the expenditure savings of 1.8% in the next financial year, unless the Government allows the*

*WSD to cut back the less cost-effective water supply service to remote areas, and to operate other services in addition to water supply. In this connection, will the Government inform this Council:*

- (a) regarding its undertaking to supply treated fresh water to 39 villages with some 8 240 villagers in stages from 2002 to 2006, whether the water supply projects concerned will fail to be completed as scheduled owing to the WSD's need to achieve savings; and*
- (b) whether the WSD has assessed the feasibility of operating other services in addition to water supply; if so, of the anticipated revenue and risks arising from the provision of such services?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President, government departments are committed to achieving savings in accordance with the overall fiscal policies of the Government. The WSD is no exception.

- (a) The water supply projects for the 39 villages mentioned in paragraph 19 of the discussion paper PWSC(2001-02)69 submitted by the then Works Bureau at the meeting of the Public Works Subcommittee held on 31 October 2001 have already been included in a number of Public Works Programme items. Up to now, the works for 10 out of those 39 villages have been completed and fresh water is being supplied to these 10 villages. The works for another 24 villages are in progress and expected to be completed in 2004. In line with standing government practices, we are reviewing the priorities of the remaining five projects, taking into account project justification, economic efficiency, technical feasibility and government affordability.
- (b) The WSD has not studied the feasibility of operating other services in addition to water supply.

**Tenancies of Container Vehicle Parks**

12. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, it has been reported that tenants of parking spaces in the container vehicle park at Kwai Wo*

*Street in Kwai Chung recently protested against the new operator of the park for increasing the rentals by 30% upon taking up the operation. Moreover, according to some tenants, nearly 80% of the parking spaces of the parks in the vicinity of Kwai Chung Container Terminals are operated by two related companies. In this connection, will the Government inform this Council:*

- (a) of the policies and the terms in the tenancies of container vehicle parks to ensure fair competition among the operators thereof and to prevent monopoly of parking spaces for container vehicles;*
- (b) whether there are any operators who just leave the land concerned vacant instead of operating container vehicle parks after being granted the tenancies of container vehicle parks; if so, of the period of such vacancy and the policies or contract terms in place to avoid such situation;*
- (c) apart from contract price, whether other factors, such as container truck operators' performance and market share, are considered when it determines if they will be granted the tenancies of the container vehicle parks; and*
- (d) as the Housing Authority (HA) grants the management of carparks in its housing estates to operators through tendering under commercial principles whilst the rentals of the parking spaces are determined by the HA itself, whether it will consider adopting such practice when handling the tenancies of the container vehicle parks?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese):

Madam President, my reply to the question raised is as follows:

- (a) We follow normal land administration practice in letting out suitable sites for public car parking purposes by Short Term Tenancies (STT) through an open and competitive bidding process. This well accepted mechanism, coupled with a sufficient supply of land for such purposes, ensures fair competition among car park operators and avoids the creation of monopolies in the market.

In Kwai Tsing District, there are 24 STT car park sites which allow for the parking of container vehicles. These car parks are operated

by six different operators. The available parking spaces for container vehicles are more than sufficient to meet the demand in the district. Different fees are charged by different car park operators based on their own commercial and market considerations. There is no evidence of market monopoly.

- (b) Two different companies had each kept one site vacant in the Kwai Tsing District after being granted STT for car parking uses. These two sites were in less central locations. One site was kept vacant for about seven months and the other for about one and a half months. These two sites have commenced operation as car parks since the end of November 2002.

At present, in the lease conditions for the STT for car parks, there are no specific provisions relating to the commencement of operation of the sites. The Lands Department will introduce a condition in future tenancies to require successful tenderers to operate their STT sites to the satisfaction of the Director of Lands. Non-compliance of this condition will lead to cancellation of the tenancy and re-entry of the site by the Government.

- (c) Apart from the tender bidding sum, the Lands Department also takes into account the past performance of car park operators, including their compliance with the STT conditions on other sites under their management. Market share is not a consideration in the award of the STT car park sites. The Lands Department is not bound to accept the highest tender offer.
- (d) The HA car parks are purpose-built car parking facilities that are owned by the HA and managed by the HA hired contractors. These contractors collect parking fees at levels fixed by the HA and are remunerated by the HA for their management services.

The Lands Department does not own any purpose-built public car parking facilities. It only lets out sites suitable for STT and specifies the permitted uses for these sites. To facilitate commercial operations, more than one use is usually allowed on these sites. This arrangement allows the market to determine the

specific uses of individual site (for example, for parking of private cars, goods and/or container vehicles) and the appropriate fees to be charged. Such an arrangement minimizes government interference in the private operators' commercial activities, and we do not consider it appropriate to adopt the HA arrangements for the STT car parks.

### **Delineation of Village Constituency Boundaries for Village Representative Elections**

13. **DR TANG SIU-TONG** (in Chinese): *Madam President, regarding the delineation of village constituency boundaries for village representative elections by the Home Affairs Department (HAD), will the Government inform this Council of:*

- (a) *a detailed breakdown of the estimated expenditure of \$9.96 million budgeted for the above work in the current financial year, and whether the staff cost in terms of the time spent by the HAD's existing staff on such work is included in the budget;*
- (b) *the definition of multi-storey buildings which are to be excluded from the boundaries of village constituencies, and the basis of such a decision; and*
- (c) *the respective numbers of objections and complaints received so far regarding the delineation of village constituency boundaries in the current financial year and the progress in handling such objections and complaints?*

**SECRETARY FOR THE CIVIL SERVICE** (in Chinese): Madam President,

- (a) A sum of \$9.96 million has been allocated in the current financial year (2002-03) to make preparations for the 2003 Village Representative Elections. The expenditure can be divided into: (i) cost of hiring contract staff to take up the preparatory work and (ii) departmental expenses.



The preparatory work includes site survey, delineation of village boundaries, preparation of related maps, printing of draft, revised and approved electoral boundary maps, voter registration and election publicity, and so on. We have already completed the most important part of the current stage of work, that is, delineating the village areas and preparing the maps of 693 existing villages.

A detailed breakdown of the expenditure is given below:

<i>Items</i>	<i>Amount (\$)</i>
1. Preparation of maps showing the village areas (including drafting, revising and finalizing the maps)	
i. printing charges	750,000
ii. rental fees of plotters	300,000
iii. departmental expenses of the Survey and Mapping Office of the Lands Department	550,000
2. Salary of 44 contract staff (including gratuities and mandatory provident fund)	7,960,000
3. Departmental expenses (such as car rentals and stationery, and so on)	400,000

The staff cost in terms of the time spent by the existing staff of the HAD is not included in the above estimated expenditure.

- (b) The HAD has drawn up a set of General Guidelines on the Delineation of Village Boundaries for Resident Representative Elections to facilitate District Officers (DOs) to determine the village boundaries. The Guidelines only set out the general principles, and individual cases will have to be carefully considered on their own merits. DOs would have to exercise balanced judgement to ensure a fair and just arrangement. In all, the test of "reasonableness" will apply.

As regards the question of the definition of multi-storey buildings, in general, only rural-type premises (such as three-storey small village houses) would be included within delineated village boundaries. Estate-type multi-storey buildings (such as Kingswood Villas in Tin Shui Wai) would be excluded from the boundaries of villages. However, the DOs would have to take into consideration the circumstances of individual cases in making decisions.

- (c) The HAD delineated the boundaries of 693 existing villages and conducted a public consultation exercise from 23 July to 12 August this year. During the consultation period, a total of 175 submissions were received, expressing views on the delineation of boundaries relating to 145 villages. In other words, no objection was received regarding about 80% of the delineated village boundaries.

After detailed consideration and discussion with the people concerned, the DOs of the respective districts in the New Territories accepted or partially accepted 117 proposals (about 67%) and rejected 51 proposals (about 29%). The remaining seven proposals were withdrawn by the people concerned of their own accord.

For those people whose views were not adopted, they could furnish supplementary arguments and information within three days after the issue of the respective DO's reply. During this period, a total of 25 submissions were received. The supplementary arguments were again carefully and thoroughly considered by the DOs. The views concerning eight of the cases were accepted or partially accepted while the decisions on the other cases were upheld.

### **"Head-bashing" Robberies**

14. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding "head-bashing" robberies, will the Government inform this Council:*

- (a) *of the number of head-bashing robberies reported to the police and the number of such cases in which the suspects were arrested, in each of the past 12 months, together with a breakdown by district;*

- (b) *whether the information revealed in the reply to (a) above shows an upward trend in such crimes, and whether they occurred more frequently late at night or at early morning hours;*
- (c) *of the measures to step up efforts to combat such crimes, and whether it will deploy more police officers to patrol certain areas; and*
- (d) *whether it will review the relevant penalties?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President,

- (a) The number of head-bashing robberies reported to the police in the past 12 months and the number of such cases which were detected, broken down by district, are shown in the table below:

	<i>Hong Kong Island</i>	<i>Kowloon East</i>	<i>Kowloon West</i>	<i>New Territories South</i>	<i>New Territories North</i>	<i>Total</i>
December 2001	0	1	1	1	2(1)	5(1)
January 2002	1	1	5	0	1	8
February 2002	3(2)	2	2	0	3	10(2)
March 2002	1	1	1	0	1	4
April 2002	2	0	2	3	4	11
May 2002	0	1	4	3	5	13
June 2002	2	1(1)	3	0	2	8(1)
July 2002	1(1)	0	1(1)	3	6(1)	11(3)
August 2002	1	1	4(2)	0	5	11(2)
September 2002	5	0	7	0	3(1)	15(1)
October 2002	3(2)	1	7(1)	3	1	15(3)
November 2002	3(1)	3	9(2)	3	11	29(3)
Total	22(6)	12(1)	46(6)	16	44(3)	140(16)

( ) represents the number of cases detected

- (b) The number of head-bashing robberies recorded by the police in the past 12 months is 140. It is higher than the annual figures of 85 in 2001 and 115 in 2000, but lower than the 154 cases in 1999.

Analysis of head-bashing robberies which occurred in 2002 shows that most of such cases happened during the period from 8 pm to 8 am.

- (c) Apart from active investigation of head-bashing crime, the police have put in place a number of measures to tackle such crimes. These measures include more frequent patrolling by police officers at black spots taking into account the crime situation of the respective districts, and requiring front-line officers to pay more attention to suspicious persons. In addition, the police have sought to raise public awareness of head-bashing robbery through stepped-up publicity, including press releases and television programmes such as "Police Magazine". Since early November 2002, the police have started the winter precaution campaign to remind the public to be more vigilant so as to prevent the occurrence of crime, including head-bashing robbery.
- (d) Section 10 of the Theft Ordinance (Cap. 210) provides that a person who commits robbery is liable to a maximum penalty of life imprisonment. If the victim is killed in the course of the robbery, the defendant will be additionally charged with murder, which carries a mandatory life sentence upon conviction. As a rule, counsel in the Department of Justice prosecuting robbery cases invariably brings to the attention of the Court the extent of injury, if any, sustained by victims in such cases. If the Department of Justice considers that an unduly lenient sentence is imposed, it will apply to the Court for review of sentence.

In 2000, the Court of Appeal issued a guideline specifying that all cases of head-bashing robbery should be tried at High Court and the usual sentence following a contested trial should not normally be less than eight years' imprisonment. In the first three quarters of 2002, two offenders of head-bashing robbery were respectively sentenced to imprisonment of seven and a half years and six years. It is considered that existing legislative sanctions dealing with head-bashing robberies are adequate.

**Discarding of Unused Mosaic Tiles by Housing Department**

15. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that the Housing Department (HD) recently discarded several dozen cartons of unused mosaic tiles in Tai Wo Estate, Tai Po, as signs of "ageing" had been found in these mosaic tiles. These tiles were surplus construction materials handed over to the HD by the contractor of the estate for future maintenance of the exterior walls of housing blocks. In this connection, will the Government inform this Council:*

- (a) *of the extent of "ageing" of such mosaic tiles, and whether they are unusable for interior decoration;*
- (b) *how long mosaic tiles can normally be kept before becoming unusable; and*
- (c) *how surplus construction materials handed over by contractors are disposed of by the HD?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): Madam President, before replying to the Honourable Member's question, I would like to make some clarifications. Tai Wo Estate has already been sold under the Tenants Purchase Scheme. Estate management and maintenance services for this estate are now provided by private property management company. As far as we know, when tidying up the estate storeroom recently, the property management company found that about 30 of 400 cartons of mosaic tiles left over from previous maintenance works had become defective because of transportation or damp. At the instruction of the Owners' Corporation, the property management company discarded the defective tiles, while keeping the usable stock in the estate storeroom.

My specific reply to the three-part question is as follows:

- (a) The 30 cartons of mosaic tiles discarded by the Owners' Corporation became defective because of transportation or damp, and not ageing. The defective mosaic tiles can no longer be used, even for interior decoration.

- (b) Properly stored in dry conditions, new mosaic tiles can normally last over five years.
- (c) Upon completion of works, contractors usually hand over small quantities of consumable materials, such as mosaic tiles and floor tiles, to the HD for use in future maintenance. Such reserve materials will be properly kept in the estate storeroom upon receipt.

### **Use of Flight Awards Earned from Government Passages**

16. **MS EMILY LAU** (in Chinese): *Madam President, the Code for Principal Officials under the Accountability System (the Code) provides that "there is no obligation on principal officials who travel on duty to claim flight awards from airlines. However, if and when such awards are claimed and credited to a principal official's mileage account, the principal official should report the awards to his bureau/department to facilitate planning for possible use of the awards for subsequent duty travel. For flight awards earned from government passages, the first call on the use of such awards shall be for subsequent duty travel." In this connection, will the executive authorities inform the Council:*

- (a) *of the reasons why principal officials who travel on duty have no obligation to claim flight awards from airlines; whether it has assessed if this is a waste of public money;*
- (b) *of the respective departure and arrival dates, destinations and air fares in respect of each duty travel of each principal official since the implementation of the accountability system for principal officials on 1 July; whether the principal officials have reported to the Administration the mileage earned on each duty travel and the flight awards received as a result; and*
- (c) *whether or not the principal officials, in accordance with the provision of the Code, used the flight awards previously earned from*

*government passages when they travelled on duty; if not, of the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Chinese): Madam President, according to the Code, there is no obligation on the part of principal officials who travel on duty to claim flight awards from airlines. However, if and when such awards are claimed and credited to a principal official's mileage account, the principal official should report the awards to his bureau/department to facilitate planning for possible use of the awards for subsequent duty travel. Civil servants are also subject to the same requirement.

- (a) Principal officials are not obliged to claim flight awards from airlines mainly for three reasons: (i) generally under flight awards schemes, a substantial amount of mileage would need to be accumulated before awards could be redeemed; (ii) the airlines which principal officials fly on for each duty visit may not be the same; and (iii) air tickets redeemed under flight awards schemes are subject to certain restrictions and may not fit in with the itinerary and needs of the principal officials. Those principal officials under the accountability system who need to undertake duty visits frequently have already joined flight awards schemes and claimed mileage from the airlines.
- (b) The departure and arrival dates, destinations, air fares, and mileage earned in respect of the duty visits undertaken by principal officials under the accountability system for the period 1 July 2002 to 30 November 2002 are set out at Annex.
- (c) The Financial Secretary is going to Nanjing for a duty visit today by means of a return ticket redeemed from mileage previously earned. Apart from that, since 1 July 2002, no other principal officials have redeemed awards from mileage earned from previous duty passages as the mileage accumulated so far does not enable the redemption of an air ticket that suits the itinerary and needs of their duty visits.

## Annex

Duty visits undertaken by principal officials under the accountability system  
from 1 July 2002 to 30 November 2002

	<i>Date</i>	<i>Destination(s)</i>	<i>Air fare</i>	<i>Mileage earned</i>
Chief Secretary for Administration	3 to 5 July 2002	London	\$58,098	27 577
	17 to 24 August 2002	Canberra, Sydney and Melbourne	\$35,858	13 797
	18 to 20 September 2002	Shanghai	\$5,580	2 298
	23 to 28 November 2002	Tokyo, Fukuoka and Osaka	\$14,023	6 659
Financial Secretary	26 September to 1 October 2002	San Francisco, Washington DC and Toronto	\$66,488	28 738
	22 to 30 November 2002	Amsterdam, London, Brussels, Toulouse, Paris and Dublin	\$50,881	9 199
Secretary for Justice	25 to 26 July 2002	Qingdao	\$6,200	Not applicable <sup>1</sup>
	21 to 23 November 2002	Chengdu	\$4,929	
Secretary for Commerce, Industry and Technology	3 to 11 September 2002	Washington DC and Toronto	\$64,388	21 266
	6 to 8 October 2002	Kuala Lumpur	\$8,617	3 906
	21 to 27 October 2002	Los Cabos	\$64,601	19 029
	12 to 16 November 2002	Sydney	\$32,049	13 776
	22 to 24 November 2002	Shanghai	\$5,660	Application for mileage earned being processed
Secretary for Housing, Planning and Lands	No duty visit has been undertaken since 1 July 2002			
Secretary for Education and Manpower	No duty visit has been undertaken since 1 July 2002			



	<i>Date</i>	<i>Destination(s)</i>	<i>Air fare</i>	<i>Mileage earned</i>
Secretary for Health, Welfare and Food	7 to 12 September 2002	Wellington and Auckland	\$43,383	Not applicable <sup>2</sup>
Secretary for the Civil Service	26 to 29 November 2002	Shanghai and Hangzhou	\$4,040	Not applicable <sup>1</sup>
Secretary for Home Affairs	28 to 30 September 2002	Pusan	\$10,433	Not applicable <sup>1</sup>
Secretary for Security	19 July 2002 and 6 August 2002	San Francisco and Seattle	\$35,868	19 347
Secretary for Economic Development and Labour	20 to 25 July 2002	Mexico City	\$53,382	26 402
	18 to 21 September 2002	Shanghai	\$5,485	Application for mileage earned being processed
	24 to 25 September 2002	Beijing	\$7,740	
	22 to 23 October 2002	Beijing	\$7,730	
Secretary for the Environment, Transport and Works	15 to 20 September 2002	Beijing and Shanghai	\$8,050	Application for mileage earned being processed
	31 October to 3 November 2002	Beijing	\$6,272	
Secretary for Financial Services and the Treasury	3 to 6 September 2002	Los Cabos	\$68,313	21 744
Secretary for Constitutional Affairs	8 to 9 August 2002	Ottawa and Toronto	\$4,240	Not applicable <sup>2</sup>

1. Has not joined the flight awards scheme.

2. Has not applied for mileage from the airline.

3. As the Secretary for Constitutional Affairs took leave after the duty visit in Toronto and Ottawa, he had decided to pay for the air ticket for travel between Hong Kong and Toronto out of his own pocket, while the air ticket for travel between Toronto and Ottawa was borne by the Government.

**Situation of Depressive Illness Among Public**

17. **DR LAW CHI-KWONG** (in Chinese): *Madam President, depressive illness has been determined by the World Health Organization as the leading cause of disability, and roughly 25% of women in the world can expect to develop such illness at some point during their lifetime. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of persons who were diagnosed as having developed depressive illness in each of the past three years, together with a breakdown by the following: gender, age and how their illness was identified;*
- (b) *of the estimated number of persons in Hong Kong who are suffering from depressive illness but have not yet been diagnosed as such;*
- (c) *of the services specially provided for women who are suffering from depressive illness and for preventing such illness among women;*
- (d) *whether it will consider conducting a survey on the situation of depressive illness among the public, especially among women, covering such areas as the number of patients, the problems it brings to the patients, and the implications on the medical services and economy in Hong Kong, and exploring ways for prevention and treatment; and*
- (e) *whether it plans to take measures to enhance the public's knowledge of and ability to identify depressive illness as well as their acceptance of such patients, to strengthen the basic health and support services, and to enable patients to receive treatment at the earliest opportunity?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese):  
Madam President,

- (a) The number of persons who were diagnosed to be suffering from depressive illness and requiring consultation and specialist treatment by the Hospital Authority (HA) in the past three years, with a breakdown by gender and age, are set out as below:

Age group	Year 1999-2000			Year 2000-01			Year 2001-02		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
< 15	16	19	35	8	23	31	10	16	26
15-39	886	2 250	3 136	996	2 573	3 569	1 111	2 955	4 066
40-64	1 298	2 973	4 271	1 595	3 692	5 287	1 872	4 394	6 266
> 65	639	1 704	2 343	781	2 019	2 800	1 002	2 425	3 427
Total	2 839	6 946	9 785	3 380	8 307	11 687	3 996	9 790	13 786

(including one case of unknown age)

Patients with depressive illness are referred to the HA for treatment by general practitioners, family medicine practitioners and general out-patient clinics. The HA's information system however does not separately capture statistics on how such patients are identified.

- (b) A local study conducted by The Chinese University of Hong Kong in 1986 on the population of Sha Tin showed that a lifetime prevalence of depressive illness for the age group of 18 to 64 was 1.29% for men and 2.44% for women. In view of the limited scope of the study, the findings may not be applicable to the Hong Kong population as a whole. Within the group of patients who meet the diagnostic criteria of depressive disorder, some have only mild and moderate symptoms and can be adequately managed by general and family medicine practitioners in the primary care setting. We therefore do not have estimates of the number of persons in Hong Kong who are suffering from depressive illness but have not yet been diagnosed as such.
- (c) General and family medicine practitioners and specialists, both in the public and private sectors, provide services for the early detection and treatment of depression for both men and women. In addition, recognizing that postnatal women are more prone to develop depressive illness, both the HA and the Department of Health (DH) have taken steps to strengthen these women's ability to cope with their new challenges. The HA's antenatal clinics screen and identify, through the administration of a specially designed questionnaire, women in the postnatal period who have particularly

high risk of developing postnatal depression for early diagnosis and treatment. Depending on the severity of the risk, patients so identified will be referred to the HA's psychiatric department for further assessment and treatment. Kwai Chung Hospital has initiated a comprehensive peri-natal psychiatric care programme to provide prenatal and postnatal counselling services to female psychiatric patients.

The DH provides promotive and preventive programmes through its Maternal and Child Health Centres (MCHCs) to support women. Antenatal health talks on pregnancy, labour and care of newborn babies are delivered to prepare parents-to-be, especially inexperienced young mothers, both physically and psychologically for the new role. DH staff offers individual counselling and assistance through support groups. During antenatal and postnatal periods, special attention is given to clients who have high risk of developing mood disorders and referral will be made to psychiatrists or welfare agencies, as appropriate. A new parenting programme, introduced in September 2002, aims at equipping parents attending MCHCs with the necessary knowledge and skills to bring up happy and well-adjusted children. The parenting programme enhances parents' competence in promoting physical and mental health of their children and reduces stress related with problems of child care.

- (d) A study on depressive illness and its impact on medical services and the economy in Hong Kong is a complex and monumental exercise, requiring inter-sectoral collaborative research. The DH is looking into the feasibility of conducting studies such as a population health survey which will provide the information for a better understanding of depressive illness in the community.
- (e) The HA has in recent years organized extensive mental health promotion programmes to enhance public awareness of common mental illnesses such as schizophrenia and depression. For example, Castle Peak Hospital has, since 1999, implemented a "Defeat Depression" Project to disseminate educational messages on mental health to patients, their carers, and the general public. The HA's antenatal clinics also organize talks on postnatal depression.

The DH has trained its health care staff to be sensitive and equipped them with clinical knowledge to identify persons with mood disorders and to facilitate early treatment referral. Continued effort is made in building staff capacity in handling mental health conditions. At the population level, public education campaigns such as the annual Mental Health Month promote mental health awareness and acceptance among the population. The theme for this year is "Mental Health in the Family". During the Mental Health Month, government departments, statutory bodies and non-government organizations worked together to mobilize community participation in more than 90 activities ranging from seminars to art competitions and recreational activities. Health educational resources and audiovisual aids, for example, a video entitled "Post-natal Mood Disorders", are produced to raise public awareness of postnatal depression and its prevention.

### **Land Leases Granted at Nominal Premium for Developing Sports and Recreational Facilities**

18. **MISS CHOY SO-YUK** (in Chinese): *Madam President, in reply to a question I raised at the Legislative Council meeting held on 13 November this year, the Secretary for Home Affairs stated that to facilitate the promotion of sports and recreational pursuits, the Administration had, as at that date, granted 66 land leases at nominal premium to sports associations and non-profit-making bodies for developing sports and recreational facilities for the benefit of the community at large. In this connection, will the Government inform this Council:*

- (a) *whether it knows the amounts of membership fees and monthly charges levied by the relevant associations and bodies on their members, and whether such associations and bodies have imposed any other membership requirements on top of the fees charged; if so, of the details;*
- (b) *when the current terms of the 66 land leases will expire; and*
- (c) *when the relevant associations and bodies apply for land lease renewal at nominal premium upon the expiry of the current leases,*

*whether the Administration will take the general public's eligibility for joining as members and using their facilities as one of the considerations in determining the approval or otherwise of the applications; if it will not, how it can ensure that the relevant government land will not be used by only a small number of people?*

**SECRETARY FOR THE CIVIL SERVICE** (in Chinese): Madam President, my reply to the Honourable Member's question is as follows:

- (a) As private clubs have to develop and manage their club facilities with their own funds and resources, they are free to determine the amounts of membership fees and monthly charges. All along, the Government has not interfered with the fees and charges of private clubs and therefore we do not have such information.

On top of the fees charged, private clubs may also lay down their own membership requirements. But they have to recruit members in accordance with the conditions set out in their Memorandum and Articles of Association, which must be free from any discriminatory clauses concerning membership policies or requirements. In other words, the priority for membership of the general public is free from any form of discrimination by race, religion or sex. Some sports associations may, of course, give priority to members who represent these associations in competitive events, or to debenture holders nominating a change in their nominated members.

- (b) The expiry dates of the terms of the 66 land leases are set out in the Annex.
- (c) On receiving applications for renewal of leases from these associations and bodies, the authorities will first of all consider whether the land in question will be resumed for public purpose and whether the grantee has breached the prevailing land lease conditions. The applicant's Memorandum and Articles of Association will also be scrutinized to ensure that the membership policies and requirements are non-discriminatory. In addition, the applicant has to accept a special condition which requires that the grantee must allow outside bodies such as schools, welfare agencies

and relevant government departments to organize activities at specified facilities and periods, thus facilitating the use of the recreational facilities by many more people.

## Annex

## Leases Granted at Nominal Premium for Recreational Purposes

<i>Serial No.</i>	<i>Name of Holder</i>	<i>Lot No. and Location</i>	<i>Lease expired in</i>
1.	The Hong Kong Federation of Youth Groups	IL 8960 No. 55 Model Lane, North Point	2013
2.	The Scout Association of Hong Kong	IL 8691 Mansion Street, North Point	2013
3.	The Royal Hong Kong Yacht Club	ML 709 Kellett Island	2056
4.	Royal Hong Kong Yacht Club	RBL 1077 and Extension, Middle Island	2006
5.	Aberdeen Boat Club Limited	AIL 425 Shum Wan Road, Brick Hill	2006
6.	The Royal Hong Kong Golf Club	RBL 1117 Deep Water Bay	2011
7.	The Hong Kong Country Club	RBL 1129 Wong Chuk Hang Road	2012
8.	Hong Kong Cricket Club	IL 8783 No. 137 Wong Nai Chung Gap Road	2008
9.	Hong Kong Football Club	IL 8846 Sports Road, Happy Valley	2011
10.	South China Athletic Association	IL 8850 Caroline Hill Road, So Kon Po	2011
11.	Chinese Recreation Club, Hong Kong	IL 8875 Tung Lo Wan Road	2011
12.	Craigengower Cricket Club	IL 8881 No. 188 Wong Nai Chung Road	2011
13.	Hong Kong Girl Guides Association	IL8894 Wong Nai Chung Gap Road	2011
14.	Jardine's Lookout Residents' Association	IL 8895 No. 2 Creasy Road, Jardine's Lookout	2011
15.	Indian Recreation Club	IL 8900 Carline Hill Road, So Kon Po	2011
16.	The Hong Kong Jockey Club	IL 8847 Sports Road and Wong Nai Chung Road	2034
17.	The Bishop of the Roman Catholic Church in Hong Kong	Lot 1318 Cheung Chau	2012
18.	Hong Kong Youth Hostels Association	Lot 188 DD 337 Lantau	2012
19.	Hong Kong Youth Hostels Association	Lot 235 Ngong Ping	2012
20.	Hong Kong Playground Association	Lot 667 DD 2 Mui Wo	2012
21.	Hong Kong Young Women's Christian Association	Lot 727 DD 332 San Shek Wan, Lantau	2012
22.	Scout Association of Hong Kong	NKIL 5956 Kowloon Tong	2011
23.	The Kowloon Tsai Home Owners Association	NKIL 5961 Kowloon Tong	2011
24.	Kowloon Tong Club	NKIL 5989 Kowloon Tong	2011
25.	Area Committee of the Hong Kong Sea Cadet Corps	NKIL 6001 Diamond Hill	2012
26.	Mongkok District Cultural, Recreational and Sports Associated Limited	KIL 10724 J/O Ivy Street and Beech Street	2003
27.	Kowloon Bowling Green Club	KIL 11065 No. 123 Austin Road	2011
28.	South China Athletic Association	KIL 11071 No. 6 Wylie Path	2011
29.	Hong Kong Softball Association	KIL 11088 Tin Kwong Road	2011
30.	India Club, Kowloon	KIL 11095 No. 24 Gascoigne Road	2011
31.	The Filipino Club	KIL 11096 No. 10 Wylie Path	2011
32.	Municipal Services Staff Recreation Club Limited	KIL 11097 No. 4 Wylie Path	2011

<i>Serial No.</i>	<i>Name of Holder</i>	<i>Lot No. and Location</i>	<i>Lease expired in</i>
33.	Club De Recreio	KIL 11098 No. 20 Gascoigne Road	2011
34.	The Directors of the Young Men's Christian Association of Hong Kong	KIL 11105 Off Gascoigne Road	2011
35.	Hong Kong Chinese Civil Servants Association	KIL 11048 No. 8 Wylie Path	2011
36.	Kowloon Cricket Club	KIL 11052 No. 10 Cox's Road	2011
37.	The Pakistan Association of Hong Kong Limited	KIL 11094 No. 150 Princess Margaret Road	2011
38.	Yau Yat Chuen Garden City Club Limited	NKIL 6042 Yau Yat Chuen	2011
39.	Scout Association of Hong Kong and Hong Kong Girl Guides Association	KCTL 391 Wo Yip Hop Road	2012
40.	Royal Hong Kong Yacht Club	Lot 341 DD 212 Che Keng Tuk	2014
41.	The Scout Association of Hong Kong	Lot 1131 DD 217 Pak Sha Wan	2012
42.	The Hebe Haven Yacht Club Limited	Lot 1138 and Extension DD 217 Pak Sha Wan	2012
43.	The Directors of the Chinese Young Men's Christian Association of Hong Kong	Lot 147 S.D. 5 Sai Kung	2012
44.	Hong Kong Girl Guides Association	Lot 148 DD 250 Sai Kung	2012
45.	The Clearwater Bay Golf and Country Club	Lot 227 DD 241 Po Toi O	2012
46.	Victoria Recreation Club	Lot 316 DD 252 Sai Kung	2012
47.	The Outward Bound Trust of Hong Kong Limited	Lot 590 DD 256 Tai Mong Tsai	2012
48.	Lau Wah Sum and Samuel Derek Oates as Trustees for the Area Committee of Hong Kong Sea Cadet Corps	Lot 611 DD 256 Sai Kung	2012
49.	Po Leung Kuk	Lot 613 DD 257 Pak Tam Chung	2012
50.	The Boys' and Girls' Club Association of Hong Kong	Lot 642 DD 257 Wong Yi Chau	2012
51.	The Directors of the Chinese Young Men's Christian Association of Hong Kong	Lot 75 DD 254 Sai Kung	2012
52.	The Hong Kong Jockey Club	STTL 13 Ho Tung Lau, Sha Tin	2012
53.	The Scout Association of Hong Kong	Lot 154 DD 195 Sha Tin	2012
54.	Hong Kong Amateur Rowing Association Limited	STTL 220 Yuen Wo Road, Sha Tin	2012
55.	The Scout Association of Hong Kong and The Hong Kong Girl Guides Association	STTL 272 Shui Chuen Au Street, Sha Tin	2012
56.	Hong Kong Sports Institute Board	STTL 277 No. 25 Yuen Wo Road, Sha Tin	2012
57.	Hong Kong Youth Hostels Association	TPTL 133 Tai Mei Tuk	2014
58.	The Duke of Edinburgh's Award Hong Kong	Lot 602 R.P. DD16 Lam Tsuen	2012
59.	Tai Po Sports Association Limited	TPTL 6 and Extension Area 4, Tai Po	2012
60.	Hong Kong Gun Club	TWTL 399 Chuen Lung, Tsuen Wan	2012
61.	Po Leung Kuk	Lot 2411 DD 118 Tai Tong	2011
62.	Hong Kong Girl Guides Association	Lot 1707 DD 122 Yuen Long	2012
63.	Tung Wah Group of Hospital	Lot 2321 DD 96 Ma Tso Lung	2012
64.	Community Sports Limited	Lot 2322 DD 96 Ma Tso Lung	2012
65.	Yuen Long District Sports Association Limited	YLTL 160 Yuen Long	2012
66.	The Hong Kong Golf Club	Lot 942 RP in DD 94 Sheung Shui	2020



**Transport Arrangements at Tourist Attractions**

19. **MR ALBERT CHAN** (in Chinese): *Madam President, as there is a lack of comprehensive transport arrangements for some tourist attractions in Hong Kong, visitors have to change public transport several times to visit these spots, which wastes their time and money. In this connection, will the Government inform this Council whether it:*

- (a) *has considered improving the transport arrangements for travelling to and from the tourist attractions so as to attract more residents and tourists to them; if it has, of the details; if not, the reasons for that;*
- (b) *has assessed if the current expenses required for travelling to and from tourist attractions are reasonable; if the outcome of the assessment is in the negative, of its plans to lower them; and*
- (c) *will enhance the service of sight-seeing buses (such as issuing more licences for operators and increasing the number of routes and frequency) to improve the transport arrangements for travelling to and from tourist attractions; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President, Hong Kong is served by a comprehensive public transport system with a wide network of services provided by various modes, including railways, buses, public light buses, ferries, taxis and trams. The Transport Department (TD) monitors closely changes in passenger demand and the operation of existing services and will introduce new services or enhancement to existing services where appropriate.

To facilitate visits to various tourist spots, about 25 recreational bus and 20 ferry services are in operation. New services for tourists being planned include a "hop-on hop-off" franchised bus route linking sightseeing spots between Central and Shau Kei Wan and a harbour tour ferry service.

In general, public transport fares are competitive in Hong Kong. Public acceptability and affordability are also taken into account in setting fares of

public transport services together with other relevant factors such as passenger demand, operating condition of the service, financial performance of the operator.

To facilitate visits by tourists, some public transport operators offer travel passes with attractive fares or other concessions to tourists. The TD will continue to facilitate public transport operators in introducing such concessionary measures.

Tour bus services are non-franchised bus services operated on a hire basis with no-fixed routing or frequency. Their operation is regulated by passenger service licences issued by the Commissioner for Transport under the Road Traffic Ordinance (Cap. 374). The TD has been working closely with the non-franchised bus trade to help enhance their service quality to better meet passenger demand. For example, the TD organized a seminar for non-franchised bus operators including tour bus operators in October this year with a view to improving their services, in particular driver behaviour and attitude. The TD has also pursued actively the provision of parking and loading/unloading facilities at tourist spots. The TD will continue with its efforts in this regard.

### **Plan of Shenzhen Authorities to Provide Additional Container Berths**

20. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, it has been reported that the Shenzhen authorities will provide 10 additional berths exclusively for containers in the next few years. In this connection, will the Government inform this Council whether:*

- (a) *it has assessed the impact of the above plan on the operation of the Kwai Chung Container Terminal in Hong Kong; if so, of the outcome; and*
- (b) *it plans to attract private investors to participate in the construction of new container terminals which operate at lower costs and provide better quality of service, in order to strengthen the competitiveness of the local freight industry; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President,

- (a) At present, the major container terminals in Shenzhen include the Yantian Container Terminal in the east and Shekou Container Terminal and Chiwan Kaifeng Container Terminal in the west. According to the Shenzhen Transportation Bureau (STB), a total of eight container berths, four at Yantian, two at Shekou and two at Chiwan will be developed by 2005. The total capacity will increase from 4.8 million TEUs in 2001 to 9.4 million TEUs in 2005. The STB envisages that additional container terminals will be required in the 11th Five-Year Plan (2006 to 2010).

Currently, the handling capacity in Hong Kong exceeds 20.6 million TEUs comprising 12.6 million TEUs by the eight container terminals and 8 million TEUs by other land-based container handling sites. In 2005, with the completion of Container Terminal 9 and the continued improvement in efficiency by the existing eight terminals, the total container handling capacity in Hong Kong is estimated to exceed 25.5 million TEUs.

In view of the continued growth of cargo volume in the Pearl River Delta, the Economic Development and Labour Bureau has commissioned a study on Hong Kong Port — Master Plan 2020 (HKP2020) to formulate a competitive and sustainable strategy and master plan for Hong Kong's port development, including the location for major container terminal ports and related infrastructure up to the year 2020. The study will examine the key factors affecting cargo generation, cargo handling and cargo routing. It will also assess the development of the Shenzhen and Hong Kong ports and their interaction. The study is scheduled for completion by late 2003.

- (b) All the eight container terminals in Hong Kong at present are fully funded (including the cost of land formation for the terminal), owned and managed by the private sector with no direct or indirect government involvement in investment and management. Container Terminal 9 currently under construction is also developed and will be operated in the same mode.

As for future development, the HKP2020 study will assess various approaches to maintaining Hong Kong as a leading hub port in the world. It will assess the types and the programme for container terminals to be developed; examine the respective role of the public and private sectors and recommend the most appropriate institutional arrangement. The objective is to further enhance the overall competitiveness of the Hong Kong container port.

## **BILL**

### **First Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: First Reading.

### **STAMP DUTY (AMENDMENT) BILL 2002**

**CLERK** (in Cantonese): Stamp Duty (Amendment) Bill 2002.

*Bill read the First time and ordered to be set down for Second Reading pursuant to Rule 53(3) of the Rules of Procedure.*

### **Second Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Second Reading.

### **STAMP DUTY (AMENDMENT) BILL 2002**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I move that the Stamp Duty (Amendment) Bill 2002 be read the Second time.

The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) and to provide a legal basis for the introduction of a new system of stamping.

Under the existing requirements, the persons concerned must pay stamp duty for instruments of lease agreements, property transfers and stocks transactions. At present, the following requirement is applicable to all applications for stamping handled by the Stamp Office: the applicant must present the original instruments to the Collector of Stamp Revenue (Collector). The Stamp Office will then examine the original instruments presented and compute the stamp duty payable. After the applicant has paid the stamp duty required, the Collector will stamp the instruments with a franking machine to show that the applicant has already paid the stamp duty for the instruments. In 2001-02, the Stamp Office handled a total of 1 million stamping applications, including 360 000 lease instruments and 230 000 property transfer instruments. As for the instruments of stocks transactions, they were mostly handled by authorized dealers and the Hong Kong Exchanges and Clearing Limited.

Under the new system proposed in the Bill, the Collector may accept electronic applications for stamping and may also issue stamp certificates to replace the conventional practice of stamping the original instruments. Under the proposed new system, the applicant is required to submit an application to the Collector in writing or electronically and pay the stamp duty required. Unless the Collector so requests, the applicant does not need to present the original instruments. After receiving the relevant application and stamp duty, the Collector will issue stamp certificates for the instruments either in writing or electronically.

The new stamp certificate will enjoy the same legal status as the conventional stamp on an original instrument.

The new stamping system is applicable to the instruments of property transfers and simple lease agreements. These types of instruments represent about 90% of all the property-related instruments handled by the Stamp Office. The new stamping system is not suitable for the remaining 10% of property transaction instruments, as they involve more complicated computations of stamp duty and the Stamp Office often needs to examine supporting documents in the course of stamping. As for the instruments of stocks transactions, it is not necessary to incorporate them into our proposal, as they are now mostly stamped electronically through authorized dealers and the Hong Kong Exchanges and Clearing Limited.

The existing practice of stamping original instruments will continue to apply after the introduction of the new stamp certificates.

The new stamping system seeks to do away with the step of handling original instruments and streamline the basically manual stamping process now. We estimate that under the new system, the time taken for stamping property transfer instruments can be reduced to less than six days, and such instruments can be stamped immediately upon the receipt of stamp duty by the Stamp Office. This is in line with the current standard for lease agreements and stocks transactions. Following the introduction of the new electronic system, the staff costs of the Stamp Office, depending on the utilization rate of the new system, may be reduced. Many advanced countries now also accept e-applications and e-stamping.

We have consulted the Law Society of Hong Kong and the property sector on their views, and they have all expressed support.

With these remarks, Madam President, I commend the Bill to the Legislative Council.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Stamp Duty (Amendment) Bill 2002 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to House Committee.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect.

**PRESIDENT** (in Cantonese): First motion: The 70% ceiling for residential mortgage loans. I have accepted the recommendations of the House Committee on the time limits of speeches on this motion. As the time limits for speeches on this motion are the same as those in the past, I will not repeat them here. I

just wish to remind Members to note the limits. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

I now call upon Mr James TIEN to move his motion.

### **THE 70% CEILING FOR RESIDENTIAL MORTGAGE LOANS**

**MR JAMES TIEN** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, under the special economic conditions of Hong Kong, many people who have made money from business or employment will invest in property. That is, they will buy property for self-occupation or buy property and then let it out for rental income. Speaking of investment strategy, people in different places of the world may invest in different ways. But insofar as Hong Kong is concerned, most people will buy property with their savings or capital. Indeed, we can see that over 1.4 million families in Hong Kong own their own properties, among which some 1.1 million families have purchased their properties from private developers, whereas the other 300 000-odd families have purchased flats under the Home Ownership Scheme (HOS). Such being the case, if secondary residential property prices fall or when properties in the secondary market cannot be sold easily, many people in Hong Kong will be greatly affected.

The current interest rate is much lower than that in 1997. The Prime Rate (P) back then was high and so, no matter how hard one tried to negotiate, one had to pay interest at a rate of 10%. Now that the interest rate has come down. The P has also come down substantially. So, the interest rate payable can be lowered to P minus 2.5% or P minus 3%, with the interest rate actually ranging from 2.5% to 2.8% in most cases. So, the resultant situation is that despite the economic downturn and the fact that most wage earners have not been given a pay rise, the burden of monthly mortgage repayment has become far more stabilized than before, judging from the current status of mortgage loan repayment. So, as the banks have said, the risk of, say, defaults on mortgage loans by borrowers who cannot continue to service the repayment, or the repossession of mortgaged properties by banks, has been reduced. But today, secondary residential property prices are very much lower than the level a few years ago.

Madam President, I wish to say a few words on the range of measures recently introduced by the Government to stabilize the market. I think they are very useful. But in the short term, I am still of the view that these measures will be more helpful to first-hand properties than to the second-hand ones. It is because for first-hand properties, apart from the provision of bank loans amounting to 70% of the value of property, most developers are also willing to lend buyers loans at 25% of the value of property, or even pay for owners their legal fees, decoration costs, and so on. This shows that buyers can buy a flat without having to pay much. But for second-hand properties, quite on the contrary, the owners are faced with far greater difficulties. More often than not, even if they are able to find a buyer, the buyer may have difficulties in securing loans because the buyer can normally secure a loan only being 70% of the property price. Owners of second-hand properties generally do not have the means to play the role of banks or developers by receiving 70% of the property price first and then allow the payment of another 25% by the buyer at a later stage. Owners of second-hand properties do not have the means to do so. As a result, the transactions of second-hand residential properties are far less active.

The Liberal Party interviewed over 1 000 owners of private properties by telephone between 9 and 29 October — Madam President, the interviewees are all owners — asking for their views on the proposed measures to stabilize the property market and asking them which measures are, in their view, more important. They considered such measures as the moratorium on land sale or cessation of the construction of HOS flats useful, but took the view that they might be effective only in the long run; 43% of the owners of second-hand properties considered the relaxation of the 70% ceiling for residential mortgage loans most important, because if the ceiling could be relaxed, it would be easier for them to sell their flats.

Certainly, from the perspective of banks or the Government, or according to consistent line of the Hong Kong Monetary Authority (HKMA), the stability and security of banks must be protected. I trust the Liberal Party and most Honourable Members will support this absolutely. It is definitely not our wish to see a crisis emerge in the banking system, because the majority of the deposits in banks belong to the general public. Should there be problems in the banking system, many depositors who have deposited their money in banks would certainly be victimized. This is the last thing we wish to see.



On the other hand, insofar as the prevailing property prices are concerned, would the ceiling for residential mortgage loans be abolished just because we have put forward this proposal to the Government or the HKMA? We are not suggesting that banks should offer loans amounting to 90% or 100% of the property prices. We are only asking for the abolition of the ceiling for residential mortgage loans. Prudence is a major principle of banks in financial management. Prudent lending practices mean that the security of the borrower's job, how much the borrower is making in income, how good the borrower's repayment ability is, and so on, will be considered. Banks have all along been doing this, and this is also what they should be doing.

We have also noticed that with regard to the ceiling for mortgage loans, in such English-speaking common law jurisdictions as the United States, Britain, Canada and Australia, property transactions have been very active, but none of them has set a ceiling for mortgage loans. It is true that banks in the United States, especially those that specifically deal with savings and loans, did run into problems in the '80s and '90s. But overall, we cannot conclude that their problems were attributed to the absence of a ceiling for residential mortgage loans in the banks of the United States, Britain, Canada and Australia. Nor can we conclude that the provision of loans amounting to 70% or 80% of the value of property by their banks has led to instability in banks and consequently caused problems in their banks. This is not the case. We are very confident, for banks in Hong Kong have always been prudent in respect of loans (that is, lending people money to do business) and will conduct in-depth studies. In fact, banks can still say to people approaching them for loans that they can be provided with loans amounting to 75% of the value of property, and that if their repayment ability is relatively high, then banks can provide loans amounting to 90% of the value of property.

Of course, the banking sector has reservations and this, I do understand. This proposal of the Liberal Party also has regard for this point. That is why we ask the Government to look into the possibility of improving the conditions and procedures for vetting and approving applications under the mortgage insurance scheme, "or" relaxing the guideline for banks on the 70% ceiling for residential mortgage loans; I have used the word "or". In fact, the objective will be achieved as long as the Government can give effect to either of the two options. Of course, speaking of insurance, if Members have paid attention to it, they can see that the work of the Hong Kong Mortgage Corporation Limited (HKMC) was not too successful at the beginning. Why? There are a number of reasons.

For one thing, their processing of applications was slow. Before loans were approved, vetting normally took about one and a half months. Significant improvement has been made recently in that vetting will take two to three weeks. Besides, they used to charge a very high premium for the loans but the premium has also come down recently. This may be due to this motion proposed by us. We had waited for a very long time for the turn of this motion, today, we have this motion debate finally. However, a lot has indeed been done in the market to improve the situation. Yet, we have also noticed that many people do not qualify for the mortgage insurance scheme. For example, a requirement for application is that at least one of the applicants must be first-time home buyers. That is, if both the wife and the husband are not first-time home buyers, their application will not be approved. Moreover, other than doctors and lawyers, self-employed persons are not eligible to borrow loans under this scheme. So, in my proposal I call on the Government to study with the HKMC the possibility of relaxing the schemes. This will be of greater help to buyers of secondary residential properties.

Furthermore, I also wish to ask this: Is it true that these schemes can be launched only by the Government through the HKMA or a government-owned mortgage corporation? In fact, such schemes should be provided by the private market. The financial services sector can also have a part to play in this business. It is most desirable that the Government should not be involved. Rather, the financial companies (not banks) should be doing this. That is, they should be allowed to provide loans amounting to 90% of the value of property, and the proportion borne by banks should not exceed 70% at the most. A higher interest rate can then be charged for the other 20% of the loan, in a manner like insurance. I think this really gives no cause for much criticism.

Obviously, since an interest rate of 2.5% is charged for a loan amounting to 70% of the value of property, many people will consider it most desirable if the same interest rate is also charged for a loan amounting to 90% of the value of property. But we must understand that if the lender has to lend as much as 90% of the value of property, even if an interest rate of 2.8% is considered too high, it is still impossible to ask for a 2.5% interest rate, or should it be pitched at 2.7%? The difference between a loan amounting to 70% of the value of property and one amounting to 90% of the value of property lies in the level of risks. The business is worth it only if lenders who bear greater risks can have a better rate of return. On this point, I think the broad direction of the Government is correct.

We have proposed this motion today in the hope that the Government can consider the two possibilities proposed in the motion. If that could be done, I think the secondary property market would become more active, in which case owners of second-hand properties would be able to find suitable buyers more easily. If owners of second-hand properties can sell their flats, I believe more of them will then buy first-hand properties or buy another property after selling theirs. In that case, the Government's revenue from stamp duty would increase. So, this would be beneficial to the economy as a whole.

I beg to move. Thank you, Madam President.

**Mr James TIEN moved the following motion: (Translation)**

"That, as the Government has introduced measures to stabilize the property market, secondary residential property prices have fallen by about 62% from their peak in 1997 and the public's ability in making property loan repayments has increased by about 73% in the same period, thereby considerably reducing the risk of defaults on mortgage loan, this Council asks the Government to adopt measures to assist needy mortgage applicants in securing more conveniently and speedily loans in excess of 70% of the value of their properties, including improving the conditions and procedures for vetting and approving applications under the mortgage insurance scheme or relaxing the guideline for banks on the 70% ceiling for residential mortgage loans, with a view to boosting property transactions, stabilizing the property market, easing deflation and reviving the economy."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr James TIEN be passed.

**PRESIDENT** (in Cantonese): Mr Albert HO will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mr Albert HO to speak and move his amendment.

**MR ALBERT HO** (in Cantonese): Madam President, I move that Mr James TIEN's motion be amended, as printed on the Agenda. Mr TIEN's motion calls on the Government to take measures to boost property transactions, stabilize the property market, ease deflation and revive the economy. All these are the common aspirations of the community. I believe the Democratic Party and Honourable colleagues will certainly support these objectives. But as to how these objectives can be achieved, today's motion has made proposals in two areas. The first one is about how to improve the mortgage loan service so that people can secure a higher amount of loans. The other is to ask for a relaxation of the 70% ceiling for residential mortgage loans. Regarding the former proposal, the Democratic Party fully supports it. But on the latter proposal, for reasons that I am going to explain in detail, it is indeed impossible for us to support it and that is why I have proposed this amendment today. Anyway, I hope that with the improvement of the mortgage insurance service, the public will be able to secure residential mortgage loans in excess of 70% of the property value by sharing some of the risks. Indeed, this can be achieved even without relaxing the 70% rule that currently requires compliance by banks in approving mortgage loans.

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

I would like to first talk about why we oppose a direct relaxation of the guideline on the 70% ceiling for residential mortgage loans.

Firstly, as Mr James TIEN has said, the ceiling is imposed in the interest of the stability of the banking system, and this is a very important reason. The policy of a 70% ceiling for mortgage loans was enforced in 1991 and has since been widely adopted in the banking sector. Later, Hong Kong had experienced the financial turmoil; the property prices had dropped over 60%, and we even saw an ever increasing number of bankruptcy cases and repossessed flats. In spite of all this, the sharp fall in property prices has not affected the stability of the banking system, an important *status quo* that we enjoy. Fortunately enough, up to this moment, no bank in Hong Kong has collapsed as a result of bad debts relating to mortgage loans. I think this is mainly attributable to a consensus between the HKMA and the banking sector to firmly adhere to this important principle of a 70% ceiling for mortgage loans. Therefore, the problem of negative equity, despite its gravity, has neither brought serious consequences nor put the stability of the banking sector in jeopardy.

Some Members may have misgivings about transcending our role by setting risk management criteria for banks, as mentioned by Mr James TIEN earlier. Furthermore, as banks are there to do business, can they be given a free hand to evaluate and weigh their own risks? Realistically, competition in the local banking sector is very keen, and this is an indisputable fact. We are worried because once the ceiling for mortgage loans is relaxed, we can envisage some aggressive banks adopting audacious approaches in approving loans to scramble for customers and hence greatly increase their risk exposure.

I must stress that the collapse of a bank is absolutely different from the collapse of a listed company. Nor can it be compared to the collapse of a law firm, that is, a single entity. The collapse of a bank will affect the stability of the entire financial system and will even produce a domino effect. Given the status of Hong Kong as a financial centre, it is indeed necessary for us to exercise extra caution and avoid the risk of causing the financial system to be dragged into a collapse. For this reason, the Democratic Party considers it inappropriate to hastily abolish the well-established guideline on the 70% ceiling for mortgage loans, given uncertainties in the current economic conditions.

Secondly, the Democratic Party considers that the services provided by the HKMC have already managed to effectively assist people who wish to buy their own homes to secure residential mortgage loans exceeding 70% of the property value. According to the information provided by the HKMC, since its establishment in 1999, 17 000 cases of mortgage insurance applications have been approved, involving a total of \$33 billion. Certainly, some applications have been rejected and such cases account for about 0.9% of the total number of cases, which is not a very high percentage.

So, the Democratic Party considers that most of the people do have access to mortgage loans exceeding 70% or even amounting to 90% of the value of property. Today, the HKMC puts up an advertisement on the front page of newspapers to introduce the one-stop 90% mortgage service provided by banks supported by the HKMC. This is very good indeed. As Mr James TIEN will also agree, we hope that the scope of this service can be extended to assist people to secure loans amounting to 70% or even 90% of the property value for buying secondary residential properties. On the interest rate, I hope that through the bargaining power of the HKMC, the premium can be reduced, or even as Mr

James TIEN has said, competition can be introduced into the market, so that banks or insurance companies will be willing to engage in this business, thereby bringing in competition and hence lowering the premium. This will also be a good thing. In the meantime, through the provision of one-stop services and extensive publicity, people will know that the 70% ceiling will not bar them from securing loans. Only that they will have to pay a little more in premium and they can secure loans up to 90% of the property value. Therefore, the Democratic Party does not see the need to relax the 70% ceiling for mortgage loans. So far as the HKMC can do a better job, this objective can be achieved.

As regards premium, we can draw a comparison. Insofar as general residential mortgage loans are concerned, for a loan with a 70% loan-to-value ratio, the interest rate is the Prime Rate (P) minus 2.5%; for a loan in excess of 70% of the property value, the interest rate, according to our information, is P minus 2.18%; for a \$2 million loan to be repaid in 20 years, the borrower can secure a loan amounting to 90% of the property value by paying \$280 more monthly. Such being the case, why do we not support and promote the mortgage insurance scheme instead of taking the risk of relaxing the 70% ceiling, causing concern over whether the stability of the banking system would be jeopardized given uncertainties in the property market?

All in all, we do hope that the property market in Hong Kong will really be stabilized. It is not our wish to see a continued fall in the property market. However, nobody has a crystal ball; nobody knows what will happen a year or two later. For things that we do not wish to see, and for things that Mr James TIEN and Honourable Members do not wish to see, can we guarantee that they will not happen ever again? If, unfortunately, they do happen, and if the property market continues to fall in the next three years, the consequences would be disastrous. By then, the impact would be faced not only by people who have taken out loans. Rather, the financial system of Hong Kong, the future of Hong Kong economy as a whole, and the security of the livelihood of all Hong Kong people would also be affected. Therefore, I have proposed this amendment, hoping that Mr TIEN will understand that we have a common objective and we absolutely can achieve this objective of assisting people to secure loans exceeding 70% of the property value, provided that the HKMC can improve its services and at the same time relax the vetting and approving criteria for loans. I think we can give it a try, and I believe we will succeed. If the HKMC could carry out more publicity in the past and work with banks earlier to provide one-stop

services, I believe the amount of loans would have exceeded the figure mentioned by me earlier. So, I hope Honourable colleagues will understand that in proposing this amendment today, we hope that sufficient services can be provided as options to consumers not only in respect of first-hand properties, but also second-hand properties. But they must understand one thing, that is, if they want to secure a loan in excess of 70% of the property value, they have to share a bit of the risks and pay a premium, the amount of which, as already mentioned by me earlier, will be within their affordability. I hope Members can support this amendment of the Democratic Party. I so submit.

**Mr Albert HO moved the following amendment: (Translation)**

"To delete "thereby considerably reducing the risk of defaults on mortgage loan," after "the public's ability in making property loan repayments has increased by about 73% in the same period,"; to delete "assist needy mortgage applicants in securing more conveniently and speedily loans in excess of 70% of the value of their properties, including improving" and substitute with "improve"; and to delete "or relaxing the guideline for banks on the 70% ceiling for residential mortgage loans" and substitute with "and examine the possibility of lowering the mortgage insurance premium, in order to assist needy mortgage applicants in securing more conveniently and speedily loans in excess of 70% of the value of their properties"."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to Mr James TIEN's motion, be passed.

**DR DAVID LI:** Madam Deputy, may I first declare my interest as the chief executive of a local bank.

The original motion points out that property prices have fallen more than 60% from their peak in 1997. As such, the risk associated with granting a mortgage at current price levels is lower than that at the height of the market. The motion concludes that this lower level of risk should result in relaxation of the 70% loan-to-value ceiling.

This appears reasonable at first reading. Unfortunately, the motion neglects to mention one crucial variable — pricing.

The lower risk of default has, in fact, already been factored into the market pricing of mortgage loans. Over the past several years, banks have competed aggressively for business, driving mortgage interest rates down and down. As a result, mortgage interest rates have fallen from more than prime plus 1% back in 1997, to as low as prime minus 2.5% now. Homebuyers and existing homeowners alike are benefitting from these lower interest rates.

The three-month Hong Kong Interbank Offered Rate (Hibor) — commonly used as a benchmark for the cost of money — currently stands at about 1.53%. Banks are offering mortgages at just 2.5%. Factoring in banks' processing and operating costs, and it becomes clear how little flexibility banks have to absorb any increase in risk in their mortgage portfolio.

Raising the loan-to-value ceiling to 80% or 90% of the market value of a property would significantly increase the risk that banks take on when they make mortgage loans. Mortgage interest rates would have to rise accordingly to reflect that increased risk.

But we must ask, in today's highly competitive banking market, would banks be able to claw back enough extra margin to reflect their increased risk? I sincerely doubt it.

May I also take this opportunity to point out that homebuyers already enjoy the freedom of borrowing up to 90% of the market value of properties in the secondary market. They may do so by taking advantage of the insurance schemes operated by the Hong Kong Mortgage Corporation and private insurers. Importantly, these schemes allow homebuyers to borrow up to 90% of a property's value without increasing the risk to banks.

Both the amendment and the original motion suggest that application procedures for loans covered by these schemes should be simplified. I welcome this publicity, as many banks in Hong Kong already offer simple mortgage packages supported by these schemes. They will gladly supply information if asked.



This motion has been proposed in the hope that raising the loan-to-value ratio for residential mortgage loans will boost transactions in the secondary property market. However, experience does not support this conclusion. In the primary market, developers have offered 90% financing schemes plus numerous incentives to buyers for years. Nevertheless, prices in the primary market have fallen for each of the past five years.

Therefore, to support this motion is to sanction a higher level of risk in the banking system for no clear gain. And political pressure must not be allowed to override sound supervision of the banking system.

I have consulted with the Hong Kong Association of Banks on the subject of this motion debate. Banks in Hong Kong are committed to following the lead of the Hong Kong Monetary Authority, trusting the Authority to set the loan-to-value ceiling independently, based on the overall risk that may be absorbed by the banking sector at any given time.

The strength and stability of our banking system is at risk. We lay claim to being an important international financial centre. A healthy banking system is vital to our economic recovery and future success. Let us not be reckless. We need only look to Japan for a picture of what may happen if banks take on excessive exposure to risk.

Thank you, Madam Deputy.

**MR CHAN KAM-LAM** (in Cantonese): Madam Deputy, the Democratic Alliance for Betterment of Hong Kong (DAB) supports Mr James TIEN's motion, which proposes that the HKMC should improve the vetting and approval criteria and procedures under the mortgage insurance programme and urges the HKMA to consider relaxing the guideline on the 70% mortgage ceiling.

Earlier on, Mr Joseph YAM, Chief Executive of the HKMA, pointed out the request for a relaxation of the 70% mortgage ceiling applicable to banks was based on a misunderstanding of the HKMA's policy. He added that the banks were in fact already offering mortgages at the loan-to-value ratio of 90% but they

only had to shoulder mortgage risks at 70% of the property value. What he meant was that the outstanding 20% risk would have to be borne by the HKMC. However, with the plummeting of property prices, the resultant marked increase in people's ability to purchase properties and also the measures launched recently by the Government to stabilize the property market, we can say that the banks are facing much lower risks now. If the Government insists on not relaxing the restriction on the remaining 20%, thus shifting the 20% risk to the HKMC or property developers, it will only show that it still does not have too much confidence in the prospects of the local property market. Although the Government has launched the "SUEN's nine strokes", it is still reluctant to relax this restriction. The Government is obviously much too conservative. At present, more and more banks are willing to offer one-stop 90%-mortgage services, with 20% coming from insurance financing. So, it is indeed the right time to relax the 70% mortgage ceiling. This can enable the banks to directly offer mortgage loans up to 90% of the property value, and at the same time, people buying second-hand flats will not have to spend any extra time on applying to the HKMC before they can take out a mortgage loan exceeding 70% of the property value. Besides, property buyers' burden will be lessened as they need not pay an extra mortgage insurance premium. We must stress that the relaxation of the 70% mortgage ceiling may not necessarily increase the lending risks of banks, because the banks can always determine on their own whether they should approve 70%, 80%, 85% or 90% by looking at the customer's income and the value of the mortgaged property. Besides, people buying newly completed flats now are generally offered re-financing services by property developers, and some banks even offer cash rebates to their mortgage customers. Therefore, many buyers of newly completed flats are now able to enjoy zero-down payment mortgage packages with over 100% financing. These packages do offer ease of repayment in the first few years, but the amount of instalments will increase very greatly subsequently. The owners concerned may become hard up because of financial difficulties, and they may default on loan repayment, thus increasing the bad debt risks of the banks. If the guideline on the 70% ceiling is relaxed, the amount of monthly instalments will be more stable, and property owners can thus assess their own repayment ability more easily. This can relatively reduce the risk of default.

The DAB wishes to emphasize that a relaxation of the 70% mortgage ceiling will not only assist more aspiring homebuyers to purchase their own homes, but also give small and medium enterprises (SMEs) and owners of negative equity assets more room to restructure their debts. SMEs are now

facing great business difficulties. If the loan-to-value lending ratio for mortgages can be increased, the burden on these enterprises will be greatly reduced, thus easing the problem of deflation. This is conducive to the economic development of Hong Kong and the achievement of the Government's desired results.

Besides, improvements to the vetting and approval criteria and procedures under the mortgage insurance programme aimed at helping more people to obtain mortgage financing at more than 70% of the property value, such as a slight relaxation of the restriction that the amount of each monthly instalment must not exceed 50% of the applicant's monthly income as well as a further shortening of the time taken for vetting and approval, will probably help boost the property market as a whole and invigorate transactions to a certain extent. As for the amendment proposed by Mr Albert HO of the Democratic Party, we will not support it. Mr HO seeks to delete the proposal of relaxing the guideline for banks on the 70% mortgage ceiling contained in the original motion. This actually gainsays the merit of allowing banks to provide full mortgage services to property buyers. It must be noted in particular that a borrower turning to the HKMC for a mortgage loan will have to pay a premium, which may be as high as 3% of the property price. This will increase the burden of the borrower. Moreover, despite many years of operation, mortgage insurance has so far failed to receive any popular acceptance. The DAB is of the view that the best way to reduce the risks borne by banks is for them to spread out their risks by selling their existing mortgages to the HKMC.

With these remarks, Madam Deputy, I support the motion.

**DR PHILIP WONG** (in Cantonese): Madam Deputy, a long-standing special feature of the local property market is that apart from self-occupation, properties are also an important investment vehicle for Hong Kong people for capital preservation. At a time when the property market was buoyant, government control over property mortgages was more relaxed and the loan-to-value ratio of mortgages offered by banks could be as high as 80% or even 90%. Since the 1990s, in order to prevent property prices from soaring, the Government had adopted a series of measures on the loan-to-value ratio, rental control and property transfers to dampen speculations.

In recent years, as a result of various internal and external factors, the property market of Hong Kong has undergone great changes with the emergence

of a group of negative assets owners, hence seriously affecting the public's investment and consumption sentiments. At present, the prices of some properties have already dropped more than 60% from the peak and the public has a lighter burden in respect of mortgage repayments. While property valuation is on the low side, bank interest rates are also low, thus increasing the real-term purchasing power of the public. This objective condition should actually be favourable to homebuyers and property investors. One of the reasons for the public's reluctance in purchasing properties is their lack of confidence in the property market. Earlier on, the Government has conducted a comprehensive review of its housing policy and introduced nine measures to rescue the market. They are meant to adjust land supply, relax or abolish obsolete control measures with the underlining objective of rationalizing its policies, hence restoring the confidence of the public and investors in the property market.

After the introduction of the nine rescue measures, the risk of another plunge of property prices has somewhat been reduced and there has been some improvement in the atmosphere of the market. However, some people still question the effectiveness of the nine rescue measures or even spread rumors that the property market would continue to "hit new lows", especially when banks cannot relax the ceiling for mortgage loans. Though some homebuyers could secure mortgages at a higher loan-to-value ratio, it is still very difficult for those making investments for capital preservation to apply for mortgage loans. This has stopped investors with "spare cash" from entering the market. I am not advocating speculation in the property market for after all it is a risky act that may lead to profits or losses. The public should keep their heads cool and operate within their means. However, in view of the above circumstances, I believe if the government measures were to be successful, the Government and all sectors in the community should work together with one mind and it is imperative that the banks should complement those efforts. On the basis of prudent risk management principles, the banks must certainly control the sum of mortgage loans and loan-to-value ratio. However, the banks may also increase the loan-to-value ratio or streamline the procedures and make flexible arrangements, so that aspiring homebuyers or potential investors intent on capital preservation could obtain the necessary loans more quickly, otherwise, how could we say that the banking sector does not have any reservations about the government measures? I do not agree with the view that a relaxation of the mortgage ceiling will undermine the self-defence ability of the Hong Kong dollar. This is because by relaxing the ceiling for mortgage loans, banks will have better business, the Government will have more tax revenue and the Hong Kong dollar will thus become more stable.

In order to stabilize the property market and restore public confidence, I hope that the HKMA would seriously consider relaxing the guideline for banks on the 70% ceiling for mortgage loans as soon as possible, and I also hope that various sectors of the community will actively complement the measures of the Government. The banks should try to streamline the loan application procedures for the convenience of applicants who meet their requirements, in particular buyers in the secondary property market. I believe this course of action will answer the aspirations of the community and help the property market to operate smoothly, thus promoting the healthy development of the economy as a whole.

Madam Deputy, I so submit.

**MR ABRAHAM SHEK:** Madam Deputy, last month, the Government introduced nine remedial housing measures. In a rare consensus, our community agreed in chorus that the Government's measures would achieve their aims of stabilizing the ailing property market. By withdrawing from the private housing market, the Government eliminates inconsistencies in its housing policies and focuses once again on assisting the needy through the provision of public rental housing. It is hoped that the measures could succeed in halting asset depreciation and assist in reviving public confidence. In a nutshell, these measures were seen as appropriate and effective.

A stable property market is what the community desires. Those around in the late '60s will remember the slump after the 1967 riot. Housing prices plunged about 70% back then, but the market bounced back and recovered swiftly in less than two years. In 1997, the property speculation bubble burst and another property slump ensued, this time knocking value down by some 64% and destroying much of the wealth of local homeowners numbering over 1.4 million people. Sadly, this time, the slump lingered with a recovery which has yet seemed to arrive, and the accumulative damage to Hong Kong in lost value exceeded the last slump many many times over.

The Government's remedial measures have halted the fall somewhat and transaction activities have increased — at least temporarily. But how long the mild revival can be sustained is anybody's guess. In the long term, the Government still has to rebuild the disrupted home-buying cycle in order to facilitate stable development of the market.

What, then, is the normal home-buying cycle? Normally, when homeowners sell their flats, they would upgrade to a bigger, newer place that is more comfortable and in a nicer environment. Often, that means moving from public rental housing to flats under the Home Ownership Scheme (HOS), which is now being replaced by interest-free home loans, or from HOS flats to private secondary housing, and then to new housing. This has served Hong Kong well for the last 30 years. The 70% ceiling on residential mortgage loans was introduced in 1995 with a purpose to dampen property speculation, and it was successful up to 1998. But this same measure has hindered the normal home-buying cycle, resulting in a drastic drop in secondhand flat transaction activities.

The loan ceiling restriction is one of the main culprits responsible for an inactive secondary market, which directly affects the stability of the overall property market.

Owing to the 70% loan ceiling restriction, many homeowners are experiencing difficulties in selling their current flats. As a result, an inactive secondhand market hinders the rung of the "flat-buying ladder" and, in turn, it undermines the balance between the new and secondhand property markets, thereby affecting the overall health of the property market.

There are those in the banking sector who believe that relaxation of loan ceiling will threaten the financial soundness of the banking system. In my view, the Hong Kong Monetary Authority (HKMA) and the banking sector are being overly cautious or outright stubborn. To show that their concerns are largely unjustified, here are some more figures:

- (a) The property market's fall has been drastic and devastating. If inflation is added in, the value of flats are now at the 1989 price level. Property owners in the western and northern New Territories have had to swallow the idea that their assets are more or less equal to, if not less than, those on the opposite side of the Shenzhen River. But with the new nine measures in place and barring any unforeseeable circumstances, the chance for further price drop is slim because property value should have reached the bottom of its cycle by now. Of more importance is the public's collective change in attitude towards property buying following the Asian financial crisis. No longer do we see property treated as a major speculative investment vehicle like stocks or mutual funds.

This has effectively reduced the reckless, rampant demand of speculative buying in the property sector.

- (b) An upside to the price drop is that the housing affordability ratio is greatly improved. Although housing prices have fallen substantially, household incomes have retreated to a lesser extent. Instead, the real income level has risen significantly since the 1990s, plus mortgage rates have been lowered over this period. The share of household incomes taken up by mortgage payments has dropped markedly — from 19.5% to 18% — which indicates that housing units are more affordable today than they were in 1997. With interest rate unlikely to go up sharply in the near future, mortgage rate should then remain stable.

Furthermore, Hong Kong's banks have always adopted a prudent attitude and strict standards in granting loans. Unless our banks suddenly decide to relax their internal assessment standards, which, I think is highly unlikely, relaxing the mortgage ceiling should not increase the bad loan ratio in the banking sector. In a market-driven system of commerce, more flexibility should be given to banks with regard to their loan policies. Besides, even without the loan ceiling restriction, banks are already subject to prudent guidelines laid down by the monitoring authorities. Before and after the introduction of the loan ceiling in 1991, banks must abide by the lending liquidity ratio requirement. There are also restrictions on the share of total loan amount taken up by mortgages.

Madam Deputy, banks may also consider extending the tenure of their loans when negotiating new mortgage agreements or refinancing existing mortgages. I know for a fact that some Japanese banks have offered loan tenures of up to 30 to 40 years to their customers. This could effectively reduce the burden of homeowners.

Madam Deputy, we must remove these untimely measures in order to facilitate a full, sustainable revival of the property market. Lastly, I urge the Government, the HKMA and the banking sector to adopt an open attitude towards the issue. They should bear in mind that a continuously depressed property market is more a threat to the banking system than the relaxation of the 70% ceiling.

**MR FRED LI** (in Cantonese): Madam Deputy, please let me quote the record of the motion debate held in this Chamber some four years ago, on 16 September 1998. At that time, Mr James TIEN moved, "That, in view of the significant downturn in the property market in Hong Kong ....., this Council urges the Government to relax the guideline on the 70% ceiling for residential mortgage loans ....., with a view to assisting the public in buying their own homes." Mr LEE Wing-tat, who then spoke on behalf of the Democratic Party, said, "Further relaxing the 70% mortgage ceiling at this point will ..... easily make the public overestimate their ability to pay for mortgages ..... ." He went on to say, "Many uncertain factors still exist in our economy. The launching of too many measures in one stroke to encourage people to purchase property will give people a positive message that the Government is positive about the economic and market prospects and therefore the public should be confident of buying their own homes. .... In fact, both the overall economy and the property market have not yet stabilized at the moment. Therefore, the Government must exercise extreme caution in implementing any further measures to encourage people to buy property."

The above views advanced by the Democratic Party years ago still look appropriate today. Years ago, the Democratic Party and a small number of Legislative Council Members opposed Mr James TIEN's motion on relaxing the 70% mortgage ceiling. We can see today that our choice was perfectly correct. It is fortunate that the Government and the HKMA did not take on board the Liberal Party's proposal at that time; had this not been the case, Hong Kong would have been plunged into a situation of "three more's" by now, that is, a situation of more negative equity assets, more repossessed flats and more bankrupts. More seriously, the bad debt ratios of many banks may rise still further, thus dealing a direct blow to the stability of the local banking system. We were able to realize the significance of maintaining the 70% mortgage ceiling, which was why we opposed the motion at that time. The Democratic Party still adheres to the very same position at that time, and it will thus oppose the relaxation of the 70% mortgage ceiling.

Mr Albert HO has explained the significance of the 70% mortgage ceiling to the stability of the banking industry. I shall look at the matter from the perspective of the general public. The general public are well aware of the current economic conditions of Hong Kong. After so many years, the Government has still failed to deliver Hong Kong from its difficulties, nor has it managed to name a direction for our future development. Once the guideline on



the 70% mortgage ceiling is relaxed, the loan-to-value lending ratio for mortgage loans will become higher, and this will in turn lead the banks to charge a higher rate of interest. The prevailing interest rate is the lowest in years, and once it goes up, people with mortgages will have to face much higher repayment pressure. So, is it really true, as pointed out in the original motion, that the ability of the public to make property loan repayments has increased, "thereby considerably reducing the risk of defaults on mortgage loan"?

(THE PRESIDENT resumed the Chair)

Besides, although the Democratic Party agrees that the mortgage insurance programme in the market can provide homebuyers with mortgage financing at more than 70%, it does not think that the existing mechanism is flawless and needs no improvement. We maintain that there are two major problems with the mortgage insurance programme:

First, people do not know enough about the programme. Sometime ago, a certain organization conducted a questionnaire survey on new homebuyers. More than half of the respondents replied that they had never heard of the mortgage insurance programme. Some even said that even bank staff very often did not know the mortgage insurance scheme well enough, so one could hardly ask or expect them to introduce the programme to property purchasers. The survey also found out that only 7.5% of the property purchasers in the secondary market had made use of mortgage insurance services. The Democratic Party thinks that all these findings show that there is still enormous room of expansion for mortgage insurance services. Publicity must therefore be enhanced, and the premium must be lowered, so as to enable more homebuyers to obtain mortgage financing higher than 70%. There has been marked enhancement in publicity on the mortgage insurance programme. The HKMC is also studying the possibility of simplifying the programme by incorporating premium costs into mortgage interest, so as to come up with one single interest rate and enable borrowers to better know their mortgage expenditure. We think that all these measures are desirable.

Another issue is the level of mortgage insurance premiums. According to the information provided by the HKMC, such premiums are currently about 2% to 3% of the property price. Assuming that the second mortgage amounts to

20% of the property price, the level of insurance premium is really a bit high. The level of premiums will directly affect the homebuyer's decision on whether or not to use the mortgage insurance programme. That is why the Democratic Party thinks that in the long run, insurance premiums must be maintained at reasonable and acceptable levels. At present, the percentage of homebuyers using mortgage insurance services is still on the low side. The authorities concerned should make enhanced efforts to publicize and promote the mortgage insurance programme, so as to induce more homebuyers to use the services. It is hoped that market expansion can create room for the downward adjustment of premiums. Actually, from the latest information, we know that the HKMC has already put in place an incentive scheme, whereby a bank that has achieved the pre-set targets will be offered premium discounts. This shows that there is indeed room for the downward adjustment of premiums. In the long run, if the mortgage insurance market can become large enough to accommodate several service providers, and if premiums can be lowered through competition, homebuyers will enjoy more obvious benefits.

With these remarks, Madam President, I support the amendment.

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, last month, the Secretary for Housing, Planning, and Lands announced in this Council nine measures to stabilize the property market. These measures are referred jokingly by the media to as "SUEN's Nine Strokes". The nine measures on stabilizing the property market, as announced by the Government, include the suspension of land sales, the cessation of HOS flat construction, the co-ordination of the housing supply of the two railway corporations, the withdrawal of anti-speculation measures, and so on. These measures are mainly targeted at the supply of housing and land, but they deal very little with the boosting of demand for housing. For this reason, the media have all hastened to ask the Government whether it will consider relaxing the 70% mortgage ceiling so as to boost housing demand. Against such a background, Mr James TIEN's motion and Mr Albert HO's amendment may in fact be regarded as the 10th and 11th strokes.

I have all along been asking the Government to take steps to stabilize the property market, so that it can develop steadily. Since the Government's announcement of the measures to stabilize the property market, there has been

marked improvement in property sales, and some opinion polls also reveal that there are signs of confidence being restored in the property market. The measures introduced by the Government are beginning to see results. As to the question of whether any further steps should be taken, I think we must still wait and ascertain if the initial signs of revival can sustain. The reason is that the 10th and 11th strokes, so to speak, are no new strokes at all; they are both rider services to the existing property mortgage packages in the market.

As pointed out by the Secretary for Financial Services and the Treasury in his reply to Mr TIEN's question last month, since second-hand property prices as at September this year have fallen by 62% from the peak levels in 1997, there is a very small likelihood that property prices will plummet yet further. This means that it is possible to relax the 70% mortgage ceiling without producing too great an impact on the stability of the banking system. What is more, once there are signs of rekindled speculation, the banks can still tighten their mortgage lending taking account of their individual circumstances.

I wish to point out that 20% second mortgages are no new things in the market. The HKMC started to offer second mortgages in 1999, and some property developers, in an attempt to boost sales, also offer second mortgages for their newly completed properties. Naturally, homeowners must make extra expenditure for the additional 20% mortgage financing. For example, they have to take out insurance policies and pay higher interests, but the actual amounts are determined by the providers of second mortgages.

The fact is that the risk exposure to second mortgages are higher than that associated with the remaining 70% mortgage financing. It is therefore only reasonable to require the homeowner to take out an insurance policy, and the premium should be determined by the market itself. To cite the example given by the Secretary for Financial Services and the Treasury, the 90% mortgage financing for a flat valued at \$2 million will entail the payment of \$53,000 in premium. If the premium is absorbed into the entire sum of mortgage loan and repaid over a period of 20 years, it will mean an extra payment of only \$280 monthly. Therefore, as in the case of bank mortgages, it is not appropriate for the Government to interfere with the insurance market and seek to regulate the levels of premium. During the property boom, the mortgage interest was generally Prime Rate (P) plus 1% or more, but due to fierce competition, it has gone down to P minus 2.5%. As a result of the narrowing interest difference,

some banks have recently said that they will stop trying to get mortgage customers by offering any preferential terms. This is very much the result of market competition. Similarly, it will be possible for the interest rates of 20% second mortgages to go down under market competition, the key being the insurance companies' assessment of repayment ability. There is no need for the Government to step in and issue any guidelines for the time being. Instead, it is more desirable to improve the vetting and approval procedures, so as to make it easier for applicants to secure second mortgage financing.

Madam President, Mr SUEN is not here now, and I do not know whether he is a lover of JIN Rong's masterpiece martial arts novels, and whether he yearns to see his nine strokes working as nicely as the "Nine Strokes of the Lone Swordsman". It is fortunate that he is not a fan of another martial arts novel master GU Long, because in GU Long's novels, there was another swordsman named "YAN the Thirteen Strokes", who was noted not only for his 13 strokes of fatal sword attacks, but also for the 14th and 15th strokes he subsequently developed. In the end, his swordplay got so powerful that it backfired. With these remarks, I support the Government's measures on stabilizing the property market, but I do not wish to see the revival of speculation in the property market.

**MR NG LEUNG-SING** (in Cantonese): Madam President, the measures recently launched by the Government to stabilize the property market have had some positive effects on confidence in the market. But I think the full recovery of the property market should still be quite some time away and will have to depend on the various other types of economic activities to be invigorated by the overall improvement of some fundamentals, both externally and internally. To hope that the several measures launched by the Government can achieve any effect in the short run is obviously unrealistic.

The Government's measures on stabilizing the property market are mainly based on market supply, some examples being the suspension of land sales, the cessation of the construction and sale of HOS flats and PRH units as well as the co-ordination of the two railway corporations' property development projects and invitation of tender. Besides all this, the Government also seeks to boost market demand by, for example, maintaining the Home Assistance Loan Scheme after stopping the sale of HOS units, and by withdrawing the various anti-

speculation measures. Admittedly, when compared with the supply-side measures, the Government's measures on boosting demand are rather limited both in force and effects. This is actually related to the role of the Government itself. Objectively speaking, being the biggest landowner, the Government will always be most influential in respect of land supply. Hence, the Government has focused on this and made it the thrust of its market stabilization initiatives. People's desire to purchase properties, on the other hand, is very much determined by their own financial ability and confidence in market prospects.

It is true that in the interest of overall economic development, the Government should actively consider all measures which can produce further positive effects on the property market. Such measures of course include those which can boost market demand or facilitate people in achieving their goal of home ownership. As for the relaxation or otherwise of the 70% mortgage ceiling, I think we should always adopt an open attitude. Owing to changes in the property and financial markets, all measures must change with the times to suit practical needs. However, the 70% mortgage ceiling is originally meant to enhance risk management in the banking system. So, on the one hand, we have to consider the effects of the ceiling on the property market, and, on the other, we must also assess the need for risk management within the banking system itself. As pointed out by the Chief Executive of the HKMA, the purpose of the guideline on the 70% mortgage ceiling is to require that whatever the loan-to-value lending ratio of a bank may be, the risk borne by the bank should not exceed 70% of the market value of the property concerned. Whether taken as an objective in itself or as a guideline on practical operation, this policy is still premised on risk management. At present, the business of the banking industry is concentrated heavily on mortgage loans and also marked by fierce competition and narrowing interest difference. Business risks are necessarily concentrated as a natural result. Moreover, with the low interest rate now, some people are inevitably induced to take out mortgages at a higher loan-to-value lending ratio; this will easily result in less prudent borrowing and may even increase the risks borne by both sides. It is therefore still necessary to stress the need for risk management measures within the banking system. Mortgage loans at 90% or more of the asset value are already available in the market. In principle, if its vetting and approval criteria and procedures can be improved to suit practical market operation and homebuyers' needs, the mortgage insurance programme should be able to foster the sound development of the market in one way or another. The effects on second-hand properties will be especially positive.

The relaxation of the 70% mortgage ceiling, something which may make the actual lending risk borne by a bank exceed 70% of the market value of a property, is a departure from the existing management discipline imposed by the HKMA. For this reason, it is up to the HKMA as the industry regulator to conduct assessment and to make a wise decision. Furthermore, at this time when the property market has not yet returned to stability, I believe that the mortgage insurance programme should still be further improved. As long as its actual operation can suit market needs, the programme can still serve as an effective means to assist homebuyers and foster the stable development of the property market.

Madam President, I so submit.

**MRS SELINA CHOW** (in Cantonese): Madam President, when answering Members' questions at the Legislative Council sometime ago, Mr Joseph YAM stated that the authorities supported other institutions diverting the risks of mortgage loans with the loan-to-value ratio above 70% away from the banking system in different ways, while at the same time enabling buyers to take out mortgage loans up to 90% of the property value. This shows that the Government does see such demand in the market. Indeed, relaxing the 70% ceiling for mortgage loans is very important to revitalizing the first-hand and second-hand property markets.

However, while the HKMC provides buyers with mortgage loans on top of their 70% loan-to-value mortgages, the requirements for applications are in fact harsh and the vetting and approval procedures cumbersome. The HKMC launched the mortgage insurance scheme in March 1999, which enables homebuyers to secure mortgage loans on top of their 70% loan-to-value mortgages in the form of taking out insurance. However, homebuyers are required to pay for an extra premium. The premium for top-up mortgages ranges from 2.1% to 3.3% of the loan amount.

It is not easy to successfully apply for 90% loan-to-value mortgage insurance, and the requirements for application are very harsh. For example, at least one of the applicants must be a first-time homebuyer, and self-employed persons are not eligible for the scheme. Mr Albert HO is not in this Chamber now. But when he mentioned the HKMC earlier, he appeared to be saying that it could assist buyers with a variety of measures. He also added that the HKMC

had extensively put up advertisements today, and his remarks gave the impression that this corporation could offer plenty of assistance to buyers. However, does he know that it took as long as one and a half months for the vetting and approving procedures to complete when the scheme was first launched? Due to incessant complaints, the HKMC then gradually reduced the processing time to about two or three weeks; and after a complaint lodged by Mr TIEN, the HKMC further reduced it by several days. But compared to private banks which need only a few days to complete the vetting process, processing by the HKMC still takes too long indeed. Furthermore, as the vetting and approving process is slow, almost no buyer can know whether their applications are approved or not before the payment of deposit. Therefore, the intended purpose of the scheme is not in the least served, and a great majority of buyers with stable income but little savings cannot benefit from the scheme. According to what Mr Albert HO said earlier, it appeared that the HKMC has approved many applications. But compared to the number of transactions, it actually has not approved a large number of cases. What is more, many of these applications were approved only at a later stage under pressure for improvements to the vetting and approving procedures. It was only because of this that the number of approved cases had slightly increased. But since 2000, the take-up rate of this scheme in the secondary market has actually been as low as 7%.

If the secondary market remains sluggish, economic recovery would be difficult. The Government's nine measures to revive the property market, however, can only promote the sale of first-hand properties, and they are not at all helpful to the secondary residential property market. In the past week or so, the sale of newly-completed flats was indeed robust. But let us make a comparison with the secondary market. Has the sale of second-hand properties improved as well? According to information of real estate agents, the sale of first-hand properties in the first week following the introduction of the nine measures had substantially increased by 200%, and continued to increase in the subsequent weeks. On the contrary, these nine measures have been far less effective in terms of their stimulation of the secondary market. In the first week following the introduction of the nine measures, no doubt the sale of second-hand properties had increased by 20%, but it began to fall right into the second week. Therefore, the measures are not very helpful to this market.

We in Liberal Party consider that to restore public confidence in the property market, it is indeed necessary for the Government to improve the

existing arrangements for mortgage loans, including improving the conditions and procedures for vetting and approving applications under the mortgage insurance scheme and abolishing the harsh requirements, and also relaxing the guideline for banks on the 70% ceiling for residential mortgage loans, so that mortgage applicants with sufficient means to make repayments can more conveniently and speedily secure mortgage loans in excess of 70% of the property value, thereby boosting overall property transactions.

The time required for the vetting and approval procedures of the HKMC certainly has to be reduced considerably, so that applicants will know whether their applications are approved before the payment of deposit.

Moreover, the HKMA has stated that the HKMC is studying ways to simplify the calculation of interest rates and introduce a one-stop mortgage insurance scheme. The Liberal Party certainly supports these. It is because with a combined rate of interest, buyers will not have to calculate the interest and premium in two different parts. This will indeed be more convenient to them. But after all, the premium must be reduced, for this is the only measure that is genuinely most attractive.

Recently, the HKMC has been signing agreements with banks, under which the procedures of the HKMC will be handled by banks. This will enable buyers to enjoy one-stop services, and it is also claimed that the time required for vetting and approval will be shortened to one week only. But if the HKMC insists on the continuation of the prevailing harsh requirements, the situation would not in any way be improved.

The HKMA has consistently refused to relax the guideline on the 70% ceiling for mortgage loans on the ground that the stability of the financial institutions must be protected. But I am sure Members must remember that the HKMA, in view of the overheated property market, had instructed banks to keep their mortgage lending to not more than 40% of the total amount of loans. Today, given the prevailing market conditions, this guideline no longer exists, but banks in fact still adhere to this limit of not more than 40%. This shows that banks are absolutely capable of making prudent lending policies on their own, and they do not necessarily have to be guided by the rules set by the HKMA. So, for the same reason, the 70% ceiling can be adjusted for the convenience of the needy buyers, particularly those who absolutely have the means to make repayments. This should be the responsibility of banks, and banks should be



allowed to determine the loan amount according to their own vetting and approval criteria. Under the current market conditions, there is no reason for Hong Kong, being a free market, to insist that the market be subject to control by the HKMA.

Thank you, Madam President.

**MR AMBROSE LAU** (in Cantonese): Madam President, the Hong Kong Progressive Alliance (HKPA) welcomes the policy introduced by the Government recently, which is by far the clearest and most comprehensive housing policy since the establishment of the Hong Kong Special Administrative Region (SAR). Specifically, the removal of the long-term target of achieving 70% home ownership rate by end 2007, the abolition of the Tenants Purchase Scheme (TPS) by stop selling public rental housing (PRH) flats, the indefinite cessation of the production and sale of Home Ownership Scheme (HOS) flats from 2003 onwards, and the co-ordination of the property supply by the two railway corporations show that the Government is determined to reduce market intervention. However, since the Government has declined to consider relaxing the 70% ceiling for residential mortgage loans, it has given the public an impression that the intervention has not been minimized.

The stability of Hong Kong economy depends on the stability of the banking system. As a responsible government, the implementation of appropriate regulatory measures would give little cause of criticism. However, a responsible government should also note the importance of suiting measures to the changing circumstances. As the good old days of Hong Kong's property market have gone, the public aspirations to home ownership have undergone fundamental changes. Furthermore, since the Government is mindful of minimizing market intervention, the HKPA considers that it is unnecessary for the Government to regard the 70% ceiling for residential mortgage loans sacrosanct, fearing that vicious competition would arise among banks once the ceiling is relaxed and banks would try to win business irrationally regardless of the risk exposure.

In fact, given the sluggish market demand, the Government should have a clear idea of the situation, otherwise, it would not have deemed it necessary to take steps to rescue the market. For this reason, even if the ceiling for residential mortgage loans is relaxed, in view of uncertain economic prospects,

will banks really ignore the increased risks of default on mortgage loans and vie for a market share through cut-throat competition? Furthermore, the so-called relaxation of the ceiling for residential mortgage loans is actually giving banks flexibility in negotiating the percentage of mortgage loans with homebuyers according to their respective circumstances without being confined to the 70% ceiling. Banks in Hong Kong have been renowned for their prudent business practice all along. In 1993, local banks proposed tightening of the ceiling for residential mortgage loans to 70% and accepted the supervision of the HKMA in view of hectic property speculation. All this shows that the risk management mechanism of the banking system has been working well. For this reason, the HKPA is confident that even if greater flexibility is restored to the granting of mortgage loans, it does not mean that banks will become lax in credit management. There is no harm for the Government to give its vote of confidence and hand the matters back to the market by relaxing the 70% ceiling of mortgage loans.

**MR HOWARD YOUNG** (in Cantonese): Madam President, the property market had all along been the locomotive of the Hong Kong economy, driving the development of different trades and industries and making tremendous contribution to the economy as a whole. However, after the financial turmoil, the property market has sustained continual contraction. Many related trades and industries have been affected and there have been incessant cases of company closures and layoffs, causing the unemployment rate to climb. In the meantime, a large group of owners of negative equity properties has also emerged. All this has dampened local consumption sentiments and slowed down the recovery of the local economy.

The Liberal Party has always been very concerned about the property market and the negative equity problem. Two years ago, we took the lead to launch a large-scale procession, with the aim of protecting people's assets and bolstering public confidence. In February last year, on behalf of the Liberal Party, I also moved a motion on assisting owners of negative equity assets, which had aroused the concern of the community and the Government. We hope the overall economy can be improved by stabilizing the property market.

In fact, thanks to repeated appeals made by the Liberal Party and other members of the community, the Government had introduced some measures to

stabilize the property market, such as suspending the sale of HOS flats and reducing the construction of HOS flats. Much to our regret, since those measures were launched, the Government had failed to point to a very clear direction; comprehensive planning was lacking and the measures were far from effective. It is only until last month when the Government announced the nine initiatives to stabilize the property market that the market has initially responded quite positively. Last week, a new property development in Sheung Wan even broke recent records in terms of the number of cheques received, and all the flats have been sold. On the contrary, the secondary market has been going to the other extreme. Very few transactions were recorded last week in respect of many housing estates in the secondary market. This shows that "SUEN's Nine Strokes" can only promote the sale of first-hand properties at most, and are not very helpful to the secondary market.

Moreover, the mortgage arrangements adopted by banks for new and old properties are different, and the arrangements can be considered discriminatory against secondary residential properties. For example, banks do not take into account whether the structure and exterior walls of a building have been completely renovated and repaired recently, and they only "mechanically" consider the age of a property in calculating the repayment period. So, those renovated secondary properties which compare favourably with new properties in terms of quality and outward appearance are unable to enjoy the low-interest concession and a longer repayment period as do first-hand properties. As far as I know, in many foreign markets, such as that in the United Kingdom, both new and old properties enjoy the same mortgage terms and tenure. Whether the mortgaged property is a new property or a 50-year-old property, the tenure of their mortgages is the same. Hong Kong is very much different in this regard. This will indeed affect transactions in the secondary market and result in disruptions in the pattern of the primary market being driven by transactions in the secondary market. This will deal a blow to the entire property market, throwing the people into a state of unease.

In recent years, although buyers of secondary residential properties can secure mortgage loans from the HKMC amounting to 20% of the property value, there are still deficiencies with the mortgage insurance scheme, such as insufficient publicity, overly stringent vetting and approving criteria, cumbersome procedures, and so on. All this has undermined the effectiveness of the scheme. As Mr James TIEN has explained this earlier on, I will not repeat the details here.

On the other hand, I believe Members must have also noticed that the HKMA, after repeated appeals by the Legislative Council, has shown some subtle changes in its position as regards the guideline on the 70% ceiling for mortgage loans. The mortgage loan scheme for negative equities with the loan-to-value ratio up to 140% introduced last year and the one-stop mortgage insurance scheme which has just been launched are indicative of the ongoing efforts of the authorities to relax the relevant conditions. These "one-stop" schemes will, in fact, indirectly enable banks to provide mortgage loans amounting to 90% of property value. Such being the case, why do the authorities not at the same time relax the restriction imposed by the guideline on the 70% ceiling, allowing banks to decide on their own the loan-to-value ratio for mortgage loans in accordance with the merits of individual borrowers?

The Government has been worried that relaxing the guideline would increase the risk exposure of the banking system. But judging from some favourable statistics, such as a fall in the rate of default on mortgage loans, and the fact that the public's ability in making loan repayments has increased by 73% compared to the peak of the property market in 1997, the exposure in respect of mortgages has actually reduced considerably. Therefore, the Liberal Party considers this an indicator of confidence. If the Government does not relax the guideline on the 70% ceiling for mortgage loans, it will hardly demonstrate truly its determination to stabilize the property market.

Madam President, if the Government could come up with concrete measures to stabilize the market earlier, and if it did not go one step forward only after being pushed one step forward by us, and if it did not propose measures bit by bit very much like squeezing toothpaste, I believe the property market would not have plummeted by over 60% and such a large pool of owners of negative equity properties would not have emerged. Therefore, the Liberal Party hopes that the Government can thoroughly improve the existing lending arrangements to tie in with the other measures aimed to stabilize the market, with a view to boosting public confidence in the future. Only in this way can the property market grow steadily, and only in this way can there be hope for recovery. With these remarks, I support the original motion.

**DR RAYMOND HO** (in Cantonese): Madam President, the vibrant property market was one of the reasons contributing to Hong Kong's economic prosperity in the past. However, property prices started to slide after 1997. So far, they

have dropped 60%, creating a large number of negative asset owners, and the situation is worrying. In mid-November this year, the Secretary for Housing, Planning and Lands announced nine measures to stabilize the property market, and immediate positive effects were seen. This is encouraging. Although the nine measures might help to revive the property market in some measure, the crux of the problem lies in the ability of the public to make mortgage repayments. In the long run, to improve the property market, I consider that we should review whether the guideline on the 70% ceiling for residential mortgage loans should be relaxed.

Although the current property prices have plummeted significantly in comparison with the past, they are still very high compared to property prices in Europe and the United States, because Hong Kong is a densely populated small place. As a result, if the public wish to buy their own homes, they have to pay a huge amount of money for one single flat. In recent years, besides high unemployment rate, the lack of confidence in the property market has also been one of the contributory factors to the sluggish property market. Despite many people in Hong Kong are caught in financial difficulties, I believe there are still a large number of people who have the financial capability to purchase properties. However, the 70% ceiling for residential mortgage loans, the huge amount of down payment plus the uncertain economic prospects have made them shy from proceeding with home purchase plans. No wonder the measures launched to stabilize the property market could not improve the circumstances significantly despite bank interest rates have been spiralling down. I believe a relaxation of the guideline for banks on the 70% ceiling for residential mortgage loans would help stimulate people's home ownership desire and induce a revival of the property market.

Limiting the ceiling for residential mortgage loans at 70% of the property value was one of the measures made by the Government to curb property speculation in the past. The purpose of this measure was to increase the costs of speculators with a view to stabilizing the market. Today, perhaps most of the speculators then have become losers and debt-ridden. Therefore, if the 70% ceiling for residential mortgage loans is relaxed, end-users would by and large be benefitted, and I believe the relaxation would not cause any negative impact on the property market.

If the Government still worries that relaxing the guideline for banks on the 70% ceiling for residential mortgage loans would give rise to speculation, I think

it should seek to improve the property market from another angle, that is, improving the conditions and procedures for vetting and approving applications under the mortgage insurance scheme, in order to assist mortgage applicants in securing loans in excess of 70% of the value of their properties. The existing procedures for vetting and approving applications are exceedingly cumbersome and the applicants have to meet a lot of requirements, therefore the take-up rate is quite low. If the procedures are streamlined and conditions relaxed, I believe more people can be benefitted.

At present, as interest rates in Hong Kong are on the low side, people who have the ability to purchase properties would find this a good opportunity to purchase properties. If the Government relaxes the guideline for banks on the 70% ceiling for residential mortgage loans and improves the conditions and procedures for vetting and approving applications under the mortgage insurance scheme, I believe these people would be more willing to purchase properties, because these measures would be conducive to alleviating the immediate financial pressure they have to face in making mortgage repayments and to reviving the property market. Real estate is one of the major pillars of Hong Kong economy, recovery of the economy is just round the corner if the property market revives.

Madam President, I so submit.

**MR MA FUNG-KWOK** (in Cantonese): Madam President, of the nine measures introduced by the Government recently to stabilize the property market, six are intended to control the supply of buildings, whereas the rest aim to assist the public to buy properties and enhance the protection for owners in the rental market. These measures have a stabilizing effect on the people of Hong Kong psychologically and also on the property market as a whole. These measures, the effects of which have been very positive, do merit affirmation; and the sale of first-hand properties has since been quite good. However, these measures have not been a strong stimulus to the secondary property market. Nor can they take care of the middle class which has suffered badly from the negative equity problem.

In fact, there is one thing in common between the latest measures introduced by the Government and those proposed on past occasions. That is, they all seek to promote the sale of first-hand properties. For example, the

various home purchase loan schemes of the Government are a spur to the primary property market. The result is that while the transactions of first-hand properties have increased, the property market has remained weak. The main reason is that the secondary market has remained sluggish after the bursting of the bubble in the property market.

During the last couple of years, property prices have continued to fall, and the number of owners of negative equity assets has been ever increasing. The secondary residential property market has almost become stagnant. Public confidence in the property market, the economy and the future of Hong Kong has been dampened. According to the estimation done by the research department of an estate agency, a rebound of 10% in property prices can bring down the number of negative equity households by 20%. This shows that as long as the prices of private properties can rise by a reasonable margin, the negative equity problem can be alleviated significantly. The level of indebtedness of owners of negative equity assets can also be lowered, thus making it easier for owners to secure refinancing and hence reduce their interest expenditure. Studies conducted by the HKMA also show that a 10% fall in property prices will lead to a 10% fall in personal consumption.

In fact, so long as the Government takes no action in respect of the secondary market, it would be difficult to achieve the objective of stabilizing or propping up the property market. It is because in an inactive secondary market, owners will only find themselves in a real estate market with extremely low mobility. Owners in financial hardships will find it difficult to get away and will be denied options to reschedule their mortgage commitment. The confidence of the general public in property investment will also be affected. Moreover, an invigorated secondary market can give impetus to the development of other industries, such as real estate agents, legal services, surveying, and decoration; and there will be greater flexibility and economic benefits.

To invigorate the secondary residential property market, the Government must start with the loan-to-value ratio of mortgage loans. The reason is that in the primary property market, it is almost certain that developers will provide second mortgages for buyers. With the first mortgage by banks, a mortgage loan totalling 90% of the property value will be provided. Together with the revolving loans and cash rebates provided by banks for individual property developments, a mortgage loan package at 100% of the property value with no down payment required can be secured. But in the secondary property market,

although there is the 90% mortgage insurance scheme of the HKMC, the scheme has not been well-received for such reasons as long processing time, the requirement of abundant information from clients, and expensive insurance premium. According to the information of the HKMC, since its establishment in January 2000, only 12 000 homebuyers have participated in the mortgage insurance scheme of the HKMC. At present, 65% of the second-hand property buyers are financed by mortgage loans amounting to 70% or less of the property value. Another 28% of the buyers are beneficiaries of government loans under the Home Starter Loan Scheme and Home Purchase Loan Scheme. This shows that 70% loan-to-value mortgages are still dominant in the secondary market.

In fact, from the responses of first-hand property buyers to different second-mortgage packages, we can clearly see the market aspiration for a relaxation of the mortgage ceiling and an increase of the loan-to-value ratio. I also believe that relaxing the loan-to-value ratio for property mortgages will fully demonstrate the Government's confidence in the property market and in the economy, which will help restore public confidence in the secondary residential property market and also directly help owners of negative equity assets. In fact, relaxing the 70% ceiling for mortgage loans may not necessarily increase the risk exposure of banks substantially. Today, a large number of negative equity owners are still working very hard to make monthly repayments in order to keep their properties. The drop in property prices has not directly caused banks to incur losses, and the proportion of mortgage-related bad debts has been on the low side of 1.2%, the highest being 1.42% only. That is a very low level, compared to a general figure of 5.5% in respect of bad debts relating to other loan businesses of banks. More importantly, after relaxing the loan-to-value ratio for mortgages, banks can still vet and approve property mortgage loans on the merits of individual clients, having regard for their own risk exposure. Regrettably, for a certain period of time, government officials and the banking sector have had strong reservations about relaxing the 70% ceiling for residential mortgage loans and so, the relaxation of the ceiling is not going to realize soon. Apart from considering the relaxation of the mortgage ceiling, the Administration should also enhance and improve the efficiency of the 90% mortgage insurance scheme. It is premature to say whether the one-stop 90% mortgage insurance services that the HKMA, the HKMC and the banking sector plan to introduce can truly answer the aspirations of the market, reduce the costs and fees borne by the buyers and improve the efficiency of the vetting and approving process.



Like past practices, the one-stop 90% mortgage insurance scheme operates in a way that banks will prepay for the insurance premium, which will then be computed into the interest rate of the mortgage loan. It is initially estimated that the interest rate for 90% loan-to-value mortgages will be 0.3 percentage point higher than that for 70% loan-to-value mortgages in general. But is this difference in the interest rate acceptable to the market? Can clients demand a better rate based on their own conditions or is there room for them to do so? All this requires continued follow-up actions by the Government, in order to prevent the recurrence of the situation where the efficiency of mortgage insurance cannot be improved and thus restraining the scheme from duly performing its function.

To conclude, in view of the current market conditions, an expeditious relaxation of the guideline for banks on mortgage loans will greatly enhance public confidence in real estate investment, which will, in turn, promote the healthy development of the market.

I so submit.

**MR ALBERT CHAN** (in Cantonese): Madam President, that the mortgage problem is mentioned in the motion reflects to some extent this Council's recognition and admission that concern has to be shown for owners of second-hand flats, in particular the plight faced by embittered property owners and owners of negative equity property. It is always with sad reflections that I talk about the problem of embittered property owners or negative equity property owners, for since March 1998, I have been taking the lead to arouse concern for the issue of embittered property owners. Initially, I was discriminated against by the public as well as some political parties and Members. At that time, we were accused of being bad losers who asked the Government for subsidies after getting our fingers burnt in speculation. The discussion on this issue today can be described as a belated spring that is nevertheless still necessary, since many negative equity property owners and embittered property owners are still facing financial difficulties. According to government figures, there are about 60 000 to 70 000 negative equity property owners, and according to studies conducted by academics, the number of such people is even over 100 000.

For over four years, we have seen many negative equity property owners who either went bankrupt, killed themselves or even chose to run away. Most

negative equity property owners have chosen to run away in order to avoid debt collection by banks. Those who are nationals of other countries have migrated to other places, never to come back again. It is in fact very sad to see such a phenomenon in Hong Kong.

If we take a look around us, we will find that the present trend in society is to boost the purchase of new flats, and this is also the case with the so-called "SUEN's Nine Strokes". If we look at the arrangements for the purchase of new flats, we will find that apart from such offers as a 70% loan-to-value ratio and a 20% second mortgage from developers, it is also possible to receive many types of rebates including cash rebates, waiver of management fee, and so on. It can be seen that a small capital outlay is required to buy a new flat to live in, since even the management fee is waived for 18 months for some new properties. Such promotional measures have caused the market to be tilted to new properties. The "SUEN's Nine Strokes" are basically intended to boost and promote the sale and advance sale of new properties. Not only are they of no assistance to second-hand properties, they will even further put a stranglehold on and stifle transactions in the second-hand market, since new properties are just too attractive and too good to miss.

If the 70% loan-to-value ratio is maintained for second-hand flats, this will bring transactions in the second-hand property market to near stagnation. To allow the second-hand market to stagnate will inevitably cause the prices of such properties and the number of transactions to become abnormally low. On the other hand, a lot of second-hand property owners will want to sell their properties as early as possible to relieve themselves of the financial pressure. Consequently, they will be landed in greater difficulties and life will be more miserable for them. Therefore, as long as the Government does not promote transactions in the second-hand market and make improvements to the 70% loan-to-value ratio, embittered property owners will continue to be forced to live in misery.

We can see that many negative equity property owners who bought their property at the peak of the property boom still have to make repayments at high interest rates. Some still have to pay interest at the rate of Prime plus 2% and some banks still refuse to offer them re-mortgage for various reasons. For example, some may have defaulted on payment before, others may have a poor record and some may not be able to satisfy the banks' requirements on financial proof. On the other hand, some banks are willing to offer re-mortgage only if

their conditions that the borrowers transfer to the banks hundreds of thousands or even millions of dollars as guarantee are met. The various arrangements and stringent requirements imposed by banks are to some extent directly related to the present 70% loan-to-value ratio.

Although after lobbying by various parties, banks have set up a co-ordination centre manned by specially tasked personnel and the HKMC has also offered loans in the form of an insurance programme, all the costs are borne by negative equity property owners and users, whereas banks do not have to bear any of the remaining risk or responsibility. Such an approach increases the misery of negative equity property owners, and is totally biased in favour of the interests of banks. No attention whatsoever is given to the problems faced by negative equity property owners. Therefore, I believe that some claims, such as the need to protect and safeguard the stability of the financial system, have entirely disregarded the problems and misery faced by those members of the middle class who are negative equity property owners and who have to service loans at high interest rates.

Madam President, many negative equity property owners are still in deep water. We have seen Secretary SUEN deploy his strokes, but they have had little effect on the overall property market, in particular on second-hand and negative equity properties. Basically, these nine strokes can be described as biased in favour of helping developers promote the tens of thousands of flats that will be or is being put on sale, and do little help to second-hand properties. Banks are now "flooded with money" and the Government is fully aware that the banks have a lot of capital. However, nobody is now willing to borrow from banks.

If the state of mortgage services for negative equity property owners can be improved, not only will this promote transactions in second-hand properties, more people will also engage in property transactions if there is a large volume of transactions in second-hand properties. The loans taken out from banks will also increase. In fact, I believe this proposal will give rise to a win-win situation for three sides: society, banks and negative equity property and second-hand property owners will all benefit from it. Since this is a proposal leading to a win-win situation for three sides, I cannot see any reason for opposing a review of the 70% loan-to-value ratio and a relaxation of the 70% loan-to-value ceiling. Some people have said that banks have to be protected.

I believe that to say so is just like saying a tree in a forest has to be protected. In order to protect this tree, no attention is given to other trees even though they will all die. I believe it is too blinkered a view and there is a total lack of understanding about the plight of negative equity property owners and the middle class.

On behalf of the Negative Equity Owners Alliance, I strongly request Members to support the proposal to relax the 70% loan-to-value ceiling and hope the Government will realize that even though Secretary SUEN has deployed his nine strokes, the ninth manoeuvre, known as the "Powerful strike of Buddha's divine palm"<sup>1</sup>, has failed to subdue the "Mighty crushing foot"<sup>1</sup>, and the tenth manoeuvre, "Powers of all Buddhas centralized in one"<sup>1</sup>, must be employed to make it a success. Therefore, if the Government is willing to use the tenth stroke of relaxing the 70% loan-to-value ratio, it will be able to provide a little help to the property market in shambles. I hope Members will support the original motion if they truly want to help the middle class and property owners in financial difficulty.

Thank you, Madam President.

**MR FREDERICK FUNG** (in Cantonese): Madam President, I remember that before the reunification, property speculation was rampant, and the unhealthy soaring of property prices caused the Government to put in place a number of measures to curb property speculation. One of these was the guideline for banks on the 70% ceiling for residential mortgage loans. Nowadays, because people are battered by unemployment and wage reduction under the economic downturn, and also because there is far less job security than before, people's idea about home ownership has become entirely different from that before 1997. I believe no one will still expect to make a big fortune from any drastic increases in property prices, nor will anyone still think that property purchase can always preserve capital value. This attitude is markedly different from that before 1997. People have become much more prudent and cool-headed regarding property purchases. They will decide to purchase properties only after giving thorough consideration to factors like financial ability, job security, and so on. Property speculation has evidently become much less rampant in recent years.

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<sup>1</sup> Martial art manoeuvres that have supernatural power in a local martial arts film.

If property speculation had remained as rampant as it was before 1997, property prices would not have plummeted continuously over the past few years. Since 1997, property prices have dropped over 65%.

The biggest difference between Mr James TIEN's original motion and Mr Albert HO's amendment lies in whether or not we should relax the guideline for banks on the 70% ceiling for residential mortgage loans. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I both think that the Government's original purpose of issuing the guideline is to curb speculation and prevent any unhealthy development of the property market. But I think that with the passage of time, circumstances have already changed. Besides, I also think that the relaxation of the guideline will also boost the transactions of second-hand flats, thus offering help to owners of negative equity assets. These owners may then either sell their negative equity assets to relieve their plight or move to smaller units. They may even have a chance to reduce the mortgage interests they have to shoulder. I am sure that this measure — the relaxation of the ceiling for mortgage loans — will be helpful to families owning negative equity assets.

Some are worried that a relaxation of the guideline may increase the risk exposure of banks. But I must say that in all cases — 50%, 70% or 90% mortgages — the banks will invariably assess the repayment ability of the property purchaser, because there is a relevant assessment system in each bank. I suppose even before the issuing of the guideline on the 70% ceiling, the banks should actually be doing exactly this. Besides, as far as I can see it, no banks have ever closed down because of the provision of 90% mortgage loans.

Therefore, I am of the view that even the 70% ceiling is relaxed and mortgages at a higher loan-to-value are offered, the banks themselves will still have both the means and ability to keep the situation under control. As for whether or not a relaxation of the ceiling will induce some banks to adopt an over-ambitious approach, or to extend loans to customers all too easily, I have to say that the banks are not stupid at all. They know the current situation of the property market very well. Apart from assessing the loan applicant, they will also evaluate the property market. I therefore think that the banks do have the means of assessment. They have far more resources and means for information analysis than any individual purchasers and speculators. Naturally, if a bank adopts an over-ambitious approach, it must then bear the risks involved. This is only reasonable. This means that if a bank really runs into any financial problems as a result of this, it should shoulder the responsibility itself.

For the above reasons and on the basis of my own analysis, I think that relaxing the 70% ceiling will bring more benefits than disadvantages. The ADPL and I will therefore support the original motion. Thank you, Madam President.

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

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, a number of Honourable colleagues have made many comments earlier, so I would like to talk about a couple of viewpoints only.

To start with, I would like to talk about risk. At present, there are several channels through which mortgage loans at 90% of the property value are obtainable. First, the outstanding 20% loan can be provided by the HKMC. Second, I believe even Mr James TIEN is aware that some private organizations are actually making use of the so-called private organizations to finance the remaining 20% of mortgages. Products like these are actually available on the market. In addition to the HKMC, some banks have resorted to financing by equity, rather than by money from depositors, to deal with the remaining 20% of mortgages. In this respect, should the banking system or the interests of depositors be safeguarded? Actually, both parties must be taken care of.

Of course, we must take account of the situation of banks in handling the entire matter of offering mortgage loans at 90% or 70% of property value. In the unlikely event of bank closure, the Government certainly can, as in the past, mount a rescue operation by using the Exchange Fund. But what losses will be incurred if the Fund cannot be used at that time and no deposit insurance is available (though insurance schemes of this kind might appear in the future, they will still be subject to limits)? Who will incur losses? Depositors will definitely be victimized. This Council will probably receive petitions from the public by then. I believe Honourable Members will still recall the incident in which depositors of the Bank of Credit and Commerce Hong Kong staged a sit-in protest on the tram tracks off the Council building more than a decade ago. I am worried that we will not know how to handle the problems should we really encounter such a situation.

I think I have to make a declaration, though it may not be much of a declaration: I am a director of the HKMC. Mr Ronald ARCULLI, a former Council Member from the Liberal Party, and Mr CHAN Kwok-keung, from the Democratic Alliance for Betterment of Hong Kong or the Hong Kong Federation of Trade Unions, are also directors of the company. I believe the problem should be dealt with by the HKMC through a proper arrangement. Earlier in the debate, Mrs Selina CHOW mentioned some less satisfactory arrangements. In my opinion, the most prominent result achieved subsequent to Mr James TIEN's proposed motion has been the placing of publicity advertisements by the HKMC. Actually, I believe not only is this worth doing, but it should be done in a better way. The procedures should also be streamlined. In very simple terms, only two interest rates are required: one for those borrowing 90% of the value of their properties, another for those borrowing 70%. Having been engaged in the manufacturing industry and the business sector for years, Mr TIEN should understand that the higher the risk, the higher the interest rate charged. If someone asks me whether the 90% or 70% mortgage loan involves greater risk, my answer will definitely be the former. The interest rates can indeed demonstrate this simple logic.

Someone might question whether the amendment proposed by the Democratic Party seeks to urge the Government to consider lowering the mortgage insurance premium. Actually, what the HKMC will do is to assemble loans, and the loans will then be insured with the so-called international organizations. We presented this observation because when we looked for products offering loans at the 90% or 70% loan-to-value ratio, no prices were obtainable from local insurance companies. As no figures on similar bankruptcy and bad debt cases were available in Hong Kong, we could only refer to the data available in the United States. However, we found that the bad debt ratios of the United States in times of economic prosperity were even higher than those of Hong Kong in times of economic downturn. As two years have been spent on examining this issue, there should be room for the Government to negotiate prices with these international organizations through the HKMC. According to the information supplied by the HKMC, the additional 20% mortgage risk is relatively low.

Therefore, in very simple terms, if we look at the matter policy-wise, we very much hope the banks or the market can offer such products to enable the public to obtain 90% mortgage loans. Actually, in the market aimed at helping negative equity property owners, the owners can receive mortgage loans at 140%

of the property value. Therefore, we very much hope that products can be made available to offer 90% mortgage loans or, in simpler terms, mortgage loans in excess of 70%.

Nevertheless, should banks be made to bear the risk incurred as a result of offering loans for the remaining 20%? Insofar as this issue is concerned, I personally feel that it is not necessary for the Government to relax its risk management at this stage. It is because both the stability of the banking system and depositors must be taken care of. In the unlikely event that depositors suffer any losses, they will approach this Council to seek our assistance, how should we explain to them then? Should we get to understand this issue from a holistic perspective? We should urge the Government to provide the public with products offering mortgage loans in excess of 70% of the value of properties in the local market. I also hope that the Secretary can, with the assistance of the Hong Kong Monetary Authority, examine what can be done to improve the products and services of the HKMC to demonstrate their efficiency.

As regards second mortgages offered by developers, frankly speaking, we all understand that the risk involved is borne by the developers, not by the banks. In my personal opinion, this issue can be divided into two separate ones. The first one concerns whether the 20% risk should be borne by the banks. Or should the risk be borne by someone else? I see no problem in making this product available. The crux of the problem lies in these two points of observation only.

I will be very pleased to see what Mr James TIEN hopes to see: to help needy mortgage applicants to secure mortgage loans in excess of 70% of the value of their properties. I absolutely support this policy in principle. The problem only lies in whether the banks should be ordered by way of directives to bear greater risks.

Madam President, while we support the amendment, we oppose the original motion.

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

(No Member responded)



**PRESIDENT** (in Cantonese): Mr James TIEN, you may now speak on Mr Albert HO's amendment.

**MR JAMES TIEN** (in Cantonese): Madam President, actually, the only difference between my original motion and the amendment is about whether or not the 70% ceiling for residential mortgage loans should be abolished. Having listened to the remarks of quite a number of Members, I have come to realize that their argument against the abolition of the ceiling is based mainly on the perspective of the banks — maintaining the stability of the banking sector. Regarding this, I am sure that not only the Liberal Party, but also many other Members, will share my view that a prudent credit policy and stability are vital to the banks.

On the stability of the banks, if we look at Hong Kong as an example, we will see that although a few banks did run into trouble in the past, none of the banks have in fact run into any trouble because they have extended mortgage loans to customers who in the end fail to meet their repayments. The several banks in question all ran into trouble because of problems with other types of loans.

Mrs Selina CHOW has mentioned that the local banking sector has adopted some industry-wide practices which are not found even in some of their foreign counterparts. For instance, in the loans business in the past, our banks were supposed to apportion 40% of their respective portfolios to real estate items and 60% to non-real estate ones. The Administration has already withdrawn the guideline on this, but basically when a bank extends \$100 billion worth of loans, it will still apportion roughly \$60 billion for other types of businesses and \$40 billion for mortgages. On such a basis, 70% will amount to \$28 billion and 90% to some \$30 billion. The overall proportion is actually not very large.

In the United States, in the 1980s, there were some banks specializing in savings and loans (S and L). Why did so many of these banks close down? It is because these savings and loans banks in the United States were engaged in the sole business of lending money to people for property purchase. They did not lend money to people for other business purposes, nor did they extend any personal loans. That being the case, all the assets of these banks were lent to people for property purchase. S and L banks thus developed some problems at that time, but this is a different situation.

Recently, other types of banks in the United States have also run into trouble, but the trouble has had absolutely nothing to do with mortgage loans in the country, because all the loans were extended to companies with high growth rates only, such as .com companies. But then, the value stocks of these companies might have dropped from \$100 to \$1 or \$2. It was precisely such rates of decline that led to the instability of many American banks. Therefore, if the local banking sector as a whole only lends 40% of their monies to people for real estate or mortgage purposes, and if such mortgage loans were each subject to a ceiling of 70% or 90% of the property values, there should not be any cause for worry. In other words, one needs not worry that the banks may have to close down because of these loans. We may of course argue that property prices have dropped very drastically over the past few years. For example, a housing unit might worth \$3 million several years ago, and a 70% mortgage loan from a bank would mean \$2.1 million. Property prices have dropped over 60% by now, meaning that the value of the housing unit is just \$2 million or \$3 million. So, a 90% mortgage would mean a mere \$1.1 million. Well, nothing went wrong even when the loan was \$2 million. Why then will there be any problem when the loan is just \$1 million? In the past, when the bank lent \$2 million, the borrower had to shoulder an interest rate of 10%; but despite the heavy burden, the borrower could still manage. Why then will the borrower fail to repay and drag the bank into trouble now, when the loan is just \$1.1 million and the interest rate only 2.5%? I think if we look at the realistic circumstances now, if we also take account of the drop in property prices and the people's repayment ability, we will see that an abolition of the 70% ceiling guideline by the Government would not possibly increase the exposure of banks.

Lastly, I wish to add a few more words. I have actually mentioned this already. We only ask the Government to abolish the 70% ceiling, but we are not saying that the banks must offer mortgage loans at 90% of the property value. We maintain that the banks must still consider their own books and examine the repayment ability of borrowers or negative equity property owners before approving any loans.

Thank you, Madam President.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I am grateful for the many Honourable Members who have offered many valuable suggestions on the subject of whether or not the

Hong Kong Monetary Authority (HKMA) should relax the guideline for banks on the 70% ceiling for residential mortgage loans. Honourable Members who support this proposal opine that relaxing the guideline would enable more people who are financially able to make the property loan repayments but who do not have enough money to make the down payment to purchase property, that would boost property transactions and thereby revive the economy. However, there are also quite a number of Honourable Members who tell us that they have strong reservations about this idea because they worry that once the guideline is relaxed, the stability of the banking system would be endangered. Honourable Members from the Democratic Party have expressed quite a lot of views on this. The views held by Honourable Members are quite divergent and that shows precisely the fact that this issue is complicated and its effects are far-reaching. Therefore, we should consider this issue with great care and prudence.

Madam President, the motion moved by Mr James TIEN today does not demand directly that the guideline for banks on the 70% ceiling for residential mortgage loans should be relaxed. The motion calls for the Government to adopt measures to assist needy mortgage applicants in securing more conveniently and speedily loans in excess of 70% of the value of their properties, including improving the conditions and procedures for vetting and approving applications under the mortgage insurance scheme or relaxing the guideline for banks on the 70% for residential property loans.

In response to this motion topic, I would like to point out first that the aim and function of the guideline on the 70% ceiling for residential mortgage loans is to restrict the credit risk borne by banks to 70% of the property value, instead of imposing restrictions on the amount of loans which the mortgagee can borrow from banks. In the reply to an oral question at a previous meeting, I have already explained to Honourable Members that this is a measure to supervise the banks and its aim is not to impose any restrictions on those who want to purchase property from securing loans in excess of 70% of the property value. For example, the guideline does not prohibit banks from offering a first mortgage loan or a second mortgage loan offered jointly by the developer and other lending institutions. According to the findings of a survey done by the HKMA, more than 90 000 home buyers have taken part in this kind of mortgage loan scheme to secure loans in excess of 70% of the value of their properties. In addition, the guideline does not prohibit banks from taking part in the mortgage insurance scheme to make loans to home buyers in excess of 70% of the value of their properties. As mentioned by some Honourable Members earlier, according to

information from the Hong Kong Mortgage Corporation Limited (HKMC), about 12 000 property owners have benefited from this scheme and secured mortgage loans of as much as 90% of the value of their properties. The scheme is applicable both to new and second-hand properties. It remains, of course, that despite loans covering a higher percentage of property value are secured, home buyers have to pay an additional insurance premium and that would reduce their incentive for purchasing properties. However, we are of the view that even if the guideline on the 70% ceiling for mortgage loans is relaxed, as mentioned by some Honourable Members earlier, the banks would charge a higher fee since the risk they bear would be greater. So it is very likely that banks would charge a higher interest rate for mortgage loans to offset the greater credit risk they bear. In this way, the borrower may not benefit so much ultimately.

It can be seen that the 70% ceiling is in effect not restricting the borrower from securing mortgage loans in excess of 70% of the value of their properties. There are many ways and means in the market available for those potential home buyers who wish to pay a down payment of less than 30% of the value of their properties. All they have to do is to talk with their banks and they can secure mortgage loans in excess of 70% of the property value through the mortgage insurance scheme.

The motion also mentions improving the conditions and procedures for vetting and approving applications under the mortgage insurance scheme. In this regard, Mrs Selina CHOW has mentioned that the procedures used to be very cumbersome and the time required would be quite long. The HKMC has explained to us that the procedures have recently been streamlined, and I shall cite some examples later on. Such improvement measures include the expansion last month of the scope of the scheme to uncompleted flats with a mortgage loan of \$8 million, so that the maximum amount of mortgage loans advanced can reach 85% of the property value. Loans for completed and uncompleted flats with a mortgage loan of \$5 million or below may reach a total of 90% of the property value. With regard to the conditions for vetting and approval, the criteria used by the HKMC are broadly similar to those used by the banks in making mortgage loans. For example, the repayment amount should not be more than 50% of the total household income. Since implementation of the scheme, applicants who are rejected are less than 1% of the total number of applicants. From this it can be seen that the vetting and approval criteria of the scheme are not that harsh.

As for the vetting and approval procedures, the HKMC maintains a close tie with the banks and the advice of banks is often sought in order to enhance the efficiency in processing applications and simplifying the procedures. Now eligible applicants who are able to provide all the documents of proof required may have their applications for mortgage insurance approved by the HKMC within one single day. The HKMC has also issued a questionnaire to the banks recently, consulting their views on the feasibility of launching a one-stop mortgage loan scheme covering 90% of the property value and of reflecting the premium in the mortgage loan interest rate. This kind of one-stop mortgage insurance scheme will enable potential home buyers to know at once the actual interest rate for mortgage loans up to 90% of the property value, thereby facilitating their making of decision. The response of banks to this has been positive and 25 banks have indicated that they would join this scheme. As Mr Albert HO has said earlier, the banks are making great efforts in promoting this scheme, and two banks have actually launched this scheme. Other banks have indicated that the scheme would be launched in the near future. The Government supports this kind of improvement measures made at the market's own initiative. For this is a win-win proposal that would enable the public to secure loans covering a higher percentage of the value of their property and limit the exposure of the banking system to a reasonable level.

Mr Albert HO in his amendment urges the Government to examine the possibility of lowering the mortgage insurance premium. In response to this, I would like to stress first that mortgage insurance in Hong Kong is a free market. The HKMC does not enjoy any franchise nor is it the only operator. Provided that the requirements of the relevant regulatory authority are met, banks may choose any qualified insurance company to underwrite mortgage insurance in excess of 70% of the property value concerned. As far as we are aware, three banks are offering jointly with insurance companies mortgage insurance services or such services for negative equity properties. Thus, the HKMC has to ensure that its premium is competitive.

At present, the HKMC provides mortgage insurance service together with five insurance companies in the private sector. The HKMC only undertakes about 20% of the risk involved whereas the remaining 80% or so is transferred to these five re-insurance companies. Due to such an arrangement, the premium is not determined by the HKMC alone, but jointly with the other re-insurance companies according to commercial principles. If the HKMC does not

determine its premium according to commercial considerations, it is likely that the other insurance companies from the private sector would lose their interest in the scheme and it would be the home buyers who will suffer in the end.

The last point which should be noted is that the insured party under the mortgage insurance scheme is the bank concerned instead of the borrower. Therefore, all the premium has to be paid by the banks. Of course, the banks are free to transfer the premium onto the borrower. But as we all know, competitions in the mortgage loan business in Hong Kong is very intense and with the launching of the one-stop mortgage insurance scheme covering 90% of the property value, home buyers will be able to know at any time the actual mortgage interest rate inclusive of the mortgage insurance premium. This will facilitate competition among the banks in the provision of this product and this will make the actual interest rate for insured mortgages more attractive.

I would like to cite an example to Honourable Members to show that the mortgage insurance scheme provides a more preferential option than a package offered by developers when they wish to secure loans at 90% of the value of their properties. Take a new flat just put up for sale as an example. Suppose home buyer wishes to buy a flat worth \$2 million and apply for a mortgage loan up to 90% of the property value to be repaid over a period of 20 years. Suppose the borrower applies for a second mortgage loan from the developer, the interest rate for the first mortgage loan from the bank would normally be around Prime minus 2.5%, that is, P-2.5%; whereas the interest rate for the second mortgage loan from the developer is usually P+1.75%. Thus the actual interest rate for the loan would be P-1.39%. However, if the home buyer secures a loan which adds up to 90% of his property value through the mortgage insurance scheme, and intends to pay the premium, which is about 2.98% of the loan amount, on a 20-year tenure, then the actual interest rate would be P-2.18%. The difference between the two actual interest rates would be 0.79%. In other words, if the mortgage loan applicant in this case secures a loan which adds up to 90% of the value of his property through the mortgage insurance scheme, then he would be able to save more than \$180,000 in repayments.

Owing to the above reason, we think that competition does exist in the mortgage insurance market. At present, the market is still at an initial stage of development, but since there is no unreasonable restriction to market entry, we are convinced that the market will further develop. This would mean more

competition and a wider range of products. Therefore, we believe that the level of mortgage insurance premium should be determined by the market according to commercial principles. It would be improper for the Government to intervene in market pricing and it would not be necessary to examine how the premium can be lowered. For such a move may on the contrary lead to the consequence of market participants losing their interest to the ultimate disbenefit of potential home buyers. As a matter of fact, the HKMC has always been studying into ways of lowering the premium as much as it possibly can. For example, it has launched a premium rebate scheme recently. It would enable a rebate of as much as 10% of the premium to the participating banks, depending on the performance and amount of their underwritten mortgage loans. This is meant to encourage banks to adopt a more positive and prudent attitude in vetting and managing the mortgage loans.

Mr TIEN suggests relaxing the 70% ceiling for residential mortgage loans so that the needy mortgage applicants may secure loans of a greater amount with a view to boosting property transactions and stabilizing the property market. In my reply given in this Council to a question raised by Mr TIEN on 13 November, I made a clear response. Now I would like to add some details. First of all, I must make it clear that the guideline on the 70% ceiling for residential mortgage loans is a measure adopted by the HKMA as part of its policy of long-term and prudent supervision of banks. It is meant to maintain the stability of the banking system. As we all know, the stability of the banking system is vital to our economy. The guideline is not drawn up to achieve the objectives of any housing policy. Facts have shown that property prices roller-coastered over the past 10 years. The guideline on the 70% ceiling for mortgage loans has proved to be effective in limiting the losses suffered by banks as a result of the nose dive in the value of mortgaged properties. Hong Kong is one of the few places in Asia which has weathered the Asian financial turmoil with its financial and banking sectors remaining intact. Other places in the region, such as Thailand, were severely hit in the crisis. We believe this guideline on the 70% ceiling has played its part.

Some Honourable Members are of the view that the guideline on the 70% ceiling is in breach of the free market principles. The HKMA should allow banks to consider the merits of individual clients and exercise prudence in arriving at a flexible decision on vetting and approving loan applications with a view to helping the public to purchase their own properties. I would like to

point out, however, that the guideline was accepted by the banking sector on a voluntary basis in 1991. The guideline was later incorporated into the supervisory guidelines of the HKMA. The banking sector is very supportive of this guideline as evidenced by the support shown by senior members of the sector, such as Dr David LI and Mr NG Leung-sing who spoke earlier. This shows that the guideline is generally accepted by the market. As property prices in Hong Kong fluctuate very greatly, it is the general view of the market that this policy should be maintained for effective risk management of property loans. If this policy is abolished, the sector would worry that the banks would raise the percentage of mortgage loans against the value of property as a result of competition among banks. This would greatly increase their credit exposure.

We do not think that the 70% ceiling for mortgage loans is an important obstacle in the way of potential home buyers. The guideline has been in place for many years. Before the onset of the Asian financial turmoil, there was an annual increase of newly approved mortgage loans, even as the ability of the people in making loan repayments was far lower than is the case now. I think we all know that a lot of factors would affect the property market, such as supply and demand, interest rates, the income and employment prospects of home buyers, the credit policy and stand of banks, and so on. Therefore, we are not sure if any single factor such as relaxing the loan ceiling would have a direct impact on the property market and the incentive of the people to purchase properties.

There are some views that now is the most opportune time to relax the 70% ceiling, for property prices have dropped 60% and the chances of them further diving are slim. I must stress that the 70% ceiling is a long-term measure of prudent supervision. For many years it has contributed to effective risk management in the local property market. Therefore, we should not change this policy rashly as the property prices change. For if problems of stability arise in the banking system, it will not be to the advantage of depositors and clients and in the end, as I have said, the overall economy of Hong Kong would be affected. International credit rating agencies have always been keeping a close watch on the developments in Hong Kong and the soundness of our financial system is also one of the important factors used by them to assess our economic outlook. If our credit rating is adversely affected by this policy to relax the mortgage loan ceiling, it would injure the ability of our banks to raise loans and also affect those people who need credit facilities like home buyers.



Lastly, I would also like to point out something which has often been overlooked and that is, the guideline on the 70% ceiling for mortgage loans can actually bring some benefits to consumers. The reason is that this measure can enable banks to manage effectively the risks in property loans and if banks can manage such risks effectively, that would keep the default rate of mortgage loans at a very low level. The default rate for such loans in October 2002 was only 1.1% and so it has boosted the banks' confidence in such a kind of loans and promoted competition among banks for the provision of such loans. As competition is keen, clients can benefit from more preferential interest rates for loans. We can see that in 1997 or before, the mortgage loan interest rate was P+1% and now it has been reduced to P-2.5%. This is made possible as banks find the risks involved in this kind of loans very low and so is the default rate. So everyone will benefit from this. This is, like I said, a win-win situation.

In sum, we are of the view that there are already enough channels in the market to enable needy home buyers to secure mortgage loans in excess of 70% of the value of their properties. We support the HKMC and other market participants to take measures as appropriate to enable needy home buyers to secure mortgage loans of a greater amount. However, the major principle to be followed is that such measures should not expose the banking system to excessive risks. As to the question of mortgage insurance premium, we think that it should be decided by the market according to commercial principles and it would not be proper for the Government to intervene. Finally, we think that the guideline on the 70% ceiling for mortgage loans is a proven and prudent supervisory policy and it should benefit from long-term stability. In terms of policy, this should not be confused or thought of as a measure which influences the property market or as part of the housing policy.

Madam President, owing to the above reasons, the Government cannot lend its full support to the original motion or the amendment. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Albert HO to Mr James TIEN's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr YEUNG Sum rose to claim a division.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum 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:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Ms LI Fung-ying voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr WONG Sing-chi and Ms Audrey EU voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Albert CHAN, Mr Frederick FUNG, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the amendment and 20 against it ; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, eight were in favour of the amendment and 16 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 TIEN, you may now speak in reply. You still have five minutes 28 seconds.

**MR JAMES TIEN** (in Cantonese): Madam President, first of all, I would like to thank Honourable Members who have expressed concern in this motion for their speeches. While the majority of Honourable colleagues acknowledge there is a problem pertaining to secondary property loans, they are divided only over the way to deal with the problem. Therefore, I do not intend to respond to their comments one by one. Mr Fred LI quoted the remarks made by Mr LEE Wing-tat in relation to a similar motion proposed by me in 1998. According to Mr LI, should the motion be passed, the banking system of the territory would have run into great trouble. In my opinion, his assumption may not be absolutely right, for problems might or might not have occurred. Starting from 1998, the property market has actually seen prices continue falling to certain levels. From the angle of real estate, the banks and property developers are offering loans amounting to 70% and 25% respectively of the value of properties. However, it has never occurred to me since 1998 that, in terms of the 25% mortgage loans offered by real estate developers, a certain number of large and medium real estate companies have to declare bankruptcy owing to their failure

of recovering loans from borrowers of mortgage loans. If property developers are still not broke today, this means that even if the Government decided then to abolish the 70% ceiling on mortgage loans, things might not necessarily go wrong.

On the contrary, I would like to raise several points in response to the speech made by Secretary Frederick MA. With reference to the Asian financial turmoil, the Secretary pointed out that it was fortunate that the 70% ceiling on mortgage loans was already in place in 1998, otherwise the banks in Hong Kong would run into great trouble. In my opinion, however, the fact that local banks had not run into great trouble when the financial turmoil struck in 1998 was mainly attributed to the very healthy financial position of the territory, the local banks and the commercial and industrial sector, making it unnecessary for all of them to borrow loans in US dollar. In contrast, the governments and the business sectors of other Southeast Asian countries such as Thailand and Indonesia had to borrow money. This had eventually led to the bankruptcy of many banks in these countries. Therefore, it is inappropriate to compare Hong Kong with these countries. The Secretary has also mentioned the point that international rating agencies might lower the ratings of banks in Hong Kong should the 70% ceiling on mortgage loans be abolished. However, as I mentioned earlier, the 70% mortgage ceiling is unique to Hong Kong. There is no such practice in such countries as the United States, Australia, Canada, and so on. According to this argument, why is it possible for the banks in these countries to score higher ratings than those in Hong Kong? According to this argument, is it necessary to lower the ratings of the banks in the United States, the United Kingdom and Australia? For these reasons, I truly doubt if an abolition of the 70% ceiling on mortgage loans will definitely jeopardize the financial integrity of our banking system and thus severely affect its international rating. I see that this will not necessarily be the case.

Following the introduction of the stabilizing measures by the Government, the Liberal Party consulted a number of property owners and found that the very concern of many of them was the 70% ceiling on mortgage loans. I joined the queue for moving a motion for debate in mid-November. It was unfortunate that I was not chosen in the drawings of lots on 27 November and 4 December. It is not until today that I have the chance to move this motion. Something good has indeed occurred in the interim. I found that the Government was actually very concerned about this issue. As Mr Albert HO remarked earlier, we can see from the newspapers that the HKMC has placed an advertisement detailing

its services such as a one-stop service, participation by 25 banks, one-day application procedure, and so on. Actually, part of the problem, or even most of our concern, has already been addressed. Since the problem has, by and large, been addressed now, I hope the Government can take the other issue into consideration as well.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TIEN, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): 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 Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr

Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr Michael MAK, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Dr LAW Chi-kwong voted against the motion.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Dr David CHU, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kuok voted for the motion.

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

Mr NG Leung-sing abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 26 were present, 23 were in favour of the motion and three against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 29 were present, 19 were in favour of the motion, eight against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

**PRESIDENT** (in Cantonese): Second motion: Enacting laws to implement Article 23 of the Basic Law.

The mover of the motion may speak on three occasions: when moving the motion; on the amendment and in his reply. He has up to 15 minutes to speak on each occasion. The mover of amendment and other Members will each have up to 15 minutes for their speeches.

I now call upon Mr James TO to move his motion.

### **ENACTING LAWS TO IMPLEMENT ARTICLE 23 OF THE BASIC LAW**

**MR JAMES TO** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

The voicing of my concern in the legislature over the implementation of Article 23 of the Basic Law (Article 23) can be traced back to the first question raised by me in 1991 when I first joined the then Legislative Council. Some people once joked with me that I should thank the Secretary for Security, Mrs Regina IP, and the Secretary for Justice, for were it not for their frankness, the debate in the community over the enactment of legislation to implement Article 23 would not have attracted such enthusiastic responses.

The tactic employed by the extremely brave Secretary Regina IP to hard-sell Article 23 has triggered off great resentment from the public. It can be said that she deserves credit for mobilizing media workers, legal professionals, the banking, industrial and commercial sectors, the arts and culture sectors, university students, teachers, social workers, and even taxi drivers, as well as waiters and waitresses working in cafes.

Secretary Elsie LEUNG has even told the public frankly that Article 23 is like a "sword" hanging over the heads of the people. This is indeed a most appropriate analogy. The "sword" will not only behead the public, but also sever the ties between Hong Kong and our Motherland, as well as the ties between Hong Kong and the international community. Eventually, Hong Kong will depreciate into a dispensable city with no hope at all.

Some people used Article 23 legislation to draw a line between people who are considered patriotic and those who are not. People supporting the proposals to legislate are considered patriotic; while those who oppose the proposals are considered not. My view is just the opposite. To oppose the legislation is a genuine act of patriotism. Secretary Regina IP has time and again referred to the great revolution in China in 1949. She also compared the uprising of HUANG Chao to rebellion and subversion. I wonder if it has ever occurred to her that peasant uprising was the red banner hoisted in the history of Chinese Marxism. It was symbolic of the power of social progress and the class struggle against the feudal imperial dynasty. The fact that the Secretary has made herself a laughing stock essentially reflects that her naive and ridiculous belief about political correctness, her perception that "shining the shoes of the Central Authorities" is an act of patriotism.

If the Secretary had really read the history of Modern China well, she would have understood that intellectuals in China have been subject to endless sufferings as a result of patriotism labelling. Today, one may think that he is standing in the right position by following strictly the direction of the Central Authorities. Who knows if he could be turned into a "counter-revolutionary" tomorrow! Just as it was generally held that YUE Fei was a hero who risked his life to repay his country with divine loyalty. Who knows if the Communist Party would, for the sake of national integration, even hesitate to honour YUE Fei as a national hero for political reasons! If we page through history from the periods of "rectification", "anti-rightist" to "Cultural Revolution", we will find that it was stained with blood and tears. I am not trying to quote anything from books or resort to gimmicks, I just want to give a brief account of the historical events that have left us short of breath and heavy-hearted. The remarks we make today will all be recorded and become history. Every one of us might have to face a severe trial by history in the future.

The spirit behind Article 23 legislation is very simple indeed — there is great distrust of the people of Hong Kong. Vigilance is called for since the territory is seen as a base for subversion and reactionary activities. If this is truly the way the Central Government looks at the territory, the Government of the Hong Kong Special Administrative Region (SAR) must reflect the truth to the Central Government, instead of intensifying the misunderstanding with the intent of creating mutual suspicion and distrust between Hong Kong and the Mainland, sowing discord between Hong Kong and our Motherland, and belittle and injure the patriotic spirit of the people of Hong Kong.



The objective consequence of legislation, just as the case during the Cultural Revolution, is that the ruling power will make a persistent search for enemies, counter-revolutionaries and subversive elements within the community once the legislation is in place, thereby aggravating the internal conflicts of the community. After repeated search in those years, MAO Zedong eventually came to believe that there were counter-revolutionaries with the Communist Party. Consequently, the whole of China was plunged into disasters. If the leadership of the SAR Government truly loves the country and Hong Kong, why must it do it? Are the lessons of history not impressive enough? Is the price paid by the entire nation not high enough?

Besides severing the trust between Hong Kong and our Motherland, the "sword" will also sever the ties between Hong Kong and the international community, and undermine the value of the territory. It is the belief of Mr TUNG Chee-hwa that the construction of a bridge to link up Hong Kong, Zhuhai and Macao can "revive" Hong Kong economy. I wonder if he knows that even constructing 100 such bridges could never make up for the price we have to pay for destroying Hong Kong, the bridge linking China and the international community.

The concept of "one country, two systems", conceived by Deng Xiaoping years ago, was meant to preserve the uniqueness of Hong Kong as an international city, rather than turning Hong Kong into another Guangzhou or Shanghai. This is the strategic value of Hong Kong to China as a whole. Through legislation that implements Article 23, the freedoms of speech, of association, of the press and of communication will be restricted by the SAR Government. The value of Hong Kong *vis-a-vis* the modernization of China will be destroyed. The price we have to pay is not going to be made up for by anything.

Article 23 legislation is bound to reduce the rights and freedoms currently enjoyed by the people, contrary to the statement made by the Chief Executive that the rights enjoyed by the people of Hong Kong will not in the least be reduced. If what the people can do now is lawful and permissible in the future, why is it necessary for new offences to be made? The introduction of such feudal, obsolete and vague concepts of behaviour as "levying war" and "serious unlawful means", and conceptually obscure teleological concepts such as "putting constraints upon China" and "resisting the Central People's Government in its exercise of sovereignty", for the purpose of creating a range of serious

offences punishable by life imprisonment will greatly reduce the freedoms of the people. Offences relating to seditious publication will affect academic freedom and freedom of speech too. As a result of the newly proposed offence of unlawful disclosure, plus a new provision governing confidential information relating to relations between the Central Authorities and the SAR, journalists are going to face even more crises and traps.

I find it really puzzling: Why are some of the proposals made by the Government even stricter than the laws on the Mainland? Under the mainland criminal laws, only Chinese nationals may commit treason. According to the proposals of the SAR Government, expatriate residents may commit the offence of treason even in places outside Hong Kong. Furthermore, some proposed criminal sanctions are even stricter than those on the Mainland.

In her reply to a question put to the Government concerning the dilemma facing expatriates and Taiwanese in the event of war, Secretary Regina IP remarked that she could consider offering such people "a way out" by suggesting them to surrender their status as residents of the SAR. The Central Government has made so much effort to demonstrate to Taiwan the "one country, two systems" practiced in Hong Kong and Macao in the hope of achieving peaceful unification. In order to promote Article 23 legislation, Secretary Regina IP has even gone so far as suggesting Taiwanese to give up their identity as permanent residents of Hong Kong, so as to draw a clear line and sever the ties. Quoting a celebrated remark made by Mr James TIEN recently, the Secretary was actually trying to foil the united front work by the State Council Taiwan Affairs Office and the united front work office. Is she going to scare away all the Taiwan compatriots in order to make herself at ease? If such an extreme means can be employed against Hong Kong, how can Taiwan be expected to unite with the Mainland?

While national security must be protected, we must note that the colonial laws are already extremely comprehensive. To put it in a more precise manner, the laws should be considered "very strict". As the name suggests, "you" are subject to "my" rule in a colony, while "you" refers to aliens. It is therefore natural for "me" to maintain vigilance all the time. Actually, some small adaptations to the existing laws by the SAR Government can already provide more than enough protection for national security. It is a pity that the consultation document has resorted to making "a big movement" by creating new

offences that are even more severe and harsher than draconian colonial laws, or more than what Article 23 requires.

While Article 23 seeks to prevent "subversion against the Central People's Government", the SAR Government has gone so far as to write "safeguarding the stability of the SAR" into the laws. While it is clearly stated in Article 23 that "foreign political organizations shall be prohibited from establishing ties with political organizations of the Region", an attempt has been made to prohibit the forging of ties between mainland bodies and the SAR Government. Moreover, the fact that these bodies are proscribed by the Mainland will become the starting point for consideration. In respect of the prohibition of theft of state secrets under Article 23, the SAR Government has proposed to make the unlawful disclosure of information not obtained through theft an offence. It has also taken the opportunity to expand the scope of protection for secrets of the SAR to such an extent that it has gone beyond the scope of legislation required under Article 23.

Some of the Government's proposals also violate the spirit of the rule of law, which requires laws to be clear and specific to enable the public to judge what constitutes an offence in law. May I ask Honourable Members seated here some questions. What do "putting any force or constraint upon the Central Government" and "assisting by any means a public enemy at war with China" mean? Will tax payment be covered as well? What do "withdrawing a part of China from its sovereignty" and "resisting the Central Government in its exercise of sovereignty" mean? Even the Hong Kong Bar Association could not help asking if objections to government resumption of land be covered as well. How can the consultation be considered meaningful when even the Hong Kong Bar Association finds it hard to understand what it is all about? On the other hand, the Government is reluctant to provide us with details of the provisions to enable us further express our opinions before enacting the laws. Is it because the Government is afraid that more people will voice objection if they spot the "evils" contained therein?

Subsequent to the conclusion of the 16th National Congress of the Communist Party of China (CPC) recently, the thought of the "Three Represents" put forward by JIANG Zemin has immediately become a guiding ideology. Among the three representatives, the most important doctrine is that the CPC represents advanced productive forces. This manifesto essentially reflects the inclination of the CPC towards pragmatism. At a time when even the CPC has claimed itself to be a representative of advanced productive forces, the SAR Government has surprisingly gone the opposite direction.

The proposals of legislation to implement Article 23 actually represent the SAR's version of a new thought of the "Three Represents". It represents the gradual loss of freedoms and the rule of law, the gradual departure from a common value held by the international community, and a rapid shift from the "one country, two systems" to "one system". At a time when the CPC is determined to adopt a pragmatic approach towards greater openness so as to align with the sign posts erected by the international community, a small faction of people in the SAR who are still clinging to their backward way of thinking continue to create internal conflicts among members of the public. As a result, the territory is now falling back to a backward and closed state. This is in contrary not only to the interests of Hong Kong, but also to the state of the nation. This is a matter of life or death to Hong Kong too.

In what kind of a city will the next generation grow up? Will it be liberal, lively, and energetic, or will it be full of lifelessness, insecurity and traps everywhere?

The SAR Government has made a careful choice to introduce legislation on Article 23 at this moment when the economy is in its most depressed state. Its motive is indeed condemnable!

The Government might have thought that the people of Hong Kong would deceive their sense of right or wrong, and justice for the sake of preserving their "rice bowls". If this is really so, the Government is utterly wrong! It has made a terrible mistake too!

The Government has first adopted an approach for the scope of Article 23 legislation similar to a fisherman casting his net as wide as possible to create a sense of insecurity among the people. Having made excessive demands, it is now driving a hard bargain. After gauging the situation, if it is found that public sentiments really run high against the proposals, it will pretend to be listening to public opinion by offering some small concessions. But actually, the main body of the draconian law has already touched the base in secrecy.

Today, the Government is able to "do anything it wants", thinking that it is not necessary to be accountable to public opinion, to explain to this Council, and that it can forcibly table the bill and push it through by way of securing enough votes. If the Secretary had really read the history of the CPC, she would have

found that the reversed history would one day be reversed again. By that time, what is recorded today will be used by history as evidence to try you.

I would like to appeal to the people of Hong Kong to step forward to say "no" to Article 23 legislation. Let us join in the procession to be held this Sunday and state our position collectively.

With these remarks, I beg to move.

**Mr James TO moved the following motion: (Translation)**

"That this Council considers that enacting laws according to the proposals in the "Consultation Document on Proposals to implement Article 23 of the Basic Law" will reduce the rights and freedoms enjoyed by the people of Hong Kong and damage the rule of law and "one country, two systems"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr James TO be passed.

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mrs Sophie LEUNG to speak and move her amendment.

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, I move that Mr James TO's motion be amended, as printed on the Agenda.

Madam President, in my speech today, I shall be expressing my views with a calm mind and in a most rational manner. I feel that as now we are already in the 21st century, and if we really wish to make progress in a society that belongs to the people, we should be, on most occasions, discussing issues with a calm and sensible mind. I believe this will be most suitable. Personally, I am quite frightened if I have to participate in very heated discussions on certain issues. Therefore, I shall act in my usual way in moving this amendment.

Madam President, the enactment of laws by the SAR Government on Article 23 in order to uphold the territorial integrity of the country and maintain the stability of the Government is fulfilling the SAR's constitutional responsibility on the one hand, and facilitating the implementation of "one country, two systems" on the other.

The Liberal Party has proposed this amendment on the one hand because of its disagreement with the criticism made in the original motion against the Consultation Document on the Proposals to implement Article 23 of the Basic Law (Consultation Document), and on the other as an attempt by us to express our concern, in the hope that the Government can continue to protect the rights and freedoms currently enjoyed by the Hong Kong people while safeguarding national security.

Before discussing what is wrong with the enactment of laws, I would like to discuss the stance of those people who oppose the enactment of laws to implement Article 23. If I have not understood it wrongly, many people in society, including Members from the Democratic Party which has proposed this motion, do not just criticize the legislative proposals contained in the Consultative Document or just request the Government to publish a White Bill on it. They basically oppose the enactment of laws to implement Article 23.

The reason held by these people to oppose the enactment of laws is there is absolutely no need to enact any laws on national security given the stable political situation in Hong Kong presently. However, if they insist on upholding this stance, it is unnecessary to engage in any further discussion on the details of the legislation. This is because even if the laws are drafted in a perfect manner, those opponents will still say that the existence of such laws is entirely unnecessary.

I would like to invite those Honourable colleagues who oppose the enactment of laws to consider this. If it is not the suitable time to enact laws on national security when the political situation is stable, when should be the suitable time? There are two possible answers. First, one may say that there is absolutely no need for such legislation. However, this answer will fail to meet the requirement of the Basic Law. In fact, in presenting this answer, one is trying to make Hong Kong avoid fulfilling its essential constitutional responsibility.

Another possible answer is: We can wait for a certain period of time before enacting the laws, and that the legislative exercise will be proceeded only after sufficient consultation has been conducted in society. There is no need for an enactment of laws at the moment. However, the problem is: If we do not enact the laws when there is social stability, are we going to put forwards legislative proposals and pass the legislation in a hurry when society faces chaos, and everyone is worried or even when national security is threatened? I think a recent example of this is the anti-terrorist legislation. If one adopts this stance, one is just employing "delaying tactics".

In fact, Hong Kong is really quite stable now. However, can we be hundred percent sure that there will not be any danger in future? Do not forget, Hong Kong is an international financial city, with a lot of foreigners living here. Hong Kong is one of the cities that enjoy the most liberal living environment and free flow of information in China. How can we be sure that it will not become a target of attack? The enactment of laws to protect national security is a kind of preparation we should make in times of safety to guard against the emergence of dangers in future. This is similar to the foundation strengthening works of certain buildings. Such works have to be carried out when no problem has occurred. It will be too late if some problems have already come up.

Has this occurred to us: If there are really some criminal elements committing some acts of treason or subversion in Hong Kong, and if Hong Kong does not have any laws to punish these people, how can the SAR Government explain such a situation to the Central Government? How can we explain to the Hong Kong people who have been affected and frightened? The people of Hong Kong are also Chinese. How can we tolerate the occurrence of such incidents which endanger national security in Hong Kong?

Although Hong Kong is a Special Administrative Region, we cannot always expect ourselves to enjoy "privileges" in all matters, especially in national security, an extremely solemn and important issue, to which we should have commitment and fulfil our due obligation.

As for the original motion, the Liberal Party thinks that, while the Consultation Document has just presented some proposals not yet finalized, and the Government has also said that it would continue to listen to views from the people, the motion has already criticized it at the present stage. I think such criticisms are too arbitrary.

What the Consultation Document has done is to, on the basis of the existing legal framework, preserve suitable provisions, amend outdated laws and add certain offences to some existing ordinances such as the offences of secession, sedition and subversion, so as to comply with the requirement of Article 23.

Of course, the enactment of laws to protect national security would touch on certain politically sensitive issues such as press freedom and freedom of speech. Many people would worry that, if the provisions are not explicit enough or the offences too broadly defined, a lot of innocent people could be caught inadvertently. This may deter the people from criticizing the Government openly. The Liberal Party also agrees that the Government should listen to views expressed in society more extensively and the provisions should be written in a more detailed and explicit manner so as to minimize possible controversies that may arise in society.

For example, many small and medium enterprises (SMEs) in Hong Kong have established factories and offices in the Mainland, and they maintain close connection with many mainland business partners. They worry that their companies may inadvertently "possess" some seditious publications; or in their daily contact with others, they may disclose some so-called "state secrets" inadvertently.

We must bear in mind that major corporations would have employed legal advisers and have sufficient resources to take all kinds of precautions. But for operators of SMEs, they may not have considered such major issues as endangering national security. They worry that their close connection with the Mainland may put them in the minesfield of Article 23 unknowingly.

The legislative proposals of the Government should clearly classify and define the relevant offences, so as not to intervene with the normal conduct of business activities. Moreover, the Administration should step up its publicity on the specific proposals in respect of Article 23 legislation among SMEs, so that operators of these companies can set their minds at ease.

Besides, the freedoms of the press and of information are very important to Hong Kong as an international financial centre. We treasure the high level of freedom we are currently enjoying. Everyone has the right to express his views. Even though we may argue vehemently with each other, we can still live together peacefully.



For example, local newspapers and their financial pages always report in prominent coverage on reshuffles of the top leadership of the Central Government or even news reports on crimes committed by officials. Many of such reports are unconfirmed, or not confirmed by official channels. Will these newspapers be committing Article 23 offences?

The Liberal Party hopes that the provisions to be enacted in future in pursuance of Article 23 will not undermine the freedoms of speech, of the press and of information currently enjoyed by Hong Kong people. Objective reports will not be deemed as illegal. As for "protected information", there should be a more explicit definition. Depending on the actual circumstances, enterprises and mass media should be allowed to use "public interests" as a defence in releasing significant information obtained through unofficial channels, and that Hong Kong people should be allowed to express their views in an open and peaceful manner as is the case that has been.

Hong Kong shall enact laws on its own on the issue of national security. To safeguard the existing way of life of the Hong Kong people on the premise of protecting national security is exactly the right way to realize "one country, two systems".

The wording of the amendment proposed by me is unbiased and impartial. It only urges the Government, in drafting the relevant bill, to ensure that the rights and freedoms enjoyed by the people of Hong Kong will not be undermined and the rule of law and "one country, two systems" will not be damaged.

At the moment, Hong Kong is experiencing great difficulties. It is a place inhabited by just 7 million people. There is no issue that cannot be discussed, or that cannot be discussed calmly and rationally. Now, we are facing a most difficult time, maybe it is due to our lack of confidence in our own abilities. But in fact we can complement each other, so as to boost our confidence in the future and ourselves. Through the discussion today, we can discuss from a rational perspective and base our conclusion on facts. In this way, we can move one step forward to convey a positive message to society. This is not just my wish, for I believe this is also the wish of all those who have a commitment to Hong Kong.

May I implore Honourable colleagues, especially those colleagues in the Democratic Party (I know you are also very concerned about the affairs of the

country and Hong Kong), to adopt this attitude and support my amendment. Madam President, I so submit.

**Mrs Sophie LEUNG moved the following amendment: (Translation)**

"To delete "this Council considers that enacting" after "That" and substitute with ", as the Government will proceed with the work for enacting"; to delete "the proposals in the 'Consultation Document on Proposals to implement" after "laws according to"; to delete "' will reduce" after "Article 23 of the Basic Law" and substitute with ", this Council urges the Government, in drafting the relevant bill, to fully ensure that"; to add "will not be undermined" after "the rights and freedoms enjoyed by the people of Hong Kong"; to delete "damage" before "the rule of law and 'one country, two systems'"; and to add "will not be damaged" after "the rule of law and 'one country, two systems'"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mrs Sophie LEUNG to Mr James TO's motion be passed.

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, the motion debate conducted by this Council on the enactment of laws to implement Article 23 of the Basic Law is welcomed by the Government. The fact that members from different sectors of the community hold divergent views on this subject and express them through different channels, means and media, and eventually form public opinions precisely demonstrates the normal *modus operandi* of a free, liberal and pluralistic society. On the question of safeguarding the state, a topic considered controversial by all countries around the world, different sectors in the Hong Kong Special Administrative Region (SAR) and international critics have, from different viewpoints and perspectives, actively expressed their views on the proposals. Views can be expressed freely, whether they are for or against the legislation. Even demands made through this opportunity with respect to other policies can be expressed too. We are not surprised by such heated public discussions because this is precisely what we hope the consultation can achieve, and this precisely demonstrates the immense value of rights and freedoms.

I am afraid the SAR Government cannot agree with the wording of original motion. I also take regrets to note some of the remarks made by Mr TO, the mover of the original motion, and his personal attack against Secretary Regina IP. Later on in the debate, the Secretary for Justice will elaborate the legal viewpoints and concepts of the legislative proposals. The Secretary for Security will also explain in detail the proposals contained in the Consultation Document and respond to the concerns expressed by Honourable Members and people from different sectors of the community. I wish to speak before the other Members because I believe the rights and freedoms enjoyed by the people of Hong Kong, the rule of law and the "one country, two systems" principle, as mentioned in the motion, underpin the success of Hong Kong. I wish to state the firm position of the Government with respect to these matters of principle.

The Basic Law, particularly Articles 25 to 41 in Chapter III, safeguards the various rights and freedoms enjoyed by the people of Hong Kong and their existing way of life. The provision of safeguards for rights in constitutional documents at such length, and even through directly citing international human rights covenants, is indeed rare in the constitutions of countries in the world. Due to the above-mentioned safeguards provided for in the Basic Law, coupled with the fact that these rights and freedoms underpin the success of Hong Kong, the Government will, and is obliged to, ensure that the residents of Hong Kong shall continue to enjoy these rights. For the same reasons, in pursuance of the provision in Article 23, the SAR shall enact laws on its own to protect national security. In addition, as national security is the foundation upon which the nationals enjoy all other rights and freedoms, the SAR must, by the same token, not shirk its responsibility of enacting laws to protect national sovereignty, territorial integrity, unity and security.

In fact, countries all over the world have laws to protect national security. Generally speaking, it is within the jurisdiction of central or federal governments to formulate these laws. In addition to implementing the "one country, two systems" principle, preserving the original way of life as well as the legal and social systems of Hong Kong, the Basic Law provides that the SAR shall enact its own laws in accordance with common law principles, rather than implementing national laws promulgated by the Central Authorities, even on such an important area as protecting national security. This reflects that the Central Authorities have full confidence in the successful implementation of "one country, two systems" by the SAR, and a high degree of trust in the spontaneity of various sectors in the SAR in protecting national security. It can be said that this

legislative exercise represents the realization of the "one country, two systems" principle, in addition to the discharge of our constitutional obligation.

The Basic Law is the most important safeguard for the implementation of "one country, two systems". In addition to Article 23, Article 8 of the Basic Law provides that the laws previously in force in Hong Kong, including the common law, except for any that contravene the Basic Law or amended by this Council, shall be maintained. Article 81 provides that the judicial system previously practised in Hong Kong, except for the establishment of the Court of Final Appeal, shall be maintained. Under Article 84, courts in Hong Kong may refer to precedents of other common law jurisdictions. We can thus see that introducing the legal concepts or law enforcement model of the Mainland into Hong Kong will plainly violate the spirit of the Basic Law. Therefore, our proposals have no intention to, and will not, introduce the legal concepts and law enforcement model of the Mainland into Hong Kong. All laws shall be enacted by the Legislative Council of Hong Kong, that is, Honourable Members, in an open and transparent manner and, based on the laws of Hong Kong and the usual common law principles and systems, be adjudicated according to international human rights standards.

I must point out particularly the argument that the proposals, insofar as "theft of state secrets" is concerned, have sought to introduce the Mainland's definition of "state secrets", and that the mechanism for proscribing organizations that endanger the state will serve as a "bridge" for introducing mainland laws. Such a way of thinking is indeed entirely wrong. Our proposals regarding "theft of state secrets" merely seek to retain the Official Secrets Act 1989 of the United Kingdom, which had been enforced in Hong Kong for years. The scope of the categories of protected information is already strictly defined in existing laws. There is no question of further widening the scope. As for the proposed power to proscribe organizations that endanger the state, they must be exercised by the SAR independently, in complete compliance with the international standards prescribed by the International Covenant on Civil and Political Rights (ICCPR), in other words, the exercise of this power is subject to checks and balances by courts in the SAR.

In formulating the proposals, the SAR Government appreciated fully that special attention had to be paid and caution taken to deal with safeguarding the rights and freedoms of the residents of Hong Kong, the focus of concern

expressed by various sectors in the community. For this reason, in the guiding principle on the enactment of legislation to implement the Basic Law provision on protection of national security, the SAR has put special emphasis on the need to fully implement the provisions of the Basic Law not only in respect of protecting national security, but also in the protection of human rights, particularly with reference to safeguards for the freedoms of speech, of the press and of publication under Article 27 and the requirements and criteria relevant to the ICCPR under Article 39. We believe this guiding principle is adhered to throughout the Consultation Document. This has also reflected our sincerity and determination in this respect.

To further verify this point, the Department of Justice has specially sought the independent opinions of Mr David PANNICK, QC, a human rights barrister well known in the United Kingdom and Europe, with respect to the proposals contained in the Consultation Document. It was pointed out by Mr PANNICK that the proposals contained therein, including the proposals concerning "proscribing organizations that endanger the state", have absolutely not violated human rights. With rich experience in the European Court of Human Rights, Mr PANNICK is an internationally renowned authority on human rights laws. We firmly trust that his legal opinions are indisputable.

In addition to an open and liberal environment, the excellent tradition of rule of law is a vital quality that Hong Kong takes pride in. After years of development, Hong Kong now has an open, transparent and fully-elected legislature, a clean and efficient executive, a sound and healthy legal system, and independent and impartial courts. All these important elements help lay the foundation for the rule of law to safeguard the various rights enjoyed by the residents of the SAR according to law. Since the reunification, the rights of SAR residents are further protected by the Basic Law constitutionally. In other words, like all other laws, the enforcement of laws enacted for purposes of Article 23 can by no means override protection offered by the Basic Law. Of course, we also note Mr PANNICK's emphasis that, when the relevant proposals are enacted as laws, we must ensure that those laws shall be enforced in accordance with the principle of human rights protection. This is because however perfect are the provisions written, human rights will still be infringed should they be abused or misused. With respect to this specific point, I can assure Members that our constitutional system and our legal and administrative frameworks have offered effective safeguards to ensure all statutory powers will

not be subject to abuse. Furthermore, a powerful monitoring and remedial mechanism is in place to deal with abuses.

The rights and freedoms safeguarded by the Basic Law are substantial — Honourable Members may perhaps look at the case in which, subsequent to a judgement made by the Court two years ago that the method for allocating Secondary One places was in violation of the principle of "gender equality", the method was revised in compliance with the relevant judgement.

To conclude, the legislative proposals are consistent with international human rights standards. They will operate under the existing system of rule of law and, like all other existing laws, be subject to checks and balances imposed by courts in enforcement. The rights enjoyed by the residents will also be fully protected by courts in accordance with the Basic Law.

Madam President, in the course of implementing Article 23, the SAR Government shall offer full protection to all the rights and freedoms currently enjoyed by the people of Hong Kong, and ensure that the rule of law and "one country, two systems" will not be subject to the least damage.

**MR IP KWOK-HIM** (in Cantonese): Madam President, according to Article 23 of the Basic Law (Article 23), the Government of the Hong Kong Special Administrative Region (SAR) must enact laws on its own to prohibit such offences as treason, secession, and so on. The Security Bureau has, in pursuance of Article 23, published a Consultation Document to consult the public on the general direction of the relevant legislation. The Democratic Alliance for Betterment of Hong Kong (DAB) supports the SAR Government to enact laws on its own to protect national security and to manifest the spirit of "one country, two systems". Given that more than five years have lapsed since the reunification of Hong Kong, we have no more justifications to refuse assuming our due obligation towards the state.

The British Hong Kong Government once made an attempt to meddle in our affairs through passing the Crimes (Amendment) (No. 2) Bill 1996 to enact laws on behalf of the SAR to protect national security. I believe many Honourable Members who are sitting here can still recall this incident vividly. The DAB not only boycotted the scrutiny of the Bill, but also voted against it at

Third Reading. The reason we held was very simple. It is the internal affair of the SAR of the People Republic's of China to enact laws in respect of Article 23. It is essentially needless for the British Hong Kong Government to "step beyond its own boundary" by rushing through the legislation before the unification.

Here I would like to remind Mr James TO not to let his memory fail him on this issue. Of those Members who did raise their hands to vote in support of the Crimes (Amendment) (No. 2) Bill 1996 on 24 June 1997, 16 are sitting here in this Chamber at the moment. They are Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Ms Emily LAU, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr LEE Cheuk-yan, Mr Andrew CHENG, Mr Albert HO, Mr LAU Chin-shek, Mr LEUNG Yiu-chung, Miss Margaret NG and Mr SIN Chung-kai. I wonder if they are aware that, in section 9 of the Crimes Ordinance (Cap. 200), a law endorsed by them in the show of hands on that day, the offence of sedition covers provisions relating to causing of hatred or contempt against the government, as well as promotion of enmity between different classes in Hong Kong. Such provisions are, on the contrary, absent from the Consultation Document published with respect to legislation to implement Article 23. The Crimes Ordinance, then supported and endorsed by them, is obviously much "harsher" than the legislation to be enacted in respect of Article 23, which they are opposing. Why did not they raise objection at that time? The sword has actually been sharpened by them a long time ago.

Mr James TO mentioned earlier that the relevant legislation will turn Hong Kong into a hopeless city and that Hong Kong will depreciate should we legislate for Article 23. He also indicated that enacting the laws would imply that the people of Hong Kong are no longer being trusted. According to this argument, how could Mr TO have behaved so cold-heartedly in giving support to the enactment of legislation in 1997? Let me recall another incident. No public consultation, like the one we have at present, had been conducted before the Crimes (Amendment) (No. 2) Bill 1996 was introduced, not to mention the publication of a White Bill. On the contrary, why is the SAR Government, albeit having released the Consultation Document, being repeatedly accused of not respecting public opinion? Is it true that, in the minds of those people, all legislation proposed by the colonial government in relation to national security is worth supporting, whereas those proposed by the SAR Government must be opposed?

The Consultation Document submitted by the Security Bureau has clearly explained the direction of the legislation to be enacted in respect of Article 23. It is written in black and white in the Consultation Document that such offences as treason, secession and subversion involve substantive acts of war which include the levying of war, the use or threatened use of force, the use of "other serious unlawful means" similar to terrorist attacks that lead to serious casualties, or the staging of electronic warfare that leads to serious interference of electronic systems or public facilities. As regards "theft of state secrets", it is spelt out clearly that the offence is applicable to public servants, government contractors, police agents and informants and has nothing to do with press freedom. As for "connections with foreign political organizations", "connections" is defined in the Consultation Document to include acceptance of financial contributions, affiliation, and control by the organization in questions over policies or decisions.

The Consultation Document has spelt out everything very clearly. Is it true that those opposing the enactment of legislation do so because they have read only the summary of the document and, without knowledge of the true meaning of "other serious unlawful means", the scope of application of "theft of state secrets", and the definition of "connections", all being a matter of "making their wild guesses"? How can "assisting public enemy at war" as appearing under the offence of "treason" be described as "assistance offered on humanitarian grounds"? This is what I have seen in some anti-legislation publicity leaflets. It is really ridiculous that "serious disruption of an essential service or system" has turned into "an act of lying on tracks in protest of fare increases". Such arguments are a sheer distortion of common sense and are no more than fallacies to deceive people! Are those opponents to the enactment of legislation in respect of with Article 23 really opposing the contents of the Consultation Document, or are they merely opposing the imaginary Consultation Document they have in their minds?

It has also been argued that the People's Republic of China is a totalitarian country. It is therefore inappropriate for national security laws to be enacted to render it protection. Some have also argued that the enactment of laws by the SAR Government would result in an introduction of mainland laws direct into Hong Kong, and would thereby stifle speech and academic freedoms and ruin the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong". May I ask Honourable colleagues who are sitting here whether they have ever seen our Motherland ever being so prosperous and open as it is today? Our country is now a rapid course of opening and development. I wonder



whether those insisting that the Mainland is still under totalitarian rule have left their mindset as it was three decades ago. Are they turned a blind eye to the prevailing development of China? People holding that the enactment of legislation by the SAR is aimed at introducing mainland laws into Hong Kong are indeed "telling lies with their eyes wide open". Article 18 of the Basic Law stipulates that, under normal circumstances, national laws, with the exception of those on national flag, national emblem, national anthem, national day, nationality, territory and territorial sea, shall not be applied in the territory. National security laws in various parts of the world are all promulgated by the central authorities for implementation by local authorities. Now the SAR Government is allowed to enact national security laws on its own. This reflects that the Central Authorities have adhered strictly to the principle of the Basic Law to allow the SAR to enact laws on its own with respect to such a highly sensitive subject as national security. What is more, this is a manifestation of the trust the Central Authorities have in Hong Kong. What are the motives of those people who alleged the Government of introducing mainland laws, who deliberately created panic and provoked conflicts among members of the public?

May I suggest those who insist that China is a totalitarian state and oppose legislation for Article 23 without justifications to look at the United States, a country which often claims itself to be a big nation where democracy and human rights are respected. According to an investigation report compiled by the United Nations, among the condemned prisoners across the United States, the chances of blacks being executed are four times higher than that of whites. Even if they commit the same offence, the punishments meted out to are several times those to whites. It was reported in *Los Angeles Times* that 700 suspects were arrested following the "September 11 attacks", and many of them were beaten badly in prisons and prohibited from seeing their lawyers. According to an American watchdog of death sentence, during the past 25 years, only four out of 123 expatriate condemned prisoners were told they could seek help from their respective consulates in country after arrest. All this is in serious breach of human rights and international treaties.

All these facts are now laid before our eyes. What is in the mind of Mr Martin LEE, who has chosen to go to the United States to shout at the top of his voice that to legislate on Article 23 will injure human rights and the rule of law in Hong Kong? Has he thought of how the United States Government, with its poor human rights records and its US\$1.7 billion debt flagrantly owed to the United Nations, views him? As a Member of this Council, he has gone out of

the way to ask a foreign country to interfere in the legislative work of Hong Kong. Has he ever thought of his own identity and what he is doing?

Some of the colleagues here have suggested the Government to present a White Bill for public consultation. Let us put aside the differences between a White Bill and a Blue Bill and look at the process in which a Blue Bill is scrutinized, which Honourable colleagues are familiar with. Upon the formation of a Bills Committee after it is considered necessary by Honourable Members, members of the public will, on most occasions, be invited to attend meetings of the Bills Committee in the course of scrutiny for consultation of their views on the provisions. At the same time, the provisions will be examined by the Bills Committee clause by clause and word by word, in terms of direction and content. This Council is responsible for monitoring the Government on behalf of the public. If the general direction of legislation set after in-depth discussions by this Council and a process of public consultation and the laws finally enacted and passed by the whole Council can still be considered to be oblivious of public opinion, what justifications do Honourable Members who are sitting here have for staying here?

Actually, a Blue Bill can achieve exactly the same result as what a White Bill does. Let me quote the United Nations (Anti-Terrorism Measures) Bill as an example. Subsequent to the scrutiny of the Bill, most of its content was revised. I have taken part in the scrutiny of the Drugs Trafficking and Organized Crimes (Amendment) Bill 2000, which lasted a protracted two years and eight months. In the course of scrutiny, members of the public were, on many occasions, invited to this Council to express their views. To make legislation by way of a Blue Bill can enable the Government to give full consideration to changes in content, the timeframe and public opinion. I do not see any need for public consultation to be conducted by way of a White Bill before a full consultation can be considered done. Mr Patrick YU, a veteran barrister, once remarked, "Throughout the hundred years or so when Hong Kong was a British colony, when did the British Hong Kong Government consult members of the public before enacting laws?" Today, the Government is demonstrating the highest degree of transparency by consulting the public on the direction of the legislation before drafting the laws, so that all of us are given full opportunities to express our views. Why is there still dissatisfaction?

Amid all these diverse opinions, it is fortunate that rational voices can still be heard. In his representation this Council, Prof Albert CHEN of the Faculty

of Law of the University of Hong Kong expressed a diversity of views on the content of the Consultation Document. Nevertheless, he also indicated that he shared the general direction that the SAR Government should, under Article 23, enact laws on its own. Such constructive ideas are precisely what we need in scrutinizing the relevant bill in future. The amendment proposed by Mrs Sophie LEUNG has demonstrated the spirit of rational discussion. Therefore, the DAB supports the amendment and oppose Mr James TO's original motion.

The modern history of China was plagued with misery. People of the previous generation have all gone through the Sino-Japanese War, and experienced a feeling close to seeing the death of their country and the pain of broken families. In the post-war period, orphans having no idea of the identities of their parents could be found all over China. The feeling of being rootless had put many people in regrets all through their lives. "Without a country, how can there be families?" How can we enjoy a happy family life if our national security is unprotected and our country cannot enjoy stable growth?

Madam President, I so submit.

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, over the past two months or so, I have been confronted with almost the same question by people taking the initiative to talk to me on the streets or in Mass Transit Railway compartments. The question was: Why does the Government not concentrate on improving the economy and employment and, instead, choose to legislate on Article 23 at this moment, thus causing panic among the people?

Madam President, when the "Consultation Document on the Proposals to implement Article 23 of the Basic Law" (Consultation Document) was just published, the Secretary for Justice made the following comments in response to a joint request made by the Hong Kong Bar Association and the Law Society of Hong Kong for the publication of a White Bill: "If a consensus cannot be reached on the proposals contained in the consultation document, the Government will have to reassess the situation." In the last Question and Answer Session held in this Chamber, I asked Mr TUNG "how he interprets 'consensus reached'? If no consensus is reached..... What are the implications of 'reassessing the situation'? What are the criteria?" Instead of giving me a direct reply, Mr

TUNG only remarked, "the consultation period has just started, I do not want to come to any conclusion here.". Mr TUNG also indicated that he believed the people of Hong Kong would support the legislation.

Madam President, anyone who has paid attention to the development of events over the past two months or so will clearly sense that the Article 23 legislation is a highly controversial issue. The Civil Human Rights Front, formed by a number of non-government organizations, will launch a large-scale procession this Sunday to protest against the enactment of laws in respect of Article 23. On the other hand, it has been reported that groups supporting the legislation will organize a 10 000-strong massive rally as a counterbalance measure. It can be said that on this question of legislating on Article 23, there is absolutely no consensus among members of the public. What is more, a highly antagonistic situation has arisen. In my opinion, it is now time for both Secretary for Justice Elsie LEUNG, and Mr TUNG to explain clearly to the public how the Government is going to interpret the relevant public opinion when no consensus is reached.

I believe many people of Hong Kong have the same question in their minds and that is: Will opinions entirely different from the proposals contained in the Consultation Document be considered by the Government? Will opposing views be considered? In what manner will the views expressed by the public be considered? If the Secretary for Security can still not explain to the people in public today the criteria to be adopted for the assessment of public opinion when the consultation is drawing to a close, how can the people be convinced that the Government has no predetermined stance over this consultation exercise?

Last month, in a seminar held by the religious sector with respect to Article 23, Bishop Joseph ZEN, Head of the Catholic Church in Hong Kong, prescribed three conditions with respect to legislating on Article 23. The conditions include first, the Legislative Council must be elected and the Central Government should launch political reforms; second, a White Bill must be published for consultation; third, rational discussion should be held between the Secretary for Justice and the Hong Kong Bar Association to ensure that the details of the legislation can safeguard the rights and freedoms of the people.

Madam President, I believe the thinking of many Hong Kong citizens is similar to the views expressed by Bishop ZEN. If the Government forces through the legislation before dispelling the doubts and worries of the people, strong protests from different sectors in the community will be triggered. Moreover, the people will once again lose their trust in the Government.

Madam President, public dissatisfaction with the Government's overall administration has almost reached an alarming level. To legislate on Article 23 will, in no way, foster social cohesion. On the contrary, it will only further polarize the community and lead to further distrust of the Government. To me and quite a number of people, there is a big question mark in our minds: Does the Government wish to see such a development whereby society is further polarized and the Government's acceptability further drops? If not, why must the Government insist on legislating at this very moment?

Madam President, no matter what the Chief Executive and the Secretary for Security say to substantiate how "politically correct" it is to enact laws on Article 23 and how important it is to protect national security, I have only one conviction when the people of Hong Kong still do not enjoy the right to choose their own government, that is, such fundamental human rights as the right to information, of association, of religious belief, the right to freedom of speech and the freedom of the press will override everything else.

The Secretary for Security has made repeated claims that human rights will not be undermined. But my doubt is: Under the common law principle, we have the rights and freedoms to do anything not prohibited by law. In other words, such legislation as providing for criminal offences under Article 23 is bound to undermine the rights and freedoms originally possessed by the people, not to mention the fact that the proposals to enact laws to implement Article 23 precisely seek to expand the powers of the Government. Such being the case, how can it be said that the human rights enjoyed by the people of Hong Kong will not be affected?

What are human rights? The most direct definition is to restrict the powers of a country or a government. What can it be if the proposals to legislate on Article 23 are not meant to expand the powers of the country and the Government?

While Honourable Members may continue debating whether or not the proposals to legislate on Article 23 should be supported, I believe the Government should at least honestly tell the people of Hong Kong the truth and sincerely listen to different views from different parties, including views opposing the Government.

With these remarks, Madam President, I support the motion. Thank you.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, in the past 150 years of modern history, China was invaded many times by foreign powers. Major historical incidents like the Opium War, the Russo-Japanese War, the Sino-Japanese War, The Boxers' Uprising, and the Japanese invasion of China all brought prolonged sufferings to the people of China. And certain territories of our country were subject to invasion, secession and forced leases, such as the secession of Outer Mongolia from China, the establishment of the puppet Manchukuo regime, the occupation of Taiwan and the Diaoyutao Islands and the cession of Hong Kong and Macao. The Chinese people then, having witnessed that, for long periods of time, our country had been bullied by the foreign powers, our sovereignty being exploited, our territories being divided and the security of its nationals being subjected to constant threat, all felt extremely angry! Fortunately, after the Second World War, China succeeded in abolishing most of the unequal treaties and recovering most of the ceded land. In particular, the national strength of China has grown substantially and as a result, we can enjoy the present peaceful and prosperous days. Yet, there are still some scattered efforts made by certain foreign people with wicked ambition in promoting secession activities in China. Let us take a look at the rebellion that took place in Tibet over a decade ago, the terrorist activities directed by activists of the Xinjiang Independence Movement in recent years, and recently there are still certain activists in Taiwan promoting Taiwan Independence. All this shows that some foreign powers are still reluctant to see a strong, prosperous and united China with territorial integrity.

As Hong Kong used to be a colony for more than a century, the education received by most of the people in the past, even the elites, seldom touched on the modern history of China. Therefore, it is very difficult for them to realize the pains associated with a divided and bullied country, a country in chaos. As it develops, no wonder some people now describe acts of secession casually as "could be legitimate political aspirations".

In the Mainland, there are already laws on treason, secession, subversion. However, as the country allows Hong Kong to enjoy the special treatments of "one country, two systems" and "Hong Kong people ruling Hong Kong", the drafting process of the Basic Law started in 1985, and the Basic Law Drafting Committee and the Basic Law Consultative Committee were thus established. The two Committees comprised more than 200 members, drawn from different sectors of society such as the commercial and industrial, academic, religious, political, legal and other sectors of society. Extensive consultations had been conducted on several occasions to gauge the views of the people from different walks of life. The Basic Law was formulated after five years of careful study, drafting, repeated assessments, amendments and confirmation. After the reunification of Hong Kong with China in 1997, the operation of all laws is conducted according to the Basic Law, that is, the constitution enacted by the Special Administrative Region of Hong Kong, China (SAR). As the Article 23 of the Basic Law (Article 23) has clearly stipulated that Hong Kong shall enact the relevant laws on its own, and it has been more than five years since the reunification in 1997, I cannot see any justifications for Hong Kong not to act according to the established constitution. Enacting the laws as soon as possible will not only fulfil our responsibility and obligation to our country, but also give the SAR explicit laws, so that we may ensure that the people can continue to enjoy their rights as guaranteed by the Basic Law while implementing "Hong Kong people ruling Hong Kong".

In fact, any countries would make the protection of their territories and the overall security of their people as their principal missions. Therefore, any act of endangering national security, subversion against the Government, secession of the sovereignty of the country and other related acts are stipulated as serious crimes in explicit provisions in most countries. Let us take a look at how the United States treats people who may be suspected of disclosing confidential information on national defence, how they antagonize people suspected of causing harm to the nationals, or even how to clamp down on the commercial activities of people or organizations suspected of financing terrorists.

Some people may hold the view that the enactment of laws to implement Article 23 will bring about unfavourable factors to the business environment of Hong Kong. I think, under the prevailing international situation, this is just untrue. The contrary will happen instead. The reasons are:

First, Hong Kong is an international commercial city. The enactment of laws will deter international elements with wicked ambitions to use Hong Kong as a base for promoting activities of secession and subversion, so possible chaos in Hong Kong could be avoided.

Secondly, nowadays most countries in the world worry about sabotage activities by terrorists. The United States has already enacted laws which stipulate that, with effect from 2 December this year, all shipments from foreign countries to the United States must be thoroughly searched at the departing port (for example, Hong Kong) 24 hours before departure. After the search report has been made, the United States Customs will then decide whether it allows the shipments to depart from Hong Kong for the United States. Therefore, after clear laws on Article 23 have been enacted, we can prevent international terrorists from making use of Hong Kong to conduct their activities. This will also echo the other anti-terrorist laws in other parts of the world, and establish Hong Kong as a stable and secure metropolitan city, where law-abiding businessmen from all over the world can conduct their business activities with peace of mind.

Thirdly, we must take precautions to protect the security of both the country and the SAR. Otherwise, the costs of any remedial measures taken afterwards would be much higher than that for early precautions. Hong Kong simply cannot afford to bear such heavy costs.

Fourthly, the greatest concern of investors are the wavering policies of a government. Now, with the full trust of the Central Government, the SAR Government proceeds to enact laws on its own to implement Article 23 according to the actual circumstances in Hong Kong after conducting sufficient public consultation. This would rightly remove all sorts of uncertainties related to Article 23 as soon as possible. This is in fact favourable to the investors.

Fifthly, if the SAR could act specifically in accordance with the Basic Law, the Central Government will have no worries, and it will have enough confidence to give the SAR a free hand to continue implementing "one country, two systems" and "Hong Kong people ruling Hong Kong". This would obviate the need for the Central Government to intervene and separately enact essential national laws for the SAR.

Therefore, for the industrial and commercial sectors, the enactment of laws should be proceeded as soon as possible. The SAR Government should



expedite the collection of views from different sectors of the community on the enactment of laws to implement Article 23, and it should attach priority to its work of examining, classifying, categorizing and sorting out the views and starts the actual legislative process in order to further implement the Basic Law to protect the security of the country, including that of Hong Kong. This would enable Hong Kong to manifest a high degree of autonomy and the traditional spirit of the rule of law, thus becoming a relaxing, funny and secure international metropolitan city which is politically stable with good law and order and a hub for thousands of businessmen.

Madam President, I so submit.

**DR YEUNG SUM** (in Cantonese): Madam President, the message of this motion moved by Mr James TO of the Democratic Party is very clear, that is, refuting what Chief Executive TUNG Chee-hwa has said. On the day of release of the Consultation Document on enactment of laws to implement Article 23 of the Basic Law (Article 23), Mr TUNG stressed that the proposals put forward by the Government of the Hong Kong Special Administrative Region (SAR) absolutely would not reduce the rights and freedoms presently enjoyed by the people of Hong Kong. The Democratic Party opines that a truly representative Legislative Council should convey a crystal clear message to society, that the proposals contained in the Consultation Document will definitely reduce the rights and freedoms presently enjoyed by the people of Hong Kong, and will even undermine the rule of law and "one country, two systems". If the public is misled by the Chief Executive into believing that the proposals of the Government would not undermine human rights, some of them may support the enactment of laws because of their wrong trust in the Government.

So what is wrong with supporting the legislation? It is even a responsibility prescribed by the Basic Law. Of course, I am not saying that we should never enact any laws for this purpose, because this will really constitute a breach of Article 23. However, the issue at hand is: When should we enact the laws or should we enact the laws now? Article 23 stipulates that the SAR Government "shall enact laws on its own", and this covers the suitable timing for the enactment of laws. If "enact laws on its own" is not interpreted in this way, has the SAR Government not contravened the Basic Law as six years have lapsed before it puts forward its legislative proposals? According to an opinion poll conducted by the Lingnan University, 57% of the people do not think that this is

the right time to enact laws on Article 23. However, the Consultation Document just fails to mention this most fundamental issue, that is, whether this is the opportune time for legislation.

Why does the Democratic Party think that this is not the right time for legislation? The Democratic Party is of the opinion that, during the past five years, no major political disturbance has occurred in Hong Kong. There have not been any activities related to treason, sedition and subversion, nor have there been any secession activities. In Hong Kong, no one has advocated Taiwan Independence, Hong Kong Independence, Tibet Independence or Sinjiang Independence. So there is absolutely no need to make legislation to provide for any new offences.

The Chief Executive should now concentrate on addressing the unemployment issue and the financial crisis, rather than bringing up this political controversy unnecessarily. Enacting laws on Article 23 will somehow undermine the human rights of the people and injure the business environment. This will also have an adverse effect on our economic development.

So, in the opinion of the Democratic Party, when is the suitable time for legislation? Apart from the factor of "need" as mentioned above, there is a prerequisite before the relevant laws can be enacted, that is, when democratic political systems are in place in China and Hong Kong. This is because, national security laws without the benefit of a democratic political system, will just be tools used by the rulers to suppress freedom, and national security will simply become security for the rulers because they could hoard their powers permanently while the people will become increasingly insecure.

Last week, Ms Frances D'SOUZA, visiting international human rights expert and the convener of the panel of advisers responsible for devising the Johannesburg Principles, said last week that the enactment of laws on Article 23 will seriously threaten and undermine human rights and freedoms in Hong Kong. She said, "History demonstrates that if you have a law (on subversion) in the statute books ....., even if it is not used, the fact it exists exercises a chilling effect (on the people and they will feel worried)". This is what we called the chilling effect, and this is exactly why we want to stress that, discussion on the enactment of laws to implement Article 23 could proceed only when at least the Chief Executive and the legislature are elected by universal suffrage.

Some people may say that, if we do not enact laws on Article 23, are we going to sacrifice national security? They, especially the DAB, mention that, if the country cannot survive, how can the families? My response is very simple: If there are no people, how can there be a country? If the people do not have freedoms, there will not be any country or families. More importantly, we already have some very stringent legislation to protect our national security, such as the Crimes Ordinance, the Official Secrets Ordinance, Societies Ordinance and the Public Order Ordinance. The national security of China absolutely does not have any problem, no matter we are looking at the issue from the perspective of protection offered by statutes or the actual situation. The Chief Executive says that even if we do not have the need to enact laws now, but as the laws will not undermine human rights, why do we not just enact the laws anyway? The motion moved by Mr James TO is actually trying to convey a clear message: The enactment of laws will really undermine the rights and freedoms currently enjoyed by the people of Hong Kong.

The existing common law principle in Hong Kong is: The people can do anything that is not prohibited by law, and the Government cannot take any prosecution action. Now the Government drafts up legislation to specify new offences, whereby something people can do originally has become illegal now. If you still insist that this will not reduce the rights originally enjoyed by the people, it is absolutely illogical. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) protects the freedom of expression, and that any limitation of such a freedom must be specified in the form of law. It is true that Article 23 does require that the protection of national security has to be spelt out in legal provisions. However, there should be a suitable balance between protecting national security and protecting the freedoms of the people. We feel that the Government's proposals are obviously inclined towards and over protecting national security. And under "one country, two systems", we feel that human rights and freedoms of the people are very important. In addition, the people all along support the concept of one country, and support China's resumption of its sovereignty over Hong Kong. Therefore, we do not see any urgent need to enact laws on national security.

There are numerous concrete examples illustrating that the proposals contained in the Consultation Document on Proposals to implement Article 23 of the Basic Law (Consultation Document) will reduce the rights of the people. Members of the Democratic Party will elaborate on this, by citing a number of examples, from the perspective of principle and technical aspects in the meetings

of today or tomorrow. Let us take the proposals on the proscription of organizations as an example. The proposals have already exceeded the requirement of Article 23 which is confined only to political organizations, and the scope has been extended to proscribe any organizations. Therefore, even religious organizations cannot be exempted. However, according to Article 148 of the Basic Law, the relationship between organizations in the SAR and their counterparts on the Mainland should be based on non-subordination, non-interference and mutual respect. But the proposals in the Consultation Document have introduced additional limitations which could make local religious organizations subject to proscription when mainland religious organizations are specified as endangering national security. This would obviously reduce the religious freedom of Hong Kong and violate the Basic Law, thus damaging the principle of "one country, two systems".

I wish to further discuss in what ways the Consultation Document damage the rule of law in Hong Kong. The Government proposes to establish a so-called independent tribunal to specifically examine points of fact submitted by the proscribed organizations in appeal, whereas appeals to court can only be made when they are accompanied by points of law. In fact, this has exactly deprived the Court of the jurisdiction. As a matter of fact, in many cases, it is very difficult to discriminate between points of facts and points of law. For example, on the issue of subordination, it could involve both the points of facts and points of law. In addition, the scope of a judicial review is very narrow. So the Court really has no way of overturning the ruling made by a tribunal according to the evidence presented.

How does the Consultation Document damage "one country, two systems"? On the proscription of organizations, the Consultation Document proposes that, when a certain local organization is found to be affiliated to a mainland organization which has been proscribed by the Central Authorities on national security grounds, the Secretary for Security is empowered to proscribe the local organization. And the formal notification by the Central People's Government should be conclusive of the fact that the mainland organization has been proscribed. Although the Secretary for Security may not accept this, I believe this will not happen. The Court in Hong Kong has no way of questioning this, and there is no provision for this mechanism in the Basic Law. This has obviously damaged the autonomy of the SAR and the "two systems" element in the set-up of "one country, two systems".

There is a common point between Articles 19 and 158 of the Basic Law, that is, first, there must be a case being adjudicated before the SAR can invite the Central People's Government to provide a certificate or to make an interpretation of the provisions concerned. However, on the new proposals on the issue of certificates by the Central People's Government to the SAR, the initiating mechanism is controlled by the Central People's Government. Even when there is no case being adjudicated, the Central People's Government may still, bypassing the Court of Hong Kong, issue certificates to the SAR from time to time, thus giving direct instructions to Hong Kong to the effect that certain organizations have to be proscribed in Hong Kong as well because they are considered to be engaging in subversion against the Central People's Government. But the Court of Hong Kong has no way of questioning such actions. I believe even the Secretary for Security could not resist such instructions. This is obviously damaging "one country, two systems" devised in the Basic Law.

In conclusion, all the seven offences listed under Article 23 are political offences. On the surface, the proposals in the Consultation Document seek to protect national security. In fact, they are just protecting the dictatorial rule in both China and the SAR. At the moment, both the Governments of China and the SAR are not elected by the people. They are not subject to the supervision and monitoring by the people. Even if they have abused the powers in respect of the seven sins, they will not be voted down in the next election like the elected governments in overseas countries. What is more, there are already very stringent legislation sufficiently, or even excessively protecting national security. Therefore, the Democratic Party opposes the enactment of laws by the SAR Government to implement Article 23 for this will infringe human rights in Hong Kong.

I would like to raise one last point. The Secretary has stressed repeatedly that more than 300 000 members of the Hong Kong Federation of Trade Unions (FTU) are in support of legislation. In this connection, may we propose that a referendum on the issue be conducted by the Government and let the people decide whether they support the enactment of laws at the present stage. If the Government is sincere in protecting human rights, I believe it does not have to be afraid of a referendum.

Madam President, the Democratic Party clearly opposes the enactment of laws on Article 23, and urges the people to join the grand demonstration in protest of Article 23 legislation which will be held at 3 pm this Sunday in the Victoria Park.

With these remarks, Madam President, I support the original motion and oppose the amendment.

**MR LEUNG FU-WAH** (in Cantonese): Madam President, when I listened to the speech delivered by Mr James TO earlier, I came to understand the meaning of the common saying "A normal person speaks like a blind". But I agree with him very much in one of the sentences he said, that is, some people would have to face "the severe trial by history" in the future. I also believe that, the future history, the history of China and Hong Kong, will make a critical trial of the Democratic Party of today. Mr TO has failed to mention in his speech any concrete examples of how Hong Kong's international ties will be cut after the enactment of laws. China is the country that has attracted the largest amount of foreign investments (amounting to over US\$50 billion) this year. Under such circumstances, as Hong Kong proceeds to enact the laws in this respect, how will it be cut off from the international community, he did not go into too much details. He also said that the laws to be enacted in respect of Article 23 of the Basic Law (Article 23) would be even more stringent than those in the Mainland, and the punishments even heavier. But I cannot see any examples cited by him. He said that even the professionals of the Hong Kong Bar Association could not understand the Consultation Document on Proposals to implement Article 23 of the Basic Law (Consultative Document). In fact, if they did not understand the Consultation Document, they would not have presented dozens of counter proposals. Therefore, they actually understand the Consultation Document very well. It is only a case of some people pretending to be muddleheaded, especially Mr LEUNG Ka-kit, Chairman of the Hong Kong BAR Association, who is emotional and always makes public appearances to talk on political issues.

Madam President, I would like to state at the outset that the following viewpoints are targeted at those people who oppose the enactment of laws, rather than those who have criticized the Consultation Document or raised concrete suggestions. Some people have described the legislative proposals in the Consultation Document as "seven sins", but Article 23 has unequivocally stipulated that the Government of the Hong Kong Special Administrative Region (SAR) shall enact laws on its own in seven areas. However, as can be observed in society during the past three months, I feel that those opponents of the legislation have really displayed certain symptoms and signs of illnesses. The first type of illness is called "anxiety syndrome". The first group of people who

have displayed symptoms of the anxiety syndrome are a small group of so-called "democrats". They are in fact some chronic patients, with their medical history dating back to at least 10 years ago. The disease started as early as when the Central Authorities decided to resume the sovereignty over Hong Kong in 1997. Their disease was controlled sometimes, but could recur at other times, and recently we can see the onset of the disease again! Their disease has infected some other people. For example, a university student told the Secretary for Security that on the issue of enactment of laws on Article 23, the anxiety of all the people is his anxiety. Obviously, the illness has spread around. As the conditions of some of the people suffering from "anxiety syndrome" are not too serious, after the Secretary for Security, the Secretary for Justice and other government officials have explained that the spirit and intent of the legislation are protecting national security and unification, the enactment of laws by the SAR Government to implement Article 23 will not affect the way of live, human rights and freedoms of Hong Kong people. Nor will the freedom of information in Hong Kong be affected. I believe their "anxiety syndrome" will be cured ultimately.

As for Falun Gong in Hong Kong, the Hong Kong Alliance in Support of Patriotic Democratic Movements of China and members of pro-Taiwan organizations, they seem to have contracted another type of disease called "panic disorder" or "imaginary self-matching syndrome". They are afraid that after the laws on Article 23 have been enacted, the SAR and the Central Government will use the legislation as a tool to suppress them. Among them, the Hong Kong spokesman of Falun Gong, Mr KAN Hung-cheung, said in an interview that the SAR Government, in enacting laws to implement Article 23, will extend the mainland legal practice to Hong Kong, thereby violating the principle of "one country, two systems". The Hong Kong Alliance in Support of Patriotic Democratic Movements of China is of the view that the legislation will reduce the room for people to participate in public affairs through unofficial organizations and to protect their own rights. Pro-Taiwan organizations even said that the enactment of laws on Article 23 is targeted at pro-Taiwan organizations. Even if the statutes are loosely drafted, people will still have some taboos and may not be bold enough to participate in activities organized by pro-Taiwan organizations, for fear that they might be accused of secession. In fact, "panic disorder" is completely caused by their own psychological factors. Just as Vice Premier QIAN Qichen has said, "They have devils in their hearts.". So if they have acted fair and square and have done nothing illegal, why should they fear that they might be suppressed by the Government?

Some people in the local press obviously have contracted the third type of disease — "paranoia". Taking the Hong Kong Journalists Association as an example, they have repeatedly pointed out that the allusion to treason, secession, sedition and subversion in Article 23 could lead to the conviction of a person simply because of his comments. With such a disease, certain media with an established stance always imagine that they could easily fall into some traps of law in the course of news reporting. Therefore, in order not to be convicted by the Government simply by their own words, they will inevitably exercise self-censorship. Consequently, this will affect not just the freedom of the press, but also the right of the people to information. However, why should the journalists let such imaginations stay in their minds? In fact, the Secretary for Security and the Secretary for Justice have assured them that, as long as their news materials are based on information obtained through lawful channels, and that the purpose of the news report is not for violating the integrity and unification of the country, the media will absolutely not be affected by the Article 23 legislation.

The fourth type of disease is "split personality". The symptom of this disease is: A person could display two contradictory and completely different attitudes towards the same issue within a short span of time. A recent example emerged on the 6th of last month when this Council was scrutinizing the Immigration (Amendment) Bill 2001. The object of this Bill is, in order to tie in with the policies of the Central People's Government, to provide that mainland officials are posted to Hong Kong will not be granted the rights of abode in Hong Kong under the Immigration Ordinance, even if they have worked here continuously for seven years or more. At the meeting, some Members, including Ms Emily LAU, opined that it was inappropriate that the Amendment Bill was seeking to interpret the Basic Law by way of local legislation. Miss Margaret NG also stated in her speech that under the Basic Law, the Legislative Council could only enact legislation consistent with the Basic Law, and that the Basic Law had not empowered the SAR Government to reduce the rights and status of legislation. In their speeches, they stressed that it was necessary for the SAR Government to follow the letter of the Basic Law, and no amendment should be made to it. At that time, I thought it was really good that several Members were so keen to uphold the Basic Law. They opposed the Amendment Bill just because they were too earnest to uphold the Basic Law. However, just after an interval of a month, as I listened to the opposition views of these Members on the enactment of laws in respect of Article 23, surprisingly they said that it was not necessary for the SAR to enact laws, and that such



legislation will undermine freedoms and human rights in Hong Kong. I asked myself why they would lose their memory just after one month. At that time, they upheld Article 24 of the Basic Law very strongly, but why do they oppose the enactment of laws in respect of Article 23 now? Apart from selective amnesia, I could not think of any other answer.

The fifth type of disease is "senile dementia", the morbidity rate of which has shown an upward trend during the recent years. Although the Government is in a very tight financial position, I suggest that the expenditure in this area should not be reduced because we must try our best to cure such patients. Such patients keep past events and persons in their minds all the time. If their conditions should deteriorate, they might confuse the correct time and space in their minds. So they would always bear remote history in mind. The speech delivered by Mr James TO a moment ago fully testifies this point! While the current discussion is on the Consultation Document in front of him, his mind travelled back to more than two thousand years ago and said even Jesus had committed the offence of subversion, and that the *Bible* is a subversive publication. But as far as I know, several Directors of Bureaux are Christians or Catholics. Even people of different religious faith would not say something so abusive to each other, but now such words came from the mouth of a religious leader. Is it not too much a surprise and worry for everyone? When I first heard that, I was really frightened. Of course I was not afraid of being accused of having committed the eighth sin, as said by these people, of sowing distrust between Hong Kong and the Central Authorities, of promoting secession and hurting the hearts of the Chinese. Instead, I was afraid that they did not have the courage to consult a doctor to cure their illness, and they might become "pathological followers" in the end.

Recently, Bishop Joseph ZEN Ze-kiun of the Hong Kong Diocesan Catholic Church broke the convention that religious leaders would not participate in political discussions in high profile. Instead, he has been one of the front-line figures on the issue of enacting laws to implement Article 23. He has strongly criticized that the enactment of laws would ruin the spirit of "one country, two systems". We understand Bishop ZEN's arguments very well, but what are the justifications for his arguments? How can an argument stand if it is not supported by justifications? If Bishop Joseph ZEN and the democrats are still not enlightened and continue to oppose for the sake of opposing, then what is

the difference between them and the "pathological gamblers" who indulge in gambling? Both Bishop Joseph ZEN and the democrats indulge in opposition activities day and night, and we can detect the same symptoms and disease from them, that is, seriously distorting the facts, always making provocative and seditious remarks. Consequently, Bishop Joseph ZEN could become a "pathological saint", and might mislead the Catholics into departing from the principles of love and guiding people to virtuous causes.

During the past few months, some people have kept openly criticizing the SAR Government for enacting laws to implement Article 23, and said that the legislation would constitute "seven sins" and bring about serious impact on Hong Kong as a whole. Among these people, Mr Martin LEE and Mr James TO went to the United States and countries of the European Union in the hope of inducing foreign countries to interfere with the enactment of laws to implement Article 23 in Hong Kong. After all, enacting laws to implement Article 23 is an internal affair of the SAR. It is already wrong for someone to "badmouth" Hong Kong in overseas countries from time to time. However, it is even doubly wrong for them to try to rely on external forces to intervene in the internal affairs of Hong Kong.

The last type of disease can be described as incurable because it could be cured only by the person himself! What kind of disease is it that brings so much trouble? It is the "forget-the-origin syndrome". The patient is a person with yellow skin, black hair and brown eyeballs, yet he would go to the West from time to time to act like a spoiled child and complain to foreigners and request them to interfere with his own domestic affairs. Perhaps his body has undergone certain genetic changes, so that his command of the foreign language is so good that he speaks like a native. But his command of Chinese is not so good, and his understanding of the meaning of certain Chinese words may have certain discrepancies. He has even described himself as very "patriotic"! Mr James TO even said he was patriotic when he delivered his speech. What a classical example of the most extraordinary distortion of the truth. However, I really wish to know, when this small group of "forget-the-origin syndrome" patients go to the foreigners whom they consider "friends of justice" (Mr IP Kwok-him has said a lot about these "friends of justice" earlier on) to request them to interfere with their own "national" and "domestic" affairs, if they have ever thought about how these people will make of them? Maybe these "friends

of justice" will think behind their "mask of justice" that why such people have to go to other countries to complain just because their own country wishes to enact laws to protect national security. Apart from soccer teams that would employ "foreign help", now there are people who would also like to employ foreign help in handling "national affairs" and "domestic affairs". Of course, there are some exceptions. They would go to Britain, to participate in a half-an-hour debate of the ceremonious House of Commons. Our debate today will be much longer than half an hour, and I believe we cannot finish it this evening. But they just had a half-an-hour ceremonious debate on it, and only a handful of people were present as we could see on the television. What did our professionals say? They quoted some ancient legislation and used such seditious language as "mummies" and "terminator". Such excessively politicized and emotional language and practice would really degrade their own images in the mind of the people. According to the statistics (which Members have seen before), most of our elected District Councils support enacting laws in this respect. I wonder if Honourable colleagues have noticed this.

Lastly, I would like to say a few words to these Members who oppose the enactment of laws to implement Article 23, "Ideology is the main story; There are endless reasons to worry; True or false you should query; Survival of China should be taken seriously; National security and unification should be protected really; Articles in Basic Law should be enacted sincerely; Factual discussion is most important actually; Exaggerating the principles you're being silly!"

Thank you, Madam President.

**MR TIMOTHY FOK** (in Cantonese): Madam President, the present discussion on the enactment of laws to implement Article 23 of the Basic Law (Article 23) seems to have focused on such questions as freedoms and whether a White Bill should be issued for public consultation. The legislative intent, that is, such key issues as protecting the state against disturbances caused by treason, secession, sedition, subversion and theft of state secrets, has not been properly addressed. As a result, there is the phenomenon of a misplaced emphasis, seriously affecting the quality of discussion, and eventually the relevant legislative work is subject to unnecessary distortion and intervention.

As the representative of the Sports, Performing Arts, Culture & Publication Constituency, I am very concerned with the worries about freedoms of speech, of information and of the press as expressed by some of my constituents, and agree with the significance of upholding such freedoms to Hong Kong. However, we cannot attach absolute values to all kinds of things, and we certainly cannot confuse the proper priorities of different issues. Although freedoms of speech, of information and of the press are very important, we cannot magnify their significance to an indefinite proportion. Otherwise, anything would be considered infringing on freedoms, which is unrealistic. In fact, on the discussion of the legislative proposals on Article 23, the declaration of national rights and the protection of national security are the principal issues of the enactment, whereas the worries felt by individuals in the whole implementation process should be considered a scope of secondary concern, which could be duly addressed by reference to other articles of the Basic Law and other legislation. Therefore, such worries should not affect the legislative work on principal issues.

Besides, as we face the objective circumstances of terrorism having spread to such neighbouring countries as Indonesia and the Philippines, it is now the right time and essential for us to enact laws to implement Article 23, and such work should not and cannot be held up by the discussion on such technical details as the manner in which public consultation is conducted or the formulation of safeguards and restriction provisions. Anyway, "without a country, can there be families"? Our individual lives, properties, rights and freedoms are all protected by the country. Therefore, it is very unwise of us to let the hypothetical worries of some people hold up the making of legislation to protect national security. If we cannot protect national security, what rights or freedoms can we speak of?

I must point out that, on the protection of civil rights and freedoms, there are already detailed specifications in Articles 25 to 39 of the Basic Law. And the International Covenant on Civil and Political Rights (ICCPR) has also provided for specific protection in this regard, and together with the supervision and monitoring provided by the legal mechanism, a complete protection system has been formed. In fact, the worries raised by some people in the constituency in connection with Article 23 are not new. They had been raised before the reunification of Hong Kong with China. However, the realistic situation after the reunification tells us that the worries held by these people have never realized. The Central Government and the SAR Government have done their utmost in providing the best possible protection for the rights and freedoms of Hong Kong

people by way of the Basic Law or other relevant legislation. Sometime ago, the Reporters Sans Frontieres released a press freedom ranking table for 139 countries and territories, in which Hong Kong ranks 18, being the highest ranking in Asia. This shows that their worries are unrealistic.

Just think about this: Why did the same legislative provisions which were accepted as natural and reasonable and their implementation in overseas countries such as the United States and Britain acceptable trigger off controversies and overseas concern when the same proposals were put forward by the SAR Government? Such selective worries have gradually steered the discussion away from the rational track. I can say that, if such distrust is not removed, no matter how much government assurance, safeguards and restrictions are made and formulated or even consultation by means of a White Bill is conducted, they are all useless!

Madam President, it is necessary for Hong Kong to remain as an international press centre, a news and information exchange centre. However, the freedoms of press and information and the offences of subversion and treason are matters of different levels which cannot be confused, or treated as chips for bargaining in negotiations. In fact, there are only two new items in the legislative proposals. One of them is the simple adaptation of "On the relationship between the United Kingdom and Hong Kong" into "Relations between the Central Authorities of the People's Republic of China and the HKSAR", with no changes in the content. The second amendment is meant to plug a loophole in law — to make protected information procured through illegal channels subject to the legal provisions. This change is reasonable, and will not bring about any impact on press activities and press freedom. Of course, journalists should also respect the rule of law and be law-abiding. They have no justifications for procuring certain protected information through illegal channels, such as theft or procuring certain protected information without authorization and make damaging disclosure. Therefore, the new restrictions have no impact on normal press operation, nor will there be any influence on press freedom. Some people in the constituency may have thought about the issue in a far-fetched manner!

As the representative of the constituency, I would like to urge the Government to seriously consider the worries of the people of the industry, enhance the transparency of the legislative process, and formulate suitable supplementary provisions in the implementation details so as to remove their worries and steer the discussion back onto the normal track of national security.

**DR DAVID CHU** (in Cantonese): Madam President, on the issue of enacting laws to implement Article 23 of the Basic Law (Article 23), members of the public are most concerned with three major points: Firstly, should the laws be enacted? Secondly, when should the laws be enacted? Thirdly, how should the laws be enacted?

Firstly, on the issue of whether the laws should be enacted, the public has in fact already reached a consensus on it, that is, any government should enact laws on national security. Actually, the fact that the SAR shall enact laws on its own to implement Article 23 fully embodies the realization of "one country, two systems" and "a high degree of autonomy". We should express our positive views on the enactment of laws, so as to make the legislation conform more to the overall interests of Hong Kong.

Secondly, on the issue of when the laws should be enacted, I think it has been overdue for five years and five months. This is because no time vacuum should be allowed to exist in the laws that uphold national security. Let me quote an example for illustration. No matter where the President of the United States goes, a Marines officer is by his side 24 hours a day, carrying a black briefcase named "Football". The briefcase contains the controlling device for the nuclear arms of the United States. We all know that the chances of activating this controlling device by the United States President are very slim. However, he still brings along this device all the time because not a second of vacuum in national security should exist. So, though a lot of Hong Kong people believe that they will not use Hong Kong as the base for subversion against the Central Government and neither will foreign forces (in fact the chances of such happening are quite slim), we still have to enact laws as soon as possible because this is a matter of principle.

Thirdly, on the issue of how the laws should be enacted, the Basic Law has already stipulated that the SAR shall enact laws on its own. Though the work of enacting the laws is very tough, I am confident that the SAR Government will have sufficient wisdom to draft the relevant laws which will on the one hand address the need of national security and on the other protect the rights and freedoms enjoyed by the people.

In fact, most of the legislative proposals are only amendments to existing legislation, whereas the only newly drafted provisions are those on "secession" and "subversion". Now, some people worry about the power of the Secretary

for Security to proscribe organizations which endanger national security, and that such power may undermine the freedom of association in Hong Kong. However, do not forget, the freedom of association has already been protected by Articles 27 and 39 of the Basic Law as well as the International Covenant on Civil and Political Rights (ICCPR). When the Court makes a judgement, it has to make sure that the rights conferred by the above provisions are implemented.

Madam President, according to Article 23, Hong Kong has to prohibit any activities that endanger national security. Therefore, it is necessary for Hong Kong to proscribe local organizations that threaten national security. This is an important measure for maintaining "one country, two systems" and the prosperity and stability of Hong Kong. May I ask: Is it in the interest of the country and Hong Kong to tolerate the existence of organizations in Hong Kong that endanger national security? The answer is obviously in the negative. What is more, the freedom of association of the people of Hong Kong is sufficiently protected for three reasons:

First, the proscribed organizations must be banned in the Mainland on the ground of "national security". This is a prerequisite for the Secretary for Security in exercising the relevant power. Some people may worry that the interpretation of "national security" in the Mainland is very much different from that in Hong Kong. So, it may be very easy for the mainland Government to ban certain organizations which may not really endanger "national security". However, we must note that, even if an organization is banned in the Mainland, it does not follow that the local organization will be automatically proscribed. According to the Consultation Document, "The Secretary for Security can exercise the power of proscription only when it is required in the interests of national security, public safety or public order according to the ICCPR standards." In other words, if the Secretary for Security has taken the action of proscription before confirming that the action is necessary, his or her action is illegal.

Second, the Secretary for Security must be satisfied with evidence proving the affiliation of the local organization to the mainland organization before he or she can proscribe the relevant organization. The Government has indicated that the affiliation shall be strictly defined.

Third, the decision of the Secretary for Security to proscribe and to declare an organization illegal will be subject to review by the Court. Aggrieved

organizations not satisfied with the decision may lodge appeals with an independent tribunal or apply to the Court for a judicial review. Some people worry that it is very difficult for the Court in Hong Kong to disagree with the decisions of the Central Government. I think this reflects that people holding such a viewpoint do not have confidence in "one country, two systems" and the judicial independence of Hong Kong. Since the reunification, the Judiciary has been able to maintain its independence, and the Court has not been subject to any political intervention when passing judgements. We do not have any reasons to think that Hong Kong will lose its judicial independence in the future.

Madam President, lastly, I would like to reiterate one point, that is, the SAR should enact laws to implement Article 23. As for the conduct of this legislative exercise, it will depend on the joint efforts of people from different sectors of the community to pool together their wisdom and to make constructive suggestions to the Government, so as to make the legislation more consistent with the overall interests of Hong Kong.

With these remarks, I oppose the original motion and support the amendment.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, the former President of the United States, John F KENNEDY, has this much quoted line, "Ask not what your country can do for you — ask what you can do for your country." This line might have been quoted a million times, but there are certainly quite many occasions on which the line has been quoted out of context, that even leaders of democratic countries think that the country should be placed above the individual and it is totally justified to require the people to give up everything for their country. I think Mrs Regina IP, the Secretary for Security, may well be one of these people who hold such a view. For she once quoted this line when she talked about legislation on Article 23 to rationalize the restraints on freedoms as a result of laws enacted to implement Article 23. Some people may query that KENNEDY, as a leader of a democratic country, should not put emphasis on the country instead of showing a respect for the individual? Only totalitarian governments of MAO Zedong, STALIN, and so on, would require their people to give all of themselves to their countries. As a matter of fact, I would think that people who cite these two kinds of people in their discussions have all made a mistake, that is, they have isolated the issue and not placed the issue in the proper historical and social contexts for analysis.



When KENNEDY made that remark, there was the Cuban crisis and the United States was vulnerable to attacks from the Soviet-supported Cuban regime. KENNEDY was urging the people of the United States to defend their country and to make sacrifice for their liberty.

Likewise, when we discuss the legislative proposals to implement Article 23 today, we should never detach ourselves from the historical background for its formulation, the aims, the process involved, the contents and the social impact of Article 23. For if not, the discussion will only be vague and irrational. It is unfortunate that recently we have seen a lot of banners on the streets with these words in Chinese: "Without a country, can there be families?". These banners are supposed to rally people's support for the enactment of laws on national security. I would think that this is an over-simplistic view of legislation for Article 23. The discussions are confined only to issues of whether one upholds national security and whether the support or otherwise for this would amount to being patriotic or unpatriotic. This is entirely detached from Article 23 and the substantive contents of the Consultation Document. Moreover, many submissions in support of legislation have pointed out that it is only natural that national security should be protected and that legislation is the responsibility of the SAR. However, we have to ask whether legislating for Article 23 is purely an issue of whether being patriotic or not. Does it mean that legislation on Article 23 is the only way to protect national security? Should all means be used, including depriving people of their basic human rights, in order to protect national security? To answer these questions, we have to conduct an in-depth discussion on Article 23 and the Consultation Document. One cannot make light of the issue simply by asking a couple of simple questions or shouting a couple of emotive slogans.

Therefore, I must stress again that the issue of Article 23 legislation should be discussed in the context of the history of the formulation of the Article, its aims, means and impact.

Many people, especially the democrats, have always thought that the Basic Law was formulated without having taken on board the views of the public extensively. Of the members of the Drafting Committee, only a minority came from Hong Kong and some of the members were not representative at all. The Basic Law was drafted under the direction of the Mainland and so its acceptability has always been open to question.

In fact, the original wording of the "Draft Basic Law (for solicitation of opinions)" on the provisions on national security was like this: "The Hong Kong Special Administrative Region shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government". At that time, many people opposed to the incorporation of the idea of subverting the Central People's Government into the Article. It was because they thought that such an approach violated the original intent of legislating for the protection of the country and that most of the democratic countries did not have such provisions. Thus there was strong opposition to this. As a result, the second draft of the Basic Law deleted the part on subversion. Unfortunately, after the pro-democracy movement in 1989, the Central Government was deeply concerned about the fact that many people in Hong Kong supported the pro-democracy movement in China. It was worried that this enthusiasm shown in the support for the pro-democracy movement in China would endanger the totalitarian rule of the Communist Party of China (CPC) and so the concept of "subverting the Central People's Government" was added into the provision again. At the same time, the stipulations on overseas political organizations were added in an attempt to further restrict the freedom of association of the people of Hong Kong.

From the history of the formulation of Article 23 we can see that the contents of the existing Article 23 are discriminatory and prohibitive. Therefore, it can be seen clearly that the legislative intent of this provision is not purely to protect the country but more importantly, it is to strengthen the totalitarian rule of the CPC and to curb opposition in Hong Kong. So it is different from the spirit of similar laws made in democratic countries. I hope the Government and those people who support the legislation will realize that the case of Hong Kong is totally different from that in other countries. We cannot argue that since other countries have this kind of law, then we should also have it. It is because the spirit behind this provision is to suppress opposition in the name of national security so that totalitarian rule is strengthened. This is not the kind of legislative intent that we find in democratic countries at all. Therefore, I think if we are really to talk about national security, we have to do one thing and that is, to amend the Basic Law and make it acceptable to members of the public.

In addition, any discussion on enacting laws for Article 23 should not be detached from its impact. Some people said earlier that there would not be any families without a country. If legislation is to be made according to the

Consultation Document, it is precisely sacrificing the family in the interest of the so-called national security. The stipulations on the so-called "misprision of treason", that is, failure to inform, require the public to inform the police when they know that another person has committed treason, otherwise, they would have committed an offence. The effect of this provision will only make people and members of the family watch each other as if the days of the Cultural Revolution are back. Family members will accuse each other and report on each other for their own safety. Do we want to see this? How will this influence the relationship between family members and relatives? When people say there must be a country before there can be families, but in circumstances as these, do we still have a family when there is a country?

Secretary Regina IP and many people who are in support of Article 23 legislation have repeatedly emphasized that people who do not have "devils in their hearts" will not have to worry as the legislation will affect only those who have devils in their hearts. But people apart from those who belong to human rights organizations and the legal profession, others like academics and librarians have also expressed concern, that is, whether the legislation will affect them. So this is not simply a question of whether people have devils in their hearts or not. It is the far-reaching and grave impact of this provision which is the crux of the matter.

In addition, many journalists are concerned that the information to be protected under the offence of theft of state secrets has expanded to include information relating to relations between the Central Government and the SAR and that the ambit of the Official Secrets Ordinance has been expanded from civil servants and government contractors to all members of the public. So a journalist would have committed an offence if an unauthorized disclosure of protected information is made. Since the scope of protected information is expanded and not clearly undefined, journalists are likely to fall into traps and so in order to avoid being caught in proceedings, they would rather not report. This chilling effect will not only undermine freedom of the press, but also make it extremely difficult to monitor the Government.

The concern is not confined to journalists alone, the banking sector has also expressed concern recently about the free flow of information. People in the banking sector worry that they might commit an offence when they analyse financial information or that they are handicapped in making such an analysis when the free flow of information is obstructed. These worries apparently stem from the possible impact of legislation on Article 23.

Vice Premier QIAN Qichen was asked on Tuesday whether enacting laws for Article 23 would affect foreign investment in Hong Kong. His answer was that provided that money could be made in Hong Kong, there would not be any worries about foreign investments not flowing in Hong Kong. What Vice Premier QIAN was referring to might well be the situation on the Mainland, for despite all the inadequacies in law and that workers may be exploited and tormented in all sorts of ways and means, foreign investments are still going into China. But that is the situation on the Mainland. Is the situation the same in Hong Kong? Are we going to attract foreign investments with these? Should we not try to attract foreign investments by the free flow of information? I must stress that the development of the financial services sector hinges on, a sustained free flow of information. It is unfortunate that some foreign companies are getting worried about this. Can we expect them to put their worries aside and continue to invest in Hong Kong? When they find other places more attractive than Hong Kong in making money, will they not leave Hong Kong?

Some people may think that if only they can lend their support to the Government and side with the Government, then they will not have to worry about how the legislation is to be made. The legislative intent of laws on Article 23 is precisely to make all people side with the Government and so they will not dare to voice any opposition. But I would like to point out that the determination of whether one is on the side of the Government rests not in the hands of these people, but entirely in those holding the reins of power. When those in power are of the view that you are on their side, then the draconian law will not be enforced against you. But when someday those in power think that you are no longer their men, then you are vulnerable to the draconian law. ZHAO Zhiyang, the former Secretary-General of the CPC was forced to step down for he was accused of disclosing state secrets when he made the remark that "all important matters are decided by Comrade DENG". I recall back in the 1980s during the reunification talks, ZHAO asked the people of Hong Kong what they were afraid of. The people of Hong Kong should have found the answer now. People may be regarded as on the side of those in power today, but it is likely that they may be regarded as enemies to those in power the next day. Are we going to get any protection when this is the reality? Should things like these happen in a free society where human rights are protected?

I am convinced that political rights should not be alienated from civil rights. The people at large want to make use of these rights to fight for social

justice. The legislation on Article 23 will not only deprive the people of their political and human rights, but also deprive them of their economic rights and the right to a decent life. The Consultation Document expands indefinitely the concept of war under the offence of treason. The so-called war is not only limited to "war" as defined in international law, but will include "a riot or insurrection involving a considerable number of people, including foreign nationals, for some general public purpose." Moreover, scope of the offence of sedition is also inflated to include inciting others "to cause violence or public disorder which seriously endangers the stability of the state or the SAR". The acts here obviously are the internal affairs of Hong Kong, but why should they be elevated to the level of national security? Is this an infinite expansion of the concept of national security?

On the other hand, the special investigation powers of the police permit the police to enter private premises without a warrant on grounds of emergency to conduct a search. With such unbridled powers, the police can interfere with the operations of civilian organizations whenever they feel like it.

On top of that, the Consultation Document also introduces mainland laws into Hong Kong. Those organizations defined as illegal on the Mainland will also be declared as illegal in Hong Kong and local organizations are barred from having any links with them. This is obviously an extension of the powers of the Central Authorities to the SAR. Will "one country, two systems" exist in Hong Kong any more?

Looking from the history of the formulation of Article 23 and its aims and social impact, enacting laws to implement the provision is obviously not purely a matter of national security, nor it is simply related to a declaration of patriotism or otherwise. As legislators, we must discuss the provision in great detail and with the public as well. We should never evade the issues and hope to get away with it.

As seen from the above analysis, the purpose of legislation on Article 23 is to silence opposition and the contents of the Consultation Document, as the original motion puts it, will "reduce the rights and freedoms enjoyed by the people of Hong Kong and damage the rule of law and 'one country, two systems'".

As for the amendment, I think it is trying to be pragmatic, but in fact it is too idealistic, for it assumes that enacting laws to implement Article 23 will give sufficient protection to human rights. As I have mentioned, the enactment of laws to implement Article 23 is meant to curb opposition to the Central People's Government and that is already proof that human rights are undermined. The amendment as it is will only place a mission impossible onto the Government. I do not think we should harbour any illusions for it.

Madam President, I so submit.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, every country in the world will insist on the principle of the supremacy of national interest and to make national security its prime concern. No country in the world will not impose any legal restraints and penalties on acts of secession, sedition and subversion which endanger the state. China is certainly no exception to this. For this reason, Article 23 of the Basic Law expressly provides that:

"The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

It has been five years since Hong Kong was reunited with China and the Basic Law was implemented, if legislation is not made or if delays are made to, the Government of the Hong Kong Special Administrative Region (SAR) would have no legal base to prohibit acts which are expressly prohibited in Article 23. Loopholes would then exist and these may be exploited to further acts which endanger national security or become a haven of such acts. All these are things which the overwhelming majority of the people of Hong Kong would not like to see and so we should not take the matter lightly.

The Basic Law stipulates that the SAR Government and the people of Hong Kong shall enact laws on their own. This shows that the Central Government has placed the greatest trust and support for the SAR and its people. This is an important constitutional obligation and duty for the SAR Government and the people of Hong Kong. It is also a task to be discharged by Hong Kong

people to show that they will protect national security and that they should regard this as something absolutely justified and a responsibility which they cannot evade. That laws should be enacted to implement Article 23 is an important task for the SAR Government in realizing the objectives of "one country, two systems" and the Basic Law.

The people of Hong Kong cannot hope to be immune from the impact if national security is endangered and when China and its people suffer. It is because the protection of national security and interest cannot be separated from the protection of security and interest of the people of Hong Kong. Safeguarding the security of the state is consistent with safeguarding the well-being of the people of Hong Kong. It is only when the country is safe that Hong Kong will remain stable and prosperous.

The rule of law is an important cornerstone of Hong Kong and it is a vital underpinning of our competitive advantage. However, the system of law in Hong Kong cannot be considered perfect for Article 23 of our "mini-constitution", that is, the Basic Law, is not implemented by way of legislation. As mentioned above, if this is to continue, Hong Kong is likely to become a place where activities are carried out to endanger national security or become a haven for people who seek to endanger national security. Should this happen, our business environment will certainly suffer, social unrest will be caused, foreign investments will pull out of Hong Kong, and our prosperity and stability will be gone. And so will be our original competitive edge. That the SAR Government proposes to legislate on Article 23 is precisely to prevent such things from happening. It is also meant to preserve our competitive edge so that we can emerge as winners in the global economic competition and foster closer links with the Mainland. As a result, there will be smooth development in "one country, two systems" and the well-being of the people of Hong Kong will be afforded the greatest protection. So it can be said that enacting laws on Article 23 is necessary not merely for the protection of national security but also for the protection of the interest of the SAR Government and the people of Hong Kong.

Enacting laws to implement Article 23 is a constitutional responsibility of the SAR Government and the Hong Kong people given to Hong Kong by the Central Government and vested in the Article itself. Laws should be enacted fully in accordance with the stipulations in Article 23. Seven kinds of acts are prohibited in the Article and it is incumbent on the SAR Government to make legislation to prohibit these acts.

Five of these seven acts are already covered by existing laws of Hong Kong, with the exception of the offences of secession and subversion. As to the five offences prohibited by existing laws of Hong Kong, they should be retained, subject to certain adaptations.

On the offence of secession, the Consultation Document states: "Nations provide their nationals, and others who lawfully reside in the nations, protection from foreign attacks or coercion, stability, peace and security, apart from other benefits. Preserving the territorial integrity of the nation lies at the heart of the welfare of a nation, and is a top priority of most countries. Breach of that integrity by force, threat of force or other serious unlawful means almost invariably leads to war, and any efforts to tamper with territorial integrity should be discouraged. For our country, we strongly agree that upholding sovereignty, territorial integrity and unity, and the "One-China" Principle is crucial to the well-being of our country as a whole. We should as a matter of principle staunchly resist moves to break up the nation." Every citizen and every place in a country should do their utmost to protect the fundamental interests of their country, that is, territorial integrity, unity and national security. In fact, many countries including those which practise the common law system regard the preservation of territorial integrity as one of their fundamental interests. Any attempt to secede any part of the territory would be regarded as a serious act of treason which will endanger the survival of the country concerned.

The Consultation Document is absolutely right in its comments on the dangers which the offence of secession will bring to the country and its people. It is therefore imperative that such activities must be prohibited by legislation.

On the offence of subversion against the Central People's Government, the consultation document states: "The basic system of the state, as well as the Government of the People's Republic of China, which includes the National People's Congress, the Central People's Government and other state organs, are the key institutions of the state. Overthrowing or undermining them by illegal means should be viewed most seriously."

As stated in the Consultation Document, the Government of the People's Republic of China is a key institution of the state. The institutions, laws and administrative measures of a state are implemented through the government machinery and the welfare of the people is protected by the government as well.



The Central People's Government is established by Constitution and it represents the interests of people of various races in the country. Subversion of the Central People's Government is an encroachment on the Constitution and it runs counter to the fundamental interests and will of people of various races in the country and is an act of treason.

Many countries have indeed enacted laws to prohibit acts to overthrow or undermine their government established by constitution. Such acts are deemed as treason. Under the existing laws of Hong Kong, acts aimed at overthrowing the Government are covered by the existing provisions on treason and these are punishable offences. It is absolutely necessary for the SAR Government to enact laws to prohibit acts of subversion against the Central People's Government.

As to the issue of expanding police powers, as mentioned above, the very essence of Article 23 is to protect the sovereignty, territorial integrity, unity and security of the state, that is, the fundamental interests of our country. It is therefore important that sufficient powers be provided for investigation into the offences proposed. The existing laws of Hong Kong provide the police with investigation powers, however, these powers may not always be adequate to cater for the special nature of some Article 23 offences. This may lead to serious consequences as certain crucial evidence against an offence committed may be destroyed. Therefore, the Consultation Document proposes that an emergency entry, search and seizure power should be vested in the police for purposes of investigating some Article 23 offences.

The Hong Kong Federation of Trade Unions (FTU) is of the view that in order to ensure that the enactment of laws on Article 23 can be realized to the fullest, it is essential that the Consultation Document has proposed the provision of powers to the police. The FTU supports this. However, in order to prevent abuse, the FTU thinks that such powers can only be given to police officers of the rank of Assistant Commissioner of Police or above.

The legislation on Article 23 of the Basic Law is in complete agreement with the interest and will of all the people in the country, including the people of Hong Kong. It is also in agreement with the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Moreover, it is more lenient than similar laws enacted in other common law jurisdictions. The freedoms and

rights enjoyed by the people of Hong Kong under the Basic Law will certainly not be reduced by the Article 23 legislation. Conversely, this will ensure a better implementation of the Basic Law so that the laws of Hong Kong can be made perfect and greater protection is assured. Since the publication of the Consultation Document, among the views expressed on this most fundamental question of whether or not to enact laws to protect national security, the responses obtained are mostly positive and supportive. This shows that the people of Hong Kong have become the masters of their country and it is a demonstration of their sense of responsibility.

The FTU thinks that the Government's adoption of a consultation document to solicit public opinion is a good idea. But since the subject of consultation is new, so it is only natural that people would have different views and opinions. To ensure that the legislation on Article 23 is sound, the FTU hopes that the Government will bear in mind the advice of the ancient sages that "To listen with both ears will lead to enlightenment, but to listen with one ear will result in ignorance". We hope that the Government will hear views from all parties and give serious consideration to them. We also hope that various organizations and people from all walks of life will actively take part in the discussions, that they can show a sense of responsibility to Hong Kong and to their country, discuss the issues from a rational and pragmatic approach and put forward practicable and constructive views. The FTU will extensively collect the views from trade unions and the public, especially from the grassroots. The views gathered will be conveyed to the SAR Government.

In order to brief the grassroots on the contents of the Consultation Document, the FTU suggests that the Government should publish some promotional materials which are written in popular language, attractive and more comprehensible. There should be more publicity in the mass media such as the radio and the television. All these efforts will facilitate a better understanding among the public of the contents. Hence the consultation exercise will be more effective.

The FTU thinks that the enactment of laws by the SAR Government to implement Article 23 is vital to national security and it is also essential to the interests of Hong Kong. The enactment is therefore very important. The FTU will lend its staunch support for it and we believe that with the concerted effort by the Government and the people of Hong Kong, the enactment of laws on Article 23 will be sound and complete.

Madam President, I so submit.

**MR WONG SING-CHI** (in Cantonese): Madam President, I would first comment on the guiding principles of the proposals to implement Article 23 of the Basic Law as contained in the Consultation Document and the failure of the SAR Government to enact laws on its own, then I will focus on the offence of treason.

Article 23 of the Basic Law provides that "The Hong Kong Special Administrative Region shall enact laws on its own". The meaning of enacting laws on its own would include the time and manner that the laws are enacted, that is, the twin aspects of legislative procedure and contents of the laws.

On the question of when should laws be enacted, the Basic Law gives the SAR flexibility on the timetable for the enactment of laws on Article 23. I recall an official from the Security Bureau once said that the offences mentioned in Article 23 were the "mother of crime", that is, they were grave offences, very significant offences. That the SAR Government wants to have the laws enacted by next July is completely groundless. It is because laws which are so important and involving crimes of such a magnitude would have to be passed by next July. Why is it that all through the past five years the SAR Government did not enact these laws but it is trying to rush through the process in the sixth year? The Government may say that it has used five years to study the issues involved. But if that is the case, why is the public only given such a short period as three months for consultation? Why does the Government think that now is the right time to legislate? If this is really the right time, then please present us the rationale. But no rationale has been given and even in the Consultation Document, there is no discussion on whether it is a suitable time to enact laws on the Article. This kind of mentality which bars discussions, which is bent on enacting the laws immediately would make people suspect that it is the Central Government which requires the SAR Government to legislate expeditiously. This is in breach of the principles of "enacting laws on its own" and "a high degree of autonomy".

With respect to the legislative procedure, since the task is of such magnitude and complexity, plus the fact that the proposals advanced by the Government involve concepts not found in the existing laws of Hong Kong, such as concepts of the offences of subversion and secession, it would be proper if the proposals are referred to the Law Reform Commission for study. In addition, public opinion holds that the public should first be consulted by way of a White Bill and legislation should be enacted only when more common grounds are reached in society. This kind of approach should be a sound and fool-proof.

However, the Government refuses this flatly and it is already working on the drafting instructions during the consultation period. Thus the public is left with an impression that this is a bogus consultation. People would think that the laws are enacted because the Central Government is exerting pressure on the SAR Government and that the latter ardently hopes that the entire legislative process would complete by next July. When the Government refuses to consider such a reasonable and mild demand from the public that a White Bill should be issued, how can the public expect the Government to accept the views expressed by them in respect of the Consultation Document? For such views may be more severe. When the Government does not even accede to a simple request like issuing a White Bill, how can the people think that the Government would accede to other requests of a higher order?

As to the contents of the proposed legislation, the Secretary for Justice made the remarks that the SAR Government had consulted the Central Authorities on the proposals to implement Article 23, for the Article was a provision on the protection of national security. This was meant to avoid repercussions in future should the laws passed later be rejected by the Central Government when they were submitted for record. In other words, when the many pieces of relevant legislation are to be amended later, should consent be obtained from the Central Authorities as well? This would certainly violate the principles of "a high degree of autonomy" and "enacting laws on its own". The design of "one country, two systems" is meant to immunize the SAR from pressure exerted by the stronger side, that is, the Central Authorities, for compliance with its directions. The fact that the SAR Government has taken the initiative of consulting the Central Authorities is undermining its autonomy. What is more appalling is that the SAR Government has refused to disclose the consensus reached with the Central Authorities, not even the areas where consensus has been reached. It is also silent as to with whom in the Central Authorities discussions have been held, the organizations with which a consensus has been reached, and so on. Did it discuss with the Standing Committee of the National People's Congress, with LI Peng, or any one? The persons, time and contents, are just like state secrets, and nothing whatsoever has been disclosed. On the other hand, a monk in the Po Lin Monastery of Hong Kong once made a complaint to the Central Authorities with regard to a dispute in land use with the SAR Government, but it was ignored. The Central Authorities were right in this incident, but why is it that in this case of enacting laws to implement Article 23, the SAR Government has approached the Central Authorities and the latter has agreed to discuss the matter and a secret consensus has been reached? This has clearly been an act that damages "one country, two systems".

Paragraph 1.7 of the Consultation Document sets out the three guiding principles on the proposals to implement Article 23. Unfortunately, there are many inadequacies in these principles.

First, the Government refuses to act according to the Siracusa Principles on the Limitation and Derogation Provisions (Siracusa Principles). The Principles stipulate that restrictions on rights on grounds of protecting the national security of a country should be limited to only those which aim at protecting a country from threats to its survival, territorial integrity and political independence from force or threat of force. The Siracusa Principles were drawn up in 1984 and the Court of Final Appeal of Hong Kong has cited the Principles in its judgement in respect of a case concerning the burning of the national flag in 1999. This shows that the Court recognizes its authority, but it has not been accepted in the Consultation Document.

Second, the Government refuses to legislate according to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles). The Principles state that restrictions are to be imposed on the use of national security as a ground to adopt measures. Such measures should be limited to only those whose genuine intention and purpose are resistance to force or threat of force to protect the survival and territorial integrity of a country.

Third, the principle of minimal legislation has not been adopted to enact laws to implement Article 23.

Lastly, the Government has failed even to act according to the very principle that it has laid down, namely, on fine and accurate legislation. Offences of endangering national security should be narrowly and strictly defined and put in accurate language. This will enable the public to foresee which kinds of acts are legal or illegal, so that the public will have something to follow and this will prevent scenarios like self-censorship and white terror.

I would like to turn to treason offences. Certain terms related to treason, such as "levying war" can be traced back to some Acts of Parliament in the 14th century. Hong Kong does not have any precedents on this. The most recent case in Britain dates back to more than a century ago and this is an obsolete case which is out of touch with the needs of a modern democratic society.

The consultation document states that "war" is not limited to the true "war" of international law. It is not essential that the offenders should be in military array or be armed with military weapons. It is sufficient if there be assembled a large body of men who intend to debar the government from the free exercise of its lawful powers and are ready to resist with violence any opposition. That is to say, if some people organize a crowd to seige a police station and demand that some demonstrators be released, that may be defined as levying war.

Under such a definition, some industrial actions or demonstrations will easily fall under the definition of levying war. This is certainly an obstacle to our freedom of expression and demonstration. The Law Reform Commission of Canada proposed in 1986 to change "levying war" into "engaging in war". But the Hong Kong Government has chosen to adopt some old and draconian law and done nothing to narrow down the definition of the offence. This is a grave infringement of the freedom of expression.

The Consultation Document also points out that the Government of the People's Republic of China stands for the integrated concept of the Central People's Government and other national authorities established under the Constitution. This is a violation of the principle of minimal legislation. Article 23 only prohibits treason, secession, sedition and subversion of the Central People's Government. The relevant proposals have in fact given protection to various government institutions and local authorities. That is not necessary as sufficient protection has been given to these institutions and local authorities under the current criminal legislation.

In addition, the offence of treason of unclear in defining acts "to intimidate or overawe". The original text is meant to offer protection to Members of the Parliament in Britain and Members of the Hong Kong Legislative Council. The relevant law in Canada defines this as a situation where Members of the Parliament are compelled by force to make a different political decision. However, the Consultation Document changes this to protect the Government and that is unnecessary.

"Public enemy" as referred to in the offence of treason is someone whose country is in a state of war with one's country. Any act done to strengthen the enemy or weaken one's country to resist the enemy constitutes assistance. The concept of assisting public enemy at war is not necessary according to the principle of minimal legislation.

The Consultation Document also mentions misprision of treason. The Democratic Party is of the view that failure to report a known offence should not be made a criminal offence, for this would lead to social division. Take my son as an example, I have always taught him to be a law-abiding person. He does not know what is treason or sedition. If someday he sees his dad in a crowd of demonstrators in front of the Government Secretariat, he may suspect that his dad is committing treason. In order not to breach the law, he informs the police about his dad. And so harmony in the family is shattered. This kind of events would easily lead to mutual distrust and the whole society would be thrown into a state of white terror. The Democratic Party therefore strongly opposes making the misprision of treason a statutory offence.

The Consultation Document proposes that the offence of treason should apply to all persons who are voluntarily in the SAR, regardless of their nationality. It is considered that only someone who owes allegiance to the state or enjoys its protection may commit treason against it. But for foreign nationals in Hong Kong such as tourists, how can they be assumed to owe allegiance to the People's Republic of China? If they have committed any acts of violence which undermine national security, they will be subjected to the relevant laws on criminal offences. It would not be justified to impose the offence of treason on someone who is not a permanent resident of Hong Kong. The proposal will also injure our business environment.

The offence of treason is applicable to acts done by permanent residents of Hong Kong in a place outside Hong Kong. For Hong Kong residents who have emigrated, there are no legal channels for them to renounce their Hong Kong permanent resident status, though there may be some ways in future that they may renounce their status as permanent residents of Hong Kong. But people from Taiwan or overseas Chinese may do that. So it seems that the Hong Kong Government is not attaching enough attention to them and a bad message is struck home in that if anything bad happens, they may as well renounce their status as permanent residents of Hong Kong. In fact, when the authorities have indicated that they would consider devising some measures to enable people to renounce their status as permanent residents of Hong Kong, strong discontent has been aroused among some Taiwanese. So it looks as if Article 23 which is meant to protect national security may have the effect of impeding the progress of the unification of China.

On the question of the time limit for the offence of treason, the current requirement is that prosecution should be made within three years after the

commission of the offence. The consultation document abolishes such a requirement. The Democratic Party opposes the absence of any time limit for the prosecution on offences of a political nature like treason. For this would engulf the people of Hong Kong in fears that old scores would be settled.

With these remarks, I support the original motion. Thank you, Madam President.

**DR RAYMOND HO** (in Cantonese): Madam President, it is now some five years into the reunification of Hong Kong with the Motherland, and a smooth transition has been successfully achieved under the principle of "one country, two systems". It should therefore be an appropriate time for the Government of the Hong Kong Special Administrative Region (SAR) to prepare for enactment of laws to implement Article 23 of the Basic Law (Article 23).

Since the subject of legislation is relatively sensitive, it is understandable, and only to be expected, that there are very divergent views in society about the various proposals advanced by the Government. But I personally do not agree with those who argue that since nothing endangering national security has occurred since the reunification in 1997, there is no urgency to enact the legislation required.

The deferment of legislation until there is a major incident will do no good to Hong Kong at all, because if we hasten to enact legislation only after a major incident, the laws enacted in the end may be very harsh. The anti-terrorism laws enacted by the United States in the wake of the "September 11" incident are a good example. Since Hong Kong has already been reunited with the Motherland for more than five years and "one country, two systems" has been achieved successfully, it is really the right time to enact laws to implement Article 23.

It is necessary to enact laws to implement Article 23. In all countries and places in the world, Western countries not excepted, there are laws to prohibit secession, subversion, and so on. Being a part of China, Hong Kong is obligated to protect national security. For this reason, we should support the relevant legislation, so that laws in the interests of the State and the social, political and economic stability of Hong Kong can be formulated.



The Consultation Paper published by the Government in September this year already provides a very good basis for discussions. Unfortunately, some members of society still cling to a stance of antagonism, making it impossible to hold any sensible and calm discussions. I hope that all sectors of society can put aside their preconceptions, conduct serious discussions on the contents of the Consultation Paper, and make concerted efforts to ensure that while the SAR enacts laws to implement Article 23, it can at the same time protect the fundamental rights and freedoms of Hong Kong residents in accordance with the provisions of Chapter III of the Basic Law.

Furthermore, I also hope that people can stop arguing continuously about the need or otherwise for the Government to publish a White Bill. The relevant legislative proposals are already expressed very clearly in the Consultation Paper, and the government officials concerned have also explained the contents of the Consultation Paper on many occasions. Besides, the legislative process in Hong Kong is highly transparent. Whether the relevant provisions are to be published in the form of a White Bill or a Blue Bill, Honourable colleagues of this Council and I myself will always scrutinize and discuss the provisions and the associated details in the most serious and meticulous fashion.

Madam President, I fully understand that the SAR Government has the duty to enact laws to implement Article 23. But I also hope that during the process of drafting the legislation, the Government can fully consider the views of all sides, so that the provisions thus drawn up can effectively uphold national security and at the same time allay people's worries that their existing rights and freedoms may be affected. I so submit. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Honourable Members, judging from the number of Members waiting to speak, and also because of the need for government officials to give their replies, I believe we cannot complete the debate on this motion before midnight today. Therefore, at around 10 pm I shall adjourn the meeting until tomorrow afternoon.

**MR MICHAEL MAK** (in Cantonese): Madam President, I would like to declare at the outset that I oppose the enactment of laws to implement Article 23 of the Basic Law (Article 23). Since the financial turmoil, there has been

instability and unrest in Hong Kong. As a result, the people are miserable and worried. Yet, instead of taking the positive step of finding a solution to remedy the situation of Hong Kong, the Government seeks to enact laws in respect of Article 23 at such a sensitive time. How unwise it is to take this course of action which will divide the community and damage the image of Hong Kong as an international cosmopolitan city. If the Government is willing to spare the energy for launching calculated moves to divide the community directly or indirectly, and use such energy on assessing the pros and cons of this enactment of laws, it will certainly realize that the legislation is simply unnecessary.

Since the reunification, no act of secession or subversion against the country has ever occurred. Although there have been processions and demonstrations, all of them have been conducted in an orderly and peaceful manner. There have never been any offences of sedition, subversion and secession. Can you say that taking a coffin to the street, and carrying portraits of officials and the Chief Executive in demonstrations are acts of subversion? Can you say that former Democratic Party Chairman Martin LEE meeting with overseas guests is "bad-mouthing" Hong Kong and committing an act of treason? Can you say that some minor scuffles with policemen that take place in the course of demonstration are acts of sedition and subversion? Taking myself as an example, I made a fact-finding trip to Taiwan last week during their Mayor Election. In passing, I would like to mention that there were many other councillors as well. They had all waved the Kuomintang flags provided by the relevant Taiwan organizations. I have brought one Kuomintang flag back to Hong Kong. Will I be considered to have committed offences of treason, secession, and subversion against the Government, if this incident is mentioned by someone some years later? I had given out a large number of name cards to the people I met in Taiwan. If they send me e-mails informing me of their political platforms, will I be considered as having ties with foreign political organizations? Which of the seven sins have I committed? So far, the Government has just stressed the need to enact the laws, but it has never explained why it is necessary to do so, and why the existing ordinances are inadequate for protecting national security. In fact, all that the Government needs to do is to make some slight adaptations to the existing ordinances such as the Public Order Ordinance, Societies Ordinance and Crimes Ordinance, and then the legislation would be sufficient for regulating the seven sins such as treason, secession, sedition and subversion which are prohibited by Article 23. As the existing laws are already providing sufficient protection, why should the

Government resort to creating new offences which have caused so much confusion and division?

I have contacted many voters in my constituency. Once they met me, they would ask me what I thought and what they should do. They all said that they were very frightened. Recently, I decided to conduct a survey by sending out a questionnaire on the enactment of laws to implement Article 23 to voters of my constituency. In fact, this happened last week. I was still in Taiwan. I made a lot of calls back to Hong Kong to instruct my assistant to prepare a relatively neutral questionnaire. Within a few days, more than a hundred copies of questionnaire were returned. Respondents generally said that they opposed the enactment of laws — more than 70% of the respondents took this stance, whereas those supporting the enactment account for the remaining 20% or so. However, be they in support of or opposed to the legislation, the majority of them said that they were afraid that the profession might be affected and there might be a negative impact on the profession. They worried that the image of Hong Kong would suffer, that the academic researches and exchanges of Hong Kong with overseas institutions would be affected, that they could not touch on sensitive issues in their communication with patients, and that their exchange activities with overseas professional bodies might violate certain provisions. The Government has not enacted the laws, but it has already made people in my profession and the professionals worry a lot. I do not know whether the Government has thought about this clearly: How great the people and the professionals will be affected by the legislation?

A lot of people worry that, on the pretext of protecting national security, Article 23 will become a tool suppression of dissidents. Presently, people from different sectors can say whatever they want to say. I am not sure if they can continue to do so in the future. However, I hope the Legislative Council could endow me with privileges to continue speaking as freely as I wish. After laws on Article 23 are enacted, I do not know whether I can continue to voice my own opinions once I step out of the Legislative Council Building. What I fear is that the SAR Government might make use of the so-called offences in Article 23 like treason, secession, sedition, subversion against the Central People's Government and theft of state secrets to suppress opposition voices, political discussions and dissidents. By then, Article 23 will not be performing its role of protecting national security. Instead, it could be reduced to a horrible political tool.

If the Government insists on enacting laws to implement Article 23 despite the opposition, it will only create more restricted areas and traps for the people, seriously exploiting people of their human rights and freedoms. No matter how prudent the conviction provisions will be drafted, and no matter how prudent the enforcement will be as claimed by the Government, it will inevitably have a chilling effect on the people who fear that they might inadvertently commit offences and it will be difficult for them to clarify the issues. As the people are afraid of getting into trouble as a result of making certain comments, they will be deterred from making remarks on matters related to the Government and public policies, thereby the room for public discussions will be reduced as a result. Hong Kong people, who are always very outspoken in expressing their views, especially those pioneer advocates of democracy and freedom like me, will shut up because they are frightened and worried all the time. Such laws are not just disturbing the people, they are actually a tragedy that reflects a retrogression of a democratic and liberal society.

The mass media have always been regarded as the third power, expressing all kinds of viewpoints and exercising the functions of monitoring the Government and balancing the interests of the Government and the public. However, under the looming threat of Article 23, the media, when conducting news-reporting activities, will easily be accused of committing offences of sedition in inciting others to treason, secession, or subversion, and be adjudicated as seditious publications. Therefore, it will be inevitable for the media to exercise self-censorship when they release sensitive news reports. Under the new legislation, the media will generally be inclined towards the Government in order to avoid committing offences inadvertently. So there is no way for them to balance the interests of the Government and the public. As a result, some or all of them will become the mouthpieces of the Government and cannot play the role of monitoring the Government.

In the Consultation Document, the Government proposes to give the public power to enter private premises without a warrant. In this way, the power of the police is extended infinitely. We fear that, upon the enactment of the laws to implement Article 23, the police could abuse the power, on the pretext of national security and collection of evidence, to disturb organizations, dissidents or innocent residents not welcomed by the Government, and eventually turning policemen into political executioners! Certainly this would seriously infringe upon the privacy of the people and their basic human rights. In fact, the police have already been vested with sufficient powers to investigate crimes. There is

absolutely no need to expand the power of the police. Such disturbing proposals are surely stupid.

Hong Kong is an international cosmopolitan, an open and liberal society. According to the American Heritage Foundation's Index of Economic Freedom, Hong Kong ranks number one in the world. However, the Foundation also said that the enactment of laws on Article 23 would have a negative impact on the freedom of Hong Kong. Many foreign banks worry that the enactment of laws in respect of Article 23 will suffocate the freedom of information in Hong Kong. I hold Dr David LI in high esteem for his willingness to disclose this message. Certain newspapers or organizations have commended him as a popular Member of this Council. Actually, he really deserves such favourable comments. I hope Dr David LI can continue to reflect opinions to the Government in such a tone. If the Government insists on enacting the laws in respect of Article 23 despite opposition, the persistent open and liberal image of Hong Kong in the international arena will be seriously damaged. This will deter investors from coming to Hong Kong, thereby affecting the economy of the territory and further rocking the confidence of Hong Kong people. Is the Government trying to spark off another emigration wave in Hong Kong? Hong Kong is a place with no natural resources, so manpower resources are the lifeline of Hong Kong, and the middle class is an underpinning of the community. Let me take the people in my industry like nurses, pharmacists, radioactive technicians, psychologist, physiotherapists and occupational therapists as an example. These people are professionals, belonging to the middle class. They have made a lot of contribution to Hong Kong. They have an influential role to play. With their professional expertise, they can go to different parts of the world like the United States and the European countries and start a new life there. If the Government makes them lose confidence, it is easy to trigger off another emigration wave. They are talents in great demand by other countries. They can make do without Hong Kong. Hong Kong should treasure its talented people. Do not make our professionals go away and trigger off a recurrence of the emigration waves that took place in 1989 and 1997. Hong Kong cannot take such a heavy blow again.

It is not easy for Hong Kong to attain the image as an international cosmopolitan, and the Pearl of the Orient is well known. In the past, a lot of Hong Kong people had contributed their hard efforts to building up this liberal, open, civilized and democratic society. As a proverb goes, "The ancestors

planted the tree, and their descendants enjoy the shade." We are now enjoying the fruit and air brought about by an open and liberal society. If the Government insists on enacting laws to implement Article 23, it will destroy the foundation and achievement of Hong Kong which had been built up with so much hard effort over such a long time, and Hong Kong will fall into a poor state that defies resurrection. Should that happen, the Government will be blamed as the "prodigal son who squanders the family fortune".

In short, Hong Kong is facing unprecedented economic adversities. The Government should assess its own priorities, put its focus on improving the economy and the livelihood of the people and restore the confidence of the people. This is much more important than wasting energy on an issue which is not at all urgent, creating confusion and rocking the confidence of the people, thus making the economy of Hong Kong turn from bad to worse. I oppose the enactment of laws to implement Article 23 under the present objective social and political circumstances. I urge the Government to think twice before really proceeding to enact the laws, thus saving itself from the scorn of the international community and becoming sinners in history. I so submit.

**MR HENRY WU** (in Cantonese): Madam President, national security laws are important laws. In other countries, including those which flaunt the banner of democracy and liberty, laws are enacted as a matter of course to uphold national security, territorial integrity and sovereignty. The absolute necessity of legislation is therefore beyond any question. In countries like the United Kingdom, the United States, Singapore and Canada, the maximum penalty for crimes of treason, secession, sedition, subversion and theft of state secrets is life imprisonment, or even death sentence. As for organized crimes that endanger national security and violates Article 23 of the Basic Law (Article 23), it has been proposed to introduce amendments to existing ordinances, whereby the penalties for organizing or supporting a proscribed organization shall be seven years' imprisonment and an unlimited fine. In contrast, for similar crimes in the United States, under Section 2385, Title 18 of the United States Code, whoever organizes any society which advocates the overthrow or destruction of any government in the United States by force or violence; or becomes a member of any such society, knowing the purposes thereof, shall be fined or imprisoned not for more than 20 years.

Hong Kong has been reunited with the Motherland for more than five years, and the implementation of "one country, two systems" has been successful. The Basic Law provision allowing the SAR Government to enact laws on its own to prohibit acts endangering national security is a special arrangement under "one country, two systems". In general, such laws are formulated by the State Central Government. But instead of implementing the existing national laws on national security in Hong Kong, the Chinese Government has acted in accordance with the Basic Law, allowing Hong Kong to exercise its prerogative of enacting its own laws to implement Article 23. People may actually reflect their views through the process of enacting laws on our own, so as to make the laws eventually enacted appropriate to the context of Hong Kong as far as possible. For this reason, we should treasure this opportunity and participate in this process in an active and positive manner.

Madam President, laws on protecting national security are important laws, and in principle, they should have been enacted and implemented at the inception of the SAR. It therefore does not stand to reason for anyone to argue that since the laws have not been enacted such a long time after the reunification, there should be no urgency to do so now. What is more, it must be remembered that only clearly defined laws will be able to ensure the future security and stability of the State and also Hong Kong. Hence, the enactment of legislation to implement Article 23 should not be delayed any further. Therefore, any continued arguments on whether a White Bill should first be published will not only hinder the efficient formulation of an appropriate piece of legislation, but also give an opportunity to some people who intend to do harm to society. In case any opponent thinks that due to its limited room for amendments, a Blue Bill cannot possibly serve as a means of consultation which can really gauge people's views, I can tell them that I used to think so too. But the passage of the Securities and Futures Ordinance in March this year has changed my view. As much as 80% of the Blue Bill for the Ordinance was amended. This convinces me that as long as there are good reasons, a Blue Bill can still be amended.

There are now very heated discussions in society on the enactment of laws to implement Article 23. But many of the arguments advanced are much too bitter and biased. Article 23 has even been labelled a "draconian law". I do not think that all this can be of any help at all. There is freedom of speech in Hong Kong, but freedom must never be abused, and everyone must be held responsible for their words and deeds. I would think that only objective and impartial analyses, together with the expression of constructive views, can enable the public to interpret the whole matter correctly. Therefore, I very

much agree with Mrs Sophie LEUNG that we must remain sensible and calm in the discussions, instead of resorting to any extreme and drastic approach.

Madam President, I support the amendment, which urges the Government to pay full heed to people's opinions when drafting the relevant bill to implement Article 23, and to proceed with the relevant legislative work as quickly as possible, while protecting national security, and ensuring that the rights and freedoms enjoyed by the people of Hong Kong and "one country, two systems" are not undermined. Madam President, I so submit.

**MISS MARGARET NG:** Madam President, it is now two-and-a-half months since the Government published its proposals to implement Article 23 of the Basic Law. We can no longer debate whether or not to legislate in a vacuum. In the present context, the only question for debate is whether the proposals in the Consultation Document should be supported, or whether, as the Honourable James TO's motion suggests, they diminish fundamental rights and freedoms and the rule of law, and therefore must be opposed. Put in context, it is clear to me that legislation must be opposed, unless the Government drastically revises its proposals.

It follows that the amendment of the Honourable Mrs Sophie LEUNG is unacceptable, because by deleting the words "the proposals in the Consultation Document ..... will reduce", she is by implication saying that these proposals will not reduce the rights and freedoms, and the rule of law which Hong Kong enjoys. With this, I disagree.

It is not only my personal view, but the considered opinion of many of the most respected members of my profession, that these proposals threaten fundamental rights and freedoms. I deplore the attack of a Member on the Chairman of the Hong Kong Bar Association (the Bar), Mr Alan LEONG, SC, whose contribution to the informed debate on this important issue is exemplary. Such attacks on him and other public figures are beyond contempt. In a forum of the Law Society of Hong Kong (Law Society) held on 16 November, serious doubts and criticisms were raised about the proposals. They are summarized and reported in the December issue of *Hong Kong Lawyer*. The Bar's 236-paragraph Response to the Consultation Document released earlier this week states:



"while the Bar appreciates that it is the duty of the HKSAR [Hong Kong Special Administrative Region] to enact domestic laws to prohibit the acts and activities listed in Article 23, the Bar does not agree to the legislative proposals set out in the Consultation Document ..... " (para. 5)

"The Bar expresses its serious concern that many of the proposals ..... do not appear to be consistent with the minimum standard guaranteed by the ICCPR [International Covenant on Civil and Political Rights] and ICESCR [International Covenant on Economic, Social and Cultural Rights], the guarantees of fundamental rights under Chapter III of the Basic Law and the Johannesburg Principles. Proposals that are obviously restrictive of freedoms of expression and association are presented in the absence of safeguards and suitable exceptions and therefore frustrate any meaningful enquiry in terms of proportionality." (para. 232)

Madam President, while the Government is eager to seek the approval of legal experts abroad, I would respectfully recommend them not to belittle the expertise of the legal community at home who are, moreover, familiar with Hong Kong's constitutional law and context, to an extent that no foreign expert can equal.

The Article 23 Concern Group has published seven pamphlets on the Government's proposals which are written by leading academics and practitioners of constitutional law. Prof Albert CHEN of the Law Faculty of the University of Hong Kong, while commending the approach of the proposals, severely criticized their substance, particularly on sedition and the proposed new offence of unauthorized disclosure under the Official Secrets Ordinance. In a comparative law forum held in the University of Hong Kong in November, academics with expertise in foreign law and Chinese law pointed out numerous pitfalls and the lack of understanding of the law in this area in the proposals.

There is remarkable consensus among those who have been engaged in the in-depth analysis and rational debate, in calling for a White Bill to be published for public consultation because the terms in which the offences are drafted are too vague and broad, as such, they create great uncertainty. This is in itself contrary to the rule of law. So far, the Government has refused to do so without a single respectable reason. Where the offences are uncertain and the penalties severe, especially in offences of a political nature, the chilling effect is immense, stifling the legitimate exercise of rights and freedoms guaranteed by the Basic Law.

The offences in the proposals are not, as represented by government officials, confined to acts and activities aimed at overthrowing the Central People's Government by violence or terrorist-style sabotage, or joining force with a foreign power to levy war against the Chinese state. They extend to speech, to association and hence religious affiliation, to peaceful assembly, to the pursuit and dissemination of ideas, the disclosure of information, the normal operation of a free press, and above all, to the expression and organization of legitimate opposition recognized in every free society.

A few examples will illustrate the point. Misprison of treason is an offence of omission. No act, let alone an act of violence, is required. It is defined as the failure to report that someone has committed treason. The possession of or dealing with seditious publication does not require even speech or expression or any act beyond being in possession of or in some way dealing with a publication. Indeed the publication does not have to be a seditious publication in the normal sense. It does not have to be intended to urge anyone to violence. According to the Government's proposals, it suffices that the publication is likely to incite some people to commit treason, secession or subversion. If there are reasonable grounds to suspect that the publication is likely to have this effect on some people, then a person who is in possession of or deals with the publication commits an offence. Being an office-bearer of a proscribed organization is an offence. One does not have to be personally involved in any particular act of the organization. Being associated in membership in that capacity is enough. The organization does not have to have committed, or attempted to commit, or have as its object ever to commit any act of treason, secession or subversion. Suffice that it is affiliated to a mainland organization which is proscribed by the Central Government for reasons of national security, and the Secretary for Security in the Hong Kong Special Administrative Region, somehow, considers it necessary to ban the organization, too.

The proposed broadening of the Official Secrets Ordinance to create a new offence of unauthorized disclosure is not just plugging a loophole as the Government claims (para. 6.22), but fundamentally changes the operation of that Ordinance. It shifts the responsibility on officials to guard official secrets to the lay public, and the press not to make an unauthorized disclosure of the protected information which they have obtained other than from an official source. The effect is to place the press at risk when they publish information which exposes the Government to criticism.

We must not turn a blind eye to the real effect of the proposals. The protection of national security aimed at is not protecting China against foreign invasion or internal insurrection. They are to protect the Central People's Government against any opposition, actual or potential, from developing or being given expression. It is not Article 23 as promulgated in the Basic Law which is being implemented, but the political directive of a Central People's Government shaken by the 4 June incident, that Hong Kong must not be used as a base for supporting subversive activities. Indeed para. 5.6 of the Consultation Document openly acknowledges this.

Herein lie the offences likely to affect our lives most directly: subversion, together with sedition and theft of state secrets. As para. 5.6 makes clear, subversion is to be dealt with by creating a new offence of subversion, and by the proscription mechanism to which I have just referred.

The offence of subversion is unknown to the common law. As defined, it can be committed not only by using violence, but also by the undefined "threat of violence" or the vaguely defined "serious unlawful means" which can extend to speech and peaceful assembly or organized expression of legitimate opposition without violence or sabotage. Using any of these means to "intimidate the Government of the People's Republic of China" or to "disestablish the basic system of the state as established by the Constitution" constitutes subversion. Inciting others to commit subversion is sedition. Thus, publishing articles to encourage others to hold or join mass rallies, or hunger strikes to express discontent with the Government of the People's Republic of China and to put pressure on it to adopt a more democratic system of government free from corruption, amounts to subversion.

Just to illustrate, the 1989 Student Movement for Democracy in Beijing would fall within the definition of subversion. As proposed, a Hong Kong permanent resident can commit subversion by his acts within or outside Hong Kong. So, fund-raising or demonstration in Hong Kong in support of the students amounts to subversion, and any Hong Kong person going to Beijing to give assistance to the students or to join their demonstration commits subversion.

If the groups organizing the movement in Beijing were proscribed by the Central People's Government as threatening national security, then every Hong Kong organization affiliated with them would be exposed to proscription by the Secretary for Security. The police will have the power to investigate

sympathizers to see if they are members of such organizations, or, if they had travelled to the Mainland, to see whether they have done anything which can amount to acts of subversion including inciting, aiding and abetting, counselling or procuring, or conspiring with others to commit subversion.

As the Bar observes, the proscription mechanism centres too much power on the Secretary for Security without sufficient checks and balances. The Secretary for Security's power is subject only to judicial review. As proposed in the Consultation Document, the factual reasons for his or her decision to proscribe a certain group cannot be challenged before the Court. Both the Bar and the Law Society oppose such a power of proscription altogether. I am of the same view. We also strongly oppose the proposal to remove the time limit for prosecuting for treason and sedition. The mischief of these offences lie in the immediate danger that they bring about and therefore must be swiftly prosecuted. To allow prosecution to be brought long after the event is to give the Government a tool for political persecution.

Under the "one country, two systems" principle, Hong Kong can enjoy freedoms which may still be under restrictions in the Mainland. This is one of Hong Kong's advantages, and something not only people in Hong Kong, but people in the Mainland, take pride and comfort in. We must oppose every attempt to diminish the freedoms we enjoy, as China itself moves towards a more open and free society.

Madam President, I support the motion and oppose the amendment. Thank you.

**DR TANG SIU-TONG** (in Cantonese): Madam President, I support the enactment of laws by the Government of the Hong Kong Special Administrative Region (SAR) in respect of Article 23 of the Basic Law, because in accordance with the Basic Law, this is what the SAR Government should and must do, and an important part of the task to implement "one country, two systems" and "Hong Kong people ruling Hong Kong". The "two systems" in "one country, two systems" is founded on "one country". Hong Kong obviously has the responsibility and obligation to uphold "one country". Indeed, every responsible government will enact laws to protect the unity and security of their own country. Certainly, the enactment of laws to implement Article 23 involves such sensitive issues as the basic rights of individuals and so, the

concerns expressed by some members of the community in this connection are understandable.

However, we cannot infer that the legislative proposals would damage the rights now enjoyed by the people simply on the basis of some inadequacies or ambiguities in the proposals for consultation, and adding onto these some very extreme assumptions. This is by no means an objective and rational analysis. As pointed out under (a) of the Guiding Principles in the Consultation Document, it is necessary to meet fully the requirements of the Basic Law, including Article 23 which stipulates the acts that must be prohibited, and other relevant provisions in Chapter III, in particular Article 27 which guarantees the fundamental rights and freedoms of Hong Kong residents, and Article 39. In other words, the enactment of laws in relation to Article 23 must be consistent with the other provisions of the Basic Law.

On the enactment of laws to implement Article 23, some organizations and members of the public are concerned, among other things, that legislation on "sedition" and "theft of state secrets" would damage the freedom of speech. Freedom of speech and free flow of information are the cornerstones of the success of this pluralistic society of Hong Kong. We must ensure their sustenance in Hong Kong. In my view, the legislative proposals to implement Article 23 have given the greatest possible protection to the freedoms of speech and information. But of course, there is still room for improvement with regard to some proposals.

Firstly, the offence of "sedition", which often involves speech and words. In this connection, there is concern that the Government would abuse the provisions to suppress the expression of opinion and freedom of expression, or even persecute political dissenters. Moreover, there is also the view that such concepts as "stability of the state" or "stability of the HKSAR" in the legislative proposals are vague in meaning and easy prey to abuse by the Government. In fact, the Consultation Document has already pointed out that the mere expression of views, or mere reports or commentaries on views or acts of others, will not be criminalized. To charge a person with the offence of sedition, the prosecution, apart from proving seditious acts on the part of the defendant, must also prove that the defendant has the intention to incite others to commit certain offences, and only in this way can the charge be established. As general reports or commentaries will not have the intention to incite others to deliberately commit an offence, they will not be affected. However, to allay the concern of some

people, the Government, when tabling the bill, must ensure clarity in the provisions to fully reflect that mere news reports and commentaries on current affairs do not constitute a basis of sedition.

Another issue that has aroused enormous concern is the offence of dealing with or possessing seditious publication. Librarians and even teachers are worried that their work will be affected. Although the question of whether a publication is seditious will be decided by the Court rather than the Government, academic institutions, teachers, and members of the public will not commit such an offence under general circumstances. But to avoid unnecessary public concern, the Government can consider conducting studies and reviewing the definition of "seditious publication", so that the public can know more clearly the coverage of the legislation when the Blue Bill is tabled.

Madam President, another issue of great concern to the press is the offence of "theft of state secrets". Some foreign business communities have also expressed concern about the possible impact on the flow of information. The Consultation Document proposes the making in the Official Secrets Ordinance of a new class of protected information, namely, "relations between the Central Authorities of the People's Republic of China and the HKSAR", and also the offence of "unauthorized and damaging disclosure of protected information". There is the view that the legislation, if enacted, would greatly widen the scope of protected information to cover even information which is not considered protected information now. They consider that the term "relations between the Central Authorities and the HKSAR" is ambiguous and this may lead to an extension of the Central Authorities' concepts of national security to Hong Kong, thus posing threats to the freedom of press.

In fact, the proposal of the Consultation Document to add "relations between the Central Authorities and the HKSAR" as a class of protected information will not widen the scope of protected information in the existing Official Secrets Ordinance. Before the reunification, the Hong Kong-British Government had all along considered Hong Kong's relations with mainland China part of the relations between the United Kingdom and Hong Kong, and information involving China and Hong Kong had been put under "information relating to international relations" protected by the Official Secrets Ordinance. Now, the Consultation Document proposes to take this information out of "international relations", making it an independent item of "relations between the Central Authorities and the HKSAR". This is an adaptation made in the light of the reality that Hong Kong has already reunited with China.

Furthermore, the disclosure of certain confidential information by the media or the public will not constitute an offence. It will constitute an offence only when the information is obtained by unlawful and unauthorized access and when the disclosure of such information is damaging to the public or society. As to the question of what will be considered protected confidential information, it will be decided by the Court in accordance with the definitions in the Official Secrets Ordinance, not by the Government.

While the Government has expressly pointed out that the legislative proposals would not curb the freedom of press, I think the Government, when drawing up the legislation, should make every effort to ensure that this is most accurately and unequivocally reflected in the provisions. Given an increasingly close tie between Hong Kong and the Mainland, the exchange of information between the two places will become frequent. With regard to what will be considered confidential information relating to "relations between the Central Authorities and the HKSAR", the Government should consider conducting further studies in this respect, in order to work out a clear definition in the legislation, so that media workers and the public can clearly know under what circumstances would an act be prohibited by the law.

Madam President, the enactment of laws to implement Article 23 of the Basic Law will have a significant bearing on the long-term interest of Hong Kong, and this is something that should be done. I hope that members of the community can put forward more useful and constructive views on the legislative proposals, so that the laws eventually enacted will meet the needs of Hong Kong, rather than invariably opposing this legislation, for so doing will not do Hong Kong any good. With these remarks, I oppose the original motion.

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, a lot of discussions have been held to analyse in detail the enactment of laws on Article 23 of the Basic Law (Article 23), from the angles of human rights, freedoms, and the rule of law. I very much share the arguments advanced by Mr James TO earlier. Therefore, I do not intend to look at Article 23 from this angle. However, I must emphasize that the fact that I have decided not to look at the matter from this angle does not mean that I support the legislation on Article 23. In my opinion, the enactment of laws in accordance with the proposals outlined in the Consultation Document to implement Article 23 will undermine the rights and

freedoms enjoyed by the people of Hong Kong, and damage the rule of law and "one country, two systems".

In addition, I believe the legislative proposals made by the Hong Kong Government to implement Article 23 will endanger our information flow, thereby severely undermining the position of Hong Kong as asian telecom hub.

In my capacity as the representative of the Information Technology (IT) Constituency, I am going to express my views on the impact of the legislative proposals on IT users in general, and the IT and telecommunications sectors, from the technical level and the angle of the daily operation of the IT sector.

From the perspective of the IT and telecommunications sectors, the Government has failed to consider the situation confronting the sectors. First, the Government has not considered the impact of the relevant legislation on the IT development of Hong Kong, free flow of information, and the position of Hong Kong as asian telecom hub. Second, it has not evaluated the technical upgrade and operational arrangements required in the future to tie in with the implementation of laws as well as the relevant financial implication. Third, the Government has not indicated whether guidelines will be issued to the sectors in the future and whether the sectors will be consulted on the needs or ways to complement the implementation of the relevant legislation. This has made it difficult for the sectors to determine the legal liabilities they are supposed to bear after the enactment of the legislation.

To start with, I would like to say a few words on websites. A number of popular websites in Hong Kong, such as YAHOO, Sina.com, Hong Kong.com, MS.com and Now.com, have set up their own news centres. Many members of the public will read news re-published from other parts of the world by these websites. Will the news centres of these websites be charged with the offence of sedition for re-publishing reports defined as seditious publications? Though it is possible for websites to, in the light of their own needs, register as newspapers under the Registration of Local Newspapers Ordinance (Cap. 268), they generally consider it unnecessary to do so. Under such circumstances, can websites not registered as newspapers defend themselves by invoking news reporting as a defence of "reasonable excuse", as specified in paragraph 4.18 of the Consultation Document? In my opinion, these news centres function very much like newspapers in terms of news reporting. As these online news centres



cover news by way of re-publishing, reporting and editing are usually not required. Therefore, online websites can be considered to be on a par with newspapers. As such, it is not necessary for online news centres to register as newspapers before they can be allowed to use news reporting as a reasonable excuse or defence.

In many personal or corporate websites, the so-called chat rooms or news groups are set up to provide website visitors a venue to express their views. Should the Government's legislative proposals be implemented, will it become necessary for the responsible persons of websites to conduct real-time monitoring of the content of their chat rooms to prevent treasonable or seditious messages from spreading online? If a responsible person removes a suspected treasonable message from his chat room without reporting to the police, will his act constitute an offence of aiding or inciting treason? In addition in reporting to the police, will he be required to report to the police information about the clients who have logged onto his website, such as by furnishing a name list of the clients who have, after the treason message was posted, browsed the message, the time of such actions and whether the message has been further disseminated? Insofar as these issues are concerned, I think the Government should adopt a more stringent principle of holding the one publishing the opinions responsible. If all webmasters, that is, the operators of a websites, is to bear all worries and fears for the content of the chat room, they will prefer applying a stringent hand to handle the matter. Eventually, the room for the public to express views might be undermined. It is therefore essential for the Government to specify the relevant principles clearly to immunize the sector from such liability.

The maintenance of log by the IT sector and providers of IT services is normally intended for internal use, such as calculating service charges. At present, there are no laws in Hong Kong requiring service providers to retain their log. Throughout the Consultation Document, the Government has not said a word about whether mainland laws such as requirements related to managing electronic public notice services by the Internet in the Mainland and management laws for Internet information services will be applied for the purpose of introducing Internet regulating arrangements similar to those introduced in the Mainland to require the keeping of logs and the provision of such to law enforcement agencies as and when necessary. In brief, service providers in the Mainland are required to keep logs, and are obliged to disclose relevant information to the government when necessary. Conversely, it is not necessary

to do so in Hong Kong. In terms of law enforcement with respect to the Internet, investigation can hardly be conducted in the absence of such records. Therefore, such records will be required for the purpose of enforcement. Actually, laws of this kind best illustrate the tool being used by the Mainland to curb freedoms enjoyed by the people. By means of the preserved logs provided by service providers, such information as comments made by users on the Internet, websites visited, messages delivered, will all be recorded. After the enactment of such laws, IT users will be the most affected. They might even be barred from joking on the Internet, for the record of what they said can, at any time, be used as evidence against them.

To complement the implementation of the legislation, the industry will have to handle additional administrative workload in its daily operations. At the same time, government agencies will have to deploy resources for enforcement. The expenses thus derived can in no way upgrade the productivity of the industry and will impose heavy burdens on both the industry and the Government. The promotion of IT development will be affected too. The industry is currently facing a harsh business environment. If these expenses can be diverted to developing IT infrastructure, electronic businesses, network technology and mainland markets, it will have a positive impact on Hong Kong's technological levels and socio-economic development, and further consolidate Hong Kong's position as asian telecom hub.

I would like to declare in advance that the Government must not introduce laws similar to the two abovementioned statutes targeted at curbing the freedoms enjoyed by the people. I oppose making it compulsory for the industry to retain logs. In order to protect privacy, only the Court can issue orders to obtain logs from the industry.

The popular short message services or the future multi-media services, as well as the contents of the Internet and short messages, can all be considered as publications. In brief, if I send a short message to Mr James TO and tell him jokingly that I "support Taiwan Independence", the message will be considered a publication. Is the industry obliged to re-examine its archives before the relevant legislation formally comes into? Is it really incumbent upon the industry to review these records? As it is an offence to possess seditious information, the best solution is to delete all information defined as seditious. After the relevant legislation takes effect, will the industry be obliged to inspect the information conveyed through servers? Nonetheless, we are proud that the

industry is not going to censor the information conveyed to its clients by way of a conduit and that its commitment to protecting the privacy of its clients has borne fruit. In short, the most important duty of the so-called Internet Service Provider or Telecom Service Provider is to play a role similar to that of a conduit. In other words, they must make no attempt to inspect the contents of information. Even the so-called web hosting firms will not, and are not obliged to, inspect the information stored with them, for such information is considered the property of their clients. All legal liabilities shall be borne by the clients. Professional conduct is an important cornerstone of the industry. We are trusted by clients from all over the world because we observe our professional conduct. The Government must not ask us to commit self-destruction.

I hereby request the Government to discharge the industry of any legal liabilities arising from the disclosure of information on its networks on behalf of its clients, in terms of the contents of information, the aiding liability arising out of repeated offence, the offence of handling and possessing seditious publications under the offence of sedition, and so on. I would also like to request the Government to respect the industry's transmission of client information in the manner of a conduit.

Furthermore, I hope that the Government can delete the offence of possessing seditious publication to protect IT users. With advances in technology, when we link up with the Internet, just as what a number of colleagues were doing just now, a lot of programmes will be implanted into our computers at any time. Dr David CHU once told us in a Council meeting that, after visiting a number of websites, certain pornographic sites were implanted into the desktop of his computer. Despite repeated attempts, there was nothing he could do to delete them and his efforts were in vain. It was me who eventually helped him delete those websites. Actually, not every person knows how to delete certain data that have been implanted into the hard disk since the data can be securely implanted into the computer. What can Honourable Members or Bureau Directors do if certain seditious messages are implanted into their computers?

The offence related to "possession" has posed us a big headache. I hope the Government can truly get to understand the relevant problems. The situation is similar to the existence of numerous advertising and pornographic websites at the moment. Members who care to visit these websites — I am not encouraging Members to visit pornographic websites more often — will find that

a lot of data will remain in the hard disk of their computers and can hardly be removed. Many of these data will even pop up or push out. Once certain associated messages are implanted, they might be defined as seditious publications. As a result, computer users can hardly avoid committing the offence of possession of seditious publications. Actually, before discussing this subject, we have discussed another related issue with respect to ordinances pertaining to child pornography — I see that Ms Cyd HO is nodding — and come to the conclusion that the offence of "possession" has presented us a big headache.

According to Mr CHEUNG Man-kwong, even an attempt to implant a message into the e-mail box of Mr TUNG Chee-hwa might constitute a serious offence. It can be seen from all this that the sector will face a lot of grey areas. We simply do not know when we will contravene the relevant laws. We must understand that these offences are very serious, and the relevant penalties are quite severe too. In my opinion, the Government should make legislative proposals to prescribe that offences relating to serious interference of electronic systems be treated as computer crimes and no separate legislation is thus required for this purpose. If it is held that interference of government electronic systems and that of private electronic systems are caused by different criminal motives, the Government should present its justifications.

Let me cite game software again to illustrate my point. According to some American newspapers, terrorists have reportedly made use of flight simulator, a computer game, to conduct pilot training (it was rumoured that flight simulators had been used for training purposes by two hijackers who directed a passenger flight to crash into the World Trade Centre). There are a lot of war games available. They include Command & Conquer, Rainbow Six, Counter-Strike, and so on. There are even war games for staging battles across the Taiwan Strait, that is, electronic games enabling one to play as the Kuomintang to launch counter-attacks against the Mainland. Will a person playing such software commit the offence of sedition? As Dr TANG Siu-tong remarked earlier, even if prosecution is not instituted on this point alone, it is already sufficient to have caused us concern. It is hoped that the Government can relieve us of such worries in the future.

Madam President, insofar as the issue of legislation is concerned, one of the decisive factors determining whether our sector has sufficient room for development is the ability of Hong Kong to attract a large number of foreign-funded companies. The fact that the sector has the strength to compete with

other countries in the business world is because, in addition to the presence of IT firms, there is a business environment in Hong Kong where there is less regulation.

I hope to make use of the remaining 10 seconds or so to say a few words. Actually, a lot of rating agencies including the Heritage Foundation, various foundations, the American Chamber of Commerce, the British Chamber of Commerce, foreign-funded banks and local small and medium enterprises have voiced concern over the enactment of laws on Article 23 in Hong Kong. Even such foreign financial journals as *The Economist* and *Asia Wall Street Journal* have published articles to express concern over this matter. I hope the Government can, in paying attention to ways to ensure the enactment of laws on Article 23, ensure the ratings of Hong Kong not be affected. In the past several years, the freedom of speech in Hong Kong has indeed been criticized by many and, as a result, there has been a negative impact on the ratings of Hong Kong. It is hoped that the Government can take such views into consideration throughout the whole legislative process.

I so submit.

## **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm tomorrow.

*Suspended accordingly at Ten o'clock.*

**Appendix I****WRITTEN ANSWER****Written answer by the Secretary for Health, Welfare and Food to Mr CHAN Kwok-keung's supplementary question to Question 4**

To enhance and rehabilitate our fisheries habitats, the Agriculture, Fisheries and Conservation Department has commenced deploying artificial reefs in Hong Kong waters since 1998. The scheme, scheduled to be completed in 2003, would cost around \$61 million in total. The Department has also launched a fish fry releasing trial scheme since 2000 to enhance the local fisheries resources. To date, the trial scheme has cost a total of around \$580,000.

**Appendix II****WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Mr Albert HO's supplementary question to Question 5**

Since the Housing Authority (HA)'s decision to carry out foundation strengthening and remedial works for Blocks K and L of Tin Chung Court, the works have all along proceeded according to the original plans. However, in order to collect evidence for legal actions, the legal team engaged by the HA has arranged to measure the pile lengths for the two blocks on a sampling basis. As the measurement results will be used in the legal actions and have been given to the Independent Commission Against Corruption at its request, we have been advised by the Department of Justice that it may be prejudicial for us to disclose the results to the public at this stage. Hence, we cannot disclose the results here, but as Members are aware, we have as requested provided them in confidence to the Select Committee on Building Problems of Public Housing Units of the Legislative Council, which examines the construction issues of Tin Chung Court and others.

Though we cannot disclose the results to the public for the time being, we can confirm that they are not a cause for the delay in the foundation remedial works for Block L of Tin Chung Court. In fact, as the Secretary for Housing, Planning and Lands has pointed out in the Legislative Council meeting, the delay is a consequence of the complex geological conditions and occupation of the neighbouring blocks. Members may also note that the three expert consultants responsible for the design and audit of the remedial works have considered the results and reached a consensus after discussions that the original remedial scheme remains in order. In any case, the HA has taken into account all foundation problems of this Block in carrying out the remedial works and the building will fully comply with the safety specifications after completion of the works programme.

## Appendix III

## WRITTEN ANSWER

**Written answer by the Secretary for Security to Ms Cyd HO's supplementary question to Question 6**

The Honourable Cyd HO has asked about the penalty of the 17 persons convicted of "Gambling in a place other than a gambling establishment". Please be informed that the breakdown of their penalty is set out below:

<i>No. of Persons</i>	<i>Amount of Fine (HK\$)</i>
Four males	100
Four males	200
Seven males	300
One male	400
One male	500