

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 1 March 2006

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

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

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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

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

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H.

DR THE HONOURABLE JOSEPH LEE KOK-LONG

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

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

THE HONOURABLE MA LIK, G.B.S., J.P.

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

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

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

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

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): A quorum is not present now. Clerk, please ring the bell to summon Members to the Chamber.

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

PRESIDENT (in Cantonese): The meeting now starts.

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>
Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) Order 2006	27/2006
Village Representative Election Ordinance (Amendment of Schedules) Order 2006	28/2006
Import and Export Ordinance (Specification of Ending Date under Section 42) Notice 2006	29/2006
Import and Export (Registration) Regulations (Specification of Ending Date under Regulation 15) Notice 2006	30/2006
Import and Export (General) Regulations (Specification of Ending Date under Regulation 6DAH) Notice 2006	31/2006
Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Specification of Ending Date under Regulation 26) Notice 2006	32/2006

Other Papers

No. 71 — Consumer Council
Annual Report 2004-2005

No. 72 — The Hong Kong Academy for Performing Arts Annual
Report 2004-2005 and the Financial Statements and
Auditor's Report for the year ended 30 June 2005

No. 73 — Summary and Revenue Analysis by Head,
General Revenue Account,
Estimates for the year ending 31 March 2007

Report of the Bills Committee on Protection of Endangered Species of
Animals and Plants Bill

Report of the Bills Committee on Revenue (Profits Tax Exemption for
Offshore Funds) Bill 2005

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Announcement of Incorrect or Misleading Information by Listed Companies

1. **MR ALBERT HO** (in Cantonese): *It has been reported that in November last year, Pacific Century Insurance Holdings Limited (PCIHL), a listed company, announced profits of about \$105 million for the first three quarters as at end of September last year. Following the suspension of trading of its shares in January this year, the company announced that, as it had not applied the new accounting standards, it had made an error in reporting its profits, and the actual profits should be \$8.01 million, representing a drastic reduction of 92% as compared to the amount previously announced. In this connection, will the Government inform this Council:*

(a) *of the total number of cases in the past three years involving announcements of incorrect or misleading price sensitive*

information by companies listed in Hong Kong with subsequent amendments made; the investigations carried out by the authorities in respect of these cases and the number of cases in which the listed companies concerned were penalized or prosecuted by monitoring bodies;

- (b) whether it has assessed the impact of the above cases on the reputation of Hong Kong as an international financial centre as well as the interests of investors; if it has, of the assessment results; and*
- (c) how it will prevent the recurrence of similar cases and whether it will consider amending the relevant legislation, with a view to strengthening controls (such as imposing heavier penalties, introducing a fine system and allowing investors to claim compensation) and providing for "the investors' right of derivative action", so as to allow minority shareholders to take legal actions on behalf of listed companies against the management and defaulters concerned?*

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

- (a) Under the existing regulatory regime, the Securities and Futures Commission (SFC) is the regulator of the securities market and is responsible for the regulation of the market and enforcement of relevant statutory requirements. The Stock Exchange of Hong Kong (SEHK) is the front-line regulator of the market. All companies listed on the SEHK must comply with its Listing Rules. The Listing Rules stipulate the requirements for initial public offerings and continuing obligations of listed companies including ongoing disclosure of price-sensitive information. When there is a breach of the Listing Rules of the SEHK such as disclosure of false or misleading price-sensitive information, the SEHK may request the concerned listed company to clarify. The SEHK may also impose non-statutory sanctions such as public censure and a public statement which involves criticism, and so on.

Separately, under the Securities and Futures (Stock Market Listing) Rules which came into effect in April 2003, listed companies are required to file with the SFC a copy of any announcement, circular or other document issued under the Listing Rules. Under sections 182 and 384 of the Securities and Futures Ordinance (SFO), if a person knowingly or recklessly provides false or misleading information in the statutory filing with the SFC, the SFC may exercise its statutory power to conduct investigation and gather evidence. A person who breaches these sections shall be liable to criminal fines and imprisonment.

According to the information provided by the SEHK, during 2003 and 2005, there were about 1 000 listed companies. The SEHK has conducted investigation into 38 suspected cases involving disclosure of false or misleading price-sensitive information by listed companies. Listed companies involved in all these 38 cases subsequently made clarifications. Persons concerned in four of these cases were sanctioned by the SEHK.

According to the information provided by the SFC, since 1 April 2003, the SFC has conducted investigations into 22 suspected cases of disclosure by listed companies in breach of section 384 of the SFO, and has instituted prosecution in three cases. The parties involved in two of these cases have been convicted.

- (b) We certainly do not want to see cases like this taking place in Hong Kong. However, this is only an isolated case. In fact, the position of Hong Kong being an international financial centre has been built on solid foundation. Both overseas and local investors have full confidence in our market, which is evidenced from the active turnover of Hong Kong stock market. Last year, the market turnover, amount of initial public offering equity funds raised and the market capitalization all reached record high. The total market turnover amounted to \$4,520.4 billion in 2005. The market capitalization exceeded \$9,000 billion in February this year. Even overseas investors cast a vote of confidence in Hong Kong's market: overseas investors have constantly contribute to 35% to 40% of Hong Kong's stock market turnover. It can be seen from the above that Hong Kong's position as an international financial centre is

secure as ever. However, we will not be complacent, and will continue with various improvement measures to ensure that our regulatory regime is conducive to the development of a quality market which is fair, open and transparent.

- (c) In fact, the existing system has already provided investors with a lot of protection. In respect of investors' claims for compensation, under section 281 of the SFO, a person who has sustained any pecuniary loss as a result of a relevant act in relation to market misconduct committed by another person can claim compensation from the person concerned by exercising the right of civil action. Such market misconduct includes disclosure of false or misleading information to induce the purchase or sale of securities by another person.

As regards derivative action instituted by investors, the relevant provisions in the Companies (Amendment) Ordinance 2004, which came into effect on 15 July last year, have significantly enhanced shareholders' remedies, including allowing minority shareholders to bring statutory derivative actions on behalf of the company against wrongdoers in relation to the company. The Ordinance also empowers the Court to award damages to company members whose interests have been unfairly prejudiced.

As regards sanctions, under sections 277 and 298 of the SFO, market misconduct takes place when a person discloses, circulates or disseminates information that is likely to induce the purchase or sale of securities by another person if he knows that, or is reckless or negligent as to whether, some information is false or misleading. The person concerned shall be subject to civil sanctions by the Market Misconduct Tribunal or criminal prosecution. The civil sanctions that may be imposed by the Market Misconduct Tribunal include disgorgement order and disqualification order, and so on. If the person is prosecuted and convicted, he may be liable to a fine of \$10 million and to imprisonment for 10 years.

To further strengthen the position of Hong Kong as an international financial centre and protect investors' interests, we will continue to work closely with the regulators in improving the regulatory regime.

One of the key initiatives is to give statutory backing to major listing requirements so that the SFC can impose civil sanctions on listed companies as well as their directors and officers for breaches of the statutory listing rules. Or such breaches may be brought to the Market Misconduct Tribunal for civil proceedings or be subject to criminal prosecution.

To further enhance the quality of financial reporting by listed companies so as to safeguard the interests of investors, the Government introduced the Financial Reporting Council Bill into the Legislative Council last June to set up the Financial Reporting Council (FRC). The FRC will be responsible for investigating the professional misconduct committed by auditors of listed companies and collective investment schemes, and enquiring into the financial reports of such companies and schemes to see if they comply with the relevant legal, accounting or regulatory requirements. The Administration will continue to give full support to the Bills Committee of the Legislative Council in scrutinizing the Bill so that the FRC can be established as soon as possible. We expect that after the establishment of the FRC, independence of investigation can be strengthened. As this independent investigatory body will be vested with more effective statutory investigative powers, the effectiveness of investigation and hence the quality of financial reporting by listed companies can be enhanced.

MR ALBERT HO (in Cantonese): *From the information provided by the Secretary, it can be seen that during the period between 2003 and 2005, a total of 60 listed companies were investigated by the SEHK and the SFC in respect of irregularities related to disclosure, and subsequently seven listed companies were sanctioned or prosecuted. Madam President, the most important concern is that these investigations which involve suspected disclosure of false or misleading information by companies are kept confidential in the course of investigation and no public comments are made. The PCIHL incident mentioned today is a case in point. The Government will make no disclosure nor give any comment. If it is concluded later that no follow-up action is required, the Government will give no account of the investigation. Even if the company concerned is sanctioned, I cannot find in the main reply today any*

information indicating that investors will be provided with compensation of any kind. Therefore, under a system with such a high degree of confidentiality but a lack of accountability and transparency, more often than not, we will think that this kind of incident involving large companies will be left unsettled.....

PRESIDENT (in Cantonese): Please state your question direct.

MR ALBERT HO (in Cantonese): *My supplementary question is: How can the Secretary tell us that outsiders will have confidence in this kind of system adopted by an international finance centre like Hong Kong?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): As to whether a finance centre can win the vote of confidence from investors, the total market turnover and capitalization of the market can largely speak for itself. Therefore, regarding Mr Albert HO's query on investor confidence in this market, I do not agree, for we can see from the figures that investors do have great confidence in our market. However, Mr Albert HO also raised the issue of confidentiality earlier. What information can actually be disclosed? Members will understand that if some misleading information is disclosed by a company, the regulator does have the responsibility to follow up, and Members may notice that both the SEHK and the SFC will follow up such cases. As for the disclosure of information, I believe they do have their considerations in various aspects for reasons like confidentiality. If Mr Albert HO has any opinions, we are more than prepared to convey his opinions to the two regulators.

Mr Albert HO has also mentioned the protection for investors. I have already explained clearly in the main reply that investors could claim compensation from the wrongdoers of the listed company through derivative action. Therefore, we have already set out in the main reply that sound systems have already been put in place to provide protection to investors.

MR JAMES TO (in Cantonese): *President, with regard to the PCIHL's incorrect or wrong reporting of its profit, the President of the Hong Kong*

Institute of Certified Public Accountants expressed that he could hardly understand how a professional could have made such a serious mistake. Does the Government consider the wrong reporting of profit by a listed company a serious incident? The Secretary said earlier that the SFC would follow up the case. What does he mean? Under the Ordinance, when a person discloses information which he knows is false or misleading, or is reckless or negligent as to whether the information is false or misleading, it is a kind of market misconduct. How can the Government ensure that the SEHK and the SFC will really follow up such cases? Will the Government inform the public of the results, thereby boosting the confidence of the public in the entire market and system?

PRESIDENT (in Cantonese): Mr James TO, your supplementary question has no relation with the hunger strike, so please take off the label with the "on hunger strike" wordings on your clothes. Secretary for Financial Services and the Treasury.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Mr James TO asked whether it was a serious problem; but I do not wish to comment on individual cases. All along, the Government has attached paramount importance to corporate governance. The reason is simple. As an international finance centre, we must instill confidence in investors to attract them to invest in Hong Kong, so that our market will continue to thrive. Therefore, in terms of policy, it is undeniable that the Government has made an enormous effort. Since the drawing up of the corporate governance rule in January 2003, I have been working hard on corporate governance, and much have been done by the Government together with the SEHK, the SFC and market participants in this respect. I hope all companies will do their best in corporate governance to win the confidence of investors in their companies, and investors will thereby place confidence in the entire market. These are the established policies and objectives of the Government.

Regarding Mr James TO's question on whether the regulators have followed up such cases, Members do know that Hong Kong adopts a three-tier system. On the finance front, the Government is responsible for the formulation of policies, while the statutory regulator, the SFC, and the front-line

regulator, the SEHK, are responsible for regulation enforcement. If Members have any views in this respect, I believe the two regulators will be more than willing to listen to Members' views and examine ways for making improvement. We are also ready to convey Members' views to the SFC and the SEHK.

MR JAMES TO (in Cantonese): *President, it was mentioned in the first part of the supplementary question that a listed company had overstated its profit by more than 10 times, but the Government even failed to state whether the incident was a serious one. I did not ask whether the company concerned had violated the law, for the incident is still under investigation now. However, on the whole, the Government has not, out of the concern of maintaining Hong Kong's image as a financial centre and being responsible, adopted an attitude that shows it attaches importance to the incident and considers the incident a serious one that warrants follow-up action on its part. Should this not be attributable to the Secretary's status of being a former employee of the company concerned?*

PRESIDENT (in Cantonese): Mr James TO, you need only state which part of the supplementary question raised by you just now has not been answered, that is, the part which asks whether the incident is serious. Secretary, do you have anything to add?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first, I have to clarify that I am not an employee of the PCIHL. Regarding this point, I believe Mr James TO has made a mistake. Second,

MR JAMES TO (in Cantonese): *He is a former employee of an affiliated company.*

(The President indicated Mr James TO to be seated)

PRESIDENT (in Cantonese): Secretary, please continue with your reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Second, I have said earlier that the Hong Kong Government attaches paramount importance to corporate governance. Had we not taken corporate governance seriously, we would not have proposed ideas like the establishment of the FRC. This proposal is still under the scrutiny of the relevant Bills Committee, and it is our practice of not commenting on individual cases. However, Mr James TO may draw his own conclusion from the relevant policies. If he cannot come to such a conclusion, I should be astonished.

MR JAMES TO (in Cantonese): *He has not answered the part on whether the incident was a serious one. It is not about whether or not I have to draw a conclusion now.....*

PRESIDENT (in Cantonese): I get your point; you think the Secretary has not yet answered your follow-up question.

MR JAMES TO (in Cantonese): *Yes. Does the Government consider the nature of this incident serious? I did not ask the Government to state whether the company concerned had contravened the law.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, may I take this follow-up question?

PRESIDENT (in Cantonese): Secretary, you may answer it.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I have made it very clear earlier that this is a matter of regulation. Mr James TO, in his follow-up question raised earlier, insisted that the Government must state whether or not the incident is serious. Actually, we do not have any relevant information on hand. Besides, we are not the authority responsible for regulation which is indeed the responsibility of the SFC and the SEHK. I think Mr James TO has to be more attentive when he listens to our reply in future.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question now.

DR YEUNG SUM (in Cantonese): *Madam President, in the Secretary's reply to part (c) of Mr Albert HO's question, it quoted sections 277 and 298 of the SFO, stating that when a person discloses, circulates or disseminates information that he knows is false or misleading, or is reckless or negligent as to whether the information is false or misleading, and has thus caused the persons concerned to sustain loss on securities investment, he or she shall be subject to sanctions or prosecutions. However, the Secretary stopped short of mentioning the negligence issue. Does it then mean that negligence is not subject to sanctions or prosecutions? If that is the case, does the Secretary consider it a loophole in the Ordinance and that an amendment should be made to close it?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I believe this Ordinance aims to deal with misleading and deliberate acts, and negligence is not included. However, for all incidents resulted from negligence, the company concerned must be held accountable to the shareholders. If a mistake made by a company is resulted from negligence but not a deliberate act, the company concerned has to present evidence to prove that the mistake is not deliberate and is likely caused by the imperfections in internal work, but its shareholders may challenge it. If shareholders lose their confidence in the management of the company, they will sell off their shares at the market or censure the company. If negligence is involved, I believe the company concerned would be queried by its shareholders, but this is not a violation of the SFO. Members should draw a distinction between the two.

DR YEUNG SUM (in Cantonese): *The Secretary has acknowledged just now that negligence is not covered by the Ordinance. But part of the supplementary question raised by me earlier asked if negligence was not subject to any sanctions and punishment, would the Government consider it necessary to amend the law? Madam President, the Secretary has not answered this part.*

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I have to add that if such case does occur, the company concerned must prove to the regulator that the incident is caused by negligence. That is to say, the company concerned has to make considerable effort to prove it, and it is not up to the company to say whether negligence is involved. The regulators will examine the overall procedures. If negligence on the part of the company is really involved, the company has to do something to prove it. However, if the enactment of legislation is required whenever something wrong is done by a company, I think at this point of time this will give rise to a lot of problems. I have to thank Dr YEUNG Sum for his opinion, and I will propose this to the regulators and see whether they have any further comments or whether follow-up action is required. If so, I will report to Members in due course.

PRESIDENT (in Cantonese): Second question.

Central Slaughtering

2. **MR WONG YUNG-KAN** (in Cantonese): *President, it has been reported that, in recent months, the Government is expediting the study on implementing central slaughtering of poultry in Hong Kong. Regarding central slaughtering of poultry and its impact on the poultry farming, wholesaling and retailing trades, will the Government inform this Council:*

- (a) *whether it has abolished the plan to set up a regional poultry abattoir in the Western Wholesale Food Market; if so, of the reasons for that; if not, why it has proceeded to study the implementation of central slaughtering before the outcome of the regional poultry abattoir pilot scheme is available;*
- (b) *whether it has set a timetable for the total ban on the trades engaged in the sale of live poultry; if it has, when the sale of live chickens will be totally banned, and whether it has set a timetable for closing down all chicken farms; and*
- (c) *given that the authorities have indicated that it will only enforce a mandatory ban on the whole live poultry industry if two or more*

cases of avian influenza have been found in poultry farms, wholesale markets or retail markets, of the reasons for expediting now the study on the proposal regarding central slaughtering of poultry, and whether or not they will, before deciding whether to implement central slaughtering, assess its impact; if not, the reasons for that?

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

- (a) To minimize the risk of human infection of avian influenza, we have been actively considering the development of a poultry slaughtering plant to put together poultry slaughtering activities. This aims to achieve complete segregation of humans from live poultry. As the Western Wholesale Food Market was once the slaughtering venue for live ducks and geese and some basic infrastructure is readily available, we inclined to set up the poultry slaughtering plant there originally so as to shorten the construction period. Subsequently, we have deliberated on site selection and considered that if the plant is to be located in the urban area, the surrounding environment would inevitably be affected. Moreover, the long transportation route of live poultry will not only cause possible nuisance to the urban area but also increase the risk of avian influenza. As a result, we believe it would be more appropriate to identify a site in the New Territories, which is relatively separated from residential areas and in proximity to poultry farms, to develop the plant.
- (b) Our long-term policy goal has hitherto been complete segregation of humans from live poultry. In view of the emergence of avian influenza cases in different parts of the world recently and that the risk of human infection of avian influenza is on the rise, in particular in densely-populated cities, we are urged to develop a poultry slaughtering plant. Nevertheless, some people still want to enjoy freshly slaughtered chickens. Hence, we need to take into consideration views from various parties in drawing up an implementation timetable. We consider it desirable to ban the retail sale of live poultry upon the operation of the plant. As regards rearing of live poultry, we have no timetable to close down chicken farms. Chicken farmers may continue to rear chickens.

Nevertheless, their chickens will have to be slaughtered at the plant prior to sale at retail outlets.

- (c) Our ultimate policy objective is to achieve complete segregation of humans from live poultry. Before realization of this objective, if there is evidence indicating that the existing control measures to prevent avian influenza have become ineffective, for example, having two or more cases of avian influenza at poultry farms, wholesale markets or retail markets within a short period of time, we need to take decisive action to cull all live poultry in Hong Kong immediately in an attempt to minimize the risk of spreading avian influenza.

Fundamentally, it is imperative to consider the long-term policy to prevent human infection of avian influenza ahead of any outbreak. One of the options is to develop a poultry slaughtering plant. Development of the plant does not mean banning the entire live poultry industry. Chicken farmers may choose to continue their operations. The development of the plant will naturally have impact on the live poultry retailers, but they may choose to sell chilled chickens. In the process of considering the development of the plant, we have already assessed the impact on the trade. Yet, we are of the view that the public health benefits of developing the plant override the impact on the trade.

MR WONG YUNG-KAN (in Cantonese): *President, changes in government policies are frequent, and have become even more rapid after the incident of a smuggled chicken which was found to have problems. The Secretary said in part (c) of the main reply that he had assessed the impact of the proposal on the trade and the community. Can the Secretary give us a detailed account of the impact of the proposal?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, current statistics show that the construction of a poultry slaughtering plant may affect the employment opportunities of 3 400-odd people, especially those engaged in the wholesale and retail markets. We will examine in detail how big the problem is in this regard, and offer a detailed explanation.

We are also prepared to report to the Legislative Council on the details of our plan and some of the decisions to be made at the meeting of the Panel on Food Safety and Environmental Hygiene to be held in March.

MR VINCENT FANG (in Cantonese): *President, I would like to follow up the part of the Secretary's main reply concerning the setting up of a poultry slaughtering plant for the implementation of central slaughtering. May I ask the Secretary whether the proposed central slaughtering will adopt a "through-train" mode of operation, or follow the existing practice of slaughtering pigs, where chickens slaughtered at the slaughtering plant will be transferred to the wholesalers and retailers for subsequent processing?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we have of course yet to formulate a plan setting out the details of future operation. However, we envisage that in future, chickens will be transported to the slaughtering plant for slaughter prior to sale at retail outlets, and I think this approach should be adopted. As regards the procedures involved and the impact on the current position of wholesalers, we will give an account after detailed analysis.

MR WONG KWOK-HING (in Cantonese): *In reply to the supplementary question raised by Mr WONG Yunk-kan earlier, the Secretary said that about 3 400 people will be affected. Will the Secretary please clarify whether those 3 400 people include workers and transportation workers, and whether the Secretary will provide them with compensation?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the 3 400 people I referred to earlier is the sum of all staff working in various wholesale venues, live poultry transporters and at the retail level. Of course, we have not yet assessed the impact on them, and this is only a preliminary figure. Just as I have said right now, a further account will be given in detail later.

MR WONG KWOK-HING (in Cantonese): *President, the Secretary has not answered whether or not compensation will be provided to them?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we will account for the compensation issue as well. Certainly, if any sector's failure to survive is considered to be attributable to a policy, I think the Government will definitely study into the matter.

DR JOSEPH LEE (in Cantonese): *In the main reply, the Secretary has emphasized the importance to achieve the objective of complete segregation of humans from live poultry, but I can also see from the main reply that, given these circumstances, poultry farmers are still allowed to continue rearing chickens and the authorities have not indicated clearly if central or regional slaughtering will be implemented. May I ask the Secretary how he can achieve complete segregation of humans from live poultry policy-wise?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I must clarify that the complete segregation of humans from live poultry does not mean they will never come into contact. I guess it is still impossible to use robots in the rearing of chickens for the time being, not at this moment. Nevertheless, in respect of contact between humans and chickens in some modernized farms, especially contact between farmers and chickens, established procedures and bio-security systems have been put in place, where people are required to put on specified clothing and take full precautions before entering the chicken farms. Unless no one on earth eats chicken, otherwise workers would still be required to rear chickens on the chicken farms and have contact with chickens. However, full precautions must be taken before coming into contact with chickens. Contact between chickens, especially before they are slaughtered, and other members of the public should be avoided as far as possible. In this regard, I believe the measure of complete segregation of humans from live poultry must be implemented.

We opine that, at present, it is important to provide vaccination for all chickens available in the Hong Kong market, be they local or mainland live chickens exported to Hong Kong, so as to prevent the outbreak of infectious disease among chicken and humans. The existing measures are therefore still in force. However, as we all know, there are outbreaks of H5N1 avian influenza in different parts of the world which may cause genetic change in the virus. Will the genetic change in virus render the vaccine currently in use ineffective

after a certain period of time? It is difficult to tell. And yet, it can be envisaged that problems will certainly arise after some time. Therefore, more time is needed to prepare for the implementation of the relevant measures, and I think a timetable should be expeditiously drawn up.

PRESIDENT (in Cantonese): Dr Joseph LEE, has your supplementary question not been answered?

DR JOSEPH LEE (in Cantonese): *Yes, President. Part of my supplementary asked whether central slaughtering will actually be implemented, or will consideration be given to proceeding with regional slaughtering before taking forward central slaughtering? The Secretary has not answered this part of the question.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we opine that if a single central slaughtering plant can cope with all the demands in Hong Kong, the local chicken farms in particular, there will be no need to construct additional slaughtering plants. However, if the local slaughtering plant is unable to cope with the large number of chickens, we certainly have to consider setting up additional slaughtering plants in different areas. But from public hygiene and health considerations, I believe the current decision to construct a single central slaughtering plant is preferred to setting up several slaughtering plants.

DR LUI MING-WAH (in Cantonese): *Of course, the Government considers the central slaughtering plant very useful in preventing avian influenza. Yet, it will give rise to the problem of upsetting the livelihood and work pattern of many people. May I ask the Secretary, given that, will the authorities consider allowing some large-scale chicken farms to slaughter the chickens on their own? The Government can impose certain requirements or exercise control through the licensing of chicken farms before giving them a free hand to handle the matter. The merit of this approach is.....*

PRESIDENT (in Cantonese): You only need to state your supplementary question. Have you put forth your supplementary question?

DR LUI MING-WAH (in Cantonese): *Yes, I have done so.*

PRESIDENT (in Cantonese): Fine. There are many Members waiting to ask questions.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I understand it, there are currently 139 registered chicken farms in Hong Kong, but none of them is large in scale. If the existence of a large-scale chicken farm can replace all other chicken farms, it certainly worths our consideration. Yet, I think it is by no means an easy task. At the same time, a suitable distance must be maintained between the slaughtering plant and the chicken farms. Co-location should be avoided because we do not want the whole industry to be affected in the event of an outbreak of diseases, be they the chicken slaughtering or rearing trades. Therefore, large-scale chicken farms, either in the Mainland or overseas countries, are built at a certain distance away from the slaughtering plants. Yet, it is impossible for Hong Kong farms to maintain the prescribed distance in view of their area.

MR TAM YIU-CHUNG (in Cantonese): *President, has the Secretary ever disclosed that the poultry slaughtering plant will be set up in New Territories North, say, the Ta Kwu Ling area? Furthermore, the Secretary seemed to have disclosed the wish to totally ban the sale of live chickens in three years. May I ask if the Secretary has such an intention?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the issue being considered is, of course, the identification of a suitable site in proximity to chicken farms in the New Territories. However, the decision on siting has yet to be made as there are other options, subject to the results of an environmental impact assessment and transport consideration. As regards the timetable, it is envisaged that the whole project will take at least three years to complete, which is already the fastest possible timetable. However, prior to the setting up of the slaughtering plant, decisions on legal and related matters should also be made, while seeking the Legislative Council's endorsement of the relevant legislation.

MR FRED LI (in Cantonese): *President, as stated in the Secretary's reply, the Government's long-term policy objective is complete segregation of humans from live poultry by setting up poultry slaughtering plants. However, the paper submitted by the Government to this Council a year ago — more than half a year but less than one year — which also mentioned the complete segregation of humans from live poultry, has stated clearly that regional slaughtering is an appropriate compromise and its many merits are set out in detail. Today, however, the Government suddenly introduces central slaughtering and forgets about regional slaughtering, which was originally its appropriate compromise. May I ask what factors have made the Government change its stance again in less than one year and now suggests the need to set up a poultry slaughtering plant so hastily? I wish to ask the Secretary: Has he compared the pros and cons of regional slaughtering versus a poultry slaughtering plant? Can he give us an explanation on this?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, last year, we already said that the complete segregation of humans from live poultry must be implemented. Yet, we also see that the current consumption of live chickens by Hong Kong people has been dropping. In the past, the highest daily consumption recorded was about 60 000 to 70 000 chickens, but it has dropped to about 50 000 chickens now. Therefore, the number of slaughtering plants to be built must be determined by demand. Furthermore, local, mainland or international views in these days all suggest that the more the poultry is being transported, the higher the risk of avian influenza virus spreading along the transportation route. Therefore, it is hoped that the transportation route of poultry should avoid passing through too many areas, while necessary processes will be conducted at one stop as far as possible. If a single slaughtering plant is sufficient to cope with the demand, there will be no need to build another one.

Last year, we said that if regional slaughtering were implemented, fresh chicken meat would be available for sale in the market, and I think this is the primary objective of adopting regional slaughtering. However, in view of the greater risk involved under the current situation, consideration must be given to balancing the needs of these two aspects.

MR ANDREW CHENG (in Cantonese): *President, I would like to follow up the supplementary question put by Mr Fred LI earlier. The Secretary said in part (a)*

of the main reply that the Government has been actively considering the development of a poultry slaughtering plant. The Western Wholesale Food Market option has in fact been discussed for a couple of years, and the Government has also told the Legislative Council that it is almost a must. However, it now has come to the decision that an alternative site must be identified for a very simple reason — transport issue. In fact, we also raised the transport issue at that time. Therefore, I wish to ask the Secretary: What is the Government's version of "actively"? If central slaughtering is to be implemented, has the Government identified a suitable site in New Territories North? If not, according to the Government's version of "actively", how much longer do we have to wait before central slaughtering is expeditiously taken forward, thereby achieving the goal of complete segregation of humans from live poultry?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we have identified some possible locations for the construction of poultry slaughtering plants, but further analysis on such issues as the sites' environmental conditions, transport services and surrounding environment is required. Just as I said, a report will be submitted to the Panel on Food Safety and Environmental Hygiene in March to give an account of our views.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

MRS SELINA CHOW (in Cantonese): *The Secretary has explained a number of issues right now, but he has not answered one point that has been discussed and a consensus on which reached in principle in this Council last year — the consensus reached with the trade suggests that regional slaughtering can balance the demands, aspirations and interests of all parties. However, one year later, there are major policy changes again in this year. Actually, planning-related matters could be handled first since last year. May I ask the Secretary whether he has balanced the aspirations and interests of the trades as well when a major policy change is contemplated, and whether he has considered that such a change may probably force the small and medium enterprises in the trade into a dead end, and increase the possibility of monopolization by large consortia instead?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we have all along discussed this issue with the trade. Certainly, the risk level of avian influenza outbreaks is, on the whole, changing, and therefore we must make the right decision at the right time. According to the existing timetable, there is definitely sufficient time for us to discuss with the trade the impact of the implementation of central slaughtering on them, as well as the relevant arrangements to be made.

PRESIDENT (in Cantonese): Mrs CHOW, has your supplementary question not been answered?

MRS SELINA CHOW (in Cantonese): *Yes, the Secretary has not answered the part of my supplementary question concerning monopolization.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, since we have no idea who will be interested in operating such a plant at the moment, it is impossible to ascertain whether or not the operation will be monopolized. Of course, in the event that more and more people consider engaging in such work, the tender mechanism in place can ensure that the trade will be well monitored.

MRS SELINA CHOW (in Cantonese): *President, it seems that the Secretary has not focused on my supplementary question in giving his reply. What I mean is that, the small and medium enterprises can continue with their business under his original policy of regional slaughtering, but now that the policy has been changed, hence monopolization may probably arise. The Secretary has not answered this part of my question.*

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): No.

PRESIDENT (in Cantonese): Third question.

Monitoring of Executive Authorities by Legislature

3. **MR MARTIN LEE** (in Cantonese): *Madam President, when attending a radio programme last month, the Chief Executive said that while it was provided in the Basic Law that the legislature had the function of monitoring the executive authorities, he "hoped that its monitoring would not overstep the line and become a case of acting primarily out of political rather than practical considerations". In reply to a question last month on the Chief Executive's above remarks, the Administration did not provide any specific example to show that this Council, in monitoring the Government's operation, had acted ultra vires and primarily out of political considerations. In this connection, will the Government inform this Council of:*

- (a) the specific meaning of the expression "overstep the line" used by the Chief Executive; and*
- (b) the specific examples which show that the Legislative Council, in monitoring the Government's operation, has "overstepped the line" and gone beyond the functions conferred on it by the Basic Law?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, as mentioned in our reply to a written question raised by the Honourable LEUNG Yiu-chung on 15 February, the executive and legislative authorities have different responsibilities and powers. The two sides shall exercise their powers and perform their functions in accordance with the Basic Law. They should both complement, and keep a check and balance on, each other's functions.

Under the Basic Law, the political structure of the Hong Kong Special Administrative Region (SAR) is an executive-led system headed by the Chief Executive. For example, in accordance with Articles 43 and 60 of the Basic Law, the Chief Executive is the head of the Hong Kong SAR, and the head of the Hong Kong SAR Government. Article 48 of the Basic Law stipulates that the Chief Executive is responsible for implementing the Basic Law, nominating and reporting Principal Officials to the Central People's Government for appointment, and conducting external affairs as authorized by the Central Authorities on behalf of the Hong Kong SAR Government, amongst other things. Article 62 of the Basic Law provides that the Hong Kong SAR Government is responsible for drawing up budgets, and drafting bills, motions and subsidiary legislation.

Article 73 of the Basic Law stipulates 10 powers and functions of the Legislative Council, including the enactment and amendment of laws. Furthermore, Article 64 of the Basic Law provides that the Hong Kong SAR Government must abide by the law and be accountable to the Legislative Council: it shall implement laws passed by the Legislative Council and already in force; it shall present regular policy addresses to the Legislative Council; it shall answer questions raised by Members of the Legislative Council; and it shall obtain approval from the Legislative Council for taxation and public expenditure.

We note that in the past, individual Members of the Legislative Council have criticized the Hong Kong SAR Government for not going through the Legislative Council in respect of the disposal of land resources. There is no basis for this allegation. Article 7 of the Basic Law stipulates that the Hong Kong SAR Government is responsible for the management, use and development of land within the Hong Kong SAR. In discharging their duties, the Chief Executive and the Hong Kong SAR Government led by him will act in full compliance with the powers and responsibilities conferred upon them by the Basic Law and the laws of Hong Kong.

When the Chief Executive attended a radio programme earlier on, he sought to deliver a key message about the relationship between the executive and legislative authorities. He expressed the hope that the executive and legislative authorities would perform their functions in accordance with the provisions of the Basic Law, and that the two sides would co-operate and deal with issues of public concern in a practical manner.

MR MARTIN LEE (in Cantonese): *Madam President, all of us can see that the Secretary has not answered both parts of the main question. First of all, I asked the Secretary the meaning of the expression "overstep the line". He has not answered it. Then, I asked the Secretary to provide specific examples which could show that we had overstepped the line. He has not answered it either. May I ask the Secretary, when preparing the reply to this question as he did on the last occasion, whether he has discussed and asked the Chief Executive why he made such a remark before his baloney in the Legislative Council? Is the Secretary at his wits' end or unable to answer this question? If so, will the Secretary go back to seek the Chief Executive's advice, tell him to withdraw his irresponsible remarks and tender apologies to this Council?*

PRESIDENT (in Cantonese): Mr Martin LEE, you have asked two supplementary questions. The first asked the Secretary whether he had.....

(Mr Martin LEE remained standing)

PRESIDENT (in Cantonese): You may sit down. The first supplementary question asked the Secretary whether he had discussed with the Chief Executive before answering this oral question. The second supplementary question asked the Secretary whether the Chief Executive should be requested to withdraw his remark. In that case, which supplementary question do you wish the Secretary to answer?

MR MARTIN LEE (in Cantonese): *Madam President, the Secretary has not answered either part of my main question. It is quite fair to ask him these two questions again, isn't it?*

PRESIDENT (in Cantonese): This is not a question of fairness. Rather, you should choose which question you wish the Secretary to answer. If I have invited the Secretary to answer a supplementary question, he must answer it. As to whether he will answer the remaining one, it is up to him to decide.

MR MARTIN LEE (in Cantonese): *I hope he can answer the second supplementary question. But in answering it, he can deal with the first one at the same time. (Laughter)*

PRESIDENT (in Cantonese): Secretary for Constitutional Affairs.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Mr Martin LEE should know that I represent the position of the SAR Government when answering this question on its behalf. In fact, our position is very clear. We hope the executive and the legislative authorities can complement, and keep a check and balance on, each other's functions. Let me reiterate that this is the most important position of Hong Kong society in dealing with public affairs.

MR MARTIN LEE (in Cantonese): *Madam President, the Secretary is reluctant to answer the question again. I can do nothing. He is really ridiculous.*

MR CHEUNG MAN-KWONG (in Cantonese): *President, what I can do is to put questions to the Secretary again. In the main answer, the Government said that the expression "overstepping the line" is an encouragement. But an encouragement should be based on facts instead of an empty wish. Does the Government consider that the Legislative Council, in monitoring the disposal of the land in West Kowloon, has overstepped the line and acted out of political considerations? Recently, the Government has withdrawn the West Kowloon project. Does it show that the Legislative Council is reasonable in monitoring the land use in West Kowloon and the Chief Executive should withdraw his remark of "overstepping the line" because it does not tally with the fact?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): *Madam President, the Chief Executive needs not withdraw his remark because it is only a reiteration of the important principle in the Basic Law that the two organs should complement, and keep a check and balance on, each other's functions. In dealing with the West Kowloon project, the SAR Government has acted in accordance with the principle under Article 7 of the Basic Law which confers powers on the SAR Government to manage and develop the land resources in the territory. The Legislative Council, on the other hand, can scrutinize our budget and financial proposals in accordance with the Basic Law. This is precisely an example that we should discharge our own duties, complement, and keep a check and balance on, each other. In the main reply, we have highlighted this principle in order to illustrate the principles of the Basic Law. However, we have also noted that, regarding the West Kowloon issue, the SAR Government has recently explained to the public and the Legislative Council our latest decision. Mr Alan LEONG and other Members all consider that we have accepted good advice readily. This has precisely illustrated the merit of complementing and keeping a check and balance on each other.*

MR CHIM PUI-CHUNG (in Cantonese): *President, in the main reply, the Secretary mentioned that it was hoped that the executive and legislative authorities could complement each other's functions. However, are the Government's attitude and the Chief Executive's remark destructive or constructive?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I think we are all public figures and key persons responsible for the handling of the public affairs in Hong Kong. Our message to the public is one of mutual encouragement in order to do a better job. There is always some tension between the executive and legislative authorities which, however, will be useful to the handling of public affairs if it is applied appropriately.

MR RONNY TONG (in Cantonese): *President, maybe I could put a question in another way. I believe the Secretary will agree that under Article 7 of the Basic Law, the SAR Government cannot grant land to property developers for free. If the property developers make returns through certain means, does the Secretary agree that the use of such returns for the construction of public facilities is a kind of public expenditure?*

PRESIDENT (in Cantonese): Mr Ronny TONG, I think you should ask this supplementary question in another approach because I cannot see how the supplementary question you just asked is related to the main question.

MR RONNY TONG (in Cantonese): *President, it is totally the same because the Secretary has quoted Article 7 of the Basic Law. Since he has pointed out that Article 7 and Article 73 of the Basic Law are not related, so, regarding the West Kowloon project, the SAR Government, under Article 7 of the Basic Law, is allowed to grant land to property developers without the Legislative Council's approval in exchange for the property developers' undertaking to build public facilities. My supplementary question is: Obviously the Secretary will not say that the SAR Government can grant land to property developers for free, but since the property developers' undertaking in exchange for the land is to build public facilities, does the Secretary not agree that it is a public expenditure item?*

PRESIDENT (in Cantonese): Yes, your question is allowed.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, Mr Ronny TONG is indeed an outstanding barrister because he made

an assumption before asking a supplementary question. Of course, the SAR Government will not grant land to property developers for free. For any land grant, we will act in accordance with the principle of contracts. But since Mr Ronny TONG has asked this question, I should reiterate some important provisions under the Basic Law.

Under Article 73 of the Basic Law, the SAR Government should submit proposals on taxation and public expenditure to the Legislative Council for approval, which will in turn scrutinize the financial budget submitted by us. At the same time, however, Article 7 of the Basic Law also stipulates that the SAR Government, under the leadership of the Chief Executive, should be responsible for the management, use and development of land in the territory. These two Articles have respectively conferred different functions on the Legislative Council and the Hong Kong SAR Government. Under Article 64 of the Basic Law, we shall answer questions raised by Members of the Legislative Council, including questions concerning the West Kowloon project. We have acted in full compliance with the Basic Law in various respects.

MR RONNY TONG (in Cantonese): *President, we have not overstepped the line if we have acted in accordance with the Basic Law. In that case, why did the Chief Executive make such a remark?*

PRESIDENT (in Cantonese): It seems that this follow-up question is not part of your previous supplementary question.

MR RONNY TONG (in Cantonese): *Then, can I follow up the Secretary's reply?*

PRESIDENT (in Cantonese): A follow-up question is not supposed to be asked in such a way. You should press the button and wait for another turn.

MR RONNY TONG (in Cantonese): *I only asked a question on the basis of his reply just now.*

PRESIDENT (in Cantonese): No, it should not be asked in such a way. You have to see which part of your previous supplementary question has not been answered and then repeat that part of the question.

MR RONNY TONG (in Cantonese): *I see your point, President. Can I ask a follow-up question? May I ask the Secretary whether his statement just now means that the Government can bypass Article 73 of the Basic Law if it intentionally grants land for free?*

PRESIDENT (in Cantonese): This is not a follow-up question either.....

MR RONNY TONG (in Cantonese): *But he has just said so in his earlier reply.*

PRESIDENT (in Cantonese): I think you need to gain a better understanding of the Rules of Procedure. Now I will call the next Member to ask a question.

MS EMILY LAU (in Cantonese): *President, may I ask the Secretary whether the Government has discussed the matter internally after the Chief Executive has made the remark on the radio? Does it realize that the Chief Executive has made an overstatement as he did last year when he said that he was a politician? (Laughter)*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, what the Chief Executive said is the main principle or the principle of the Basic Law.

MR LEE WING-TAT (in Cantonese): *President, under Article 73(5) and (6), the functions of the Legislative Council are to raise questions on the work of the Government and to debate any issue concerning public interests respectively. In his reply to Mr Ronny TONG's supplementary question, the Secretary in fact said that the Government had eventually accepted advice readily. This is right*

and this is exactly an example of exercising our own functions. So, why is there this allegation of "overstepping the line"? So, the monitoring by the Legislative Council is reasonable and the remark of the Chief Executive that the former has overstepped the line is groundless. On this issue, does the Secretary not think that the Chief Executive, as Ms Emily LAU said, has made an overstatement unawares? As the Secretary also said that our advice would be readily accepted, meaning that our monitoring function has been exercised appropriately, how can we be described as having overstepped the line?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, let me reiterate that under Article 7 of the Basic Law, the SAR Government has the right to use and manage the land resources in the territory. This may be different from the standpoint mentioned in the Phase I Report on the development of the West Kowloon Cultural District. For instance, in the Phase I Report, Members said, "The Legislative Council's constitutional role in the scrutiny and approval of the Government's disposal of public assets and resources under the normal approval procedure was bypassed." The Subcommittee also considers that "disposal of valuable land resources which is likely to be at less than market value or any public subsidy in money or in kind should be subject to the same scrutiny as public expenditure." However, Madam President, in dealing with such public affairs, the SAR Government has adhered to two principles which are entirely based on the Basic Law. First, in respect of distribution and granting of land, we act in accordance with Article 7 of the Basic Law and other legislation and policies of the SAR. If there are any matters relating to public expenditure and the budget, we will submit proposals to the Legislative Council for Members' approval in accordance with the Basic Law. So, regarding these two principles, our position has been very clear. I also hope that Mr LEE Wing-tat and other Members can accept and respect the functions of the SAR Government under the Basic Law.

MR LEE WING-TAT (in Cantonese): *President, he has not answered my supplementary question despite his detailed explanation.....*

PRESIDENT (in Cantonese): Then, which part of your question has not been answered?

MR LEE WING-TAT (in Cantonese): *Well, which part of my supplementary question has not been answered by the Secretary? The Government has its own position as just mentioned by the Secretary, we also have our own report, in which we have only expressed our views on our functions stipulated in Article 73(5) and (6) of the Basic Law. How can it be regarded as "overstepping the line"? How can the exercise of such functions be described as "overstepping the line"? The Secretary is reluctant to answer this part of the question.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, regarding the functions under Article 73(5) and (6), that is, to raise questions on the Government and to debate any issue concerning public interests, I believe the Principle Officials of the SAR Government have already given full replies regarding the West Kowloon project in this Council.

MR LEUNG YIU-CHUNG (in Cantonese): *President, as the Secretary just said, replies to my questions were given by him on 15 February, in which only the scope of the functions were mentioned and there were no formal, direct and explicit replies to the real problems raised in my written question. Today, in his reply to Mr Martin LEE's question, the Secretary did not answer part (b) of the main question in a specific manner, nor did he cite any example to illustrate how the Legislative Council had "overstepped the line". The only one which can hardly be regarded as an example is the issue of land. May I ask the Secretary whether the issue of land is an example? If it is, can the Secretary tell us specifically how Members have overstepped the line in the case concerned? If this is not an example, can he tell us whether there are other examples? If there is no other example, does it not prove that the Chief Executive's allegation was groundless? If he did have made some groundless allegation, how can we co-operate and complement each other?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, on issues of concern to both the executive and the legislature, particularly the West Kowloon issue, our views have already been further

exchanged in these ten minutes or so today after our month-long discussion. Regarding the West Kowloon issue, our positions have been very clear. I would like to reiterate that we will deal with the issue in accordance with the Basic Law and our land management has been totally appropriate. I also hope that Members will understand and respect the provisions of the Basic Law.

The spirit of the Chief Executive's speech on the radio programme interview is to remind us that both the executive and the legislature should complement each other and work for the best interest of the people.

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

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Secretary has not answered whether the example is the real one. If that is an example, how can it be regarded as an act of overstepping the line? He has not answered this point. If that is not an example, is there any other example? Neither has he mentioned whether there is another example. If there is no other example, I asked him whether our co-operation has been ruined. He has not answered either. So, he has not answered any of my supplementary questions.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, as I have already mentioned such an important incident, is it still necessary to cite another example? On the other hand, the superficial tension between the executive and the legislative authorities can enhance our zeal in handling problems. Sometimes, it is useful.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

MR ALAN LEONG (in Cantonese): *President, I can ask a short question for a short reply.*

I would like to ask the Secretary a question. According to the thinking of the answer, if, for instance, the executive authorities have decided to distribute land for free tomorrow — it is for free — can the Legislative Council exercise its monitoring function without overstepping the line by pointing out that the Government should not do so?

PRESIDENT (in Cantonese): Mr Alan LEONG, it seems to be a hypothetical question. Would you try to rephrase your supplementary question so that it is related to the main question?

MR ALAN LEONG (in Cantonese): *President, I will try my best.*

President, I would like to ask my question on the basis of the Secretary's main reply. It is mentioned in the second last paragraph of the English version that Article 7 of the Basic Law — I had better refer to the Chinese version.

President, in the main reply, the Secretary said, "We note that in the past, individual members of the Legislative Council have criticized the Hong Kong SAR Government for not going through the Legislative Council in respect of the disposal of land resources. There is no basis for this allegation. Article 7 of the Basic Law stipulates that the Hong Kong SAR Government is responsible for the management, use and development of land within the Hong Kong SAR." President, I would like to ask the Secretary: If the Government has decided to distribute land for free, can the Legislative Council monitor such administrative decision of the SAR Government in accordance with Article 73 of the Basic Law?

PRESIDENT (in Cantonese): May I slightly modify the question for you?

MR ALAN LEONG (in Cantonese): Yes.

PRESIDENT (in Cantonese): You can ask the Secretary whether the management, use and development of land in the territory will also include land grant to anybody without consideration.

MR ALAN LEONG (in Cantonese): *Yes, thank you, President.*

PRESIDENT (in Cantonese): And then the question is: Does the Legislative Council have the power to monitor in this respect?

MR ALAN LEONG (in Cantonese): *Thank you, President.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the SAR Government has a set of comprehensive and long-standing policy thinking in respect of handling the land resources in the territory. For the charitable organizations or social service providers, land will be granted at a token premium of \$1 under certain circumstances. For instance, we have recently made a decision in respect of the Heung Yee Kuk and similar arrangements are made in order to provide assistance and support to religious bodies and educational organizations.

On the other hand, if public land is granted to commercial organizations, public interests will be safeguarded by means of auctions or through the application list in order to ensure that public resources are utilized appropriately. Under certain circumstances, we will, in the light of public needs, require the property developers to build certain public facilities or ask them to do so on our behalf.

Regarding Mr Alan LEONG's hypothetical question, I think the basis is not sound because we have developed a set of comprehensive land use policy over the past few decades. Having said that, when dealing with these matters, we will act in full compliance with Article 7 of the Basic Law which has empowered the SAR Government to deal with such matters. We will fully respect the Legislative Council's request for an account from the Government and Members' request for replies to their questions and queries. We will also give an account to the public through our replies to the Legislative Council Members' questions and queries. In Hong Kong, we fully respect the public's right to know and fully respect the basic principle that we, as the SAR Government, have the duty to serve the community.

PRESIDENT (in Cantonese): Fourth question.

Interception of Communications and Covert Surveillance

4. **MS EMILY LAU** (in Cantonese): *President, on the 9th of last month, the Court of First Instance of the High Court ruled that the Law Enforcement (Covert Surveillance Procedures) Order (the Executive Order), made by the Chief Executive on July 30 last year, was inconsistent with the provisions of Article 30 of the Basic Law, and that section 33 of the Telecommunications Ordinance (TO) was also inconsistent with the relevant provisions of the Basic Law and the International Covenant on Civil and Political Rights. However, the Court suspended the above judgement for six months to avoid a legal vacuum arising before new legislation was put in place. The authorities indicated that they would expedite the enactment of the new legislation on interception of communications and covert surveillance. In this connection, will the executive authorities inform this Council:*

- (a) of the respective numbers of interception of communications and covert surveillance operations carried out by each law-enforcement agency last year;*
- (b) whether they plan to consult the public in the form of a White Bill; if so, of the details; if not, the reasons for that; and*
- (c) whether they have assessed if the legality of the interception of communications and covert surveillance operations by law-enforcement agencies will again be subject to legal challenges prior to the enactment of the new legislation; if an assessment has been made, of the results?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the judgement handed down on 9 February 2006 has three main parts. In gist, the Court:

- (i) dismissed the application for a declaration that the Chief Executive had acted unlawfully in breach of his duty by failing to appoint a day for the commencement of the Interception of Communications Ordinance (IOCO);

- (ii) found that the Executive Order made by the Chief Executive in July 2005 (and gazetted on 5 August 2005) was lawfully made, but did not constitute a set of "legal procedures" for the purpose of Article 30 of the Basic Law; and
- (iii) declared that insofar as section 33 of the TO authorizes or allows access to or disclosure of the contents of any message, it is unconstitutional.

The Court recognized that any legal vacuum brought about by the declarations made would constitute a real threat to the rule of law in Hong Kong if law-enforcement agencies are unable to conduct interception of communications and covert surveillance. It therefore ordered that they be suspended for six months so as to allow time for the executive authorities and the Legislative Council to put in place corrective legislation. The Court declared that notwithstanding its judgement, section 33 of the TO and the Executive Order are valid and of legal effect for a period of six months from the date of the order.

At the same time as announcing the making of the Executive Order in August 2005, the authorities made clear its intention to put in place legislation to regulate covert surveillance (and we later announced that legislation for interception of communications would be included) as a matter of priority. Since then, recognizing the need for the legislation to be enacted as early as possible, we have been consulting various interested parties on their views concerning the key parameters of the proposals, and in parallel preparing the draft legislation at full steam.

Based on the recommendations of the 1996 Law Reform Commission (LRC) report on interception of communications, the 1997 White Bill on interception of communications, the IOCO passed in 1997, as well as views gathered earlier on the key parameters of the proposed regime, we published our legislative proposals on 1 February 2006. We have since had three meetings with the Panel on Security of the Legislative Council on our proposals, and provided explanations and clarifications regarding the issues raised by Members during the discussions. We have also continued to meet with interested parties to listen to their views on the proposals.

A major concern among many of our interlocutors is the need for the draft legislation to be introduced into the Legislative Council as soon as possible. I

am pleased to report that the Executive Council has now approved the introduction of the Interception of Communications and Surveillance Bill into the Legislative Council. The brief for the Legislative Council on the Bill will be provided to Members at a latter time today. I sincerely hope that with the co-operation of Members, the Bill may be enacted as soon as possible, such that the safety and law and order of Hong Kong may continue to be protected effectively.

The replies to the three parts of the question are as follows:

- (a) The law-enforcement agencies have undertaken a quick review of the cases of interception of communications and covert surveillance in the last three months of 2005. The number of cases is as follows:

- Interception of communications: 178
- Covert surveillance: 170

We have also undertaken to count the cases arising since 20 February 2006 for three months. The information will be provided to the Panel on Security in due course.

- (b) Our legislative proposals on interception of communications are not entirely new, but are based on the recommendations of the LRC in 1996, the 1997 White Bill on interception as well as the IOCO. We will continue to listen to views on the Bill in the coming months during the scrutiny of the Bill by the Legislative Council.
- (c) The Court declared that section 33 of the TO and the Executive Order remain valid and of legal effect for a period of six months from the date of the order and we are advised that it will continue to be lawful for our law-enforcement agencies to carry out interception of communications and covert surveillance under the respective legislation and the Executive Order during that period. Members will be aware that the declaration of temporary validity is the subject of an appeal, and we will not speculate on the outcome of the appeal; but it does emphasize the need for the early enactment of the Bill.

MS EMILY LAU (in Cantonese): *President, the Secretary said in the main reply that the Interception of Communications and Surveillance Bill had been approved by the Executive Council and would be introduced to the Legislative Council very soon. He also urged Members for co-operation to enable the early passage of the Bill such that the safety and law and order of Hong Kong might continue to be protected effectively.*

President, for years, the right to privacy of citizens has enjoyed no protection. In part (b) of the Secretary's main reply, it is stated that these legislative proposals are not entirely new and discussions in this respect commenced years ago, and examples include the recommendations made by the LRC in 1996 and the issue of a White Bill in 1997. But why did the Secretary not mention the criticisms made by the United Nations Human Rights Committee in 1995 and 1999 against the authorities that the absence of specifications under section 33 of the TO and section 17 of the Post Office Ordinance had opened such provisions to abuse by the Government, intruding the privacy of the public? President, why has the Government not also mentioned that?

SECRETARY FOR SECURITY (in Cantonese): Madam President, I do not agree with Ms Emily LAU's remarks that we had abused the relevant ordinances in the past to intrude the privacy of citizens. All along, comprehensive ordinances are in place to safeguard the freedom, rights and privacy of the people of Hong Kong. In the past, the security forces and law-enforcement agencies were extremely prudent in exercising their power. I do not think we had intruded the privacy of the public when we invoked section 33 of the TO in the past.

Regarding the criticisms made by the United Nations that we had done nothing during the past eight years, Madam President, they are not fair. In the past eight years, the Government has conducted a number of studies on interception of communications with a view to enacting legislation on this as soon as possible. Certainly, during the interim, the Security Bureau had to accord priority to different issues and attended to more important tasks. In the hearing of the recent judicial review, the Judge also disagreed that the executive authorities had deliberately delayed the enactment of legislation on this. Therefore, in part (i) of the judgement, the Judge ruled that the Chief Executive had not delayed the enactment of the order.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary said earlier that there had been no abuse of power on the part of the Government. But who knows whether or not the Government has abused its power or overstepped the line. We can only say that "what men are doing, God is watching". I think no one would like to see the police in Hong Kong being turned into a secret police.*

President, I would like to raise a supplementary question on part (a) of the Secretary's main reply which stated that the law-enforcement agencies had carried out 178 operations of interception of communications and 170 operations of covert surveillance. Will the Secretary give more details, stating also which law-enforcement agencies are involved? For we have a lot of law-enforcement agencies in Hong Kong. Second, how many persons are involved in each of these cases? What justifications did the authorities have for these operations of interception of communications and covert surveillance were carried out? For example, were the operations carried out for the purpose of crime prevention, discovering the voting intentions of Members or any other reasons? Will the Secretary give more details?

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you have asked two supplementary questions, which of them would you wish the Secretary to reply?

MR LEE CHEUK-YAN (in Cantonese): *I have only put one supplementary question. That is, in respect of the figures, which law-enforcement agencies are involved and the reasons and background for these law-enforcement agencies to carry out operations of interception of communications and covert surveillance.*

PRESIDENT (in Cantonese): Alright, Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Madam President, in respect of operations of interception of communications, two departments, the Independent Commission Against Corruption (ICAC) and the police, had applied to the Chief Executive for approval under section 33 of the TO; as for covert surveillance, four departments, namely the ICAC, the police, the Customs and Excise Department and the Immigration Department, were involved. These departments applied for the exercise of power for these two types of

operations according to legal requirement. First, it is for public security reason, and of course concurrently for the purpose of crime prevention and detection, that application for the exercise of the power of interception of communications is submitted. Second, in respect of the power of covert surveillance, it is specified under the Executive Order on covert surveillance issued by the Chief Executive last year, as Members may be aware, that law-enforcement agencies can apply to the relevant senior officials for a warrant for covert surveillance only for these two reasons.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary has not given the reasons why the authorities had carried out such operations. The Secretary did reply that it was out of the concern of public security, but the answer is too general. Can the Secretary be more precise, stating whether it is related to demonstrations, terrorist activities or others?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, in order to assure Mr LEE Cheuk-yan, I can tell Members that we will not carry out covert surveillance or interception of communications out of political consideration, for our primary objective is to ensure public security in Hong Kong. We cannot set out all the reasons here for Members, but combating terrorism is certainly one of these reasons.

MISS TAM HEUNG-MAN (in Cantonese): *May I ask the authorities whether a contingency plan has been put in place to ensure that law-enforcement agencies and law-enforcement work will not be affected even if the Interception of Communications and Covert Surveillance Bill failed to be enacted in June?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think the drawing up of a contingency plan is not the sole responsibility of the executive authorities, for the Legislative Council, like us, also has the responsibility to maintain public security and a satisfactory law and order situation in Hong Kong. This is exactly the expectation of the people of Hong Kong. I thus very much hope that we and Members of the Legislative Council will work together to have this Bill enacted as the laws of Hong Kong in future, providing a legal basis for the law-enforcement officers in Hong Kong.

PRESIDENT (in Cantonese): Miss TAM Heung-man, has your supplementary question not been answered?

MISS TAM HEUNG-MAN (in Cantonese): *If, despite the effort made by both sides, the problem remains unsolved or the legislation cannot be enacted within six months, what contingency measures does the Secretary have? Has the Secretary held discussions on this issue before?*

PRESIDENT (in Cantonese): Do you mean to ask about the contingency measures?

MISS TAM HEUNG-MAN (in Cantonese): *Yes, right.*

SECRETARY FOR SECURITY (in Cantonese): I recalled that on the day the discussion on the issue of Executive Order by the Chief Executive was held, some Members asked whether emergency legislation on covert surveillance could be enacted. I think this is also one of the options we may consider.

MR LAU KONG-WAH (in Cantonese): *President, during the discussion, we have also expressed grave concern about the so-called notification mechanism. We certainly understand that not the subjects of each case will be notified. However, for cases which the commissioner on covert surveillance knows have been wrongfully handled, will the Government consider notifying the persons concerned?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, this is one of the views and suggestions. Of course, we will consider it according to the overall legislative intent. On the one hand, we have to safeguard the privacy of the public and maintain transparency, and on the other, we have to maintain the effectiveness of law enforcement by law-enforcement agencies at present. A reasonable balance must be struck between the two.

We have had discussions with law-enforcement agencies, and they expressed grave reservations about giving post-incident notification to the subjects put under surveillance. I have said on different occasions that in an investigation of a criminal syndicate, our target is not only a single individual but the entire syndicate. During the investigation of these criminal syndicates and corruption syndicates, we can hardly get close to the mastermind of these syndicates or intercept their telephone calls, but can only intercept the communications of their underlings and subordinates. However, if the subjects concerned have to be notified when no prosecution is initiated after the interception of communications, it is tantamount to exposing our investigation to the world. This will significantly undermine our power and efficiency in law-enforcement operations which aim to combat crimes, drug trafficking and corruption.

I certainly appreciate Mr LAU Kong-wah's proposal which aims to protect the reasonable privacy of the public, and that is why he asked whether the subject would be notified if law-enforcement agencies have really made a mistake. We will as well write down this proposal and conduct studies on this later.

MR JAMES TO (in Cantonese): *President, for years, the Government has been invoking legislation which has now been declared unlawful or unconstitutional to carry out interception of communications or covert surveillance. Should this not be regarded as an abuse but rather an optimal utilization? Why would the Secretary have said so when he answered Ms Emily LAU's question earlier?*

Coming back to the supplementary question raised by Mr LAU Kong-wah earlier, in fact, will the Government consider the approach stated in the legislation proposed by me in 1997? That is to say, if the Secretary does have worry in this respect, why can we not leave it to the Court to decide? If the Court considers that the notification will really wake the wolf or that the notification should not be given at the initial stage of the operation, it will rule that the information should not be disclosed to the subject and made public. Will the Government consider this proposal? For this piece of legislation was already passed by this Council in the year 1997.

SECRETARY FOR SECURITY (in Cantonese): Madam President, in my earlier reply to Mr LAU Kong-wah's question, I explained the worries we have

about the practice of giving post-incident notification to the identified target. Just now, Mr LAU Kong-wah made a suggestion and now Mr James TO has given his, we will consider these suggestions as we have already heard them.

Regarding the first part of Mr James TO's supplementary question which states that we have all along been doing something unlawful, I do not agree with that. For we have always been acting in accordance with the existing laws of Hong Kong and policies that proved to be effective, it was not until 9 February this year that section 33 of the TO was ruled to be unconstitutional by the Judge. In this connection, I already pointed out earlier when I answered Ms Emily LAU's question that the police exercise such power to combat crimes, while the ICAC uses it to combat corruption. The Government has made tremendous efforts to maintain and uphold the freedom and privacy of the people of Hong Kong.

PRESIDENT (in Cantonese): Mr James TO, has your supplementary question not been answered?

MR JAMES TO (in Cantonese): *No, it has not been answered. Just now, when I mentioned the term "unlawful", I refer to the meaning under the concept of common law, which means that when something is declared unlawful, it is unlawful from the outset, but not that*

PRESIDENT (in Cantonese): You are not having a debate with him

MR JAMES TO (in Cantonese): *I know, and I am not debating with him, so.....*

PRESIDENT (in Cantonese): You need only state which part of the supplementary question raised by you just now has not been answered.

MR JAMES TO (in Cantonese): *The part which has not been answered is the meaning of the term "unlawful" to which I referred, that is, under the common*

law concept, something, if regarded as unlawful, should be unlawful from the outset. Under this circumstance, does the Secretary consider the previous operations unlawful or just a full utilization of the legislation? This is what I mean. I have to explain that the term "unlawful" has a specific definition

PRESIDENT (in Cantonese): It is now Question Time but not the time for a debate. Please be seated.

MR JAMES TO (in Cantonese): *President, I am not engaging in a debate, I*

PRESIDENT (in Cantonese): It is adequate that you state your supplementary question. If you wish to debate with him, we do have a debate mechanism in place which allows you to do so.

MR JAMES TO (in Cantonese): *President, I do not intend to start a debate on it. But I think the Secretary may have misunderstood the meaning of the term "unlawful" to which I referred. In his mind, "unlawful" means "the absence of law", but in fact when something is declared unlawful by the Court, it means that it is unlawful from the outset, but not that it becomes unlawful from the very second the Court declares it so. In this context, the Secretary has not answered my supplementary question.*

PRESIDENT (in Cantonese): Mr James TO, you have already stated your supplementary question. Besides, owing to the exceptionally lengthy supplementary question you have raised, this will be the last supplementary question.

SECRETARY FOR SECURITY (in Cantonese): Madam President, after all, I consider that we have always acted in accordance with the laws of Hong Kong. It is also stated in the judgement handed down by the Judge that within the six-month grace period, so to speak, it is lawful and constitutional to invoke these laws.

PRESIDENT (in Cantonese): Fifth question.

Squatter Control Policy

5. **MR CHAN KAM-LAM** (in Cantonese): *President, will the Government inform this Council:*

- (a) *of the respective current numbers of squatter huts in the territory and residents therein;*
- (b) *whether it plans to clear all squatter huts in Hong Kong; if so, of the details of the clearance timetable; if not, the reasons for that; and*
- (c) *whether it plans to conduct a comprehensive review of the existing policy on squatter control?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, due to the influx of mainland immigrants and rising birth rate, Hong Kong's population grew drastically in the 1950s and 1960s. Housing supply was then unable to cope with the surge in demand. As a result, thousands of people erected squatter huts on undeveloped and unleased government land or leased private agricultural land to meet their immediate housing need. Illegal immigration, which reached a peak by the end of the 1970s, exacerbated the problem. It was only after the implementation of a series of immigration control measures in the early 1980s that the squatter population began to stabilize.

To gradually reduce the number of squatter huts, the Government conducted a territory-wide Squatter Structure Survey in 1982 and announced that the surveyed structures are allowed to remain until the land is required for public purpose or the structures have to be demolished for safety reasons. In the interim, the Government provides and maintains the basic facilities in the squatter areas to improve the living environment. Through routine patrols, newly erected structures are demolished so as to contain the number of squatter structures. Upon squatter clearance, suitable rehousing arrangements are provided by the Housing Department to the affected clearerees depending on their eligibility. The squatter clearance and control arrangements described above have been in place since 1982.

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

- (a) Since the Squatter Occupancy Survey conducted in 1984, the Government has not conducted any other surveys or studies to monitor the movements in squatter population. Hence, we can only make reference to the latest quarterly General Household Survey conducted by the Census and Statistics Department (C&SD). Based on that survey, at present there are about 40 000 people living in temporary housing in Hong Kong, which includes squatter structures and roof-top structures, and so on. Structures built of permanent materials are excluded.
- (b) In the absence of development plans or safety concerns, large-scale clearance of squatter areas is not only disruptive to the occupants but will also lead to substantial resource implications arising from resumption of land, rehousing of affected clearerees and administration of land without development plans. In view of these considerations, the Government will continue to carry out squatter clearances having regard to need or public safety. As such, we have no plan to clear all squatter areas. To assist squatters to improve their living conditions as soon as possible, squatter control staff from time to time in their routine patrols persuades and assists squatters to apply for public rental housing. Since 2001, a total of 7 500 squatter households have been rehoused to public rental flats through the General Waiting List.
- (c) On squatter control, the Government conducts regular patrols to deter illegal squatting on government land and leased agricultural land. New structures are demolished upon detection. Meanwhile, the basic facilities in the existing squatter areas will be maintained and repaired as necessary to ensure safety and hygiene. These squatter control measures have effectively helped to contain the proliferation of squatting while assisting squatters in need. The arrangements outlined above still apply and we have no plan to alter the current policy on squatter clearance and control.

MR CHAN KAM-LAM (in Cantonese): *President, the Secretary explicitly stated in the second paragraph of the main reply two criteria for squatter*

clearance, which are whether there are development plans for and safety concerns of the squatter areas. The Government planned a few years ago to clear the squatter area in Cha Kwo Ling, but the matter fell through. Moreover, the several fire incidents happened recently show that the lives and properties of the occupants are subject to risks. May I ask the Government whether it will conduct an assessment on all squatter areas? For squatter areas where there is no development plan, will the Government reconsider their clearance after assessing their safety conditions?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

Just as Mr CHAN Kam-lam has said, there are the two criteria. The first criterion is whether there is a need of land by the Government which is more than obvious. If there is a need of land in the course of works projects or if there is such a need in other respects, we will arrange for a clearance exercise. Secondly, we mentioned the issue of safety. In fact, as far as safety is concerned, we mainly refer to the influence of slopes because many places in Hong Kong are adjacent to slopes which require stabilization works. Under such circumstances, clearance and rehousing of affected clearerees were conducted in the past. With respect to the current remaining squatter huts that have not been dealt with, the slopes concerned have been assessed under this policy and arrangement as not posing a major risk to the squatter huts and their occupants. I thus have not insisted on having these squatter huts cleared for the safety of the occupants, but we will certainly persuade occupants from time to time to voluntarily apply for public rental housing. I have mentioned in the main reply that great achievement has been made in this respect. Since 2001, a total of 7 500 squatter households have been rehoused to public rental flats through this plan and the problem has been greatly reduced in proportions.

With respect to the Cha Kwo Ling squatter area, we have a similar plan in place. In fact, after the two fire incidents, the affected occupants who are eligible have been allocated public rental flats.

MR CHEUNG HOK-MING (in Cantonese): *The Secretary stated in part (a) of the main reply that "at present there are about 40 000 people living in temporary housing, which includes squatter structures and roof-top structures, and so on. Structures built of permanent materials are excluded". May I ask the Secretary whether temporary housing includes interim housing? If so, what proportion do interim housing occupants account for among the 40 000 people?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, we have not included interim housing into the temporary housing in the calculation because the former is a service provided by the Housing Department. We use the term "interim" only to indicate that the occupants are living in interim housing on a temporary basis, not to indicate that the structure of the interim housing is of an inferior quality or it is constructed with different building materials. With respect to these 40 000 people, as stated in the main reply, we have not conducted similar surveys since the Squatter Occupancy Survey in 1984. We thus cannot provide information in this respect, except making reference to the General Household Survey conducted annually by the C&SD and extracting the relevant parts that we regarded as appropriate in answering this question.

MISS CHOY SO-YUK (in Cantonese): *President, the Secretary mentioned in the main reply that newly erected structures are immediately demolished upon detection. I believe we will not object to that. Yet, President, many structures are erected for improving the living conditions of the occupants or for environmental reasons, such as erecting roof-top mat sheds for cooling down the squatter huts and thereby saving electricity. The Government, however, cannot even tolerate the existence of these structures. May I ask the Secretary whether it will consider allowing these structures, which are not erected for extending the living area but only for environmental reasons, to remain?*

PRESIDENT (in Cantonese): Miss CHOY So-yuk, this main question is about the clearance of squatters and related plans, but your supplementary question asked about the erection of structures on existing squatter huts. May you tell us how it is related to the subject?

MISS CHOY SO-YUK (in Cantonese): *President, the Secretary mentioned in the second paragraph of the main reply that "newly erected structures are demolished" which refers to any structures. I believe, with the exception of antennae, erecting a mat shed for saving electricity will also be immediately demolished by the Government. May I ask the Secretary whether he will, in consideration of the occupants' actual needs, allow them to make some adjustments with a view to improving their living standards or environment?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): The answer is no, because we need to contain the number of squatters. As I have said just now, if they want to improve their living conditions, we have the General Waiting List through which they may be allocated housing. In fact, the waiting time for those who are on the General Waiting List now is about two years or so only. Hence, if the occupants truly wish to improve their living conditions, we have a legitimate channel for them to do so.

DR JOSEPH LEE (in Cantonese): *The Secretary mentioned in part (a) of the main reply some squatter structures built of permanent materials. May I ask the Secretary if these squatter structures built of permanent materials are not included in the figure? Where are they commonly found? And whether or not these occupants will be arranged or persuaded to be rehoused?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, I have explicitly explained just now that the figures and definitions are not provided by me. The C&SD has conducted such surveys which are the only information we can use for answering the question. And for that matter, I have to state the source of the information.

As far as I understand it, squatter structures built of permanent materials, such as some of those in Lei Yue Mun, are relatively sturdy structures. They may have some red and yellow characters written on their exterior walls indicating that they were not built of such sturdy materials, but were wooden structures in the past. It is only after years of alterations that they have become sturdy structures, but their original state has been recorded in the survey conducted at earlier times. Based on this reason, as I have explained just now, we use 1982 as the basis to formulate this policy.

MR FRED LI (in Cantonese): *President, I wish to ask a question on safety in relation to part (c) of the main reply which stated that "the basic facilities in the existing squatter areas will be maintained and repaired as necessary to ensure safety and hygiene." The two fire incidents that happened in Cha Kwo Ling recently revealed that many firemen are not very familiar with the accesses to the area and that the access roads to many parts of the area are too narrow and the lighting is insufficient, which caused problems when people escaped. May I ask*

the Secretary for Housing, Planning and Lands whether he will conduct another comprehensive assessment of the existing squatter areas and enhance as far as possible the lighting and improve the fire escapes in order to pre-empt the recurrence of any dangerous situations?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

President, I have also mentioned in the main reply that in respect of squatter areas, we do have such a practice and financial support has been provided annually to improve the basic facilities in these squatter areas. Of course, other than water and electricity supply (and in respect of electricity, it also includes lighting facilities), these basic facilities also include fire service equipment such as fire hydrants. We should perhaps pay more attention to the maintenance of fire hydrants in certain areas. We have an annual provision for repairs and maintenance. I will liaise with the relevant Directors to look into individual squatter areas, with a view to ensuring that the provision we have is well spent in this respect.

MR WONG KWOK-HING (in Cantonese): *I wish to ask the Secretary: At present, how many squatters, who have applied for public rental housing, are waiting to be rehoused? Will these squatters be given priority to move into public rental housing?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I do not have the relevant statistics at hand. Please allow me to go back and check if we have such statistics and provide a written reply to this supplementary question. (Appendix I)

Secondly, about the question of priority, I have also explained just now that the waiting time for those who are on the General Waiting List is not very long, we thus have not made priority arrangement in this respect. In fact, the occupants who are on the General Waiting List have a varying degree of housing needs. They may not necessarily be squatters and they may be living in cubicles, but both of them have the same need. We thus do not have such arrangement in this respect and we do not find it a strong case to give priority to this group of squatters either.

PRESIDENT (in Cantonese): Last supplementary question.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, the Secretary said just now that the applicants may have to wait for two years before being allocated a public rental flat. Will the authorities consider providing some temporary housing, such as interim housing, for them during these two years, so as to help them move out of the squatter huts?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): If they have such a need, we would fain provide this service. However, they generally do not have such a need, or they would not accept our offer even if we did so.

PRESIDENT (in Cantonese): Last question seeking an oral reply.

Monitoring of Travel Agents

6. **MISS TAM HEUNG-MAN** (in Cantonese): *President, regarding the monitoring of travel agents, will the Government inform this Council whether:*

- (a) *current legislation requires travel agents to take out indemnity insurance; if so, of the details; if not, the reasons for that;*
- (b) *the authorities will stipulate that the licensee of a travel agent wound up by court order shall not act as a licensee within a certain period of time, so as to avoid travel agents evading their responsibilities to pay compensation by closing down their businesses; if they will, of the details; if not, the reasons for that; and*
- (c) *the authorities will stipulate that the licensee of a travel agent shall have certain experience in the management and operation of a travel agent and shall undergo continuing professional education on a regular basis, in order to improve the quality of tourism services; if they will, of the details; if not, the reasons for that?*

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

- (a) At present, the Travel Agents Ordinance (TAO) does not require travel agents that operate package tours to take out professional indemnity insurance. Like all other commercial operations, travel agents have the responsibility to adopt effective risk management measures based on their operational needs, including taking out professional indemnity insurance to reduce their financial risk in the event of liability claims.

In order to strengthen the risk management of travel agents and protect the interest of outbound travellers, the Travel Industry Council of Hong Kong (TIC) issued a directive in 2002 requiring travel agents operating outbound package tours to conduct business only with licensed or registered service providers overseas. The TIC further issued two circulars in January 2005 regarding the safety of outbound travellers. These circulars are "Outbound tour operators' requests for partners outside Hong Kong" and "Safety Checklist for Package Tours". The former stipulates that a travel agent when working with land operators and travel service providers outside Hong Kong, should request them to comply with a set of basic safety requirements. The other circular requests the land operators, local tourist guides and Hong Kong tour escorts to implement a series of monitoring measures before and during the journey to ensure travellers' safety. The TIC will continue to monitor travel agents' compliance with such requirements. This helps reduce their operational risks.

Taking out professional indemnity insurance is a risk management decision of the travel agents. It also hinges on the availability of this type of insurance policy in the insurance market. The Government will continue to remind the travel trade to take out insurance in accordance with their operational risks and needs, and assist them in taking forward the issue of insurance coverage with the insurance sector. We are now working with the trade to assess the feasibility of requiring travel agents to take out professional indemnity insurance on a mandatory basis and its impact on the travel industry and consumers.

- (b) The Registrar of Travel Agents (the Registrar) has to vet applications for the travel agent licence in accordance with sections 11 and 12 of the TAO. The vetting criteria include whether the applicant or the person who manages the travel agency (all referred to as "the applicant") is a "fit and proper person". The following are the factors for considering whether an applicant is "fit and proper":
- (1) whether there has been conviction of an offence involving fraud, corruption and dishonesty;
 - (2) whether there has been conviction of an offence against any provision of the TAO;
 - (3) whether the person is an undischarged bankrupt or in the process of liquidation; and
 - (4) whether the person is a "fit and proper person" in other aspects.

According to the TAO, the applicant has to provide records relating to bankruptcy and liquidation when submitting the application. The Registrar will not grant a travel agent licence to an applicant who is an undischarged bankrupt or is in the process of liquidation. The current vetting mechanism does not specify that a licensee whose business has been wound up by court order could not act as a licensee within a certain period of time; but the licensee is still subject to the "fit and proper" consideration. The same practice is adopted by some other sectors.

- (c) Under the present regulatory system for the travel agents, the Travel Agents Registry is responsible for the licensing of travel agents in accordance with the TAO, whilst the TIC is responsible for overseeing the day-to-day operation of travel agents. According to the Memorandum and Articles of Association of the TIC, a travel agent should employ at each of its premises at least one manager who has at least two consecutive years' relevant experience in the operation of a travel agent in his/her recent five years of employment. This is to ensure the daily operation of the travel agent is in compliance with the basic requirements of the trade.

To enhance the professionalism of the travel trade and provide quality services to the travellers, the Government and the TIC have all along attached great importance to the training and development of trade members. The TIC has not imposed any compulsory training and continuing education requirement on the licensees. This is to avoid imposing over-stringent requirements that stifle the development of the trade. The TIC has from time to time organized relevant training courses and encouraged members of the travel trade at all levels to upgrade their professional skills.

MISS TAM HEUNG-MAN (in Cantonese): *In the last paragraph of part (a) of the main reply, it is mentioned that the authorities are examining the feasibility of requiring travel agents to take out professional indemnity insurance on a mandatory basis. Have the authorities considered offering assistance to small and medium-sized tourism and travel service companies? Owing to the small scale of these companies, many insurance companies refuse to provide insurance coverage for them. Will the authorities consider assisting these small-scale travel service companies in taking out collective insurance, so that insurance companies will agree to provide insurance coverage for them? In respect of the study on the mandatory insurance requirement, when will the Government announce the study report?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): As far as I understand it, the problems now faced by travel agents in securing insurance mainly include: first, this type of insurance is not readily available in the market; second, limitations are set on the sum assured, for instance, the maximum sum assured for death and bodily injury is restricted at \$5 million only, which is obviously insufficient. For this reason, we have discussed this issue with the tourism industry, the insurance industry and the Consumer Council. We also think that a more desirable approach is to devise a professional indemnity scheme for the industry as a whole to offer insurance coverage to the entire industry, saving travel agents from taking out insurance on individual terms which is not only more expensive but also more difficult to secure.

Recently, we have held a number of meetings on this issue and the progress of the negotiation is satisfactory. The insurance and tourism industries

concerned will conduct in-depth studies on these suggestions and draw reference from overseas practice. In fact, in many other places, it is not a mandatory requirement for travel service companies to take out professional indemnity insurance. Therefore, the tourism industry is now studying the issue. We wish to hold further discussions with the trade when the relevant data are available. We will certainly announce the result in due course after the completion of the study.

MR TOMMY CHEUNG (in Cantonese): *In part (c) of the main question, it is stated that the authorities will stipulate that the licensee of a travel agent shall have certain experience in the management and operation of a travel agent and shall undergo continuing professional education. May I ask the Secretary whether or not he knows travel service companies overseas are required to adopt this practice, or whether other trades in the territory have to meet the same licensing requirement? As for professionals, I do not know whether doctors or accountants also have to undergo continuing education; does the Secretary have an answer in this respect?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I have to thank Mr Tommy CHEUNG for his question. Actually, I have already given the answer in the main reply. Accountants certainly have to know accountancy, but operating travel service companies is not a profession. I believe Mr Tommy CHEUNG also knows that rarely a place would require a licensee of a travel service company to possess experience in the operations of travel service companies to be eligible for a license, and I have also mentioned this point in the main reply. Certainly, the staff establishment of a travel service company should include persons with knowledge of the tourism business. Therefore, though, at present, a licensee is not required to be well-versed in the tourism trade, it is stipulated that a travel agent should employ at each of its operation branch one manager who has relevant experience in the operation of a travel service company for at least two consecutive years in his or her recent five years of employment, so as to ensure that the manager possesses the relevant experience in the operation of a travel service company.

As for other relevant industries in Hong Kong, as far as I know, the licensee of a restaurant does not necessarily have to know cooking and the licensee of a karaoke establishment does not have to know how to sing, while the

licensee of a bistro café does not need to know how to make egg sandwiches, for all they need to do to enable them to run their business is to employ a cook and some experienced employees. The same applies to training. We certainly encourage employees of travel service companies to receive proper training. It is already stated in the main reply that all along, both the Government and the TIC have conducted a lot of training. For example, the Government has subsidized the tourism industry to improve the skill of the members of the trade and the professionalism of tourist guides.

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

MR TOMMY CHEUNG (in Cantonese): *Yes, Madam President, the Secretary's reply is incomplete and only a majority part of the question has been answered. Do overseas countries adopt this practice?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): As far as I know, very few overseas countries have adopted this practice.

MR HOWARD YOUNG (in Cantonese): *President, in part (a) of the main question, it is asked whether some sort of mandatory requirement on indemnity insurance will be imposed. I hope the Secretary will inform us whether this approach will be adopted and tell us afterwards which professional trades are mandated to take out insurance. May I ask the Secretary whether he has heard the views of the trade that: It is almost impossible for them to secure this type of insurance nowadays, particularly after the 911 incident; or the premium charged by insurance companies is meant to turn them away; and worse still, personal safety is excluded from the coverage, which renders it meaningless to take out such insurance? I have heard that the trade has these views.*

PRESIDENT (in Cantonese): Mr Howard YOUNG, you seem to have raised two supplementary questions and I am not sure whether they are related. The first supplementary question is about whether other professions are subject to the same requirement

MR HOWARD YOUNG (in Cantonese): *Yes, I believe the Secretary may not necessarily have such information at hand, I thus hope that he can provide a written reply afterwards, stating which professions are mandated to take out this insurance? Primarily, I wish to ask whether the Secretary has heard the views that even if the trade is mandated to take out such insurance, they may not be able to do so?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): On the question of the existence of the mandatory insurance requirement for other professions, many professionals indeed take out professional indemnity insurance to secure protection for themselves. Just as I have said in the main reply, lawyers, medical practitioners and many other professionals have taken out professional indemnity insurance.

From the point of view of risk management, we certainly encourage travel service companies to take out professional indemnity insurance, but as Mr Howard YOUNG has said, not many schemes that suit the needs of travel agents are available in the insurance market now, and the sum insured is not very large, usually being capped at \$5 million. For some large-scale travel service companies, the coverage is obviously far from adequate. In my earlier reply to Miss TAM Heung-man's question, I already stated that we are now discussing the issue with the tourism industry including Mr YOUNG, and the insurance industry, examining the possibility of drawing up of a tailor-made professional indemnity insurance scheme for the sector as a whole in order to cater for the demand of the whole sector and provide adequate protection.

PRESIDENT (in Cantonese): Mr Howard YOUNG, has your follow-up question not been answered?

MR HOWARD YOUNG (in Cantonese): *I will wait for another turn.*

PRESIDENT (in Cantonese): Fine.

MISS CHOY SO-YUK (in Cantonese): *President, will the Secretary inform us of the total number of travel service companies closed and commenced operation*

in the past three years, and whether the same licensee is involved in the closure and opening of certain travel service companies?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Regarding the aforesaid figures, I believe I have to check at my office later. At present, there are a total of 1418 registered travel service companies. During the three years from 2003 to 2005, 83 travel service companies ceased providing travel agent services in the year 2003 — that was the time the SARS outbreak struck, I believe Miss CHOY So-yuk also recalled that, and some travel service companies did choose to close down their business. The figure is 67 for the year 2004 and 60 for the year 2005, adding up a total of 209. These travel service companies chose to close down because of slack business or other reasons but not because of bankruptcy. A total of 10 travel agents was closed down in the past three years.

PRESIDENT (in Cantonese): Miss CHOY, has your supplementary question not been answered?

MISS CHOY SO-YUK (in Cantonese): *He has not answered whether the same licensee was involved. However, if the Secretary does not have the relevant information at hand, will he provide such information to us after the meeting?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): As far as I recall, for cases involving the closure of a travel service company and the reopening of another one by the same licensee, I do not have such information at hand.

PRESIDENT (in Cantonese): Last supplementary question.

MR HOWARD YOUNG (in Cantonese): *President, it is stated in the first sentence (Chinese version) in part (b) of the main question that "travel agents evade their responsibilities to pay compensation by closing down their*

businesses", but I think there is something wrong with that premise. May I ask the Secretary whether specific record relating to the information on the closure of business provided earlier and the 10 travel service companies closed down is available? Were those travel service companies closed down to evade the responsibilities to pay compensation, or were such closures ordinary closures indeed?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I believe it is quite difficult to define whether a company closes down to evade paying compensation. If a company has to close down, it is usually because of financial difficulties. In this respect, I believe we do not have any concrete information showing any travel agents do try to evade their responsibility to pay compensation by closing down their businesses.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Environmental Nuisances Caused by Refuse Transfer Stations

7. **MR JAMES TO** (in Chinese): *President, some residents of Hoi Lai Estate in Lai Chi Kok complained to me about the frequent emission of stench from the nearby West Kowloon Refuse Transfer Station (WKTS). Despite some photos provided by a staff member of the WKTS operator showing the deplorable environment inside the WKTS, the Environmental Protection Department (EPD) has claimed that it is an isolated case only. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints about environmental nuisances caused by refuse transfer stations (RTSs) received by the EPD in each of the past three years, together with a breakdown by the subject matter of the complaints; the number of complaints about which investigation was completed each year in the same period, and the respective numbers of them which were found substantiated or otherwise, as well as the justifications for finding the complaints unsubstantiated;*

- (b) *whether the EPD has issued to the RTS operators guidelines on how to prevent causing environmental nuisances, and of the mechanism in place to ensure the RTS operators' compliance with these guidelines; and*
- (c) *of the standards adopted by the EPD for determining the acceptable levels of environmental nuisances caused by RTSs; whether it has assessed if there is substantial discrepancy between such acceptable levels and the levels deemed acceptable by the residents, and whether these standards will be reviewed?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Chinese): President,

- (a) During the past three years, the EPD has received 12 complaints concerning suspected environmental nuisance caused by the WKTS. A summary is tabled below:

<i>Year</i>	<i>No. of Cases</i>	<i>Content</i>	<i>Substantiated or not</i>
2003	1	Odour nuisance	Unsubstantiated
2004	3	Odour nuisance	2 cases substantiated; 1 case unsubstantiated
2005	8	7 cases: Odour nuisance	Unsubstantiated
		1 case: environmental hygiene problem inside the RTS	Unsubstantiated
2006 (until 22 February)	0	Not applicable	Not applicable

Investigations of all the above cases had been completed. The two substantiated cases occurred in June and July 2004 respectively and the affected premises were factories located within 300 m from the WKTS. After the investigations, the EPD had immediately urged the contractor to enhance the management of the transfer station operation, particularly the cleansing work and the operation of the air cleaning system to ensure that the people working or living in the vicinity of the transfer station would not be affected.

For the other 10 complaint cases that were unsubstantiated, they included two odour nuisance cases lodged to the EPD by a nearby factory in August 2003 and by a resident of Mei Foo Sun Chuen in May 2004, seven cases concerning odour scented inside Hoi Lai Estate lodged to the EPD by residents of the estate directly or through Councilors' Offices during the period from July to December 2005, and one case concerning environmental hygiene problem inside the station reported by a member of the public via a Councilor's Office in November 2005. With regard to the odour nuisance complaints from the Hoi Lai Estate residents, the WKTS was one of the sources that was suspected to be producing the odour. During the EPD's investigations, no odour nuisance was found at the locations reported by the complainants as well as at the periphery of the WKTS. Moreover, the operation and hygiene conditions of the WKTS were found to comply with the statutory requirements. Therefore, the relevant complaints were not substantiated. Nevertheless, the EPD had urged the contractor to enhance the management of the transfer station operation to ensure that good hygiene conditions inside the station would be maintained and no odour nuisance would occur at the periphery of the station.

- (b) RTS is a refuse processing facility. Within the transfer station area, odour or refuse accumulation inside the tipping hall was part of the normal operation of the station. One of the important roles in the EPD's management and control of the RTS operation is to ensure that the operation inside the station will not cause any environmental nuisance outside the station. The tipping hall of the WKTS is of enclosed type design. The air cleaning system of the hall operates continuously. It extracts air from the outside atmosphere and the exhaust air is cleaned and de-odorized before discharge at a designated position, so that the refuse dumping operation inside the hall will not affect the environment in the surrounding areas. Before a refuse collection vehicle leaves the transfer station, the vehicle will be cleaned by an automatic vehicle cleaning system to ensure that the vehicle will not pollute the surrounding areas.

There are clear and stringent requirements about the operation and environmental performance of the transfer station in the RTS

contract. The contractor of the transfer station shall fully comply with the relevant requirements. EPD staff will closely monitor the operation and environmental performance of the transfer station. The EPD has established a system to enhance the control of the contractor's performance: when the contractor fails to comply with the relevant requirements, the contractor's operation fee will be deducted. Moreover, the contract requires the contractor to employ an independent consultant to carry out environmental compliance audit annually to ensure that the RTS operation is in line with the environmental quality target of the Government.

- (c) Apart from controlling the contractor of the RTS by applying the above contract provisions, the operation of the RTS is also subject to the control of relevant pollution control ordinances.

Staff of Environmental Compliance Division of the EPD (abbreviated as "EPD enforcement staff" below) carry out independent investigations of complaints about environmental pollution of RTSs. Based on the information provided by the complainants, EPD enforcement staff will carry out investigations at the locations affected, including residential premises, workplaces or public place, at the time when the pollution would most likely occur. EPD enforcement staff will record the environmental conditions, conduct observations repeatedly outside the RTS, and look for incidents of any abnormal operation or problems with the pollution control measures inside the RTS. They will also scrutinize the reports of the independent assessment team of the station. The above actions are taken to verify if the transfer station had caused any pollution. If the above investigations find that the RTS is causing pollution, the EPD will take legal actions in addition to invoking the contract provisions. With regard to the standards of environmental pollution, the EPD has adopted the standards specified in the relevant environmental protection ordinances. The standards have thoroughly considered whether the public will be unreasonably affected by the operation of RTS. There is no difference between the acceptance level of the public and the standards adopted.

Enhancing Role and Functions of District Councils

8. **DR YEUNG SUM** (in Chinese): *President, regarding the implementation of the measures proposed by the Government in mid-2001 to enhance the role and functions of the District Councils (DCs), will the Government inform this Council:*

- (a) *of the details of the suggestions put forward by each DC over the past three years regarding the use and management of district leisure facilities (such as games halls and swimming pools) as well as district municipal facilities and services; the respective numbers of such suggestions that were accepted and rejected by the relevant government departments and the reasons for rejection;*
- (b) *of the numbers of times government departments in various districts invited, over the past three years, the relevant DCs to comment on the performance and standards of municipal services provided by private contractors in the districts concerned and the respective numbers of contractors whose contracts were renewed or discontinued by the authorities after considering the DCs' comments;*
- (c) *among the Legislative Council Briefs issued by various government bureaux in the past three years, of the number of briefs whose electronic copies were provided to the DC Secretariats for DC members' information;*
- (d) *of the respective numbers of meetings that have been held, since the commencement of the office of DC members of the current term, by Directors of Bureaux and Heads of Government Departments with these DC members, as well as the numbers of DC meetings these government officials have attended;*
- (e) *among the existing Steering Committees for Rural Public Works and Urban Minor Works Projects and the 18 District teams, of the numbers of such committees/teams that are chaired by DC Chairmen and DC members respectively;*

- (f) *of the number of members of the various consultative committees in each of the 18 districts of the territory, the percentages of DC members in the membership of the committees concerned, and the committees which are chaired by DC members; and*
- (g) *as the authorities have allocated an additional \$12 million to the Home Affairs Department (HAD) in 2001 to strengthen support to the DC secretariats and the HAD's Works Section, of the details of the funds that have been spent so far?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) According to our records, the number of suggestions put forward by DCs over the past three years regarding the use and management of district leisure facilities (such as libraries, sports centres and swimming pools) and district municipal facilities totalled 567 and 190 respectively. In respect of district leisure and cultural facilities and services, 372 suggestions were accepted by the relevant government department, and the remaining 195 suggestions are being studied and followed up. The suggestions being studied and followed up involve construction of new facilities, utilization of resources and arrangement of services, such as opening hours, which require thorough deliberation and hence cannot be implemented immediately. As regards district municipal facilities and services, 166 suggestions were accepted by the relevant government department, 13 suggestions are being considered and kept under review subject to availability of resources. The remaining 11 suggestions were not accepted either because they were not supported by the stakeholders or they were not compatible with the existing policies.
- (b) Over the past three years, the Leisure and Cultural Services Department has provided the relevant DCs with about 300 reports on the performance of leisure services provided by private contractors in the districts concerned. The DCs generally accepted the Department's assessments on private contractors. Generally speaking, the Government retenders the services upon the expiry of its contracts with private contractors. The process of tendering is

conducted according to established policies and procedures, and the tenders are evaluated on the basis of the conditions of contract, the tenderers' experience and standard in service delivery, staff qualifications and tender prices, and so on.

- (c) According to our records, the Secretariats of the 18 DCs have received electronic copies of two Legislative Council briefs from government bureaux over the past three years.
- (d) Since the commencement of the current DC term in January 2004, some 160 meetings have been held between DC members and Directors of Bureaux as well as Heads of Departments. Sixty of these meetings are DC meetings at which government officials concerned have attended.
- (e) At present, both the Rural Public Works Steering Committee and Urban Minor Works Steering Committee are chaired by the Director of Home Affairs. As regards the 18 District Working Groups, 10 of them are chaired by the respective DC Chairmen, one by the DC Vice Chairman, and seven by DC members of the respective districts.
- (f) There are around 300 district consultative committees in the 18 districts with a total membership of 6 983, among which 1 774 (25%) posts are held by DC members. 131 out of the 300 committees are chaired by DC members. These committees include some of the Area Committees, District Fight Crime Committees, District Fire Safety Committees, District Clean Hong Kong Committees, Urban Minor Works Programme District Working Groups, Rural Public Works Programme District Working Groups and District Summer Youth Programme Co-ordinating Committees.
- (g) A sum of \$12 million was allocated to the HAD in 2001-02 for the creation of 48 posts to strengthen the District Council Secretariats and divisions in the HAD Headquarters. The sum has been fully used for deployment of permanent staff and employment of non-civil service contract staff to provide support to the work of the HAD and the 18 DCs on an ongoing basis.

24-hour Emergency Service for Families Facing Crisis

9. **DR FERNANDO CHEUNG** (in Chinese): *President, the Social Welfare Department (SWD) has indicated that a 24-hour emergency service is currently available to families facing crisis. Where outreaching service by a social worker outside office hours is required, the staff of the SWD and those manning the telephone hotline can enlist support from the SWD's social workers on the respective Child Abuse, Battered Spouse or Psychiatric Emergency duty rosters. In this connection, will the Government inform this Council of:*

- (a) *the details of the current operation of the above hotline (such as the number of social workers manning the hotline and their roster arrangements) and how it ensures that help-seekers are given assistance as soon as possible; and*
- (b) *the commencement date of the 24-hour emergency service and the number of cases handled by the authorities in each month of the past five years, with a breakdown by client's sex, age, district of residence and case type?*

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

- (a) The SWD currently provides two hotlines, namely the SWD Hotline (2343 2255) and the 24-hour Family Crisis Hotline (18288) (FC Hotline) which is operated by the Caritas and fully subsidized by the SWD. The hotlines provide an important contact point for the public, including those in distress due to various reasons, and enable them to obtain all sorts of information on welfare services and seek help for their need.

The SWD Hotline is manned by nine social workers from 9 am to 10 pm from Monday to Saturday, and 1 pm to 10 pm on Sunday and public holidays. There are three to six social workers on each shift to answer incoming calls. If calls are busy and unanswered, callers may leave their messages on the answering machine and the social workers on duty will call them back within 30 minutes. For calls outside the aforesaid operating hours, callers may choose to transfer their calls to the FC Hotline (18288).

The FC Hotline, a 24-hour hotline fully subsidized by the SWD, mainly provides callers with emotional support. To operate the FC Hotline, staff are flexibly deployed having regard to the actual circumstances and the number of calls received in the past. The FC Hotline is manned by one to two social workers in the daytime and two to four after midnight. If calls are busy and unanswered, callers may leave their messages on the answering machine and the social workers on duty will call them back within 30 minutes.

In case where a social worker is required for outreaching service outside office hours, the social workers manning the SWD Hotline or FC Hotline and the police will, if situation warrants, contact the SWD's dedicated after office hours outreaching teams on child abuse, spouse battering and psychiatric emergency through mobile phone or pager.

- (b) The SWD hotline services started in 1980 whereas the FC Hotline came into service in November 2001. With effect from January 2003, all calls made to the SWD Hotline outside the operating hours could be transferred to the FC Hotline and be answered by the social workers on duty.

The After Office Hours Child Abuse Outreaching Team of the SWD started its service in 1991 and the service has been extended to battered spouse since 2000. The Psychiatric Emergency Outreaching Team of the SWD started its service in 1989.

The numbers of cases handled by the two outreaching teams of the SWD between 2001 and 2005 are shown in the table. However, the SWD does not have the breakdown by client's sex, age, district of residence and case nature.

<i>Dedicated Outreaching Teams</i>	<i>No. of cases handled</i>				
	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
After Office Hours Outreaching Team for Child Abuse and Battered Spouse Cases	45	99	81	68	72
Psychiatric Emergency Outreaching Team	32	32	19	22	15

Abandoned Electronic Products

10. **MR KWONG CHI-KIN** (in Chinese): *President, regarding the storage, recovery and recycling of abandoned electronic products, and tightening the relevant import and export laws, will the Government inform this Council:*

- (a) of the number of pieces of land in Hong Kong which are used as storage sites for abandoned electronic products, together with the location of each site and the quantity stored therein;*
- (b) of the environmental pollutions caused by these sites and the measures adopted by the Government to mitigate such pollutions;*
- (c) of the progress of the Government's work in promoting the recovery and recycling of abandoned electronic products generated in Hong Kong;*
- (d) of the number of persons prosecuted last year for illegally importing/exporting abandoned electronic products that contain harmful substances or have been contaminated; the number of persons convicted and the penalties imposed on them by the Court; and*
- (e) as some green groups have criticized that the current legislation governing the import and export of abandoned electronic products is too lax, whether the Government will consider tightening the relevant legislation in the light of the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; if it will, of the details of the plan and the legislative timetable; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENTAL, TRANSPORT AND WORKS (in Chinese): President, the illegal export of abandoned electronic products from developed countries to developing countries by traders has become a global problem in recent years. In view of this development, we have tightened up our monitoring and control over the past few years. In response to the questions raised by the Legislative Council, our reply, using the same numbering, is provided as follows:

- (a) According to the inspection results of the Environmental Protection Department (EPD), currently there are about 90 storage sites in Hong Kong. They are all located in remote areas of the New Territories. Their locations and the estimated quantities of abandoned electronic products stored therein are shown in the Annex (as the locations and operation of these sites change frequently, the EPD can only provide some rough figures).
- (b) The pollution caused by the operation of storage sites is subject to the control of relevant environmental ordinances. The EPD is very concerned about their operation. In the past two years, the EPD carried out 993 inspections to these sites and made 13 prosecutions against illegal operators. All of them were convicted. The offences mainly involved failure to register as chemical waste producers and to store chemical waste in accordance with legal requirements.

The above sites are mostly used for storage of abandoned electronic products. Only a few of them involve in simple dismantling processes; but no chemical treatment is found so far. The environmental impact by these sites is therefore considered limited. In this regard, the EPD had collected soil samples from both the inside and outside areas of 13 storage sites for analysis in 2005. The results indicated that the operation of these sites did not cause pollution to the nearby environment. Recent inspections further revealed obvious signs of reduced or slower activities at some of them. The EPD will however continue monitoring their operation closely and take prosecution against any offences spotted.

- (c) Since January 2003, the EPD has engaged the Caritas (Hong Kong) and St. James Settlement in organizing a territory-wide trial recovery programme of used computers and electrical appliances. The aim of this trial programme is to identify an environmentally sound outlet for used computers and electrical appliances, and to study the financial and logistics requirements in implementing a recovery programme. The programme has been well received by the public and the quantities of appliances collected are increasing over the years. So far, more than 123 000 units of computers and electrical appliances have been recovered. Refurbished computers

and electrical appliances in the programme are donated to the needies through charitable or volunteer organizations and those beyond repair are sold to recyclers.

In last December, the EPD collaborated with various District Councils and housing estates to run the "Waste Electrical and Electronic Equipment Recycling Day". During the event, about 11 500 units of computers and electrical appliances were collected for recycling or reuse. In addition, the EPD and the Chamber of Hong Kong Computer Industry (CHKCI) have jointly organized a six-month computer recovery and recycling trial programme since January 2006. This programme is operating on a commercial basis for collecting data on the cost of recovery of computers; and it will serve as a reference for implementing the Producer Responsibility Scheme (PRS) in future. The CHKCI has already set up nine collection points in computer malls and shops with a view to recovering and recycling 12 000 units of computers and monitors.

For the time being, the EPD is examining the feasibility of introducing the PRS as an effective means to reduce waste and promote recovery. Under the PRS, producers, importers, retailers and consumers will share out the responsibility for the management of end-of-life products. The EPD will draw reference from overseas experience, assess its cost-effectiveness as well as impacts on the trade and other stakeholders and consult the public on feasible options at a later stage.

In addition, the EPD promulgated the "Policy Framework for the Management of Municipal Solid Waste (2005-2014)" in December last year. Under the framework, we propose to submit the Product Eco-responsibility Bill to the Legislative Council for introducing the PRS as mentioned above. Specific PRS measures for individual products, including electrical and electronic equipment, will subsequently be implemented through subsidiary legislation under the new Product Eco-responsibility Ordinance.

- (d) In 2005, there were 37 prosecutions under the Waste Disposal Ordinance (WDO) on illegal import and export of abandoned electronic products that contain harmful substances, out of which 27

were successfully convicted with fines ranging from \$2,500 to \$45,000. In one of the cases in 2005, the offender was sentenced to jail for two months suspended for one year together with a fine.

- (e) The Basel Convention has been implemented in Hong Kong through the WDO since 1996. The WDO sets out that except for the import and export of recyclable and uncontaminated waste for recycling purposes, the import or export of hazardous waste or other unlisted waste for whatever purposes requires a valid permit. The Seventh Schedule of the WDO lists out those common types of hazardous electronic waste, such as cathode-ray tubes, waste batteries, scraps containing toxic heavy metals, and so on. In view of the fact that the Basel Convention also encourages recycling, the permit control of the WDO excludes the import and export of recyclable and uncontaminated waste for recycling purposes. As such, the existing control is very comprehensive and complies with the requirements of the Basel Convention.

In May 2005, we submitted to the Legislative Council the Waste Disposal (Amendment) Bill 2005 (the Amendment Bill). The Amendment Bill incorporated the Basel Ban into the WDO and amended its Seventh Schedule to include some new waste entries. The Basel Ban prohibits the export of hazardous waste from developed countries to developing countries. In this connection, the EPD has implemented the Ban administratively since 1998. Both local and overseas traders are aware of this control arrangement. Through incorporating the ban provision into the WDO, it will help sending out a strong signal to the international community that we are determined in implementing the Ban. Furthermore, the insertion of 14 new waste entries in the Seventh Schedule of the WDO can better reflect and cover all types of hazardous waste subject to control of the international Basel Convention. During the deliberation at the Legislative Council Bills Committee, the international law expert of the Department of Justice pointed out that the existing WDO and the Amendment Bill comply fully with the requirements and spirit of the Basel Convention. At present, deliberation of the Amendment Bill is nearly completed.

Annex

Abandoned Electronic Products Storage Sites

<i>No.</i>	<i>Location*</i>	<i>Estimated Area (sq m)</i>	<i>Estimated Quantity of Abandoned Electronic Products (Kg)</i>
1	North (Sha Tau Kok)	500	2 000
2	North (Hung Lung Hang)	2 400	46 000
3	North (Hung Lung Hang)	1 600	10 000
4	North (Hung Lung Hang)	600	13 000
5	North (Hung Lung Hang)	1 400	50 000
6	North (Hung Lung Hang)	900	8 000
7	North (Hung Lung Hang)	2 400	30 000
8	North (Hung Lung Hang)	600	7 000
9	North (Hung Lung Hang)	1 400	10 000
10	North (Hung Lung Hang)	1 200	10 000
11	North (Hung Lung Hang)	3 600	170 000
12	North (Hung Lung Hang)	7 000	120 000
13	North (Hung Lung Hang)	2 500	2 000
14	North (Hung Lung Hang)	3 000	20 000
15	North (Hung Lung Hang)	4 200	120 000
16	North (Hung Lung Hang)	400	5 000
17	North (Hung Lung Hang)	1 200	55 000
18	North (Hung Lung Hang)	400	Uncertain
19	North (Hung Lung Hang)	1 200	Uncertain
20	North (Hung Lung Hang)	2 000	Uncertain
21	North (Hung Lung Hang)	2 000	Uncertain
22	North (Hung Lung Hang)	1 000	Uncertain
23	North (Ta Kwu Ling)	600	10 000
24	North (Ta Kwu Ling)	7 200	50 000
25	North (Ta Kwu Ling)	1 200	12 000
26	North (Ta Kwu Ling)	1 200	3 000
27	North (Ta Kwu Ling)	1 200	12,000
28	North (Ta Kwu Ling)	600	3 000
29	North (Ta Kwu Ling)	600	10 000
30	North (Ta Kwu Ling)	2 000	25 000
31	North (Ta Kwu Ling)	400	20 000
32	North (Ta Kwu Ling)	300	5 000

<i>No.</i>	<i>Location*</i>	<i>Estimated Area (sq m)</i>	<i>Estimated Quantity of Abandoned Electronic Products (Kg)</i>
33	North (Ta Kwu Ling)	400	7 000
34	North (Ta Kwu Ling)	800	15 000
35	North (Ta Kwu Ling)	300	1 000
36	North (Ta Kwu Ling)	1 600	53 000
37	North (Ta Kwu Ling)	1 400	60 000
38	North (Ta Kwu Ling)	2 000	30 000
39	North (Ta Kwu Ling)	800	25 000
40	North (Ta Kwu Ling)	300	13 000
41	North (Ta Kwu Ling)	400	5 000
42	North (Ta Kwu Ling)	1 400	Uncertain
43	North (Ta Kwu Ling)	1 400	Uncertain
44	North (Kwu Tung)	1 800	100
45	North (Kwu Tung)	1 400	500
46	North (Kwu Tung)	1 650	1 000
47	North (Fanling)	2 700	5 000
48	North (Fanling)	2 000	3 000
49	North (Fanling)	2 000	1 000
50	North (Fanling)	2 000	30 000
51	North (Fanling)	4 000	Uncertain
52	North (Fanling)	2 000	3 000
53	North (Fanling)	1 000	Uncertain
54	North (Fanling)	1 000	1 000
55	North (Fanling)	1 000	1 000
56	North (Fanling)	1 000	1 000
57	North (Fanling)	1 000	1 000
58	North (Sheung Shui)	5 000	200
59	Yuen Long (East)	2 000	500
60	Yuen Long (East)	7 000	Uncertain
61	Yuen Long (East)	2 000	2 000
62	Yuen Long (East)	2 000	100
63	Yuen Long (East)	2 000	150
64	Yuen Long (East)	800	2 400
65	Yuen Long (East)	500	Uncertain
66	Yuen Long (East)	1 800	Uncertain
67	Yuen Long (West)	1 800	5 000
68	Yuen Long (West)	660	30 000

<i>No.</i>	<i>Location*</i>	<i>Estimated Area (sq m)</i>	<i>Estimated Quantity of Abandoned Electronic Products (Kg)</i>
69	Yuen Long (West)	2 000	2 000
70	Yuen Long (West)	700	2 000
71	Yuen Long (West)	1 000	20 000
72	Yuen Long (West)	800	50 000
73	Yuen Long (West)	1 500	8 000
74	Yuen Long (West)	2 500	10 000
75	Yuen Long (West)	3 000	10 000
76	Yuen Long (West)	2000	30 000
77	Yuen Long (West)	3 500	20 000
78	Yuen Long (West)	3 000	100 000
79	Yuen Long (West)	2 500	10 000
80	Yuen Long (West)	3 000	10 000
81	Yuen Long (West)	500	1 000
82	Yuen Long (West)	400	800
83	Yuen Long (West)	1 500	5 000
84	Yuen Long (West)	1 500	1 000
85	Yuen Long (West)	500	1 000
86	Yuen Long (West)	300	100
87	Yuen Long (West)	150	1 000
88	Yuen Long (West)	200	100
89	Yuen Long (West)	500	100
90	Yuen Long (West)	1 200	2 000

Note*: As disclosure of the address of individual sites would prejudice the protection of the personal data under the Personal Data (Privacy) Ordinance (Cap. 486), such information cannot be provided.

Reducing Threshold for Compulsory Sale of Land for Redevelopment

11. **DR RAYMOND HO** (in Chinese): *President, the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) (Cap. 545) stipulates that where a person owns not less than 90% of the undivided shares in a lot, he may make an application to the Lands Tribunal for the compulsory sale of the shares in the lot held by other owners for the purposes of the redevelopment of the lot. It is learnt that the Administration is considering a proposal to reduce the threshold to*

80%, so as to further encourage participation of private developers in urban redevelopment. In this connection, will the Government inform this Council:

- (a) as the Administration had stated when the Ordinance was enacted in 1998 that the threshold of 90% already struck a balance between the acceleration of urban redevelopment and the protection of interests of individual owners, of the rationale for proposing to reduce the threshold;*
- (b) of the impact of reducing the threshold on the interests of individual owners and the extent of controversy which may arise from such a proposal; and*
- (c) of the estimated annual increase in the number of redeveloped dilapidated buildings which will result from the reduction of the threshold?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):
President, my reply to the three parts of the question is as follows:

- (a) The LCSRO aims to facilitate private sector's redevelopment efforts. Under the LCSRO, any person who owns not less than 90% of undivided shares in a lot may apply to the Lands Tribunal for a compulsory sale of the whole lot for the purpose of redevelopment. In addition, the Chief Executive in Council may specify by notice in the Gazette certain classes of lots for which a compulsory sale threshold of not less than 80% will apply. The Gazette notice is subsidiary legislation.

Since the LCSRO came into effect in 1999, there have been calls from members of the industry, some professional bodies and individual owners urging the Government to amend the LCSRO, including lowering the compulsory sale threshold to not less than 80% across the board. Nonetheless, we have reservation over these proposals, mainly in view of the fact that the Legislative Council has come to a consensus on the LCSRO after in-depth and thorough discussions. There are also public views advocating the

need to strike a careful balance between facilitating private redevelopment and protecting private property rights.

The Government does not have any plan to propose amendments to the LCSRO at the moment. Nevertheless, to further facilitate private sector's redevelopment efforts so as to arrest the aggravating problem of building decay, we are considering to make use of the existing mechanism under the LCSRO to allow certain specified classes of lots to enjoy a compulsory sale threshold of not less than 80%, by way of subsidiary legislation and in the form of Gazette notice. We will shortly consult the industry and the public on our proposals.

- (b) During the passage of the LCSRO, the Legislative Council has examined, from the public interests angle, how to assist private sector's participation in redevelopment in order to arrest the problem of building decay and improve the overall living environment. At the same time, the Legislative Council has fully considered and discussed various measures to safeguard the interests of the affected building owners, including the provision of appropriate compensation under the LCSRO to relevant owners, and requiring the Lands Tribunal to make an order for sale only when it is satisfied that the application for redevelopment is fully justified and has fulfilled the requirements under the LCSRO.

Since our proposals are based on the existing mechanism provided in the LCSRO; and that we are mindful of the need to seek a fine balance between facilitating private sector's redevelopment efforts and protecting private property rights, we are confident that the public will understand and accept our proposals. We will listen to the views of various sectors on our proposals carefully in the upcoming consultation.

- (c) It is not possible to estimate the number of buildings that would be redeveloped each year as a result of our proposals because private sector's participation in redevelopment is mainly driven by market forces and is purely a commercial decision. Our proposals aim to create a more favourable environment to facilitate their work. Furthermore, the Lands Tribunal will examine thoroughly whether

an application for a compulsory sale has met the requirements under the LCSRO before it decides to grant an order for sale. As regards the number of buildings eligible for adopting a threshold of not less than 80% when applying to the Lands Tribunal for a compulsory sale under our proposals, we will provide the information in the context of the upcoming consultation.

Conditions upon Opening of Hong Kong-Shenzhen Western Corridor

12. **MR ABRAHAM SHEK:** *Madam President, it has been reported that the Hong Kong-Shenzhen Western Corridor (the Corridor) is expected to open at the end of this year or early next year. The Government estimates that the Corridor will aggravate traffic congestion on the already over-loaded Tuen Mun Road. Designed to relieve traffic congestion at the checkpoints in Lok Ma Chau, Sha Tau Kok and Man Kam To, the Corridor will also increase the traffic flow in Northwest New Territories, including Yuen Long and Tin Shui Wai. In this connection, will the Government inform this Council:*

- (a) as the reconstruction of and improvement to Tuen Mun Road will only be completed in 2010-11, how the Transport Department will relieve traffic congestion in Northwest New Territories, which will be aggravated by the opening of the Corridor; and*
- (b) whether the authorities will work with the operator of Route 3 to make special arrangements for diverting traffic on Tuen Mun Road to Route 3, thereby reducing the traffic flow on Tuen Mun Road?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS:
Madam President,

- (a) The Hong Kong section of the Corridor was completed at the end of last year. Based on the progress of the works which have been carried out thus far, it is estimated that the Shenzhen section of the Corridor and the main works for the boundary-crossing facility at Shekou will be completed at the end of this year. Hong Kong and Shenzhen will continue to work closely together with the objective of opening the Corridor to traffic within the first half of next year.

In the Northwest New Territories Traffic and Infrastructure Review 2004 (the Review), we have examined in detail the traffic implications of the commissioning of the Corridor on the transport infrastructure in Northwest New Territories. As we have explained to the Panel on Transport of the Legislative Council when reporting the results of the Review, the existing road networks in Northwest New Territories together with road projects which have been planned for the region should be able to cope with the traffic demand, including the additional demand which the Corridor will bring about, up to 2016.

According to our assessment, there will be about 31 000 vehicle trips daily (vtd) using the Corridor when it is open. At that time, there will be a total of around 160 000 vtd using Tuen Mun Road and Route 3, which will be below the total designed capacity of 250 000 vtd of the two major trunk roads in Northwest New Territories. We expect that by 2016, there will be about 60 000 vtd using the Corridor, and at that time, around 188 000 vtd will be using Tuen Mun Road and Route 3. That level will still be below the total designed capacity of 250 000 vtd of the two trunk roads.

Nevertheless, in order to relieve the traffic pressure on the town centre section of Tuen Mun Road, we have drawn up several short- and medium-term traffic improvement plans. Some of those plans have already been implemented, including the lengthening of the bus bays along the town centre section of Tuen Mun Road to increase their capacity and reduce obstruction to traffic on the main road, and improving the lanes merging from Tuen Hi Road into the town centre section of Tuen Mun Road. As regards medium-term measures, we will widen the section of Tuen Mun Road near Tsing Tin Interchange from two lanes to three lanes for each direction. We expect the widening works to be completed by mid-2008. We have also commissioned a consultancy study to examine whether it is feasible to introduce further traffic improvement measures at the town centre section of Tuen Mun Road. We expect that the study will be completed by mid-2006.

For the long term, we have drawn up a plan to provide new strategic transport infrastructure to meet the growth in traffic demand in the northwestern part of the New Territories after 2016. Different possible highway packages have been examined in the Review.

We have allocated resources for preparatory work for the possible highway packages, such as site investigation work and further studies. These will enable us to provide the supporting transport infrastructure to meet the development needs in a more efficient and timely manner in future.

- (b) Apart from continuing to encourage the franchisee of Route 3 to offer more concessions to more vehicle types, we are actively exploring with the franchisee other possible measures to rationalize the utilization of Route 3 and Tuen Mun Road.

Statistics on Patients Discharged from Public Hospitals

13. **MR ANDREW CHENG:** *Madam President, will the Government inform this Council of the respective numbers of patients suffering from the diseases listed below who were discharged from various clusters of public hospitals in each of the last two financial years, as well as the relevant numbers of such discharges?*

<i>Hospital cluster Disease</i>	<i>Hong Kong East</i>	<i>Hong Kong West</i>	<i>Kowloon Central</i>	<i>Kowloon East</i>	<i>Kowloon West</i>	<i>New Territories East</i>	<i>New Territories West</i>	<i>Total</i>
<i>Alzheimer's Disease</i>								
<i>Cardiac Diseases</i>								
<i>Chronic Lung Disease</i>								
<i>Diabetes Mellitus</i>								
<i>Epilepsy</i>								
<i>Parkinson's Disease</i>								
<i>Rheumatic Diseases</i>								
<i>Spinal Cord Injury</i>								
<i>Stroke</i>								
<i>Total</i>								

SECRETARY FOR HEALTH, WELFARE AND FOOD: Madam President, the respective numbers of in-patient discharges and deaths relating to patients suffering from the various diseases listed in the question and broken down by hospital clusters for the years 2003-04 and 2004-05 are set out in the tables below. There are no separate breakdowns on the figures of discharges and deaths, nor are headcount figures of such patients readily available. Cardiac Diseases, Chronic Lung Disease and Rheumatic Diseases are general terms, which do not match the disease coding currently used by the computer systems in public hospitals. To ensure consistency and accuracy of the information presented in the tables, we have provided the figures for Ischaemic Heart Disease, Chronic Obstructive Pulmonary Disease and Osteoarthritis respectively instead.

In-patient discharges and deaths in 2003-04

<i>Hospital Cluster Disease</i>	<i>Hong Kong East</i>	<i>Hong Kong West</i>	<i>Kowloon Central</i>	<i>Kowloon East</i>	<i>Kowloon West</i>	<i>New Territories East</i>	<i>New Territories West</i>	<i>Total</i>
Alzheimer's Disease	29	25	30	10	68	33	28	223
Cardiac Diseases (Ischaemic Heart Disease)	2 178	3 266	4 630	2 277	5 168	2 453	1 805	21 777
Chronic Lung Disease (Chronic Obstructive Pulmonary Disease)	3 718	2 389	3 903	4 490	7 958	4 634	2 899	29 991
Diabetes Mellitus	1 576	964	2 276	927	3 958	2 139	791	12 631
Epilepsy	541	497	468	604	1 079	637	690	4 516
Parkinson's Disease	118	81	146	69	179	128	57	778
Rheumatic Diseases (Osteoarthritis)	646	531	371	340	849	749	370	3 856
Spinal Cord Injury	5	9	10	5	16	24	10	79
Stroke	3 134	2 489	4 840	2 438	5 894	4 612	2 615	26 022
Total	11 945	10 251	16 674	11 160	25 169	15 409	9 265	99 873

In-patient discharges and deaths in 2004-05

<i>Hospital Cluster Disease</i>	<i>Hong Kong East</i>	<i>Hong Kong West</i>	<i>Kowloon Central</i>	<i>Kowloon East</i>	<i>Kowloon West</i>	<i>New Territories East</i>	<i>New Territories West</i>	<i>Total</i>
Alzheimer's Disease	14	13	24	6	53	27	20	157
Cardiac Diseases (Ischaemic Heart Disease)	2 614	3 334	4 914	2 705	6 362	3 319	2 068	25 316
Chronic Lung Disease (Chronic Obstructive Pulmonary Disease)	4 662	3 157	4 938	6 173	10 780	6 894	3 768	40 372
Diabetes Mellitus	2 039	1 129	2 598	1 208	4 402	2 858	912	15 146
Epilepsy	625	584	600	672	1 279	869	640	5 269
Parkinson's Disease	138	120	158	75	224	177	69	961
Rheumatic Diseases (Osteoarthritis)	639	625	411	452	986	971	529	4 613
Spinal Cord Injury	3	12	7	1	18	26	4	71
Stroke	3 361	2 445	5 125	2 854	5 912	5 050	2 805	27 552
Total	14 095	11 419	18 775	14 146	30 016	20 191	10 815	119 457

While the above figures are broken down by hospital clusters, they do not necessarily reflect the disease pattern by geographical boundaries for a number of reasons. Firstly, patients are allowed to seek medical attention in any public hospital apart from those in their own residential districts. As a matter of fact, there is a considerable amount of cross-cluster utilization of services. Secondly, there are cases where patients seek medical attention from more than one public hospital for the same medical condition. Thirdly, the provision of certain specialized services is currently centralized in only one or a few centres, which caters for the needs of the entire territory, for better clinical outcomes and

more effective deployment of expertise. Naturally, the number of discharges and deaths would be higher in the hospital clusters where these specialized centres are located. Lastly, the figures may be slightly overstated due to readmissions and the current practice of counting hospital transfers as discharges.

Land on Short-term Leases to Logistics Industry

14. **MR CHEUNG HOK-MING** (in Chinese): *President, it has been reported that the Government intends to lease out a total of three pieces of land in Tsing Yi South, Tuen Mun Area 49 and an area near to the Tai Po Industrial Estate to the logistics industry under short-term tenancies (STTs). In this connection, will the Government inform this Council:*

- (a) *when it will offer the above land for lease and how they are to be disposed (such as through open tender or by inviting applications from individual operators in the industry);*
- (b) *of the duration of the tenancies concerned;*
- (c) *given that the current traffic through the navigation waterway of the Rambler Channel is already very heavy, whether the logistics operations in the site in Tsing Yi South will involve sea or land transport; if sea transport will be involved, how the authorities will address the problem that such logistics operations will add to the traffic load of the navigation waterway; if land transport will be involved, whether the authorities have assessed if the existing supporting transport facilities in Tsing Yi can cope with such logistics operations; if they cannot cope, how such a problem can be resolved; and*
- (d) *given that the site in Tsing Yi South was originally one of the proposed sites for Container Terminal 10 (CT10), whether the project to build the terminal will be advanced or postponed as a result of the site being earmarked by the authorities for logistics purposes, and when the site for the terminal will be finalized?*

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

- (a) In response to the demand of the logistics sector for sites to accommodate logistics facilities, the Administration has identified several suitable sites for use by the logistics industry through STT arrangement. We have consulted the Hong Kong Logistics Development Council and the Hong Kong Port Development Council on the proposed use of the three sites mentioned in the question and both Councils and the industry support the proposals. We plan to finalize the relevant tenancy conditions in the next few months so that these sites can be put out for open tender.
- (b) We would work out the relevant tenancy conditions in the next few months. The sites would be leased out through STT and the tenure would depend on various factors including the long-term use of the site, as well as environmental and traffic concern.
- (c) As the Tsing Yi South site has a seafront for marine access, sea-land intermodal cargo operation at this site is possible. Both the Marine Department and the Transport Department have assessed the marine traffic and land traffic implications and relevant conditions would be included in the tenancy to ensure that the operation of the site will not have adverse impact on the existing marine and land traffic.
- (d) The Tsing Yi South site would be leased out through STT and would not affect the development plan of the CT10. The Study on Hong Kong Port — Master Plan 2020 (the Study) completed at the end of 2004 identified two possible locations for the development of CT10, namely Northwest Lantau and Southwest Tsing Yi. We have not made a decision on the location of CT10 at this stage. As recommended in the Study, we have commissioned an ecology study on the Northwest Lantau site to assess its suitability for constructing CT10 from an ecology perspective. In parallel, we are also updating the Port Cargo Forecasts to work out the optimal timing for container terminal development. We will review the port expansion options when more data are available.

Assisting Students with Special Educational Needs

15. **DR JOSEPH LEE** (in Chinese): *President, on assisting students with special educational needs (SEN) (including special learning difficulties (SpLD)), will the Government inform this Council:*

- (a) *of the number of students identified as having SpLD by the Department of Health (DH) in each of the past five years; how the authorities assist and support such students in overcoming learning difficulties, and whether they have regularly conducted assessment for them and understood about their rehabilitation progress;*
- (b) *whether the Education and Manpower Bureau (the Bureau) has assessed the resources required for implementing support measures for students with SpLD in primary and secondary schools; and*
- (c) *of the reasons for the Bureau's implementing in primary schools from 2003 onwards a pilot scheme under a new funding mode in order to provide funding to assist students with SEN, but not in secondary schools?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese):
President,

- (a) The number of children with SpLD identified by the DH in the past five years is as follows:

<i>Year</i>	<i>Number of Children</i>
2001	227
2002	368
2003	559
2004	634
2005	730

At present, to facilitate the learning of students with SEN, the Bureau provides additional resources to schools through various measures, including Intensive Remedial Teaching Programme, New Funding Mode, School-based Remedial Support Programme and

School-based Curriculum Tailoring Programme. The Bureau also requests the schools to formulate a school-based policy and adopt a whole-school approach to cater for student diversity, and to establish a School Support Team to co-ordinate resources deployment and policy implementation.

In the 2005-06 school year, the Bureau has commissioned a tertiary institution to conduct a teacher professional development course entitled "Understanding, Assessment and Teaching of pupils with SpLD". Besides, to cater for students more effectively, the Bureau will continue to arrange professional development courses for teachers to enhance their awareness and teaching skills in handling students with different types of SEN.

As regards the identification of students, the Bureau has developed tools such as "Early Identification of Primary One Pupils with Learning Difficulties" and "The Hong Kong Specific Learning Difficulties Behaviour Checklist (For Primary School Pupils)" to facilitate schools to have early identification and support to students with learning difficulties. Students with severe difficulties should be referred to the professionals such as educational psychologists of the Bureau for individual assessment. The professionals will advise the teachers on adaptations in teaching in the light of the strengths and weaknesses of the students' learning. The teachers will review the students' progress in learning and provide appropriate support.

- (b) In 2004-05, the Bureau allocated around \$460 million to support students with SEN (including those with SpLD) in ordinary schools.
- (c) With effect from the 2003-04 school year, the Bureau has implemented the New Funding Mode Pilot Scheme in primary schools. In the current school year, 240 schools have participated in the Scheme. We are now reviewing the arrangements and effectiveness of New Funding Mode, and exploring the implementation of an appropriate support programme in secondary schools to cater for student diversity. The Bureau will consult the schools and related parties later this year to ascertain the mode and timetable for implementation.

Improving Traffic Management

16. **MR SIN CHUNG-KAI** (in Chinese): *President, in the wake of the serious traffic congestion in Kowloon on 9 May last year, a task force was set up to review and recommend measures to enhance the emergency transport co-ordination framework. In its report submitted to the authorities in July last year, the task force mapped out 56 recommendations for better traffic management, many of which related to enhancing application of information technology (IT). In this connection, will the Government inform this Council:*

- (a) of the task force's recommendations which have been in force, are in the pipeline, or will be implemented shortly; the anticipated timeframe for the implementation of all the recommendations; and*
- (b) whether it has other IT application projects to improve the traffic management; if so, of the details of such projects and the implementation schedule?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Chinese): President,

- (a) In the past few months, the Transport Department (TD) has been actively implementing the recommendations in the Report of the Task Force on Emergency Transport Co-ordination regarding application of IT in traffic management. The details are set out below:

Actions Completed

- Use a digitized "incident map" to collate information from different sources to assess the severity and spread of congestion;
- Provide a real-time web-based incident management communication system for the TD and other government departments;
- Enhance the use of area traffic control (ATC) systems to adjust traffic signals for effective queue management and dissipation;

- Improve the design of the TD's homepage and commission the personal digital assistant version of the homepage to facilitate members of the public to check the latest traffic conditions and special traffic news;
- Use the geographical information system (GIS) to show the journey time and average vehicular speed along major routes on Hong Kong Island towards Kowloon using the three road harbour crossings;
- Establish an Interactive Voice Response System to provide real-time traffic information;
- Inform 130 organizations and government departments with more than 500 employees of special traffic news through e-mail;
- Co-operate closely with bus and railway companies to inform passengers of emergency news using various channels (for example, Light Emitting Diode display panels at bus termini and public announcement systems in train compartments) in case of serious traffic and transport incidents;
- Co-operate closely with radio stations to increase the frequency of traffic news broadcasts;
- Use third-generation mobile phones to transmit images of roads or incident sites to facilitate incident management;
- Review the Intelligent Transport Systems (ITS) Strategy; and
- Discuss with academics measures to enhance incident management.

Actions in Progress

- Install additional closed-circuit television (CCTV) cameras at strategic locations along major routes in phases to enlarge the coverage of the CCTV system;

- Implement a full-scale trial of mobile CCTV system;
- Explore the use of map and database with built-in GIS to enhance the efficiency of producing "incident maps" and to disseminate real-time traffic information;
- Explore the use of various types of vehicle tracking technologies to measure the travel time and speed of the road network;
- Explore ways to disseminate traffic news using short messaging service in a more efficient manner;
- Explore the mode of co-operation with mobile phone companies to transmit CCTV images to the public using the mobile phone network; and
- Plan to install variable message signs (VMS) at strategic locations and junctions in phases, and explore the feasibility of using mobile VMS in Hong Kong.

We expect that the majority of the above tasks can be completed within 2006.

Actions to Commence Shortly

The TD will commission a study on the following areas by the end of this year:

- Use loop detectors underneath the roadway to collect real-time regional traffic data;
- Develop an automatic incident database to facilitate incident management;
- Explore the use of traffic simulation models to assess the traffic impact of incidents;
- Develop a computerized expert-system-based incident management system; and

- Develop a shared computer-aided dispatch system to enhance inter-departmental dispatch co-ordination.

We expect that the above study will be completed in 2007. Depending on the outcome of the study, the TD will decide whether and how to apply these technologies.

- (b) Apart from the recommendations of the Task Force, we will establish a centralizd Transport Information System (TIS) and establish a more comprehensive traffic management framework in accordance with the ITS Strategy to enhance the traffic flow and improve the safety of our road network. The TD is arranging for the tendering of the new TIS contract, which is expected to be awarded soon.

As regards the traffic management framework, the installation of ATC and CCTV systems in Tai Po and North Districts has been completed. We have commenced the works to expand the system to Tuen Mun and Yuen Long, and we expect the works to be completed by October 2008. Upon completion of the project, more than 90% of all signalized junctions in Hong Kong will be covered by the ATC system. The renewal of the Hong Kong Island ATC system has progressed well and is scheduled for completion within 2006. We are also planning to replace the systems in Kowloon, Tsuen Wan and Sha Tin, and extend the system to Tseung Kwan O.

In addition, we also plan to install traffic control and surveillance facilities on major expressways, including the Hong Kong-Shenzhen Western Corridor, Deep Bay Link, Route 8 and Fanling/Tolo Highway between 2006 and 2009. We will also install additional CCTV cameras along the Island Eastern Corridor, Yuen Long Highway, Tung Chung Road, Road T3 in Sha Tin and Route 9 Extension in Tsuen Wan by 2007 for better traffic management.

We are planning to extend the Journey Time Indication System to the Kowloon approaches to the Cross-Harbour Tunnel to provide more information to motorists. We will seek funding later, and expect the project to be completed in 2008.

We will continue to use ITS and implement various projects under the ITS Strategy in a cost-effective manner through collaboration with the private sector and the academia.

Reciprocation of Donors by Tertiary Institutions

17. **DR KWOK KA-KI** (in Chinese): *President, regarding fund-raising campaigns organized by tertiary institutions and their reciprocating their donors, will the Government inform this Council whether it knows:*

- (a) *in respect of the past three years, the names, duties, terms of office and conditions of employment (including the amounts of salaries and allowances) of senior advisers, Vice-chancellor's advisers, public relations staff or external/publicity affairs staff responsible for promoting a philanthropic culture and organizing fund-raising activities in various tertiary institutions, and the details of the expenditure of various institutions on promoting and publicizing fund-raising activities;*
- (b) *the names of persons or organizations that have made donations to various tertiary institutions over the past three years, the amounts of donations and the ways to acknowledge the donors, broken down by institution, and the mechanism and criteria adopted by various institutions for determining the ways to acknowledge the donations;*
- (c) *the mechanism used by the University Grants Committee (UGC) to monitor the fund-raising strategies of various institutions, the practice of naming institutions, subsidiary faculties and departments, professorships, research institutes, research funds and buildings after the relevant benefactors, and the actual uses of the donations, and whether the UGC has assessed if the naming practice is legal and in the public interest; and*
- (d) *as the naming of the Faculty of Medicine of the University of Hong Kong (HKU) has aroused public debate, whether the UGC will urge the senior management of the HKU, including the Vice-chancellor, his special advisers and deans of faculties, to enhance accountability, respond to the voices of opposition in the community and explain its naming mechanism publicly, and whether the UGC will study and formulate a set of comprehensive mechanism, guidelines,*

procedures and principles for raising funds, with a view to addressing the issues surrounding the naming of the HKU's Faculty of Medicine and assisting various institutions in promoting a philanthropic culture?

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese):
President,

- (a) All institutions funded by the UGC are autonomous statutory bodies governed by their respective ordinances and councils. They enjoy considerable autonomy in the management of their internal affairs and finance, including soliciting and accepting donations. As all UGC-funded institutions are free to deploy their staff and other resources for carrying out fund-raising activities, the Administration and the UGC do not have such information about the manpower involved and expenditure by item incurred by individual institutions for these activities.
- (b) Based on the annual accounts of the UGC-funded institutions, the amount of donations received by institutions in the past three years are set out as follows:

<i>Institution</i>	<i>2002-03 academic year</i>	<i>2003-04 academic year</i>	<i>2004-05 academic year</i>
	<i>\$'000</i>	<i>\$'000</i>	<i>\$'000</i>
City University of Hong Kong	50,913	98,003	33,714
Hong Kong Baptist University	45,651	204,885	19,849
Lingnan University	7,433	55,334	10,969
The Chinese University of Hong Kong	304,753	215,822	188,125
The Hong Kong Institute of Education	21,357	29,985	10,829
The Hong Kong Polytechnic University	78,934	277,297	66,669
The Hong Kong University of Science and Technology	89,804	149,490	81,967
University of Hong Kong	191,605	388,096	252,841
Total	790,450	1,418,912	664,963

All UGC-funded institutions have established their own internal guidelines for handling donations. Annexed is a note on Common Practice Adopted by UGC-funded institutions in Accepting Donations issued by the UGC Secretariat to the Finance Committee in July 2005 for reference.

(c) and (d)

As explained above, all UGC-funded institutions are autonomous in soliciting, accepting and using donations. As a good management practice and to protect their reputation and academic freedom, each institution has its own internal guidelines and procedures. Before accepting donations, institutions will consider carefully the donor's wish and the purpose of the donation, to ensure that they are in line with the role and mission of the institutions concerned. Regarding naming arrangements, institutions will generally consider a number of factors, such as the impact of such naming arrangements on the institutions or faculty concerned; the donor's contributions to the institution, the education sector as a whole or the community at large, and so on, in considering whether or not to name facilities or faculties after the benefactor.

Given that each institution has drawn up its own rules and procedures for handling donations, and in line with the spirit of upholding institutional autonomy, the Administration and the UGC fully respect the autonomy of tertiary institutions in their internal management, and will not seek to interfere with the internal affairs of individual institutions. Except in the case of the Matching Grant Scheme for which the UGC has set out the rules and principles for matching of private donations, neither the Administration nor the UGC consider it necessary to stipulate any rules or guidelines on the handling of donations that the institutions must follow. Nonetheless, the Administration welcomes institutions to explain their guidelines and procedures in handling donations so as to increase transparency and to enhance the general public's understanding of the fund-raising mechanisms of our institutions.

Second Matching Grant Scheme for UGC-funded institutions

Common Practice Adopted by UGC-funded Institutions in Accepting Donations

Introduction

Institutions funded by the UGC are autonomous in the management of their finance, including accepting and use of donations. Except in the case of the Matching Grant Scheme, for which the UGC has set out the rules and principles for matching of private donations, neither the Administration nor the UGC has stipulated rules or guidelines on the handling of donations that the institutions must follow. However, as a good management practice and to protect their reputation and academic freedom, each institution has its own internal guidelines and procedures. This note attempts to set out key common practice/guidelines as identified by the UGC Secretariat upon the request of Members at the Finance Committee meeting on 8 July 2005.

Guiding Principles

2. According to the information provided by the UGC-funded institutions, the guiding principles are as follows:

- (i) Donations should contribute to the enhancement of teaching, learning, research and overall development of the institutions and not for personal benefits of individuals;
- (ii) there should be no conditions attached to a donation which would adversely affect an institution's ability to carry out its functions fairly and impartially; and
- (iii) donations should not come from sources known to institution as questionable, illegal or unethical.

Administration and Acceptance of Donations

Acceptance

3. The Council of each institution is the authority in deciding the acceptance of donations. Some Councils have set up a committee for the purpose of vetting,

monitoring or guiding various fund-raising activities and donations related matters, comprising community leaders independent from the administration of the institution. In general, the Councils have delegated the approving authority of accepting donations to different levels of executives (for example, President/Vice-Chancellors, Deputy Presidents, Vice Presidents, Deans, and so on) according to the amount of donations. But a donation involving a large amount of money or a significant policy decision would require approval from the Councils and/or their relevant committees. In deciding whether to accept a donation, the institutions will follow their own guidelines and the guiding principles, as set out in paragraph 2 above, have encapsulated the key considerations. As far as practicable, institutions may also collect relevant information of the background of the donors when deciding whether to accept a donation. The final decision will be based on a number of factors and is ultimately a judgement of the Council and/or its relevant committee(s).

Administration

4. All institutions have followed the advice given by the Independent Commission Against Corruption in the handling of solicitation and acceptance of donations where appropriate. Each institution has set up or designated an office/department which is responsible for central co-ordination and administration of various donations related matters. While individual staff, departments or faculties can also solicit and accept donations (up to their respective delegated authority), the central office/department responsible for donations must be kept informed. All donations are properly documented and the overall donation situation is reported regularly to the respective Councils.

5. Like other revenue and expenditure items, the use and record of the donations are subject to audit by external auditors at regular intervals.

Conclusions

6. Each institution has drawn up different rules and procedures for its staff in handling donations, which is within its autonomy. The UGC respects this autonomy. And from the common practices as identified above, we are also confident that the institutions are keenly aware of the need for probity and integrity in the handling of donations.

Secretariat
UGC
July 2005

Deficits of Hospital Authority

18. **MR FREDERICK FUNG** (in Chinese): *President, the Hospital Authority (HA) continuously recorded deficits in the past four financial years. In this connection, will the Government inform this Council:*

- (a) *of the basis and criteria adopted for the allocating funds to the HA each year, and how the amount of funds is arrived at; whether the amount of funds is adjusted in response to changes in demand for various health care services; if so, why the HA still runs into deficit and there is a shortfall in the provision of certain health care services (for example, out-patient service); if not, how the Government ensures that its funding policy takes, as the primary factor, the maintenance of the standards of public health care service and not controlling the overall health care expenditure within a certain level; and*
- (b) *whether it has assessed if the persistent book deficit recorded in the HA's financial account will give the public the wrong impression that the HA is being mismanaged and fees and charges for public health care services are too low, thus leading them to support any future proposals for increasing fees and charges for public health care services?*

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

- (a) The government subvention for the HA in 2001-02 and 2002-03 was largely worked out on the basis of the population-based funding model, with an annual growth rate of subvention at around 2.2%. However, in view of the Government's budgetary situation in the years from 2003-04 onwards, a 1% annual growth rate had been applied with additional funds provided for specific programmes to serve the community needs.

Notwithstanding the additional resources made available by the Government mentioned above, the total government subvention to the HA recorded a net reduction from 2003-04 to 2005-06 as a result

of the implementation of pay cuts and delivery of efficiency savings under the Government's Enhanced Productivity Programme. By their very nature, these cost reduction measures should not have long-term impact on the level or quality of the HA's services.

The main factors contributing to the financial deficits of the HA in the past few years include: increasing cost in medical treatment due to technology advancement; shortfall in non-medical income; increased staff cost due to salary increments for existing staff; one-off *ex gratia* payment to staff departed under the HA's Voluntary Early Retirement Scheme; and increased expenditure on insurance and legal services. The full amount of the deficits has been absorbed by the HA's General Reserve. There was no impact on the daily operation of public hospitals and clinics.

- (b) The Government has been working closely with the HA to address the financial difficulties faced by the HA. For the year 2006-07, with the Government's recurrent subvention of some \$27.4 billion together with other measures taken by the HA, we are hopeful for the HA to more or less balance its budget.

The main objectives of the current round of review on public medical fees are to better target government subsidies to patients most in need and to instil on the HA users a sense of value of the services that they are receiving in order to influence patients' behaviour and to reduce abuse of services and wastage of medical resources. The review has no direct causal connection with the HA's financial situation.

Property Promotion by Estate Agents in Public Places

19. **MR ALBERT CHAN** (in Chinese): *President, nuisances are frequently caused by estate agents to residents in such districts as Tung Chung, Tsuen Wan and Sham Shui Po. Some estate agents often promote first-sale properties at walkway ends in these districts, causing inconvenience to passers-by, and many of them even stop vehicles on the roads, tapping on their windows to attract the attention of the people inside, hence jeopardizing the safety of road users.*

Moreover, conflicts have arisen among estate agents in their scramble for clients in public places, causing disturbance to public peace and order. In this connection, will the Government inform this Council:

- (a) of the number of complaints received by the authorities in each of the past three years about the nuisances caused by estate agents to local residents in their promotion of properties on the streets; and*
- (b) whether it plans to step up the regulation of estate agents' sales promotion practices in public places, such as including additional conditions in the estate agent's licence to regulate on-street promotion activities by estate agents, so as to minimize their nuisances to the public; if so, of the details; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): President, the Estate Agents Authority (EAA) is an independent statutory body established under the Estate Agents Ordinance, responsible for administering the qualifying examinations and the licensing and regulatory regime for estate agents, as well as ensuring that practitioners provide estate agency services according to the law. All licensees must comply with the Code of Ethics and Practice Circulars issued by the EAA in carrying out estate agency work. Disciplinary actions will be taken against those who fail to comply. My reply to the two parts of the question is as follows:

- (a) In the past three years, the EAA has received the following number of complaints in relation to estate agents causing nuisances to the public or engaging in unruly or rowdy behaviour in public places in the course of promoting property sales:

Table 1

<i>Year</i>	<i>No.</i>
2003	10
2004	9
2005	9

(Note: The figures in Table 1 are based on the dates the complaints were received.)

The EAA has exercised disciplinary powers to suspend the licences of estate agents found to have been in serious breach of regulations, as follows:

Table 2

<i>Year</i>	<i>No.</i>
2003	5
2004	7
2005	11

(Note: The figures in Table 2 are based on the dates of the disciplinary sanctions.)

- (b) The EAA places great importance on order at first-sale sites and operation of estate agents in promoting first-sale properties in public places. In view of the rising number of first-sale properties on offer in the past year, the EAA has stepped up inspection of first-sale sites and their vicinity to minimize possible nuisances that may be caused to the public by estate agents in the course of their promotional activities. In 2005, the EAA conducted more than 900 such inspections, doubling that of 2004. During an inspection, if estate agents are found to be engaging in improper conduct (such as stopping vehicles on carriageways or gathering at nearby MTR or KCR exits to intercept passengers, which may be in breach of the relevant by-laws), the EAA would make best endeavours to stop them (including issuing over 1 000 advices/warnings last year on the spot to curb nuisances). In more serious cases, the EAA would enlist the assistance of police. Moreover, the EAA regularly makes suggestions to property developers on ways to improve the sales arrangements and orderly conduct of sales activities. In response, some property developers have taken corresponding measures to improve order at first-sale sites.

Under the present regime, all licensed estate agents have to comply with the Code of Ethics and Practice Circulars issued by the EAA. Based on the Code and the Circulars, the EAA may take disciplinary actions against estate agents found to have caused nuisances to the public or committed misconduct in the course of promoting first-sale properties, in accordance with the Estate Agents Ordinance. Such disciplinary actions may include suspension or revocation of

licences. In carrying out its regulatory and disciplinary actions, the EAA needs the co-operation of all parties concerned, including property developers and consumers. The EAA will work closely with the Consumer Council to strengthen community education.

Stopping vehicles on carriageways and tapping on their windows may jeopardize public safety and constitute serious misconduct. Improvements are called for to safeguard public interest. The Housing, Planning and Lands Bureau, in conjunction with the EAA, the Real Estate Developers Association of Hong Kong and police, will further explore improvement measures to prevent such unruly behaviours. The EAA will continue to ask estate agency firms to strengthen staff management at first-sale sites in accordance with the relevant Practice Circulars to prevent nuisance activities. The EAA will exercise disciplinary powers against the management of estate agency firms found not to have fulfilled their responsibility.

Curbing Proliferation of *Mikania Micrantha*

20. **MISS CHOY SO-YUK** (in Chinese): *President, on curbing the proliferation of Mikania micrantha, a climbing plant also known as "the plant killer", will the Government inform this Council:*

- (a) *of the locations and total area of the land where Mikania micrantha proliferated last year; and the respective areas of land covered by Mikania micrantha within the jurisdiction of various departments at present;*
- (b) *whether the relevant departments have designated staff to remove the Mikania micrantha growing in the areas within their jurisdiction; if so, of the current number of such staff in each department, and the respective areas of land in which Mikania micrantha is usually removed each month; if not, the reasons for that;*
- (c) *whether Mikania micrantha removal operations were conducted on lands within the jurisdiction of the Lands Department and the Highways Department over the past three years; if so, of the number of such operations and the area of land covered each year; if not, the reasons for that;*

- (d) *whether the authorities have conducted Mikania micrantha removal operations on private lands over the past three years; if so, of the number of such operations and the area of land covered each year; if not, the reasons for that, and how it will prevent damage caused by Mikania micrantha to the trees on such lands;*
- (e) *as it indicated at the end of 2004 that it would consider using extensively the herbicide "Sulfometuron-methyl" to kill Mikania micrantha, of the current position on the use of such herbicide to remove Mikania micrantha; and*
- (f) *whether it has explored alternatives to curb the proliferation of Mikania micrantha; if it has, of the outcome?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): President,

- (a) Mikania micrantha is found mainly at derelict fields, abandoned fishponds, hillsides and woodland fringe in Tai Po, Yuen Long and the North Districts. So far, it has not been found in urban landscaped areas managed by government departments. The spreading of Mikania micrantha in country parks and other ecologically sensitive areas has also been kept under control. Government departments remove Mikania micrantha from land areas under their jurisdiction on a regular basis. We have no statistics on the total area of land where Mikania micrantha proliferated last year and the areas of land covered by Mikania micrantha at present.
- (b) About 500 staff in the Agriculture, Fisheries and Conservation Department (AFCD) are involved in the management of country parks. Weeding of Mikania micrantha is part of their routine duties. In the past three years, the AFCD cleared a total of 76 hectares of lands with Mikania micrantha in country parks and other ecologically sensitive areas. Removal of this plant is also part of the routine horticultural maintenance work, and clearance work in public works sites controlled by government departments.

Government departments may either deploy their staff or contractors to remove *Mikania micrantha*. We find the existing arrangement cost-effective.

- (c) The Lands Department and the Highways Department together removed *Mikania micrantha* on 12 hectares of land under their jurisdiction in the past three years. As the removal of this plant was carried out as part of their routine horticultural maintenance duties, no separate statistics is kept on the number of clearing operations.
- (d) The Government does not have the right to enter private lands to clear *Mikania micrantha* therein. The AFCD will assist landowners to control *Mikania micrantha* in private land by offering professional advice on the clearing methods.
- (e) In 2004, the AFCD and the Forestry Bureau of Guangdong Province completed a study on measures to prevent and control the growth of *Mikania micrantha*. In the study, Sulfometuron-methyl was identified as an effective herbicide. Field trials have been carried out in country parks and the results have been satisfactory. However, application of herbicide to clear *Mikania micrantha* is not suitable for sites near water sources or active agricultural lands.
- (f) Researches have been carried out overseas to explore other alternative measures to control *Mikania micrantha*. However, no conclusive results are available at this stage.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Bills. We will resume the Second Reading debate on the Protection of Endangered Species of Animals and Plants Bill.

PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS BILL

Resumption of debate on Second Reading which was moved on 27 April 2005

PRESIDENT (in Cantonese): Miss CHOY So-yuk, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MISS CHOY SO-YUK (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Protection of Endangered Species of Animals and Plants Bill (the Bills Committee), I would like to report on the deliberations of the Bills Committee.

The main objectives of the Protection of Endangered Species of Animals and Plants Bill (the Bill) are to streamline and align the existing provisions under the Animals and Plants (Protection of Endangered Species) Ordinance (the Ordinance) with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), improve the control regime and streamline the licensing system and the fee structure.

The Bills Committee generally supports the policy intent of the Bill because the CITES is applicable to Hong Kong and thus Hong Kong has the obligation to comply with the international control regime on endangered species. The Bills Committee however notes with concern that some legitimate trades, such as shark's fins and furs, are being misunderstood by the public and international community as breaching international conservation conventions. As such, the authorities are urged to clarify the misunderstandings.

The Bill generally adopts the same controls as the CITES, but contains certain controls which are stricter than the CITES (such as the requirements for import/possession licence for controlled species). The authorities explained that, the Ordinance has already imposed controls that are over and above the requirements as provided in the CITES to tackle smuggling activities, which were rampant in the 1970s when the Ordinance was enacted. In view of the substantial decline in illicit trade now, the Bill proposes that some of the excessive controls under the Ordinance can be removed in order to facilitate legitimate trading in controlled species, while at the same time balancing the need for the protection of endangered species.

The Bill proposes to streamline the licensing system. The original requirement is that a separate import/export/possession licence has to be issued for each individual controlled species. It is now proposed that only one suitable licence is required on the basis of individual consignment or keeping premises. In addition, a new fee scheme will be introduced to simplify the existing fee structure with a view to achieving cost recovery.

While welcoming the proposal, members think that since importers have already obtained an import licence for the controlled species, they should not be required to apply for a possession licence. Furthermore, the requirement for importers to renew a possession licence after expiry of the two-year validity period will also cause inconvenience to the trade. The authorities explained that, different information is required in the import and possession licences which are two different mechanisms. The purpose of the requirement of renewing such licence at regular intervals is to allow the Agriculture, Fisheries and Conservation Department (AFCD) to keep track of such controlled species and to update the information in relation to the species. Since the trade has generally accepted the existing import and possession licensing mechanisms, merging the two mechanisms into one will not only create enforcement difficulties, but will also cause unnecessary confusion to the traders. To address members' concern, the authorities agreed to extend the length of the validity period of a possession licence to five years to further reduce the burden on the licensees.

The Bill provides that a person commits an offence if he, on an application for a licence or extension, renewal and variation of a licence, furnishes any false information and is liable on conviction to a fine at level 6. Members generally hold the view that the proposed penalty cannot reflect the severity of the offence. In this connection, the authorities agreed to amend the clause to add an imprisonment for six months, on top of the fine, to achieve the deterrent effect.

The Bills Committee expresses the concern that some persons may come into possession of specimen before such species are listed as controlled species under the CITES. They may not have any evidence to prove the date of possession of such species. In response to the request of members, the Secretary for the Environment, Transport and Works will include in her speech to be delivered at the resumption of Second Reading debate on the Bill an undertaking that cases of possession of controlled species without the required evidence will be considered having regard to all circumstances relating to an individual case.

With regard to enforcement, it is stipulated in the Bill that, a person commits an offence if he without reasonable excuse obstructs an authorized officer exercising his power to enter/inspect trading premises, dispose/forfeit things seized and arrest. An authorized officer may apply to the Court or Magistrate for an order to forfeit the thing seized or any proceeds of sale of that thing to the Government. Members question the propriety of forfeiture based on the offence of obstruction. The authorities explained that, if a person is convicted of an offence related to the regulation of controlled species, such species shall be forfeited to the Government. However, in the case where a person is acquitted or no prosecution has been brought against the person, the forfeiture of any controlled species concerned has to be enforced under the order of the Court or Magistrate, which will consider all circumstances of the case to decide whether the species should be forfeited. To address members' concern, the authorities agreed to amend the provisions concerned to ensure forfeiture of things seized will not be based on the offence of obstruction.

After the passage of the Bill, the authorities will provide a grace period of three months before it comes into effect. In addition, a further grace period of three months will be provided after the commencement of the new Ordinance for any controlled species, the possession of which is not subject to licensing control before the commencement of the new Ordinance. While welcoming the transition provision, the Bills Committee points out that a grace period of three months for the possession of species currently not under the control of the Ordinance may not be sufficient. In this connection, the authorities agree to extend the relevant grace period from three to six months.

The relevant parts of Convention instruments (including resolutions, decisions or notifications) that have the force of law in Hong Kong are set out in Schedule 3. It is stipulated in the Bill that, Schedule 3 can be amended through the negative vetting process by the legislature so as to ensure timely incorporation of the regulations of the CITES into the domestic law. As the definitions of certain terms in the Bill are modelled on those of such terms in the Convention instruments, and amendments to provisions relating to Convention instruments which have far-reaching implications, particularly the term "commercial purposes", will only be in the form of an Order published in the Gazette, the Bills Committee expresses the concern that the legislature may not have sufficient time to scrutinize such amendments. After repeated negotiations, the authorities eventually accepted members' request, so the term "commercial

purposes" will be moved to the main text of the Bill. In addition, the authorities will review the drafting of Schedule 3, after consultation with the CITES Secretariat, to avoid any possible ambiguity in the application of Convention instruments.

President, I hereby propose to resume the Second Reading debate on the Bill.

President, I would like to take this opportunity to put forward the viewpoints of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) on the Bill.

There are many endangered species of animals and plants in the world that are not just very few in number, but also show a sustained trend of declining in population. So, they can easily change from "the state of being endangered" to "extinction". In fact, according to a report compiled by an environmental planning organization of the United Nations, there is one species of plants becoming extinct per minute, and there is one species of animal becoming extinct every day. The sharp reduction in the number of species, apart from being caused by natural disasters or the destruction of the ecology by human beings and drastic changes, is also due to another major reason, that is, "commercial extermination", that is, certain species of wild animals and plants with economic and commercial values have become the sacrifice of the killing actions of human beings. For examples, snow leopards and spotted deer have become highly endangered species because they have become the targets of excessive hunting activities by human beings. Therefore, with regard to the protection of endangered species, all the governments in the world have been exercising very strict management and providing specific protection to such species.

Therefore, on the premise of not compromising Hong Kong's obligation under the CITES, the DAB does not oppose the Bill's proposal of removing certain outdated provisions as well as certain local controls that are over and above the CITES requirements so as to avoid bringing an undue burden and causing inconvenience to the trade/users as well as dealing heavy blows to the trading in legitimate species. But, in the meantime, we are also concerned about whether the Government has already taken enforcement action seriously, so as not to allow unscrupulous people from taking advantage of the situation, which may lead to the re-emergence of the illegal trading of endangered species.

For this reason, the DAB has repeatedly raised suggestions during the deliberations on the Bill. For example, although we do not oppose the Bill's proposal that the possession of Appendix II specimen of non-wild origins does not require a licence, we requested the Government to state explicitly in the Bill which kind of information can be used as evidence to prove to the satisfaction of the Director of Agriculture, Fisheries and Conservation that the licence can be exempted. We would like to thank the Government for accepting the DAB's several suggestions and actively making amendments to improve the Bill.

However, ultimately, apart from complying strictly with the CITES and stopping illegal trading of endangered species, Hong Kong should, being Asia's world city, set a good example by taking measures that are even ahead of the CITES requirements. There are a lot of such work we can do. I am only quoting one example below which is more commonly known.

Shark's fin has traditionally been regarded as gourmet food in the Chinese communities. The annual consumption of shark's fins is very astounding. Fuelled by the scientifically unfounded curative effect for cancer, people's disastrous craze for shark's fin had led to the over-capture of sharks. Even people of the shark's fin business agree that the sizes of shark's fins in the market have become smaller and smaller. This is obviously attributable to the over-capture of sharks which do not even have the chance to grow up normally. Besides, the quantities of certain species of sharks have also reduced by 90%. Whale shark, which is considered highly valuable, is also one of such species. It is the largest species of fish in the world with great eco-tourism value. Having a gentle temperament, it mainly eats planktons as food, so it is nicknamed as the "bean curd shark". Unfortunately, the over-capture of wale sharks in recent years has led to a sharp decline in its quantity. So it has become imperative for us to save the whale sharks from extinction now. In this connection, I think that the SAR Government, being the largest organization in the territory, should have the responsibility to set a good example for everyone, so as to arouse people's awareness of the cause of protecting endangered species. For example, in official banquets, the Government may consider banning shark's fin on the menu, which, if implemented, will be remembered as one bold step taken towards really sustainable development of Hong Kong. Of course, I understand that banning shark's fin in banquets is a most controversial issue in society. But just because of such a controversy, the adoption of such a practice will become all the more meaningful.

President, several billions passenger pigeons had once lived on North America, and is a species of birds that can be commonly seen everywhere. However, after North America has been explored and developed for over one hundred years, passenger pigeons have now been driven into extinction. After the last passenger pigeon died in September 1914, the Americans were shocked as they had seen the complete extinction of this kind of birds which was once commonly seen everywhere. So they erected a plaque to commemorate such pigeons. Inscribed on the plaque were such words, "Passenger pigeons, whose extinction was brought about by the greed and selfishness of human beings." This fully illustrates the self-reproach and regret of the Americans.

President, it has been nearly 100 years since then, and I hope we can learn the lesson and have the wisdom to stop similar incidents from happening again. President, I so submit.

MR VINCENT FANG (in Cantonese): President, traditionally the Chinese customary ways of eating and medication would entail the extensive use of natural ingredients. However, during the past few decades, out of the considerations for protecting the environment (that is, wild resources), we have started to use substitutes produced through artificial breeding or culture. Yet, some of the ingredients cannot be cultured artificially. In spite of this, practitioners of our trades still hope that there can be a continuous supply of such natural ingredients. Therefore, though the wholesale and retail sectors of our Chinese medicine, shark's fin and dried seafood trades are all very concerned about the impact brought about by the Protection of Endangered Species of Animals and Plants Bill (the Bill) on our business, we still support the protection of endangered species of animals and plants.

We in the Chinese medicine trade just hope that the Government can take this into consideration: Those precious medicines requiring licences for import could have been re-sold many times within the territory. Therefore, we hope the requirements of keeping documents can be simplified as far as possible.

Secondly, we hope the Government can assist the trade in verifying the authenticity of licences issued by overseas countries for endangered species. We also hope that the Government can accept the copies of the relevant licences because practitioners of the Chinese medicine trade may not have the ability to

verify such licences. We also hope that the Government can offer us assistance in re-exporting the Chinese medicine to other countries.

Thirdly, we hope that the Government can provide us with the formal academic names of the relevant items, and allow practitioners of the trade to use the referential terms currently in use and assist the trade to acquire their formal scientific names. As we all know, the Chinese medicine trade is a traditional industry, many of the terms and expressions are all passed from one generation to the next. As such, even practitioners of the trade may not know the formal scientific names of the Chinese medicines.

Besides, many of the patent Chinese medicines have already completed the registration procedures. In order to tie in with the Bill, the names of certain ingredients may have to be amended. For example, "musk" may have to be renamed as "artificial musk". As such, the trade hopes that the grace period exempting the possession licence can be slightly extended.

I would like to thank the Environmental Protection Department (EPD) for listening to and accepting the opinions put forward by the Chinese medicine trade, as well as agreeing to provide assistance and extend the grace period to six months. Although the trade still needs to do a lot of work in respect of the Bill, we agree to and support the Bill.

However, we hope the authorities can exercise some tolerance with the trade and provide us with assistance in the initial period after the Bill has been enacted and become effective. This will enable the practitioners to adapt to the new legislation, and we hope that the authorities will not hand down punishments easily for any acts of slight deviation. Besides, we hope that when goods already issued with an import licence pass through customs, the authorities can act according to their performance pledge by arranging the examinations and the clearance of the goods as soon as possible, so as to reduce the costs to be incurred by the trade in paying the storage fees.

During the scrutiny of the Bill, there were some actions taken against one of our other trades — the shark's fin trade, which suffered a heavy blow. Some supporters of environmental protection took the opportunity to launch a campaign calling for the people to stop eating shark's fins. As a result, the business turnover of the shark's fin trade in Hong Kong dropped substantially last year.

In fact, the shark's fin trade in Hong Kong has all along been law-abiding. The practitioners would only buy and sell those shark's fins permitted for sale by the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

We understand that such activities were initiated by the non-government sector. But I hope the Government can first assess the impact on the businesses in Hong Kong in future when it formulates new legislation and new policies, and that it can launch publicity campaigns in advance, so as to enhance the people's understanding of the details of the relevant legislation, thereby minimizing the impact on the businesses.

Finally, I would like to thank the EPD for adopting an open attitude in the entire legislative process, and I hope the Government can follow the pattern of this legislative exercise by facilitating discussions and negotiations in the process of formulating every law in future. If so, Hong Kong society will enjoy even greater harmony.

With these remarks, I support the Bill. Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): The Protection of Endangered Species of Animals and Plants Bill (the Bill) seeks mainly to ensure full compliance of Hong Kong's control regime of endangered species with the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), while simplifying the regulatory provisions of the existing Animals and Plants (Protection of Endangered Species) Ordinance and the licensing system.

The Bill was tabled at the Legislative Council for First Reading in April last year, followed by the commencement of the Second Reading process. First of all, I must thank the Chairman of the Bills Committee, Miss CHOY So-yuk, as well as other members of the Bills Committee for their very detailed scrutiny of the Bill and valuable input over the past few months.

The existing Ordinance has not fully met the requirements of CITES in respect of control over international trade in medicines made from endangered species. Therefore, we must amend the principal Ordinance in order to align our control regime with the requirements in CITES.

Since the enactment of the Ordinance in 1976, a number of amendments have been made to take account of changes in CITES requirements. Over time, some of the provisions in the Ordinance have become so complicated that they are not easy to comprehend. In addition, some of the control measures required under CITES have not been set out clearly in the Ordinance. The exemptions currently provided for different controlled species also vary considerably. We need to remove inconsistent treatments which are not justified on operational grounds.

Moreover, we propose to streamline the existing licensing system, so that a licence would be issued on the basis of individual shipment or keeping premises rather than individual species. As a result, the fee structure also needs to be revised. We propose to simplify the fee structure by replacing the 14 existing fee items with nine new fee items. It is anticipated that most of the existing and potential licence holders will be paying less under the streamlined licensing system.

In the course of the scrutiny by the Bills Committee, we had in-depth discussions with members on the details of the Bill. The Bills Committee had also invited many organizations concerned to express their views on the Bill. We were pleased to see that the trade organizations which attended meetings of the Bills Committees were supportive of the Bill.

Some members were concerned that some species which were not within the scope of regulation before will be brought under regulation following the enactment of the Bill, especially as some persons may come into possession of specimens before such species are listed as endangered species under CITES and regulated by local legislation, they may not have any evidence to prove the date

of possession of such species. The Government will consider all circumstances relating to each individual case when enforcing the requirements of the Bill on the possession of controlled species.

Some members mentioned the need to step up public education on the protection of endangered species, so that members of the public will know how to distinguish controlled species. In fact, the Agriculture, Fisheries and Conservation Department (AFCD) has been organizing various educational and publicity activities to promote the importance of the protection of endangered species among the public and the trade. These activities include broadcasting Announcements of Public Interest (API) through radio, organizing talks and competitions on drawing and sand sculpture, publication of leaflets and posters, and so on. The AFCD has since 2003 introduced the new provisions of the Bill to the trade and other interested parties by, among other things, holding about 50 consultations and sending information letters to 18 000 traders and other relevant persons. We will launch more publicity and education programmes to promote public awareness of the protection of endangered species after the passage of the Bill to enhance the public's understanding of protection of endangered species. These will include APIs, advertisements at public transport systems, information letters to traders, exhibitions, and publishing articles on the AFCD's homepage and in newspapers and magazines, to provide the latest information on the contents of the legislation to the public and the trade.

President, the Bills Committee has already indicated support for the resumption of the Second Reading of the Bill. I urge Members to pass the Bill.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Protection of Endangered Species of Animals and Plants Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Protection of Endangered Species of Animals and Plants Bill.

Council went into Committee.

Committee Stage

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

PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Protection of Endangered Species of Animals and Plants Bill.

CLERK (in Cantonese): Clauses 1, 4, 6 to 10, 12 to 16, 20, 23 to 28, 30 to 40, 43, 45 to 54, 56, 57 and 58.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 5, 11, 17, 18, 19, 21, 22, 29, 41, 42, 44 and 55.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, I move the amendments to the clauses read out just now as set out in the paper circularized to Members. I will now briefly introduce the contents of the various amendments.

The amendments involve mainly a number of areas. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) contains 25 main articles which lay down the principles of the Convention. In addition to these articles, there are resolutions, decisions or notifications made by the Conference of the Parties held every two years in respect of CITES, which aim to complement and put into practice those basic principles with interpretative guidance, and additional rules and procedures.

The basic framework laid down by the text proper of CITES is provided in the main body of the Bill, and some of the decisions, resolutions and notifications which I mentioned earlier are grouped as "Convention instruments" in the Bill and set out in Schedule 3.

While the term "commercial purposes" is not defined in the main articles of CITES, the Conference of the Parties has passed a resolution giving guidelines on what kind of activities can be regarded as "commercial purposes". As the Conference of the Parties may revise the relevant instrument from time to time in order to keep pace with the fast emergence of new commercial practices, we originally proposed to incorporate into the Schedule the meaning of "commercial purposes" derived from this resolution. But having considered members' concern that the term "commercial purposes" may affect the penalty for the relevant offences, we accepted members' suggestion of incorporating into the main text of the Bill under clause 2 the meaning of "commercial purposes" which was originally included in Schedule 3. In response to the view of the Bills Committee, we will revise the relevant definition of "commercial purposes" in the Bill to specifically include "a purpose relating to trade or business".

Moreover, some members expressed concern that the term "Convention export permit" might cause confusion as this kind of permit could include export and re-export permits, certificates of origin, phytosanitary certificates, and so on.

Taken into account the view expressed by members, we propose to change the term "Convention export permit" in clause 2 to "Convention certifying document" to avoid confusion. The references to "Convention export permit" in clauses 5, 11, 17, 18, 19 and 22 will also be amended accordingly.

The amendment to clause 3 of the Bill aims to give the term "in-transit" a more comprehensive definition in response to members' concern that the present definition of "in-transit" might not be sufficiently explicit to cover a person carrying a luggage containing controlled species while crossing the border on foot. It is, therefore, also necessary to make a similar amendment to clause 22 of the Bill.

In relation to clause 21 of the Bill, members were concerned that the phrase "to the satisfaction of the Director" might not provide clear indication as to what the person should provide in order to fulfil the requirement in clause 21 concerning possession or control of Appendix II species. We propose to add a new subclause in clause 21 to more specifically provide for the circumstances under which the evidence provided will be to the satisfaction of the Director.

Clause 29 of the Bill is amended to replace the word "state" by "give". The amendment is introduced at the request of the Bills Committee to reflect the concern about the scientific names of species.

The amendments to clauses 41 and 42 of the Bill seek to delete the reference to clause 38 to ensure that the forfeiture of things seized will not be based on the offence of obstructing an authorized officer exercising his power under clause 38.

Furthermore, at members' request, an amendment will be introduced to clause 44 of the Bill on the penalty for the offence of furnishing false information. An imprisonment of six months will be imposed in addition to the original penalty of a fine at Level 6, in order to achieve a stronger deterrent effect.

Members expressed concern that a grace period of three months for the possession of species currently not subjected to the Animals and Plants (Protection of Endangered Species) Ordinance, which could be brought under regulation after the commencement of the new Ordinance, might not be sufficient, as traders will require more time to make preparations. While the Government has consulted the trades on the length of the grace period, in the light of

members' concern that some trades may still favour a longer grace period for the species newly brought under control, we propose to amend clause 55 to extend the original three-month grace period to six months after the commencement of the new Ordinance.

All these amendments have obtained the support of the Bills Committee. We urge Members to support and endorse these amendments. Thank you, Chairman.

Proposed amendments

Clause 2 (see Annex I)

Clause 3 (see Annex I)

Clause 5 (see Annex I)

Clause 11 (see Annex I)

Clause 17 (see Annex I)

Clause 18 (see Annex I)

Clause 19 (see Annex I)

Clause 21 (see Annex I)

Clause 22 (see Annex I)

Clause 29 (see Annex I)

Clause 41 (see Annex I)

Clause 42 (see Annex I)

Clause 44 (see Annex I)

Clause 55 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 5, 11, 17, 18, 19, 21, 22, 29, 41, 42, 44 and 55 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 2.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 3.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): I move the amendments to Schedules 1 and 3, as set out in the paper circularized to Members.

The amendments to Schedules 1 and 3 are mainly amendments to wordings. In compiling Schedules 1 and 3, we originally intended to reproduce in their original wordings the relevant parts which will be legally enforceable in Hong Kong in the instrument of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Upon consideration of members' views, we have proposed amendments to some wordings and ways of expression to enhance the clarity of Schedule 3. Nevertheless, these amendments are all technical.

The above amendments are all supported by the Bills Committee. I implore Members to support and endorse the amendments.

Thank you, Chairman.

*Proposed amendments***Schedule 1 (see Annex I)****Schedule 3 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 3 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS BILL

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): President, the

Protection of Endangered Species of Animals and Plants Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Protection of Endangered Species of Animals and Plants Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Protection of Endangered Species of Animals and Plants Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005.

REVENUE (PROFITS TAX EXEMPTION FOR OFFSHORE FUNDS) BILL 2005

Resumption of debate on Second Reading which was moved on 6 July 2005

PRESIDENT (in Cantonese): Mr James TIEN, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MR JAMES TIEN: Madam President, in my capacity as the Chairman of the Bills Committee on Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bills Committee), I now address the Council on the major issues deliberated by the Bills Committee.

The Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bill) seeks to amend the Inland Revenue Ordinance (IRO) to give effect to the proposal of providing profits tax exemption for non-resident offshore funds with retrospective effect from the year of assessment commencing on 1 April 1996. To prevent round-tripping by local funds disguised as offshore funds seeking to take advantage of the exemption, the Bill includes deeming provisions which would apply to resident persons holding beneficial interests in exempt offshore funds.

While the Bills Committee supports the Bill in principle as a means to enhance Hong Kong's competitiveness and status as an international financial centre, it notes that there are a number of issues which require examination. These include the residency test for granting the proposed exemption to offshore funds, whether it is justified to apply the exemption with retrospective effect, the practicability of the deeming provisions, and the impact of the Bill on onshore funds and the local financial services industry. I shall focus my speech on the major issues.

On the test for granting profits tax exemption to offshore funds, a non-individual entity will be qualified for exemption if its central management and control is not exercised in Hong Kong. The Bills Committee is concerned that as the Bill does not define the "central management and control" criterion, application of the criterion would be subject to subjective fact-finding process by the Inland Revenue Department (IRD).

The Administration advises that the criterion is a well-established common law principle widely adopted in many jurisdictions including Australia, the United Kingdom and Singapore for determining the residence status of non-individual entities; and these jurisdictions do not define the concept in their statutes. There is a substantial body of case law illustrating how the concept has been interpreted by courts and applied to factual situations. To facilitate implementation of the proposed exemption and provide flexibility to accommodate future changes, the Bills Committee welcomes the Administration's undertaking to issue a Departmental Interpretation and Practice Note with practical examples to explain how the IRD will apply the criterion.

The Bills Committee has studied in detail the proposal of applying the exemption with retrospective effect. While the Bills Committee notes the fund industry's strong support for the proposal to provide offshore funds with legal certainty in respect of their tax liabilities for the past years, some members have reservation on the proposal. These members consider that as a matter of principle, legislative provisions should not have retrospective effect. There are also concerns about the financial implications of the tax refunds and whether the IRD has taken effective enforcement actions in the past years to recover profits tax payable by offshore funds.

The Administration advises that there are precedents in which legislative amendments for implementing tax concession measures took retrospective effect.

The Administration explains that due to practical difficulties in the past in obtaining information on share transactions carried out by non-residents, the IRD has not been in a position to enforce the relevant provisions effectively on cases where the persons carrying out securities transactions are non-residents. Therefore, even if the exemption provisions have no retrospective effect, it would be unlikely for the IRD to be able to recover tax from such offshore funds.

The Bills Committee is advised by the Administration that the IRD has raised profits tax assessments on four corporate offshore fund entities for all the relevant years from 1996-97 onwards. Three corporations have subsequently paid tax in a total amount of HK\$18.2 million. If the retrospective effect of the exemption is adopted, the Administration will need to refund to the three corporations the tax paid.

Some members have suggested that the Administration should consider providing an undertaking not to recover outstanding or liable profits tax from offshore funds since 1 April 1996. However, the Administration considers the suggestion not feasible. It explains that the IRD has the statutory duty under the IRO to recover tax from liable persons. The suggestion will also be unfair to the three corporations which have paid the tax since they will not be entitled to any tax refunds.

In view of the strong support of the fund industry for the proposal of applying the exemption with retrospective effect, the practical difficulties in recovering profits tax from offshore funds in the past and the likely substantial costs involved for recovering potential outstanding profits tax from offshore funds, the Bill Committee has no objection to the proposal.

As regards the practicability of the deeming provisions, the Bills Committee notes the concern of some organizations that applying the provisions to resident persons may widen the tax net and subject the persons to double taxation. The Administration clarifies that insofar as an individual who carries out share transactions in Hong Kong in his own name is concerned, there is no difference in the tax position before and after enactment of the Bill. It further points out that double taxation should not arise.

The Bills Committee is concerned whether the proposed 30% threshold for applying the deeming provisions is appropriate. The Administration considers that the proposed threshold has struck a proper balance between revenue

protection and the ease with which taxpayers can comply with the reporting requirements. It points out that if the threshold is too low, a resident person holding a small interest in an offshore fund may have difficulty in obtaining information for reporting deemed profits to the IRD. On the other hand, if the threshold is too high, a resident can easily abuse the exemption, which may lead to tax leakage.

The Bills Committee is concerned about the impact of the Bill on onshore funds and the local financial services industry. Given that the proposal of exempting offshore funds from profits tax may make offshore funds more attractive to investors, and that by virtue of the "central management and control" criterion, only funds that are centrally managed and controlled outside Hong Kong would benefit from the proposed exemption. Some members of the Bills Committee are concerned that the Bill may have negative impact on onshore funds and the local financial services industry.

In this connection, some organizations have advocated extending the proposed exemption to onshore funds to promote the growth of the local fund industry and provide a level playing field for local and overseas fund management companies in Hong Kong. The Bills Committee notes the Administration's view that to include onshore funds within the scope of exemption will not be in line with the policy intention of giving tax exemption to offshore funds only. Moreover, it is also noted that no major financial centres offer exemption to onshore funds.

The Administration further points out that, as the Bill specifically provides tax exemption to specified transactions carried out through licensed corporations or registered financial institutions, the local fund industry and financial services sector would benefit from the proposal. Downstream services sectors such as those provided by accountants, bankers and lawyers, will also get benefits.

The Bills Committee supports the Committee stage amendments (CSAs) proposed by the Administration. In particular, members consider that the CSAs to expand the scope of specified transactions and specified persons have addressed the concerns of the fund industry.

Madam President, the Bills Committee supports the resumption of the Second Reading debate on the Bill.

The Liberal Party also supports the Bill and the CSAs. Thank you.

MR WONG TING-KWONG (in Cantonese): As most international financial centres such as New York, London and Singapore offer profits tax exemption to offshore funds, some financial institutions pointed out that many offshore funds were discouraged from operating in Hong Kong, and would rather station in places which offer profits tax exemption to offshore funds. Some may even withdraw from Hong Kong to avoid the risks associated with taxation. In order to enhance Hong Kong's competitiveness against other international financial markets and reinforce its status as an international financial centre to further promote the development of the asset management industry and benefit the related service sectors, it is imperative for Hong Kong to attract new offshore funds to set up here, retain existing offshore funds currently in operation locally and encourage further investments by such funds in Hong Kong, I believe one of the effective proposals is to provide profits tax exemption for offshore funds. The DAB therefore supports the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bill).

During the scrutiny of the Bill, consultation meetings were held and the Bills Committee received many views from the relevant trades. The Administration has also heeded good advice and made amendments to the Bill, which include expanding the scope of qualified transactions and specified person, and carving out non-profit participating shares of management from the application of the deeming provisions. These amendments enable the provisions to suit the actual market situation and help enhancing the enforceability. I support all this.

However, here, I wish to mention a few points and hope that the Administration will take note of them.

In the Bill, the Government proposes the introduction of the common law concept of "central management and control", where only funds that are centrally managed and controlled outside Hong Kong will be exempted from profits tax. Since the definition of "central management and control" may involve the subjective judgement of the Inland Revenue Department (IRD), it is therefore necessary for the IRD to include some examples in the Departmental Interpretation and Practice Note (DIPN) to highlight the application of this criterion, with a view to giving users and investors a clear understanding of it. This will avoid creating a grey area that may make investors feel at a loss as to what to do, and give rise to disputes and conflicts which will only backfire and scare investors away. Also, the authorities should consult the trade from time

to time, with a view to conducting reviews and making improvements for the benefit of more investors.

Furthermore, the inclusion of deeming provisions in the Bill enables local residents holding less than 30% of beneficial interest in a tax-exempt offshore fund to be exempted from profits tax. The Administration pointed out that the proposed 30% of beneficial interest aims to strike a balance between the prevention of tax avoidance and helping resident investors to comply with the new legislation. However, there are divergent views among the trade as to how the percentage should be determined. I opine that whether the proposed percentage was set at an appropriate level will be well understood after the relevant arrangement has actually come into operation in future. Therefore, I hope that the Administration will keep closely in view the actual market response and its prevailing situation in future, and to conduct reviews and take follow-up actions in due course.

Although it was assessed that the ordinance concerned will not have much actual effect on the overall revenue given the practical difficulties faced by the Government in recovering the relevant tax from non-residents in the past, the proposed tax exemption will, on the contrary, have a positive impact on the economy. In order that the relevant tax can be successfully recovered, substantial costs will have to be incurred. However, I hope that the Administration will not treat this lightly, and should bear in mind that a relaxation of the taxation policy will simply increase the potential for abuse. Therefore, the ordinance concerned can truly be implemented effectively only if caution and proper supervision is exercised in enforcement.

I so submit. Thank you President.

DR DAVID LI: Madam President, Hong Kong's financial markets have grown in importance in recent years, to the point where Hong Kong now ranks as Asia's leading international financial centre. Hong Kong is the market of choice for mainland firms wishing to list internationally. Many of these initial public offerings (IPOs) rank among the top 10 IPOs worldwide in any given year.

Hong Kong's financial markets have not only grown in size, but they have also grown in stature. No longer is Hong Kong viewed as an emerging market by international fund managers. Hong Kong-listed shares are now an essential

ingredient of a well-balanced portfolio. For many individual overseas investors, the safest and easiest way to invest in Hong Kong is through an investment fund. Unfortunately, we in Hong Kong have been tardy in laying out the welcome mat for these investors.

Unlike all other major financial centres, we retain the right to tax the profits of offshore funds that trade in our markets. In practice, we have found it difficult to enforce this tax. Nevertheless, the right remains on our statutes, hanging like a sword over the heads of fund managers, ready to drop at any time. Other financial centres have long ago recognized that such taxes are counter-productive. They bring in little revenue. They only serve to drive business away. The Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bill) will finally bring Hong Kong's treatment of offshore funds in line with other international financial centres, including London, New York and Singapore.

The proposal to exempt offshore funds from Hong Kong profits tax was made as long ago as the 2003-04 Budget. The proposal has been through two rounds of public consultation, and has been further refined at the Bills Committee. Although it has been a long road, the journey has been worthwhile. The need for the Bill is now well understood. There are ample safeguards in place to prevent unintended loss of government revenue. The direct cost of this measure is very small; the potential benefits are far-reaching. I therefore take pleasure in supporting the Bill and the Committee stage amendments proposed by the Administration.

In particular, I support the retrospective provisions that backdate the effect of the Bill once it becomes law. These provisions do no more than recognize that many offshore funds trading in Hong Kong are beyond the reach of the local tax authorities. This has created an unhealthy situation, where funds with a local presence are at a disadvantage simply because it is easier to serve tax notices on them.

The retrospective provisions will serve to level the playing field, and ensure that those most active in Hong Kong are not penalized for having set up operations here. We may have been late in laying out the welcome mat. Let us be good hosts now that our friends are here.

Thank you, Madam President.

MISS TAM HEUNG-MAN (in Cantonese): The financial services industry is definitely one of the significant economic pillars of Hong Kong. At a time when all other international financial centres provide tax exemption for offshore funds, Hong Kong is facing extremely keen competition in attracting foreign capital under this trend.

The accountancy sector thinks that, for the purpose of enhancing Hong Kong's competitiveness as an international financial centre, making such offshore funds continue investing in the Hong Kong market and attracting new offshore funds to Hong Kong, the Government should enact the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bill) as soon as possible.

The Administration has already conducted two rounds of public consultation on how to implement the profits tax exemption for offshore funds. The accountancy sector has already conveyed its views on the exemption proposal put forward by the Administration. The accountancy sector generally considers that both practices proposed in the Bill and the Committee stage amendments are feasible.

The Administration proposes in the Bill that the exemption provisions should have retrospective effect from the year of assessment of 1996-97. I wish to point out specifically that the accountancy sector thinks that it is most important for the exemption provisions to have retrospective effect. If the exemption provisions do not have retrospective effect, the offshore funds will face very great difficulties in determining their tax liabilities over the past years and in consolidating their financial reports. For offshore funds, generally speaking, investors will join and withdraw from them at different points of time, so it will be unfair to require the present investors of the funds to shoulder the funds' tax liabilities in the past.

I have learnt from the Administration that there are precedents in which legislation for implementing tax concession measures take retrospective effect, and that the implementation of the exemption provisions will not bring about any substantial impact on the tax revenue situation of the Government.

In conclusion, the accountancy sector strongly supports the enactment of the Bill and the proposed amendments, and hopes that the profits tax exemption for offshore funds can be implemented as soon as possible.

Thank you, Madam President.

MR RONNY TONG (in Cantonese): President, legislative provisions with retrospective effect basically violate the principle of the rule of law. When the people act in a certain manner, and that action is governed by a certain law at that time, then no matter what kind of changes are made to that law or what any other enactments are made, the result of that action will not subsequently be changed. The laws should not undergo frequent and abrupt changes. When the people take a certain action, they should clearly know what its legal consequences will be. So, all along, we have objected to the enactment of any legislative provisions that carry retrospective effect.

Therefore, last year, when we scrutinized the Bill for implementing the abolition of the estate duty, we also objected to a provision that had retrospective effect, and that was also one of the reasons for our objection to that Bill. With regard to the present Bill, there are two provisions, that is, sections 20AC(1) and 70AB, as mentioned by the Chairman of the Bills Committee in the Report, that are intended for exempting the tax liabilities of the taxpayers in the past. In fact, if we wish to achieve this objective, all that the Government has to do is to explicitly declare during Second Reading that it will relinquish recovering such tax. It will attain the same effect without resorting to any legislative measures. Besides, this will set a very bad precedent. We do not wish to see such precedents continue to exist. However, in the meantime, we also understand that the amounts of money involved in such tax liabilities are actually not substantial, and the Government has time and again said that there are certain difficulties in recovering them.

This law is very important to the interests of the Special Administrative Region. We can see that this law will play a far more significant role than the one on the abolition of the estate duty in attracting foreign capital to Hong Kong. Therefore, I support this Bill. However, for the reason I mentioned just now, I must make it perfectly clear that I strongly object to the Government's invocation of any provision with retrospective effect, and I also hope that such precedents shall never happen anymore. Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 seeks to amend the Inland Revenue Ordinance (IRO) (Cap. 112) to give effect to the proposal of providing profits tax exemption for offshore funds.

Here, I wish to express my gratitude particularly to the Chairman of the Bills Committee, Mr James TIEN, as well as other members for completing the scrutiny of the Bill in a short time. They have put forward many valuable opinions on the Bill, thus enabling the Second Reading debate on the Bill to resume today.

As we all know, the financial services industry is a major pillar of the Hong Kong economy. Its direct economic contribution accounts for nearly 13% of the Gross Domestic Product. In 2004, the total value of assets involved in fund management business in Hong Kong was about \$3,620 billion, of which about 63% or \$2,270 billion were sourced from overseas investors. We must maintain and further enhance Hong Kong's competitiveness as an international financial centre.

Hong Kong is facing keen competition from other major international financial centres in attracting inward investments. In terms of tax treatment for offshore funds, major international financial centres like New York and London as well as the other financial centres all exempt offshore funds from taxation, while in Hong Kong, currently under the IRO, any person deriving trading profits from securities transactions carried out in Hong Kong is liable to paying profits tax. The industry has expressed the view that due to keen international competition, it is vital for Hong Kong to provide profits tax exemption to offshore funds as other major financial centres have been doing, because some of the offshore funds may otherwise transfer their investments out of Hong Kong to other financial markets, leading to a negative road-across impact on the development of the financial market in Hong Kong.

In order to reinforce the status of Hong Kong as an international financial centre and enhance our competitiveness *vis-à-vis* other international financial

centres, the Government proposed to exempt offshore funds from profits tax. The proposal will help attract new offshore funds to Hong Kong and encourage existing offshore funds to continue to invest in Hong Kong. This will help attract more international financial institutions and expertise to Hong Kong and facilitate the development of the local fund management industry.

During the drafting stage of the Bill, we conducted two rounds of consultation in early 2004 and early 2005 with the industry, various organizations concerned and the public on the proposed implementation of the proposal to exempt offshore funds from profits tax. Certain amendments have been made to the original proposal in the light of the views collected to enable the proposal to achieve more effectively the objective of facilitating investments by offshore funds in Hong Kong. In the course of the scrutiny of the Bill, we received further views from Members and the industry on the proposal. A major proportion of the amendments and new provisions that I am going to propose at the Committee stage later are based on the suggestions made by the Bills Committee and the industry.

The Bill proposes that non-residents (including individuals, partnerships, trustees of trust estates or corporations) will be exempted from profits tax for profits derived from "specified transactions" conducted in Hong Kong. The scope of "specified transactions" covers dealings in securities, dealings in futures contracts and leveraged foreign exchange trading as defined in the Securities and Futures Ordinance (SFO). The transactions must be carried out by "specified persons", which include corporations and authorized financial institutions licensed or registered under the SFO to conduct such transactions. This is meant to ensure that the transactions are in compliance with the SFO. Some representatives of the industry have reflected to us the need to broaden the scope of "specified transactions" and "specified persons". I will move an amendment later to broaden the scope of "specified transactions" to cover the common types of transactions carried out by offshore funds in Hong Kong, namely, transactions in securities, transactions in futures contracts, transactions in foreign exchange contracts, transactions in foreign currencies, transactions in exchange-traded commodities and making of deposits other than by way of a money-lending business, and to relax the scope of "specified persons" to cover holders of all types of licences under the SFO, and also to extend the scope of application to cover "specified transactions" arranged by rather than conducted directly by "specified persons".

Another condition an offshore fund needs to meet in order to be qualified for the proposed exemption is that it must not operate any other business in Hong Kong. As many offshore funds will carry out transactions incidental to the exempted transactions, we propose that the conduct of transactions incidental to the exempted transactions will not be considered as operating other business in Hong Kong, but the exemption for such incidental income is subject to a de minimis rule. If the trading receipts from the incidental transactions exceed 5% of the total trading receipts from "specified transactions" and incidental transactions in the relevant year of assessment, the receipts of the offshore funds from the incident transactions will not be given exemption, but the profits from "specified transactions" will still enjoy full exemption.

On the other hand, deeming provisions are proposed in order to produce a deterrent effect which is necessary to prevent abuse of the exemption, because without these provisions, a Hong Kong resident may avoid the tax properly chargeable on him by simply remitting funds to a non-resident company which would then carry out securities transactions in Hong Kong and pay dividends to him free from any tax liability.

Under the proposed deeming provisions, a resident person, alone or jointly with his associates, directly or indirectly holding 30% or more of beneficial interest in a tax-exempt offshore fund, or has a direct or indirect beneficial interest of any percentage in a tax-exempt offshore fund which is the resident person's associate, will be deemed to have derived assessable profits in respect of profits earned by such offshore fund from "specified transactions" and incidental transactions in Hong Kong. The amount of the deemed assessable profits would be computed by taking into account the percentage of the resident's beneficial interest and the length of ownership within the relevant year of assessment. However, the deeming provisions will not apply if the Commissioner of Inland Revenue is satisfied that the offshore fund is *bona fide* widely held.

In view of the fact that a fund manager of a non-resident fund corporation may hold non-profit participating shares for the sole purpose of managing the fund corporation, I will later on move an amendment to the effect that this type of share, which does not entitle the holder to distribution of profits and distribution of assets upon dissolution (other than a return of capital), should not be taken into account in ascertaining a resident person's beneficial interest in a non-resident fund corporation.

On the other hand, I will move an amendment to defer the application of the deeming provisions from the year of assessment in which the Bill is enacted to the year of assessment immediately following the year of assessment in which the Bill is enacted, to allow the industry sufficient time for system conversion and enable them to provide resident investors who are subject to the deeming provisions with the information for tax purposes.

In summary, under our proposal, non-residents deriving profits from securities transactions in Hong Kong are exempt from profits tax. A local resident who invests in *bone fide* widely held offshore funds or offshore funds that are not widely held, or who, alone or jointly with his associates, holds a beneficial interest lower than 30% in an offshore fund where the offshore fund is not his associate, is also exempt from profits tax.

Next, I would like to respond to the main points in some of the views put forward by members of the Bills Committee and representatives of the industry.

We propose that the exemption provisions will apply with retrospective effect from the year of assessment commencing on 1 April 1996. During the scrutiny of the Bill, some members expressed strong views on this point. The fund industry has been strongly indicating to the Government and the Bills Committee that the exemption provisions must be applied with retrospective effect, as this will provide offshore funds with legal certainty in respect of their tax liabilities for the past years. The industry considers that without the retrospective effect, offshore funds would face huge problems in finalizing their tax liabilities for past years. Boutique funds, in particular, might have financial difficulties in paying the tax for past years. It will also be unfair to existing investors in a fund if they are to bear the tax burden of the fund in relation to past years.

As far as we understand it, offshore funds do not make provisions for profits tax for their securities transactions in Hong Kong, and the Inland Revenue Department (IRD) also lacks information on past securities trading by offshore funds. It was until 2000 when the IRD discovered possible involvement by offshore funds in securities dealings in 1996-97 and the subsequent years of assessment that it immediately issued tax returns to offshore funds and raised tax assessment on them, and a tax revenue of some \$18 million was recouped subsequently. Later, in order to facilitate the development of funds in Hong Kong and to catch up with tax concessions provided in other major financial

centres, the Government decided to provide across-the-board profits tax exemption to offshore funds and stipulate a retrospective period for exemption, in order to provide clear taxation arrangement for the investment industry. For the sake of fairness, we will refund the tax already collected.

Some members have reservations about applying the provisions with retrospective effect and proposed that instead of applying the exemption provisions with retrospective effect, the Administration should consider making an undertaking that it would not recover outstanding or liable profits tax from offshore funds since 1 April 1996. However, we consider this proposal not feasible, because the IRD has the statutory duty to recover tax from any persons who are liable to pay tax under the provisions of the IRO. The authorities have no discretion to forego enforcement of the provisions of the IRO. This suggestion will also lead to unfair treatment to other corporate taxpayers which have paid the tax as they will not be entitled to any tax refunds. I wish to point out that under the legal policy of the Government, retrospective provisions are acceptable for tax concession measures as long as they will only benefit the parties concerned without imposing any burden on them. In fact, the concession measures in relation to profits tax and salaries tax endorsed over the past five years, including the concessions endorsed in the 2005-06 Budget, have also been applied with retrospective effect.

In the course of the scrutiny of the Bill, some members of the industry and some members of the Bills Committee expressed concern about the proposal to apply the "central management and control" criterion in determining the resident/non-resident status of non-individual entities. In fact, the "central management and control" criterion is a well-established common law principle widely adopted in many countries, such as Singapore, the United Kingdom, Australia and Canada, in determining the residence of non-individual entities. There is a substantial body of case law illustrating how the courts have interpreted the concept of "central management and control" and how the concept has been applied to factual situations. The adoption of the criterion would provide for the reference of both taxpayers and the IRD overseas tax cases in the interpretation and application of the criterion.

On the proposal to add provisions in the Bill to set out expressly the criteria for determining the residence of "central management and control", I wish to explain here that it is not necessary and may not be appropriate to set out in the Bill the circumstances under which the "central management and control"

of an entity are regarded as being exercised in Hong Kong. A statutory definition of "central management and control" may hinder the application of the common law principle to vastly different real life situations and may not be flexible enough to accommodate future changes. Indeed, other countries (such as Australia, the United Kingdom and Singapore), where the same concept is adopted for determining the residence of non-individual entities for tax purposes, also do not define the scope of the concept in their statutes.

Nonetheless, in view of the organizations' concerns and to facilitate implementation of the proposed exemption, the IRD will issue a Departmental Interpretation and Practice Note (DIPN) upon enactment of the Bill. The IRD will explain with practical examples the criteria to be adopted by the IRD in determining whether a fund is centrally managed and controlled in Hong Kong and whether it is taxable taking overseas tax cases and practices into account for taxpayers' reference. Members of the Bills Committee and the industry welcome the Administration's proposal of issuing a DIPN to clarify the application of the "central management and control" criterion.

On the other hand, representatives of some organizations were concerned that if the incidental transactions exceed the 5% threshold, the specified transactions originally qualified for exemption may become not qualified for exemption. We wish to clarify that such a situation will not arise in this Bill. If the relevant incidental transactions exceed the 5% limit, only the incidental income will not be qualified for exemption. Given that incidental transactions will not be regarded as "any other business" carried out in Hong Kong in considering the eligibility for exemption, the qualifying status of specified transactions for exemption will not be affected. The IRD will clarify these points in the DIPN.

Given that the proposal of exempting offshore funds from profits tax may make offshore funds more attractive to investors, some members of the Bills Committee were concerned that the proposal would put offshore funds in a more favourable position.

I wish to point out that other major financial centres do not offer tax exemption to onshore funds. As the Bill specifically provides that tax exemption is granted only in respect of specified transactions which are conducted through a licensed corporation or a registered financial institution, the

local fund industry and financial services sector should be able to benefit from the proposal. The proposed exemption will also strengthen Hong Kong's competitiveness in attracting new offshore funds to Hong Kong and encourage existing offshore funds to continue to invest in Hong Kong, which is in line with our policy objectives. The proposal will lead to an increase in market liquidity; it will benefit downstream services sectors, such as services provided by brokers, accountants, bankers, lawyers, and so on, and also create more employment opportunities in the financial services and related sectors.

Honourable Members, we consider that the proposal of exempting offshore funds from profits tax will be greatly helpful and vitally important to the development of Hong Kong as an international financial centre. I hope that Members will support the passage of this Bill today.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005.

Council went into Committee.

Committee Stage

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

**REVENUE (PROFITS TAX EXEMPTION FOR OFFSHORE FUNDS)
BILL 2005**

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005.

CLERK (in Cantonese): Clauses 1, 3 and 4.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the amendments to clause 2 of the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bill), as printed on the paper circularized to Members.

I propose that a technical amendment be made to the proposed section 20AB(4)(c) to delete the reference to "interposed person" which only applies to the circumstances in section 20AB(5) and is, therefore unnecessary to appear in section 20AB(4)(c).

As I have explained earlier, considering the fact that a fund manager of a non-resident fund corporation in Hong Kong may hold non-profit participating shares for the sole purpose of managing the fund corporation and does not have any genuine beneficial interest in the profit or assets of the fund, we agreed that this type of share, which does not entitle the holder to distribution of profits and distribution of assets upon dissolution (other than a return of capital), should not be taken into account in ascertaining a resident person's beneficial interest in a non-resident fund corporation.

In this connection, I propose to add the proposed section 20AB(9) to carve out non-profit participating management shares which are not entitled to distribution of assets from the application of the deeming provisions. I propose that subsections (1) to (4) of the proposed section 20AC be deleted and replaced by new subsections (1) and (2), so as to move the types of specified transactions qualified for exemption to new Schedule 16, and I am going to move an amendment later to incorporate this Schedule into the Bill. I will also propose the addition of section 20AC(7) to empower the Commissioner of Inland Revenue to amend Schedule 16 by notice published in the Gazette, in order to cater for changes in the financial products traded in the market. Under the Bill, the relevant transactions have to be conducted through "specified persons" and in the Bill, a "specified person" is a person who holds a Type 1 [dealing in securities], Type 2 [dealing in futures contracts], Type 3 [leveraged foreign exchange trading] (or to a certain extent, Type 9 [asset management] licence) under the Securities and Futures Ordinance (SFO).

As I mentioned just now, some members of the trade pointed out that the definition of "specified person" should be relaxed to cover holders of all types of licences under the SFO, in order to better cater for the actual situation of offshore funds. We agree with the proposal of the industry representatives and I, therefore, propose to add section 20AC(8) to specify that a "specified person" means a corporation licensed under Part V of the SFO to carry on, or an authorized financial institution registered under that Part for carrying on, a business in any regulated activity within the meaning of Part 1 of Schedule 5 to the SFO.

I will also propose an amendment to the meaning of a "specified person" before the SFO coming into effect on 1 April 2003, so that it will include a dealer, investment adviser, commodity trading adviser, securities margin financier or a leveraged foreign exchange trader registered or licensed under the repealed Securities Ordinance, the repealed Commodities Trading Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance, or a licensed bank under the Banking Ordinance.

I also propose that the original provision requiring the transaction to be conducted by a "specified person" be relaxed through the proposed new section 20AC(2), so that the transaction can be conducted through or arranged by a "specified person". This can incorporate into the scope of exemption cases where a "specified person" arranges to buy overseas stocks as well as other arrangements made by offshore funds.

The proposed section 20AD prohibits exemption for qualified offshore funds to use the loss sustained by them to set off against any taxable profit. The purpose of this provision is to prevent offshore funds from using the loss sustained by them to set off against taxable profits derived from non-exempted activities in subsequent years. As it is not explicitly specified that the provision will be applied to the subsequent years, I propose that a technical amendment be made to section 20AD to add clarity to the purpose of the provision.

The Bill originally proposes that the deeming provisions will apply at any time in the year of assessment in which the Bill is enacted or any subsequent year of assessment. For instance, if the Bill is enacted today, the deeming provisions will become effective as from 1 April last year. Some members of the industry said that they would need more time for system conversion, in order to provide resident investors who are subject to the deeming provisions with information for tax purposes. The Government considers that it is a more reasonable arrangement to apply the deeming provisions with effect from the year of assessment immediately following the year of assessment in which the Bill is enacted.

I propose to delete subsections (1), (3) and (11) of the proposed section 20AE and replace them with new subsections (1) and (3), providing that if the Bill is enacted today, the deeming provisions will become effective as from 1 April 2006. On the other hand, our policy intent is to invoke the deeming

provisions on a resident person by reference to his direct and indirect beneficial interests in an offshore fund taken as a whole. Some organizations representing the industry pointed out that the existing wording of the deeming provisions in the proposed section 20AE(1) and (3) may not achieve the intended result when applying the triggering threshold and ascertaining the amount of deemed profits. For example, it is not patently clear whether a resident person who holds 20% direct and 20% indirect beneficial interests in an offshore fund will be caught by the deeming provisions. I propose that the wording of the proposed section 20AE (1) and (3) be slightly amended to put beyond doubt the policy intent of aggregating a resident person's direct and indirect beneficial interests in an offshore fund in applying the deeming provisions.

Honourable Members, the Bills Committee had invited the relevant organizations to put forward their views on the proposed amendments, and the organizations concerned had expressed support for these proposed amendments.

Thank you, Madam Chairman.

Proposed amendment

Clause 2 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 5 Schedule 16 added.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 5, as printed on the paper circularized to Members, be read the Second time.

As I mentioned earlier during the resumption of the Second Reading debate on the Bill, having considered the suggestions of Members and the industry, I will move an amendment to extend the scope of "specified transactions" to cover the common types of transaction carried out by offshore funds in Hong Kong. I propose to add clause 5 to the Bill for the purpose of adding a new Schedule 16, which specifies six types of specified transactions as follows:

1. A transaction in securities.
2. A transaction in futures contracts.

3. A transaction in foreign exchange contracts.
4. A transaction consisting in the making of a deposit other than by way of a money-lending business.
5. A transaction in foreign currencies.
6. A transaction in exchange-traded commodities

The term "transaction" should be interpreted according to its common meaning to include both exchange-traded transactions and over-the-counter transactions. Insofar as the Bill is concerned, profits tax exemption will be allowed by reference to the nature of a financial product traded in the transactions rather than its product name.

In the proposed Schedule, the term "securities" is defined in a general sense. While the term is also defined in the Securities and Futures Ordinance, the interpretation of this term in the Inland Revenue Ordinance and the enforcement of the Ordinance have nothing to do with the SFO and will not have any implication on its implementation.

The proposed amendments, if passed, will extend the meaning of "leveraged foreign exchange trading" in the Bill to include over-the-counter and non-leveraged foreign exchange transactions carried out by offshore funds. Transactions in foreign currencies at a future time will be included in the scope of transactions in "foreign exchange contract", whereas transactions in spot foreign currencies will be included as transactions in foreign currencies. Both leveraged and non-leveraged transactions as well as listed and non-listed contracts are also covered.

After the amendments are made, the scope of "specified transactions" will also include transactions in exchange-traded commodities and making of deposits other than by way of a money-lending business. Subject to the investment strategy of the fund manager, a fund can trade in commodities listed in an exchange.

Honourable Members, after the amendments are made, the scope of "specified transactions" will cover the common types of transaction carried out by offshore funds in Hong Kong. The Bills Committee had invited the

organizations concerned to put forward their opinions on the proposed amendments, and they had expressed support for the proposed amendments.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 5 be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 5.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 5 be added to the Bill.

Proposed addition

New clause 5 (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 5 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

REVENUE (PROFITS TAX EXEMPTION FOR OFFSHORE FUNDS) BILL 2005

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

Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005.

MOTIONS

PRESIDENT (in Cantonese): Motions. Three proposed resolutions under the Public Bus Services Ordinance. First motion. Secretary for the Environment, Transport and Works.

PROPOSED RESOLUTION UNDER THE PUBLIC BUS SERVICES ORDINANCE

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I move that the first motion under my name, as printed on the Agenda, be passed.

The Chief Executive in Council approved the granting of new franchises of nine years and 11 months to Citybus Limited (Citybus) (Hong Kong Island and cross-harbour routes), New Lantau Bus Company (1973) Limited (NLB) and Kowloon Motor Bus Company (1933) Limited (KMB) on 10 January 2006. The new franchises for Citybus, NLB and KMB will start from 1 July 2006, 1 April 2007 and 1 August 2007 respectively.

Sections 26 to 32 of the Public Bus Services Ordinance set out the provisions of a Profit Control Scheme. They stipulate a permitted return that a franchised bus company can earn in an accounting year, calculated with reference to the percentage per annum specified in its franchise of its average net fixed assets in that accounting year. In accordance with section 5(3)(b) of the Ordinance, unless excluded by resolution of the Legislative Council, the Profit Control Scheme will apply to the new franchises.

At present, all the existing bus franchises do not have the permitted return arrangement. In negotiating this batch of new franchises with Citybus, NLB and KMB, we made clear that there would not be arrangements for a permitted return. Indeed, the new franchises granted by the Chief Executive in Council on 10 January 2006 do not have a permitted return arrangement. In view of this, we need to disapply sections 27, 28, 29 and 31 of the Public Bus Services Ordinance to the aforementioned new franchises. Sections 26, 26A, 30 and 32 will continue to apply for the following reasons:

- (a) section 26 defines terms used in the following sections;
- (b) section 26A specifies that financial penalties levied against a bus company shall not be taken into account in ascertaining the operating cost or service-related expenditure of the company for any purpose related to the Public Bus Services Ordinance or the franchise;
- (c) section 30 enables the Government to specify in the franchise depreciation rates and residual values in respect of fixed assets used or kept by a bus company for the purpose of or in connection with its franchise; and
- (d) section 32 requires a bus company to produce accounts and other information in relation to the public bus service operation as the Financial Secretary may require.

With these remarks, I move the relevant motion, so as to disapply the Profit Control Scheme to the new franchise of Citybus. Thank you, President.

The Secretary for the Environment, Transport and Works moved the following motion:

"RESOLVED that the franchise granted on 10 January 2006 under section 5 of the Public Bus Services Ordinance (Cap. 230) conferring the right on Citybus Limited (城巴有限公司) to operate a public bus service on the following routes shall not, for the entire period of the franchise, be subject to sections 27, 28, 29 and 31 of that Ordinance -

- (a) the routes specified in the appropriate Schedule of Routes order from time to time in force in respect of the company under section 5(1) of that Ordinance; and
- (b) the routes specified in any notices under sections 14 and 15 of that Ordinance."

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

MR ANDREW CHENG (in Cantonese): Madam President, though the three resolutions of today just narrowly deal with the Schemes of Control Agreement which shall take effect upon the granting of franchises to the three bus companies, I hope the President can allow me to, while speaking on this subject, express the views of the Democratic Party on the issue of franchise to the Government.

Madam President, after the resolutions are passed today, some of the routes of the Citybus Limited (Citybus) as well as all the routes of the New Lantao Bus Company (1973) Limited (NLB) and the Kowloon Motor Bus Company (1933) Limited (KMB) shall be granted franchises that will have a validity period of nearly 10 years. Regarding the practice of allowing bus

companies to continue operating by way of granting franchises, we do not have any objection. But our concern is what the Government should do in order to make effective use of the franchises, thereby making the bus companies provide the people with better services and benefit them.

According to the Government's present practice of granting bus franchises, when new operators first join the market, they will first be granted franchises of a tenure of five or six years and their performances will be judged upon during this period of time. If their service levels are found to be satisfactory, they will be granted 10-year franchises, as in the cases of other existing operators.

Madam President, the Government will take into account the level of passenger satisfaction as reference in deciding whether franchises should be granted to individual bus companies. Yet, let us take the KMB as an example. This colossal bus company is operating most of the routes in Kowloon and the New Territories. If the passengers of certain districts would like to see if it is possible to let other bus companies operate some of the routes upon the expiry of the present franchise, then very obviously, the answer must be in the negative. Let us take the passengers of New Territories West, Tai Po and North District as examples. As far as I know, they hope that, apart from the KMB, they can enjoy some alternative routes offered by other companies. However, under the present system, as long as the operators are willing to go on running the business, the passengers, despite being the consumers, do not have any other choices.

Madam President, therefore, the Democratic Party has all along advocated that, while maintaining the franchise system, a competition mechanism should be introduced, so as to prevent the bus operations of certain districts and certain routes from being monopolized. We propose that the Government may study the possibility of amending the franchise arrangements. We also propose that the present franchise period of 10 years can be maintained, but mechanisms of review and appeal can be established in the fifth year. If the result of a review indicates that the services are not up to the standards, the bus company concerned may appeal against the result. However, if the appeal is unsuccessful, the services provided by the bus company will have to be terminated, and it will have to surrender all of its routes, which will be put to tender and taken over by other bus companies.

Madam President, after the present franchises have expired, the Government may classify all the routes in the territory into many groupings (including the profitable ones and the unprofitable ones) and invite open tenders for them, so as to enable the Government to choose from the tendering companies and grant the 10-year franchise to the company that can offer the most reasonable services and fares. Open tenders will be conducted again upon the expiry of such franchises. We propose that the Government should consider implementing such a tendering scheme on a trial basis in certain districts, so as to determine its effectiveness.

Madam President, what makes this franchise renewal so special is the bundling of the franchises with the fare adjustment mechanism that allows both reductions and increases. We agree with this. In fact, the issue of fares is always the greatest concern to the passengers. According to a government-commissioned survey conducted by The Hong Kong Polytechnic University, as many as 38% of the respondents find the present fare level unacceptable. Upon the introduction of the fare adjustment mechanism that allows both reductions and increases, passengers will receive 5% and 10% discounts if their two-way bus fares are over \$10 and \$15 respectively. In spite of this, the overall bus fare level is still too high. It is most regrettable that these fare discounts will only apply to those routes that are operated by one single bus company. For routes that are jointly operated by different bus companies, such discounts will only apply after some changes are made to the present Octopus software. It is really strange that it should take as long as three months for the bus companies, which always take pride in their highly efficient and excellent services, to revise their software, thus making many passengers unable to enjoy the discounts until 1 July of this year. It seems that the mentality of "quick increases and slow reductions" does not only apply to oil companies, but also the operators of various bus companies. I urge the Government to negotiate with the various bus companies to shorten the time required for making adjustments to the Octopus software. Alternatively, the bus companies may provide other forms of fare concession during this period of time, so as to enable passengers to enjoy the concessions to which they are entitled.

Madam President, besides, after granting this round of franchises, the Government should continue its discussion with the various bus companies for making some other bus fare arrangements. For example, the Government may start reforming the bus route groupings by simplifying them, so as to make the

bus fare level better reflect the community structures of Hong Kong. We have pointed out that the present groupings of bus routes are much too complicated. As far as we understand, just for the KMB, New World First Bus Services Limited and the Citybus alone, there are already more than 10 bus route groupings. We think that the differentiations among some of the groupings are not necessary, thus making the bus fare chart excessively complicated.

Madam President, I shall finish very soon. Very soon,

PRESIDENT (in Cantonese): Mr CHENG, although I shall let you go on, I really do not wish to see you devoting your entire speech to stating your stance, instead of discussing this resolution.

MR ANDREW CHENG (in Cantonese): I shall finish my speech very soon, but I hope the President can understand that, the granting of the franchises for these bus routes provides us with the opportunity to convey our aspiration to the Government that, having granted these franchises to the bus companies, it should contemplate how the bus services can be strengthened. Madam President, I shall finish my speech very soon.

Therefore, regarding these unnecessary and complicated groupings of bus routes, I hope — the Secretary has heard this many times before — through this discussion, I can put this on the record and we shall continue fighting for our objectives. Moreover, we also hope that, after implementing the fare adjustment mechanism that allows both reductions and increases, the Secretary can introduce some other good policies as well, such as implementing sectional fares, thereby using the distance travelled as the criterion for determining the fares of different bus routes.

Madam President, I so submit.

MR WONG KWOK-HING (in Cantonese): Madam President, after four years' of tough negotiations, the fare adjustment mechanism that allows both reductions and increases has eventually been implemented just because the bus companies have to secure a renewal of their franchises. Today's resolutions can also be described as the exchange of letters ceremonies between the Government and the

bus companies. In fact, on issues of the fare adjustment mechanism that allows both reductions and increases as well as the franchise renewal, both Secretary Dr Sarah LIAO and the bus companies are getting what they want, though the value and the significance of what they have got may be different.

To Secretary Dr Sarah LIAO, the implementation of the fare adjustment mechanism that allows both reductions and increases represents the fulfillment of the promise she made when she first assumed office. Although the materialization of this promise has been late by four years, and the people's expectation has once become disappointment, she still did her best without giving up. And she has even told us emotionally that this "mechanism", though described by some as a "worthless gift", was achieved after much hard effort. The Secretary's sense of commitment should be commended in some measure. However, the problem is, what the Secretary has achieved after making so much effort falls far short of the expectation of the people with regard to bus fare reduction. And the requirement of making advance payment of the return-trip fares by passengers further illustrates that the officials concerned have very little knowledge of the livelihood of the masses.

To the bus operators, what they have gained this time around is very substantial. All that the bus companies have to offer is just a minimal rebate of their profits. By providing the people with 10% or 5% discounts on their return-trip fares, they can gain in exchange the right to continue running their franchised businesses for the next 10 years. And they may save the money involved in offering the concession because some people may not make use of the return-trip concession. This kind of tricky calculation does make the top management of the bus companies smile smugly.

Madam President, in the face of the fare adjustment mechanism that allows both reductions and increases as well as the renewal of bus franchises, the mass public, that is, the grass-roots people may be the only party who cannot find any good reasons to smile. As a matter of fact, the concession brought about by this new fare mechanism is just too insignificant. After enjoying the concession, the people still have to pay very high bus fares, and passengers travelling on short trips may not be able to enjoy any benefit at all.

The granting of the franchise is the ultimate weapon of the Government in dealing with the bus companies, and it is the only weapon that can make the bus operators accede to its demands.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, I am sorry. I hope you will make one or two remarks that are relevant to this resolution, will you?

MR WONG KWOK-HING (in Cantonese): Thank you, Madam President. Please go on listening to my speech, and you will know that my speech is relevant to the resolution.

But as we review the franchises granted by the Government, we think they are doing the bus companies a great favour. In fact, in the negotiations between the Government and the bus companies, more requirements should be added to the agreements, such as fare concession for people with disabilities, so as to make the bus companies compromise. If this is achieved, we would not get trapped in such a predicament now — the handicapped and the Legislative Council are talking to themselves in making the request, while the bus companies seem to be least bothered to reply whether the concession will be provided.

Madam President, in the franchise renewal negotiations, the Government has given away a lot. Fortunately, it is still sensible enough in having made some adjustment to certain minor aspects, such as urging the bus companies to improve their service level, introduce emissions reduction measures, implement measures to improve the environment and the bus stop arrangements, and so on. Yet, it is a pity that the Government has not incorporated too many requirements in the franchise agreements, and the demands made by the Government are not really difficult ones; therefore, the bus companies can cope with them very easily.

Madam President, having renewed the franchises with the KMB, the Citybus and the New Lantao Bus Company (1973) Limited, the Administration will have to wait until 2013 before it can start any other negotiations with the bus companies. Therefore, I hope in future, the authorities can draw some lessons from this round of negotiations with the bus companies, so as to identify some tricks in conducting talks with some other public organizations. Besides, I also wish to take this opportunity to advise the bus companies that, while they have been granted the franchises, they should seriously contemplate their social responsibility as a corporate citizen of society. They should expeditiously implement half-fare concessions for people with disabilities, and reach a consensus with the Legislative Council and people with disabilities in this regard.

You cannot make all the money without caring for others; otherwise, you will be remembered by the world for your notorious acts in being unkind to the underprivileged.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, Secretary for the Environment, Transport and Works, do you wish to reply?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, first of all, I thank the two Members who have spoken, and I also thank other Members who will vote for this motion.

With regard to the views put forward by Members earlier, we, in fact, already had a motion debate on bus franchise and the fare mechanism that allows fares to go upward and downward for nearly four hours on 14 December. I hope we can develop a spirit of teamwork and make continuous efforts to further improve our bus services in the future. I will continue to consider in detail the proposals made by Members today.

Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Second motion. Secretary for the Environment, Transport and Works.

PROPOSED RESOLUTION UNDER THE PUBLIC BUS SERVICES ORDINANCE

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I move that the second motion under my name, as printed on the Agenda, be passed, so as to disapply the Profit Control Scheme to the new franchise of New Lantau Bus Company (1973) Limited. Thank you, President.

The Secretary for the Environment, Transport and Works moved the following motion:

"RESOLVED that the franchise granted on 10 January 2006 under section 5 of the Public Bus Services Ordinance (Cap. 230) conferring the right on New Lantau Bus Company (1973) Limited (新大嶼山巴士(1973)有限公司) to operate a public bus service on the following routes shall not, for the entire period of the franchise, be subject to sections 27, 28, 29 and 31 of that Ordinance -

- (a) the routes specified in the appropriate Schedule of Routes order from time to time in force in respect of the company under section 5(1) of that Ordinance; and
- (b) the routes specified in any notices under sections 14 and 15 of that Ordinance."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Third motion. Secretary for the Environment, Transport and Works.

PROPOSED RESOLUTION UNDER THE PUBLIC BUS SERVICES ORDINANCE

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I move that the third motion under my name, as printed on the Agenda, be passed, so as to disapply the Profit Control Scheme to the new franchise of Kowloon Motor Bus Company (1933) Limited. Thank you, President.

The Secretary for the Environment, Transport and Works moved the following motion:

"RESOLVED that the franchise granted on 10 January 2006 under section 5 of the Public Bus Services Ordinance (Cap. 230)

conferring the right on The Kowloon Motor Bus Company (1933) Limited (九龍巴士(一九三三)有限公司) to operate a public bus service on the following routes shall not, for the entire period of the franchise, be subject to sections 27, 28, 29 and 31 of that Ordinance -

- (a) the routes specified in the appropriate Schedule of Routes order from time to time in force in respect of the company under section 5(1) of that Ordinance; and
- (b) the routes specified in any notices under sections 14 and 15 of that Ordinance."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Public Finance Ordinance. Secretary for Financial Services and the Treasury.

PROPOSED RESOLUTION UNDER THE PUBLIC FINANCE ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move the motion standing in my name on the Agenda.

The purpose of this resolution is to seek funds on account to enable the Government to carry on existing services between the start of the financial year on 1 April 2006 and the enactment of the Appropriation Ordinance 2006. This follows the procedure long established in the Legislative Council.

We have determined the funds on account sought under each subhead in accordance with the fourth paragraph of the resolution, by reference to percentages of the provision shown in the 2006-07 Estimates of Expenditure. If, prior to the enactment of the Appropriation Ordinance 2006, the Estimates are changed by the Finance Committee or officers under delegated powers, the funds on account for the relevant heads will also change accordingly. In any case, the aggregate total under all heads is \$55,884,844,000 and cannot be exceeded without the approval of the Legislative Council. The initial amount of funds on account under each head is provided in the form of a footnote to this speech.

The resolution also enables the Financial Secretary to vary the funds on account in respect of any subhead, provided that these variations do not cause an excess over the amount of provision entered for that subhead in the 2006-07 Estimates of Expenditure or the amount of funds on account for the relevant head.

The vote on account will be subsumed upon the enactment of the Appropriation Ordinance 2006.

Madam President, I beg to move.

Footnote

<i>Head of Expenditure</i>	<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of funds on account \$'000</i>
21 Chief Executive's Office	72,296	14,460
22 Agriculture, Fisheries and Conservation Department	956,336	401,482
25 Architectural Services Department.....	1,349,587	270,753
24 Audit Commission.....	115,872	23,175
23 Auxiliary Medical Service.....	59,000	11,800
82 Buildings Department	778,914	159,699
26 Census and Statistics Department	529,552	105,937
27 Civil Aid Service	72,500	14,500
28 Civil Aviation Department	635,969	127,394
33 Civil Engineering and Development Department.....	1,292,813	266,599
30 Correctional Services Department	2,379,726	489,388
31 Customs and Excise Department	1,975,440	400,047
37 Department of Health	3,061,952	784,133
92 Department of Justice	879,599	179,646
39 Drainage Services Department	1,573,228	334,913
42 Electrical and Mechanical Services Department.....	289,696	119,128
44 Environmental Protection Department	2,044,536	426,696
45 Fire Services Department	3,020,985	668,535
49 Food and Environmental Hygiene Department.	3,944,684	859,768
46 General Expenses of the Civil Service	4,213,218	1,049,500
166 Government Flying Service	212,290	95,780
48 Government Laboratory	245,157	70,097
59 Government Logistics Department.....	450,445	163,232
51 Government Property Agency	1,711,869	356,614
35 Government Secretariat: Beijing Office.....	47,369	9,474
143 Government Secretariat: Civil Service Bureau.....	386,654	83,811
152 Government Secretariat: Commerce, Industry and Technology Bureau (Commerce and Industry Branch)	497,268	111,785
55 Government Secretariat: Commerce, Industry and Technology Bureau (Communications and Technology Branch)	122,114	73,570

<i>Head of Expenditure</i>		<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of funds on account \$'000</i>
144	Government Secretariat: Constitutional Affairs Bureau	135,667	44,041
145	Government Secretariat: Economic Development and Labour Bureau (Economic Development Branch)	928,593	217,348
156	Government Secretariat: Education and Manpower Bureau	34,210,798	8,285,631
158	Government Secretariat: Environment, Transport and Works Bureau (Transport Branch)	71,671	15,017
159	Government Secretariat: Environment, Transport and Works Bureau (Works Branch)	194,519	43,024
148	Government Secretariat: Financial Services and the Treasury Bureau (Financial Services Branch)	126,419	28,167
147	Government Secretariat: Financial Services and the Treasury Bureau (The Treasury Branch)	185,003	37,001
149	Government Secretariat: Health, Welfare and Food Bureau	28,272,564	5,978,351
53	Government Secretariat: Home Affairs Bureau	754,545	162,449
138	Government Secretariat: Housing, Planning and Lands Bureau (Planning and Lands Branch)	92,397	18,480
155	Government Secretariat: Innovation and Technology Commission	463,305	144,247
47	Government Secretariat: Office of the Government Chief Information Officer	564,313	113,423
142	Government Secretariat: Offices of the Chief Secretary for Administration and the Financial Secretary	636,183	174,409
96	Government Secretariat: Overseas Economic and Trade Offices	296,825	68,476
151	Government Secretariat: Security Bureau	124,100	25,060
60	Highways Department	1,950,753	392,081
63	Home Affairs Department	1,260,789	289,242
168	Hong Kong Observatory	197,374	40,995
122	Hong Kong Police Force	11,152,791	2,320,002

<i>Head of Expenditure</i>	<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of funds on account \$'000</i>
62 Housing Department	88,827	17,766
70 Immigration Department.....	2,341,932	482,243
72 Independent Commission Against Corruption	668,462	133,693
121 Independent Police Complaints Council	12,700	2,540
74 Information Services Department	346,736	69,348
76 Inland Revenue Department.....	1,187,034	237,407
78 Intellectual Property Department.....	86,491	27,823
79 Invest Hong Kong	106,063	55,213
174 Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service.....	8,650	1,730
80 Judiciary.....	952,710	206,278
90 Labour Department.....	975,608	300,050
91 Lands Department	1,606,062	326,717
94 Legal Aid Department	748,491	149,699
112 Legislative Council Commission	346,637	78,620
95 Leisure and Cultural Services Department	5,027,086	1,119,594
100 Marine Department.....	897,414	202,030
106 Miscellaneous Services	8,520,079	6,230,335
114 Office of The Ombudsman	81,252	16,275
116 Official Receiver's Office	130,975	29,854
120 Pensions	14,172,855	2,850,890
118 Planning Department.....	426,239	97,432
136 Public Service Commission	15,511	3,103
160 Radio Television Hong Kong.....	438,886	95,770
162 Rating and Valuation Department.....	362,882	73,297
163 Registration and Electoral Office	174,083	34,817
170 Social Welfare Department.....	34,278,034	8,199,626
173 Student Financial Assistance Agency.....	3,850,280	1,180,724
180 Television and Entertainment Licensing Authority	96,272	31,353
181 Trade and Industry Department	689,654	474,218
186 Transport Department.....	882,731	203,662
188 Treasury.....	333,041	66,609

<i>Head of Expenditure</i>	<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of funds on account \$'000</i>
190 University Grants Committee	11,320,070	2,273,054
194 Water Supplies Department	5,116,893	1,027,314
	<hr/>	<hr/>
	210,828,318	52,368,444
184 Transfers to Funds	3,516,400	3,516,400
	<hr/>	<hr/>
Total	214,344,718	55,884,844
	=====	=====

The Secretary for Financial Services and the Treasury moved the following motion:

"RESOLVED that -

1. Authority is hereby given for a sum not exceeding \$55,884,844,000 to be charged on the general revenue for expenditure on the services of the Government in respect of the financial year commencing on 1 April 2006.
2. Subject to this Resolution, the sum so charged may be expended against the heads of expenditure as shown in the Estimates of Expenditure 2006-07 laid before the Legislative Council on 22 February 2006 or, where the Estimates are changed under the provisions of the Public Finance Ordinance (Cap. 2) as applied by section 7(2) of that Ordinance, as shown in the Estimates as so changed.
3. Expenditure in respect of any head of expenditure shall not exceed the aggregate of the amounts authorized by paragraph 4 to be expended in respect of the subheads in that head of expenditure.
4. Expenditure in respect of each subhead in a head of expenditure shall not exceed -

- (a) in the case of an Operating Account Recurrent subhead of expenditure, an amount equivalent to -
- (i) except where the subhead is listed in the Schedule to this Resolution, 20% of the provision shown in the Estimates in respect of that subhead;
 - (ii) where the subhead is listed in the Schedule to this Resolution, the percentage of the provision shown in the Estimates in respect of that subhead that is specified in the Schedule in relation to that subhead; and
- (b) in the case of an Operating Account Non-Recurrent subhead of expenditure or Capital Account subhead of expenditure, an amount equivalent to 100% of the provision shown in the Estimates in respect of that subhead,

or such other amount, not exceeding an amount equivalent to 100% of the provision shown in the Estimates in respect of that subhead, as may in any case be approved by the Financial Secretary.

SCHEDULE

[para. 4]

	<i>Head of Expenditure</i>		<i>Subhead</i>	<i>Percentage of provision shown in Estimates</i>
46	General Expenses of the Civil Service	013	Personal allowances	40
90	Labour Department	280	Contribution to the Occupational Safety and Health Council	30
		295	Contribution to the Occupational Deafness Compensation Board	30

	<i>Head of Expenditure</i>		<i>Subhead</i>	<i>Percentage of provision shown in Estimates</i>
106	Miscellaneous Services	163	Write-offs	50
		192	Refunds of revenue	100
		284	Compensation	30
120	Pensions	021	Ex gratia pensions, awards and allowances	50
		026	Employees' compensation, injury, incapacity and death related payments and expenses	50
170	Social Welfare Department	157	Assistance for patients and their families	100
		176	Criminal and law enforcement injuries compensation	30
		177	Emergency relief	100
		179	Comprehensive social security assistance scheme	25
		180	Social security allowance scheme	25
		187	Agents' commission and expenses	100"

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

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

MR SIN CHUNG-KAI (in Cantonese): President, in fact, this motion is moved every year and there is nothing special about it. So actually there should not be any need for me to say anything about this motion. However, something has changed. In the past, the Budget was usually tabled in mid-March, and the voting took place on 4 April in 2001, 17 April in 2002 and 9 April in 2003 and

then it was voted on about 27 or 28 April in 2004 and 2005. This resolution is necessary because our financial year commences on 1 April.

However, if everything goes according to the original schedule, and unless there are any major catastrophes, the voting on the relevant resolution shall take place on 29 March in the Legislative Council this year. I am not sure whether this is attributable to the lack of confidence on the part of the Government. Otherwise, if the Budget can be passed on 29 March, this resolution will no longer be necessary.

I would like to bring up a subject for discussion. Do the justifications for this resolution still exist? Or is it simply because the Government does not have any confidence in its Budget being passed? However, I feel that the Government seems to have performed quite badly in achieving accuracy in finance management over the years, particularly the accuracy of its expenditure. For example, according to the Budget, it is estimated that the Government would have incurred a budget deficit of over \$13 billion this year. But last week, the Government said that the deficit was just \$4.1 billion. Yet according to the figures released yesterday, there was actually a surplus of \$19.6 billion. Compared with the figures of a week ago, there is a discrepancy of about \$15 billion. In the debate held on 15 February, President, I mentioned to you that we would like to ask the Secretary not to falsify the accounts — please bear in mind what our former Deputy Prime Minister(sic) ZHU Yongji had told us, that is, do not falsify the accounts. However, why the lapse of just one week can make such a great difference? When the Financial Secretary delivered his speech last week in the Legislative Council, he pointed out that we had a surplus. But it was originally estimated that we should have a deficit of over \$13 billion, that is, the expenditure of the Government had recorded a deficit of over \$13 billion. Last week, he estimated that there should be a surplus of \$4.1 billion this year. But now, he told us another version, saying that we already had a surplus of \$19.6 billion during the first 10 months of the financial year.

Yes, there are two more months before the current financial year really comes to an end and maybe these two remaining months alone can turn the expenditure of the full year from surplus into deficit. However, as we take a retrospective look at the figures of the past three years, even in the worst financial year, after deducting the net expenditure from the net revenue during the last two months, we had the figure of negative \$3 billion. As for the best

financial year, there was even a surplus of \$5 billion during the last two months. So let us see what will happen if we base our estimation on the figures of the past three years. Since a surplus of \$19.6 billion has already been recorded during the first 10 months of the year, so even if the worst scenario does happen, that is, the expenditure incurs a deficit as high as negative \$3 billion, we still have a surplus of about \$16 billion. In a further worsening scenario in which the deficit is doubly exaggerated to a deficit of \$6 billion, we still have a surplus of about \$14 billion, which still shows a discrepancy of about \$10 billion from the Government's estimated surplus of \$4.1 billion.

President, I think the Government should handle such matters with honesty and integrity and what it says must be convincing to the people. Last week, the Government was still telling the media that the figures provided by non-government experts were not accurate because the information they have access to was limited. In a special meeting held by the Financial Secretary, Ms Audrey EU even said that although their figures were not accurate, they still had to manage their expectation. President, instead of their expectation, the Government is actually managing and tampering with the figures. I think the Government should act with honesty and integrity and make its estimation objectively. It should not, out of financial needs and for the purpose of not reducing tax and not increasing expenditure, deliberately turn the original and objective surplus of \$19.6 billion into a deficit of \$4.1 billion.

President, there exists a certain relationship between the deficit and this resolution, why? It is because the Budget was usually released in mid-March, so the Government could get hold of the figures as at end of January or February. Last time, we advanced the release date of the Budget by two weeks. So it was released on 15 February, and this might account for the Government's inability to get hold of very accurate figures. However, I still cannot understand why the Government had to stress that the figures it released were more accurate than those estimates made by the so-called non-government experts. In fact, even though the Government had access to the relevant figures, the experts' estimates were more accurate than those made by the Government.

I hope later on the Secretary can answer those questions raised by me just now. Basically there are only two questions. The first question is: How does the Government calculate the accounts? The second question is even more important: If the Budget is passed on 29 March, is this resolution still necessary?

The original objective of this resolution is to enable the Government to obtain the necessary funding before the Budget is passed. As the new Budget will have become effective on 1 April, is it still necessary to have this resolution? I so submit.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Mr SIN Chung-kai raised two questions. The first one concerns why this resolution on appropriation has to be moved. Mr SIN Chung-kai is right in saying that in the past, the Financial Secretary would usually move the Second Reading of budgets in early or the middle of March. And, a budget might be passed as late as 29 March. I must say that the situation this year is a bit special. But Members must realize that it is entirely up to the Legislative Council to decide whether the Budget is to be passed on 29 March. The Government simply does not have any knowledge. Since the Government cannot make any decision on the resolution, we must put forward this resolution on temporary appropriation today. Therefore, we must move this resolution on temporary appropriation today.

As for the second question, Mr SIN Chung-kai accused the Government of "falsifying accounts". I must express my strong protest here. The Government has not "falsified any accounts". Will our figures necessarily tally with our revised estimates? Members must understand that the Government is a huge organization whose annual expenditure and revenue amount to some \$200 billion. Our estimates are made at a very early time, with the compilation of statistics starting as early as November — we do not come up with any estimates just one or two days before the announcement of a budget. I must nevertheless thank Mr SIN for raising this question. I do not wish to spend too much time on an explanation, though, because I suppose it will take as much as an hour to explain the whole process. But I just wish to make it very clear that the Government has never "falsified any accounts" as alleged by Mr SIN Chung-kai.

So when any discrepancies arise between revised estimates and final figures attributable to various reasons in the process, we will certainly explain to the public why there are such discrepancies. But we have never "falsified any accounts" as alleged by Mr SIN Chung-kai.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

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

First motion: Implementing the recommendations of the United Nations Human Rights Committee.

IMPLEMENTING THE RECOMMENDATIONS OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

MS EMILY LAU (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, on the 20th and 21st of this month, at the United Nations Headquarters in New York City, the United Nations Human Rights Committee (UNHRC) will commence its hearing regarding the second report on the Hong Kong Special Administrative Region (SAR) under the International Covenant on Civil and Political Rights (ICCPR) submitted by the SAR Government in January last year. By moving this motion today, I hope that Members can express their views on both this report and the UNHRC recommendations regarding the implementation of the ICCPR. I also hope that Members can join hands to urge the authorities to implement the many recommendations made by the UNHRC but ignored by the SAR Government all these years.

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

Deputy President, in 1948, the United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights, which sets out a series of human rights principles as the common standards to be attained by all State Parties and peoples. However, all these are just principles, the implementation of which is not binding on the State Parties. Therefore, the United Nations adopted two human rights covenants in 1996, namely, the ICCPR under discussion today and the International Covenant on Economic, Social and Cultural Rights. These covenants set out a series of basic human rights and liberties, and each State Party is required to take the necessary steps and adopt such measures as may be necessary to give effect to the rights set out.

When these two covenants came into force in 1976, Hong Kong was still a British colony, and the British Government extended them to Hong Kong, allowing them to come into force here. At the same time, however, it expressed reservation about certain Articles of the two covenants. Ever since 1976, the United Nations has been holding regular hearings on the reports submitted. But I have good reasons to believe that even in the mid-1980s, not many people knew of this matter. As for me, I also knew nothing about it until 1988, when I discovered by pure accident that the UNHRC had held a hearing in Geneva. I was then a journalist. Startled, I hastened to round up eight to 10 persons and went to Geneva to launch an "attack". The report at that time was as thin and crumple as the several sheets of paper I am now holding. Deputy President, I managed to get a copy of it only after searching far and wide. Since then, I have been attending practically all hearings of the UNHRC. I met

some of the UNHRC members before, and I am going to see them again in New York City later this month. They are truly "evergreen" because they have been members of the UNHRC for so many years.

Deputy President, these covenants are basically meant to regulate us. The SAR Government's last report was submitted in 1999, at which time the UNHRC said that the next report should be submitted on 31 October 2003. Subsequently, however, the authorities deferred the submission of the report until January last year, so it was late by one year. This is indeed very regrettable.

What is more, Deputy President, the Central Government has not yet ratified the ICCPR. The Chinese Government has signed but not ratified this covenant. Since it has not ratified the covenant, unlike the SAR Government, it does not have to submit any reports. For this reason, I believe the SAR Government will have to organize its own delegation to the United Nations for report presentation this time around. This is no secret anyway. The United Nations very much hopes that the Chinese Government can ratify the ICCPR as early as possible. That way, it will be obligated to submit reports and present that it has really given effect to all the civil and political rights to which all Chinese citizens on its territory are entitled.

Deputy President, as I mentioned just now, I have been to the United Nations several times before. But the ICCPR was not the only purpose of my attendance. I also attended meetings on another covenant, the International Covenant on Economic, Social and Cultural Rights. I can remember that in the past, before the implementation of the accountability system, when the posts of Bureau Directors were filled by civil servants, Bureau Directors would attend these meetings. Secretary LAM Woon-kwong and Secretary David LAN (that is, the Secretary who said everything was under control) both attended these meetings. Following the implementation of the accountability system, however, our Bureau Directors — I am not necessarily saying that they are cowards — no longer attend these meetings. As far as I know, a delegation headed by an Acting Permanent Secretary will be sent to the meeting this time around. I of course respect Mr Stephen FISHER very much. But this is a very important covenant and the submission has been deferred for a year. Why do they still refuse to assign an accountability official to attend the meeting? What kind of message will be delivered to the United Nations, Madam President?

Besides, Deputy President, we must raise one point. If you have read the report It is a very brief report This one is the first report and that one is the second report. Why is the report so short? They explain that all is because there has been no change and the situation is very much the same as before. Members can thus understand why the United Nations made such a Concluding Observation in 1999: the UNHRC is concerned that most of the recommendations formulated in the UNHRC's Concluding Observations have not yet been implemented. That is why many of the issues need not be mentioned this time around and all one needs to do is just to read the report in question again. Some members of the UNHRC even say that they do not even have to read this report but just the one compiled by the colonial government in 1995. All details can already be found in the latter report. This is what things are like. They simply will not do anything at all.

Why have they done nothing? The authorities say that there are reasons. According to the authorities, they do not have any guilty conscience because their perspective is different from that of the United Nations. They claim that on all these issues, they must adopt an approach that is compatible with the actual situation. They assert that they are the most authoritative people to look after the well-being of the SAR, so they must be left to decide what should be done. They argue that the recommendations of the United Nations are not compatible with the actual situation and are not binding. The recommendations are not laws and the UNHRC is not a court, so they can simply ignore it. Such an approach is exactly the same as that adopted by Secretary Ambrose LEE in handling the interception of communications. Others already talked about this issue as early as the 1990s, in 1994, 1995, 1996, 1997, 1998, 1999, 2000 and 2005. But it simply ignored all this. And, once the Court ruled that such conduct was improper, it hastened to enact legislation. I really do not know how they regard the United Nations.

The Deputy President may ask, "Emily LAU, are you saying that it has done nothing at all?" Not exactly so, I must say. Several measures have been implemented, as also mentioned in the report. But there are only three such measures. What is one of these measures, Deputy President? It is about discrimination against women. It says that measures on prohibiting sex discrimination have come into force; the limit on damages awarded to a claimant has been removed; and, the District Court has been empowered to order reinstatement of the claimant. However, in the same paragraph, the violence suffered by women is also mentioned. Ms Margaret NG will move a relevant

motion next week. The UNHRC has also questioned why the enactment of legislation against discrimination based on sexual orientation and age has been delayed year after year. No measures have been implemented to prevent all these forms of discrimination. And, the situation with racial discrimination is even worse. When they attend the meeting, they will certainly be questioned on all this.

Another measure that has been implemented is related to Vietnamese seeking asylum. Several thousand people have already integrated into Hong Kong society.

What is the third implemented measure? It is related to official charge forms and charge sheets. Deputy President, you must know this very well because you come from the legal profession. There were no bilingual versions of these forms until 1999. The British should of course be condemned for failing to do so. Hong Kong was then a British colony and its people might not even know what charges had been pressed against them. In 1999, it was finally mentioned in this report that this had been achieved. This is the third implemented measure.

How about the recommendations that have not yet been implemented? Gosh Deputy President, I do not have too much time now, but I can still enumerate them without any difficulties. The first one is of course related to Article 25 on elections. The United Nations has always maintained that paragraphs (b) and (c) of Article 25 as well as Article 26 are being violated. However, the report asserts (Allow me to repeat its argument once again) that the UNHRC has overlooked the fact that the ICCPR as applied to Hong Kong is subject to a reservation. Therefore, it argues that the present system is compatible with the actual situation in Hong Kong (I am sure that Mr Tommy CHEUNG will say so later on) and does not contravene the ICCPR. However, I must then repeat that the authorities have overlooked the fact that the reservation referred to by the UNHRC should apply only in the absence of any electoral system; once an electoral system is put in place, the relevant recommendation should be followed. The report also mentions the interpretation of the Basic Law by the National People's Congress. Deputy President, it is said in the report that there is nothing wrong with the interpretation of the Basic Law by the National People's Congress, and that following the interpretation, there will still be plenty of room for revising the electoral systems for 2007 and 2008 and making them more representative.

In this connection, we may as well look at the contents of this document here. Deputy President, I have just received this document, so it must contain the latest information. This document is entitled Legislative Council Brief on the Chief Executive Election Ordinance. In the fifth paragraph, it is said: In accordance with the Interpretation made by the Standing Committee of the National People's Congress on 6 April 2004, if no amendment is made to the methods for selecting the Chief Executive and for forming the Legislative Council as stipulated in Annexes I and II to the Basic Law, the provisions relating to the two methods in Annexes I and II to the Basic Law will still be applicable. In the circumstances, the 2007 Chief Executive Election will be held on the basis of the existing arrangements, that is, the electorate base will remain unchanged.

However, we should remember that in Article 45 of the Basic Law, the principle of gradual and orderly progress for our elections is mentioned. If we are to mark time in this respect, will we contravene the Basic Law? Do we wish to see another application for judicial review? And, this is also a contravention of the ICCPR.

Deputy President, the second thing that the authorities refuse to do is the establishment of a human rights commission. Every report mentions that there is a need for setting up a human rights commission under the Paris Principle for the purpose of monitoring the implementation of the ICCPR. The report offers reasons for not doing so. Why does the SAR Government think that there is no need to do so? The report points out that we have an independent Judiciary, a reliable and well-established legal aid system, an effective ombudsman, a proactive civic education committee (I do not know where it is and how proactive it has been), an active press and the monitoring of local and international NGOs. It claims that all these are excellent mechanisms, so it doubts the wisdom of establishing an entirely new organization with sole responsibility for human rights, whose terms of reference is both too broad and unclear. It wonders why such an organization should ever be set up and asserts that it is best to maintain the *status quo*. These are its justifications and I have mentioned them one by one for the sake of fairness. Actually, very often, when one wants to debate with the SAR Government, one does not need to search for any other information. One only has to gather the views of the authorities and read them aloud to others. That way, people will laugh at its ridiculous arguments. Honestly speaking, Deputy President, even if other Members and I really care to study this report in detail, we will still have all sorts of "surprises" or "astonishments" after reading it.

Another point is about the protection of privacy. Actually, I do not wish to dwell on this issue any further. But Secretary Ambrose LEE is right now busy making preparations, so I guess he will have plenty to say later on. Anyway, I must tell the Secretary that we have been criticized for breaching the ICCPR, that is, the paragraph I read to him just now. He should know this only too well. He claims that he has already answered the series of questions raised in the report released in December last year. But we have never received any answers. This is a very great problem. We have been advising the Secretary for many years, but he has refused to do anything. The Court has now made its ruling, so he has to take actions. We have turned to the United Nations to tell them that the contents of the IPPCR must be written into local statutes. After the case was brought before the Court, the authorities have now started to take actions. That is why I must say that I also find the situation very regrettable.

Finally, I also wish to talk about my old trade: freedom of the press — a topic I have been raising year after year. I wish to talk about freedom of the press and self-censorship of the press. These were also mentioned in the questions raised in December last year. The report does not even give a reply. Why? It says that the answer is obvious. What then is the obvious answer? It wonders why we should mention freedom of the press at all. It says that nothing should be done. Why? It explains that there should be no intervention because this may easily be misinterpreted as intervention in editorial independence or a lack of confidence in the professional integrity of journalists. As for self-censorship of the press, it says that the problem is also exaggerated because in the SAR now, many people are still expressing their views very boldly on the Central Authorities, Taiwan, Tibet and the Mainland. But I must ask whether this is at all true.

Regarding freedom of the press, "Tai Pan" is the best case in point because in the report released in December last year, it is mentioned that "Tai Pan" and Yuk-man were both intimidated by triads, that there were criticisms from officials of the Central Authorities, and that these officials even talked about patriotism. Therefore, when it comes to these problems, we should no longer focus solely on whether the SAR Government should step in. Some were forced to "go off air" at that time. Allen LEE was forced to do so. CHU Pui-hing was almost replaced. And, Allen once told him, "Pui-hing, the three of us have already 'gone off air', but this may have saved you. Had we not been forced to do so, there might have been a new Director of Broadcasting in early 2004. And, the Director may no longer be a civil servant."

Deputy President, I have already said a lot, so I do not wish to go on. And, some Members have already reminded me. That is why I have only talked about some of the problems. They are just the tip of the iceberg. I hope Members can debate on them. I also hope that we can all give a clear picture of Hong Kong's human rights record, of how little the SAR Government has done so far.

I so submit.

Ms Emily LAU moved the following motion: (Translation)

"That, noting that the United Nations Human Rights Committee will hold a hearing on 20 March this year to consider the Second Report on the Hong Kong Special Administrative Region of the People's Republic of China in the light of the International Covenant on Civil and Political Rights submitted last year, this Council urges the Government of the Hong Kong Special Administrative Region to implement the recommendations that have been and will be made by the Committee."

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

DEPUTY PRESIDENT (in Cantonese): Mr Tommy CHEUNG will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mr Tommy CHEUNG to speak and move his amendment.

MR TOMMY CHEUNG (in Cantonese): Deputy President, I move that Ms Emily LAU's motion be amended. When we look up the International Covenant on Civil and Political Rights (ICCPR), we will find that the provisions contain some goals commonly recognized by the international community and these should also be made the objects of our common pursuit. These include: equal right to the enjoyment of all civil and political rights; everyone shall have the right to freedom of thought, conscience and religion; all persons are equal before the law and the law shall guarantee to all persons equal and effective

protection against discrimination on any ground such as race, colour, sex, language, political opinion, and so on.

Of course, the Liberal Party subscribes to these lofty goals and agree that we should strive to achieve them. But the question is that when this is going to be put into practice, would it be alright if one common mode is applied universally and inflexibly like a die is cast, to everyone without due regard to individual culture, religious background, and so on?

Insofar as Hong Kong is concerned, the United Nations Human Rights Committee (UNHRC) when scrutinizing the first report submitted by the Hong Kong Special Administrative Region (SAR) of the People's Republic of China listed a number of issues of concern. The Liberal Party holds that the SAR Government should respect and study carefully the recommendations made by the UNHRC with the approach of striving to correct mistakes identified while trying to do better when there are none. When putting into practice the recommendations made by the UNHRC, the SAR Government should take account of the actual situation in Hong Kong before implementation. This is precisely the aim I wish to achieve when I propose this amendment.

Here I wish to point out the principle of margin of appreciation used by the European Court of Human Rights. Under this principle, when an assessment is made on whether or not a country or a place has met international human rights standards, the actual situation there must be taken into account and this would include factors like customs and social factors, and so on. Actually, this principle is applied in many cases heard by the European Court of Human Rights. In a case in 1987, the Court admitted that with respect to the composition of the legislature, the state parties may have a wider margin of appreciation when fulfilling their obligations in this respect.

It is precisely because of differences between places that there may be slight variations in the implementation of the ICCPR. This is understandable. Of course, the UNHRC will advise us on this and such advice should be highly valued. A set of standards on civil and political rights should be laid down gradually, taking into account the individual circumstances. When for example the UNHRC deliberated on the report submitted by the SAR Government in 1999, concern was expressed that no legislation had been enacted on racial discrimination or discrimination on ground of sexual orientation. Now the SAR

Government has put forward legislative proposal which outlaws racial discrimination. The Liberal Party supports this move.

Though being also an anti-discrimination law, it is an entirely different case with legislation against discrimination on ground of sexual orientation. This is because the issue of legislation to ban such discrimination is very controversial in our society. It is already a bone of contention which cannot be said to be insignificant when it comes to the issue of whether such a ban on discrimination on ground of sexual orientation would in effect promote homosexuality. If such actual situation is not taken into account and laws are made immediately, then it would only make society divisive. Therefore, we should only decide on whether or not laws should be passed to prevent discrimination on ground of sexual orientation after the differences in opinions in society have reduced. Furthermore, since Hong Kong is basically a tolerant and inclusive society, discrimination is not a serious problem here and so even if legislation is to be enacted later, I do not think it will lead to any serious problem.

Deputy President, another issue of concern of the UNHRC is about the method of forming the legislature. The UNHRC has requested the SAR Government to make an explanation of the act of interpreting the Basic Law by the Standing Committee of the National People's Congress (NPCSC) on 26 April 2004. Some of the Members of the Council from the pan-democratic camp even go to the extreme of thinking that the electoral system of the Legislative Council does not comply with the principle of "universal and equal suffrage" as enshrined in Article 25 of the ICCPR.

Actually, Article 68 of the Basic Law has made it clear that "The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.". This has no contradiction with the ICCPR. As the Basic Law is a constitutional instrument of the SAR, we should act according to what is said in the Basic Law and work towards universal suffrage in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress.

According to the Interpretation of the Basic Law by the NPCSC in April 2004, the procedure for amending the method of selecting the Chief Executive and forming the Legislative Council is that, first of all, the Chief Executive shall

decide whether or not there is such a need for amendment, then a report should be submitted to the NPCSC. When after the NPCSC has endorsed the report according to the two principles of "in the light of the actual situation" and "gradual and orderly progress", the Chief Executive will present a specific constitutional reform proposal to the Legislative Council and this is to be passed by a two-thirds majority of Members of the Legislative Council. Then the Chief Executive will give his consent and the proposal will then be reported to the NPCSC for approval or record purpose.

As a matter of fact, based on these two principles, the Government had presented on an earlier occasion, against a background of the Interpretation of the Basic Law made by the NPCSC and of the related decision made, a constitutional reform package which would allow the maximum progress to be made in democratization. The proposal had all along been supported by the people. It is unfortunate that Members of the Council from the pan-democratic camp had acted in total disregard of public opinion and the reform packaged was voted down by the bundling-up strategy at voting. It denied Hong Kong the best chance for its political system to move forward in the direction of universal suffrage.

With respect to the human rights issue, the UNHRC is concerned that no statutory human rights committee has been set up in Hong Kong tasked with the investigation and monitoring of the human rights situation in Hong Kong. However, if we look closely into the current situation in Hong Kong, we will know that a Bill of Rights has been enacted, the Judiciary is independent and they together form the best guardian of human rights in Hong Kong. When these are coupled with the excellent human rights records of Hong Kong, the existence of the Equal Opportunities Commission, the Office of The Ombudsman and the Office of the Privacy Commissioner for Personal Data which serve to protect all kinds of human rights though not in a direct manner, the setting up of a human rights committee would only lead to duplication and redundancy.

I cited all these examples not because I am saying that we should not care about the views expressed by the UNHRC, only that we should never act in such a naive fashion as to follow the views of the UNHRC to the letter, or act in disregard of the actual situation in Hong Kong and accept all the recommendations made by the UNHRC, or say yes even before we know what recommendations are going to be made by the UNHRC. In our opinion, a pragmatic approach would be to follow what the amendment says and that is, to

implement the related recommendations having regard to the actuation situation in Hong Kong, as well as considering what is prescribed in the Basic Law.

Deputy President, I so submit. I hope Honourable colleagues can support my amendment.

Mr Tommy CHEUNG moved the following amendment: (Translation)

"To add ", having regard to the actual situation in Hong Kong" after "will be made by the Committee". "

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Tommy CHEUNG to Ms Emily LAU's motion, be passed.

MR ALBERT HO (in Cantonese): Deputy President, the motion moved by Ms Emily LAU today urges the Government to implement the recommendations that have been and will be made by the United Nations Human Rights Committee (UNHRC) regarding the implementation of the International Covenant on Civil and Political Rights (ICCPR).

(THE PRESIDENT resumed the Chair)

Actually, I do think that the moving of this motion is only right and proper. Hong Kong is a place where the ICCPR applies, and our Basic Law also provides that the ICCPR shall be implemented through the enactment of local legislation. We therefore have a legal obligation to give effect to the provisions of the ICCPR.

The UNHRC is the United Nations organ which is responsible for monitoring the implementation of the ICCPR. Its members are legal experts and renowned academics from different countries. Internationally, these members are the recognized authority on interpreting the ICCPR, and they also command the highest credibility and legal status in this respect. Therefore, we must respect their recommendations on how our Government should implement

the ICCPR, and we must also interpret such recommendations as the best ways of giving effect to this covenant.

Just now, Mr Tommy CHEUNG wondered whether there was any margin of appreciation, as a result of which different places would implement the ICCPR based on different considerations. But I believe that in making any resolutions, the UNHRC will surely consider things from this very perspective and make recommendations only after thorough consideration. There is instead one point which is worth noting. In case the Government, or the Government as our representative in signing the covenant, thinks that any particular provisions are not suitable for Hong Kong, the only thing it can do will be to express a reservation. If there is no reservation, I fail to see why we can choose to implement or not to implement any particular provisions of the ICCPR or the recommendations of the UNHRC in the light of our actual situation.

Madam President, the UNHRC has actually made quite a number of specific recommendations and the Government has also responded in some ways, showing a willingness to implement some of the recommendations. However, as pointed out by Ms Emily LAU just now, the Government has so far refused to implement many other recommendations or has sought to delay their implementation. In some cases, it simply resorts to certain specious arguments, claiming that the relevant recommendations have been implemented in some alternative ways. We find all this unacceptable.

In regard to the electoral system for this legislature, the United Nations has already expressed its concern, commenting that it carries various forms of discrimination. As Members know, functional sector elections have resulted in many privileges, thus constituting a contravention of Article 25 of the ICCPR.

According to Mr Tommy CHEUNG, the constitutional reform package recently put forward by the Government is in compliance with Article 68 of the Basic Law. This is precisely the point we want to talk about. One can hardly rescue the Government by resorting to Article 68 of the Basic Law as a defence, as a justification for not implementing Article 25 of the ICCPR. The reason is that the constitutional reform package is even unable to realize the principle of gradual and orderly progress. That being the case, what more can still be said?

What is more, in the recommendations it made in 1999, the UNHRC also reminded the Government not to further curtail the democratic participation of

Hong Kong people in local affairs. However, the Government remained adamant and went ahead to abolish the two Municipal Councils. It even broke its promise of delegating the public service authority of the two Municipal Councils to District Councils. We find this very regrettable and I believe the United Nations will certainly follow up this issue.

Understandably, the interpretation of the Basic Law has always been a great concern of the UNHRC. The Government only promised that it would not lightly ask for more interpretations of the Basic Law from the Standing Committee of the National People's Congress (NPCSC). But then, in 2004 and 2005, there came two more interpretations. It is true that the Government itself did not ask for these interpretations, but will it explain to the UNHRC what it has already done to prevent the NPCSC from repeating itself, to make sure that our legal system and judicial independence will never again be subjected to such severe impacts?

Madam President, another point is about the Telecommunications Ordinance. There were criticisms years back. Besides, the implementation of the Interception of Communications Ordinance has also been delayed for a very long time. There were criticisms several years ago, but as pointed out by my colleague, it was not until after the judicial review that the Government finally admitted that an executive order was no alternative to the enactment of legislation. As a result, we have been forced to rush through a piece of legislation in a matter of six months only. We find this all very regrettable.

Madam President, our greatest worry is about the freedom of speech. Many people, such as Albert CHENG, WONG Yuk-man and Allen LEE, were forced to "go off air". Our Government must address this problem squarely. Just yesterday, four men even stormed into the office of a local newspaper, the *Epoch Times Daily*, vandalizing its printing office. This is obviously a cause of concern. I think the Government must respond to the incident. I so submit.

DR FERNANDO CHEUNG (in Cantonese): President, currently, totally 14 international covenants on human rights are applicable to Hong Kong. The one under discussion today, the International Covenant on Civil and Political Rights (ICCPR), is one of them. The Government seems to have expressed a reservation in regard to all these covenants. And, it has also employed a

stalling tactic and refused to implement many of the recommendations made by the United Nations Human Rights Committee (UNHRC).

I am very grateful to Ms Emily LAU for moving this motion today because the issue of human rights in Hong Kong can thus become the focus of social discussions once again. Human rights are about the fact that all men in society are born equal. They should thus be a common concern of society as a whole. Unfortunately, however, it seems that the authorities have all along been trying to "marginalize" the disadvantaged members of society. As a result of this strategy, it seems that human rights have become an issue of concern to the disadvantaged only; as long as the Government does not ostracize them, there will be respect for human rights. Actually, such a strategy will only breed sentiments of ostracism and hostility in society, a tendency that would "personalize" the many livelihood problems of the disadvantaged. With the economic sluggishness in recent years, such sentiments have intensified, making people think that the basic livelihood protection provided by the Government to the disadvantaged is an "excessive favour".

Such sentiments can best be exemplified by the population policy implemented by the Government since 2004. In that particular year, Donald TSANG was the Chief Secretary for Administration and he led a working group responsible for formulating a population policy. Under the population policy subsequently formulated, restrictions were imposed on newly arrived residents with less than seven years of residency in Hong Kong regarding their entitlement to various welfare benefits that protect their basic livelihood, such as Comprehensive Social Security Assistance (CSSA), health care and even public services. Such a guiding principle sees the provision of welfare benefits almost as a reward for contribution (meaning that assistance will be made available only to those with economic contribution). As I pointed out in a certain paper, such a principle reflects the mentality that a resident should be provided with certain public services only after he has made contribution to society for a continuous period of time. As a result of this principle, the provision of our safety net, which was originally based on needs, has come to be regarded as a measure reflecting one's economic value. Even many backward countries may be amazed by this outdated social welfare concept of the Government.

Although the Government explains that children under 18 will not be affected, we must not forget that the family is an integrated whole. The current

policy has given rise to a situation in many new immigrant families where the CSSA for one person has to be shared by two or even three. Consequently, the spouses of many Hong Kong residents are unwilling to move to Hong Kong for fear of livelihood difficulties and many new immigrant children thus have to be brought up in a *de facto* single-parent family.

CSSA aside, new immigrant families also face many other forms of discrimination. In 1999, the Government sought an interpretation of the Basic Law from the NPCSC to overrule the verdict of the Court of Final Appeal (CFA) on the right of abode proceedings. At that time, the Government greatly exaggerated the size of the additional population that might result from the verdict of the CFA and estimationed that an extra expenditure of \$740 billion would have to be incurred, thus painting a negative image of new immigrants as "dependents" of the Government. This instilled into the general public a very negative attitude towards new immigrants. In 2004, there were five new immigrant service centres, but they have all been closed down by the Government by now. Many voluntary agencies actually want to provide services to new immigrants, but owing to resource constraints, the current situation is indeed very difficult. Although the Government also admits the seriousness of social discrimination against new immigrants, it has nonetheless played with words in the anti-racial discrimination legislation, saying that new immigrants are not a separate racial group and refusing to do anything for them.

Besides, the threat of violence faced by women is also an important human rights issue. However, for a very long time, the Government seemed to be trying to sweep all problems under the carpet. It was not until two years ago, when the Tin Shui Wai tragedy aroused extensive discussions in society, that the authorities finally started to consider the idea of amending the Domestic Violence Ordinance, with a view to enhancing the protection of abuse victims. But it is still most important for the Government and front-line law-enforcement and counselling officers to change their old mindsets; they should recognize the power inequality between men and women in society. Women are often the victims of domestic violence. The authorities must criminalize family disputes involving violence, and not only this, law-enforcement officers must also bring victims' attention to their rights under the law and the available social resources. They should not leave the decision of whether or not to charge the tormentors to the abuse victims.

Sex workers' human rights have not been given due recognition either, with the result being they have to live in the darkest corners of society. They are subject to serious discrimination in society and cases of suspected abuse by law-enforcement officers are not uncommon. Recently, a sex worker even committed suicide as an indictment of police abuses.

Now in Hong Kong, many people with disabilities have to lead a life of helplessness marked, for example, by the shortage of access facilities and job opportunities. In many ways, it is very difficult for them to integrate into society. Many people with disabilities have been waiting for institutional care for prolonged periods, ranging from eight to 10 years. Owing to the absence of any alternatives, some of them have been sent into privately-run institutions. But the conditions in these institutions are appalling and their quality also varies greatly. The Administration has so far refused to commit itself to enact any legislation on regulation. Actually, there are still many problems, such as caged dwellings, ethnic minorities and refugees. But we really do not have any more time to talk about them.

With these remarks, I support the original motion.

DR YEUNG SUM (in Cantonese): Madam President, Article 2 para 1 of the International Covenant on Civil and Political Rights (ICCPR) provides that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 25(b) of the ICCPR further provides that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

In 1995, when the United Nations Human Rights Committee (UNHRC) examined the implementation of the ICCPR in Hong Kong, it pointed out clearly in its Concluding Observations: only 20 of the 60 seats in the Legislative Council were subject to direct popular election, and the concept of functional constituencies, which gave undue weight to the views of the business

community, discriminated against voters on the basis of property and functions. This clearly constituted a violation of Articles 2, para 1, and 25(b). These were the observations of the UNHRC in 1995. The UNHRC also recommended and urged the Hong Kong Government to adopt measures to improve the situation as early as possible. However, the electoral system has not undergone any significant changes ever since.

More than a decade has passed and the sovereignty over Hong Kong has been returned to China. But under the principle of "one country, two systems", the political system of Hong Kong has seen very little progress. The number of Legislative Council Members returned by geographical constituencies through direct elections has been increased to 30, but there are still 30 functional constituency seats, and such elections are still based mainly on company and corporate votes without making any improvements in the direction of universal suffrage. Worse still, whenever the Legislative Council Panel on Constitutional Affairs wants to discuss issues relating to the political development of Hong Kong, including a timetable for returning the Chief Executive and the Legislative Council by universal suffrage and the abolition of functional constituencies and their replacement by a single territory-wide constituency based on proportional representation elections, government officials will invariably advance various excuses. They will say that discussions must focus on the electoral arrangements set out for the next term in the relevant Annexes to the Basic Law. Or, they will claim that the Government has not yet come up with any particular ideas. Recently, the Government has also resorted to the Commission on Strategic Development (the Commission) as a "shelter". But most of the members of the Commission are in fact inclined to conservatism, so it is very difficult to expect them to promote the cause of universal suffrage. And, they may even advocate a bicameral system as a means of suppressing the demand for universal suffrage.

The ICCPR provides that every citizen shall have the right and the opportunity, without unreasonable restrictions, to vote and to be elected at genuine periodic elections. The Basic Law also provides that the ultimate aim shall be the election of the Chief Executive and all Legislative Council Members by universal suffrage. However, due to opposition from the Central Authorities after the return of the sovereignty over Hong Kong to China, we do not even have any opportunity to discuss whether and how we can implement universal suffrage for the election of the Chief Executive in 2007 and Legislative Council Members in 2008. In 2004, the Standing Committee of the National People's

Congress gave a swift reinterpretation of the relevant Annexes to the Basic Law and passed a decision that ruled out the implementation of universal suffrage for the elections in 2007 and 2008 and froze the ratio of directly elected seats to functional constituency seats in the Legislative Council, thus thwarting the progress of implementing universal suffrage.

As long as the Central Authorities and the Government of the Hong Kong Special Administrative Region (SAR) can work with each other before each election of the Chief Executive and the Legislative Council, the former can always continue to rule out the implementation of universal suffrage for the following term by advancing various excuses, including "the immaturity of Hong Kong politics", "the actual situation in Hong Kong", "gradual and orderly progress" and "balanced participation". Excuses like "the actual situation in Hong Kong" are the precise reason for Hong Kong people's failure to make any headway in the implementation of universal suffrage and to participate in politics through popular and equal elections. And, there is not even any timetable that gives us at least a view of the realization of this ultimate aim. We frankly cannot accept such an excuse anymore. I have just received the Chief Executive Election Ordinance submitted by the Government. The whole thing is still basically a coterie election, with no changes in the electoral base at all. The only difference is that the casting of a vote of confidence shall be required when there is a sole candidate. And, there is no upper limit on votes either. It is evident that such a vote of confidence is nothing but an embellishment of the coterie election.

What is more, in 1999, the SAR Government dissolved the two Municipal Councils which possessed administrative and financial autonomy. And, it has ever since refused to honour its promise of enhancing the functions of District Councils by transferring the responsibilities of the two Municipal Councils to them. It has sought to defer discussions on establishing independent secretariats for District Councils, thus reducing them to mere "all-talk-but-no-action forums" that are not vested with any real powers. All this has deprived the people of any opportunity to take part in the improvement and management of their own communities. The Government has also restored the system of appointed District Council membership, and under all the unequal conditions, while the common people must undergo elections before they can become District Council members, others can simply be appointed by the Chief Executive to distort public opinions in District Councils.

The Central Authorities and the SAR Government have repeatedly suppressed the progress of implementing universal suffrage and curtailed democratic participation over the years, failing to give effect to the civil and political rights in respect of popular and equal elections as recognized in the ICCPR. For this reason, the Democratic Party must express its deep regret and urge the Central Authorities and the SAR Government to work together actively, with a view to expeditiously implementing the recommendations that have been and will be made by the UNHRC, so that the people of Hong Kong can elect their Chief Executive by "one person, one vote" and elect all Legislative Council Members and District Council members in popular and equal elections. That way, the Government can become more open and accountable to the people, thus genuinely achieve the "high degree of autonomy" under "one country, two systems".

Madam President, I so submit.

MR ALAN LEONG (in Cantonese): Madam President, even before the reunification of Hong Kong with China, the British Hong Kong Administration already submitted four periodic reports on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in Hong Kong as required by Article 40 therein. The Government of the Hong Kong Special Administrative Region (SAR) submitted its first report to the United Nations in early 1999, and the United Nations Human Rights Committee (UNHRC) gave its Concluding Observations in November the same year, expressing the concern that many of the recommendations it made previously had not yet been implemented by the Hong Kong Government.

The greatest concerns of the UNHRC at that time included the absence of any statutory and independent human rights framework in Hong Kong, the possible impact of the interpretation of the Basic Law by the National People's Congress on people's right to fair trials, insufficient credibility of investigations into complaints against the police, adverse impacts of the electoral system on people's right to take part in public affairs, inadequate safeguard for privacy, insufficient protection of deportees, loopholes of anti-discrimination legislation, serious sex discrimination in respect of education, pay for work, public office and the small house policy, the low age of criminal responsibility for children, the threat posed by the enactment of a national security law to the freedom of expression and inadequate protection of the freedoms of assembly and association.

In the second report submitted by the SAR Government last year, all these concerns were addressed. But such bureaucratic replies are not necessarily substantive and meaningful.

Madam President, the incidents caused by the enactment of legislation to implement Article 23 of the Basic Law three years ago can illustrate that the warning of the UNHRC on the enactment of a national security law is no demagoguery.

The UNHRC has time and again pointed out that the electoral system of Hong Kong is in breach of the principle of universal and equal suffrage. If the governance problems in Hong Kong remain unsolved, resulting in chaotic formulation of public policies and unsmooth policy enforcement, both the general public and investors will be at a loss as to what they should do. A hegemonist and overbearing executive will lead to endless internal depletion, eroding Hong Kong's advantages. All of us are concerned about and saddened by all this, and we hope that the executive can refrain from resorting to any outdated "reservation" as a "shelter". We further hope that the executive can stop holding any abstract discussions on "universal and equal suffrage" and leading the people on a runaround. In order to bring about effective administration and harmony in Hong Kong again, the executive must reply to the allegations of the UNHRC and implement universal suffrage as early as possible.

Madam President, as the Vice-chairman of the Independent Police Complaints Council (IPCC), I would like to say a few words on the work of investigating complaints against the police. It is true that the present complaint procedure is unable to command the absolute confidence of the general public. As advised by the United Nations Committee against Torture in 2000, the Government needs to turn the IPCC into a statutory body, with a view to enhancing its powers and independence. Before the reunification, the Government once wanted to enact an Independent Police Complaints Council Ordinance, but the relevant bill was suddenly withdrawn before Third Reading. Although the Government subsequently conducted another public consultation exercise on the enactment of such an ordinance, nothing concrete has been done after the passage of four years and despite all the gestures. The SAR Government should expedite the legislative process and submit the relevant bill to the Legislative Council as soon as possible for its scrutiny. For the purpose of enhancing the monitoring powers of the IPCC, the authorities should aim to facilitate the work of the IPCC as much as possible when drafting the legislation;

they should discard their protective attitude and refrain from imposing any hurdles on the work of the IPCC. It is only in this way that we can increase the transparency of the mechanism for complaints against the police, allay public anxieties and increase the credibility of the mechanism.

Finally, I wish to say a few more words on the United Nations Convention on the Rights of the Child. The UNHRC advises that the SAR should systematically ensure that organizations representing children can take part actively in the formulation of policies or programmes affecting children (such as education reform). The UNHRC also encourages Hong Kong to consider the possibility of establishing a standing organization for reflecting the views of children in discussions of politics. The Children's Council Project was launched in 2003 and the Children's Council Working Committee has already been operating for three years with the aims of promoting the United Nations Convention on the Rights of the Child and establishing a children-led organization. Madam President, I hold that the conditions are already ripe for the formation of a permanent Children's Council in Hong Kong to enable children to take part in the public affairs of Hong Kong through the process of elections.

Madam President, Mr Tommy CHEUNG's amendment emphasizes that consideration must be given to the actual situation in Hong Kong when implementing the recommendations of the UNHRC. I find his point most incomprehensible. Actually, human rights protection in Hong Kong is still lagging behind people's expectations and the needs of society; people's right of equal participation in politics is still far below the standards of developed regions; the establishment of a human rights framework is still nowhere in sight; the various Policy Bureaux are not yet sensitive enough to human rights protection in the formulation of laws. All this is the actual situation, which can show that Hong Kong must implement the recommendations of the UNHRC as a matter of the utmost urgency. The amendment is therefore superfluous.

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

MR MA LIK (in Cantonese): Madam President, the motion moved by Ms Emily LAU today requests the Government of the Hong Kong Special Administrative Region (SAR) to implement the recommendations that have been and will be made by the United Nations Human Rights Committee (UNHRC). By the past

recommendations of the UNHRC, it should be meant the recommendations it made in 1995 and 1996 when examining the report submitted by Hong Kong. I believe that the then British Hong Kong Administration should have implemented the recommendations made by the UNHRC in 1995 based on the actual needs of Britain.

On the question of whether or not State Parties should fully and expeditiously implement the recommendations of the UNHRC, I believe that every State Party will first have to study its own conditions. I am sure that even Western democracies are no exception to this.

For example, one Concluding Observation of the UNHRC concerning the Canadian report last year is that owing to the actual situation in the country, the Canadian authorities had not yet implemented most of the recommendations made by the UNHRC in 1999. In the Concluding Observations, the UNHRC not only expressed concern about the failure of the Canadian authorities to implement the relevant recommendations but also expressed regret at the Canadian Government's failure to forward the Concluding Observations to Members of the Canadian Parliament and at the fact that the Canadian Parliament had never spent any time on discussing the Concluding Observations.

Even in the case of another country that attaches great importance to the protection of human rights, that is, the United States, implementation is limited to what is compatible with the laws of the country. As for those articles of the ICCPR that are incompatible with its local legislation, the United States expresses either reservations, or declarations, or understandings, instead of implementing them fully. The UNHRC did express regret at this approach of the United States in its Concluding Observations made in 1995 and also requested the United States Government to withdraw the reservations in question.

As for Britain, it can be seen from the UNHRC's examination of the British reports that the British Government has similarly sought to implement the ICCPR in the light of the actual situation in the country. For this reason, the UNHRC also expresses regret at the British Government's continued adherence to the old legislation which bars convicts from exercising the right of voting, and it also regrets the failure of Britain to integrate the ICCPR into the laws of its overseas territories.

These examples can show that even those Western countries which flaunt their upholding of human rights will invariably consider their respective actual situations when responding to the requests of the UNHRC. They will not implement all the recommendations though this may lead to the "regret" of the UNHRC.

The motion of Ms Emily LAU refers to "the recommendations that have been made by the Committee". There are two facts that cannot be ignored here. First, the recommendations of the UNHRC are not binding. Second, even the British Government did not fully implement these recommendations, which is precisely why Ms Emily finds it necessary to request the SAR Government to "finish the job".

As a matter of fact, most of the recommendations made by the UNHRC in November 1995 regarding the report submitted by Hong Kong have been implemented. The language of official charge sheets has now included Chinese; anti-discrimination legislation has been enacted, some examples being the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. As for the problems relating to the living conditions of Vietnamese refugees and the rights and interests of their children, they have now basically been resolved following the abolition of the "port of first asylum policy" and the implementation of the Widened Local Resettlement Scheme.

In regard to the recommendations made by the UNHRC in 1999, the SAR Government sought to implement them step by step in accordance with the actual situation in Hong Kong. The implemented recommendations include raising the age of criminal responsibility from seven to 10 and abolishing the element of sex discrimination in the Secondary School Place Allocation System. Besides, I think that the Government is presently following up some other recommendations. We know, for example, that the authorities plan to submit bills on prohibiting discrimination and interception of communications to the Legislative Council for scrutiny within this year.

Regarding Members' concern about a recommendation that has not been implemented by Hong Kong, that is, the establishment of a human rights framework, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) maintains that its implementation or otherwise should be considered in the light of the actual situation in Hong Kong. The reason is that there are already various mechanisms protecting people's human rights. Constitutionally, people's rights and liberties are protected by the Basic Law. Institutionally, there are several public organizations protecting human rights in

Hong Kong, such as the Equal Opportunities Commission, the Office of The Ombudsman and the Office of the Privacy Commissioner for Personal Data. If an additional human rights framework with broad responsibilities is set up, its functions may duplicate those of the existing mechanisms. Therefore, the DAB maintains that the authorities should carefully study the feasibility of a human rights mechanism and its impacts on the existing measures and mechanisms.

With respect to the electoral system, I suppose there is no need for me to say anything further because if the 24 Legislative Council Members had not vetoed the constitutional reform package at the end of last year, our electoral system, to say the very least, would have taken a step forward along the path of democratization in accordance with the Basic Law. From this, we can see that the implementation or otherwise of the UNHRC's recommendations will necessarily involve the actual situation in Hong Kong, it will also be influenced by the actual political situation.

Finally, I wish to talk about the point in Ms Emily LAU's motion on urging the SAR Government to implement the recommendations that will be made by the UNHRC. I must point out that such a request is open to question. The reason is that the UNHRC has not yet convened its hearing on the report submitted by Hong Kong and even its members do not know what concerns and recommendations there will be. The Legislative Council is a responsible legislature, so even though we respect the recommendations of the UNHRC very, very, very much, we should not issue such a blank cheque and lightly urge the Government to implement recommendations that will be made in the future. The one who makes such a request has certainly let down her constituents, and the request itself is unrealistic either. Therefore, the DAB supports the Liberal Party's amendment, which advocates the implementation of the UNHRC's recommendations in the light of the actual situation in Hong Kong. It is only by adopting such an approach that we can show our respect for the UNHRC and keep in line with the actual situation in Hong Kong.

I so submit. Thank you, Madam President.

MR RONNY TONG (in Cantonese): President, since the United Nations Human Rights Committee (UNHRC) first urged Hong Kong to set up an independent human rights body in 1995, the UNHRC and the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) have made the same recommendation as many as five times.

The Government has been rejecting this recommendation over the years on the ground that there is an independent Judiciary in Hong Kong. However, in the report published by the Joint Committee On Human Rights of the British Parliament in 2003, it is clearly pointed out as follows: "A culture of respect for human rights cannot be developed through the courts alone and it cannot be developed solely by an agency within Government." If we rely solely on the system of civil claims, the aggrieved will be deterred by the huge litigation costs and onerous legal procedures. As frequently pointed out by the Legal Aid Department, remedies will only bring about "negligible" benefits. This explains why the Department often rejects applications for legal aid from the aggrieved. And, honestly, I must say that human rights can hardly be measured in money terms.

The Equal Opportunities Commission (EOC), for example, is not vested with any power of adjudication, so if the party being complained against refuses to settle the dispute by conciliation and the EOC is unable to provide any financial assistance due to resource shortage, the aggrieved will often have to give up the pursuit of litigation. It will not be possible to uphold basic human rights and justice in cases like this. As for the Office of The Ombudsman and the Office of the Privacy Commissioner for Personal Data, both of them are unable to institute proceedings on behalf of the aggrieved parties. The former is not equipped with any enforcement mechanisms and thus cannot issue any binding orders on government departments. The latter similarly faces the lack of a flexible conciliation mechanism. As a result, both are unable to play the role of providing full and substantive protection of human rights.

Besides, in regard to appeals arising from applications for conducting marches and assemblies under the Public Order Ordinance and appeals related to the registration of societies under the Societies Ordinance, most members of the relevant appeal committees and also the Chief Executive in Council either lack any professional expertise in human rights laws or are unable to handle appeals from the perspective of human rights. Besides, there is no statutory mechanism for review of the rulings of these committees. Consequently, when it comes to such an important civil right and liberty issue, there is no final safeguard and protection.

Therefore, all the existing mechanisms cannot possibly replace the role of a statutory and independent human rights commission.

In 1993, the United Nations General Assembly passed the Paris Principles, which recommend that "a national institution shall be vested with competence to promote and protect human rights" and set out the competence and responsibility, composition and methods of operation of national institutions for the promotion and protection of human rights. Later, in 1998, the UNCESCR also recommended State Parties to implement the International Covenant on Economic, Social and Cultural Rights through "national institutions for the promotion and protection of human rights".

Actually, as early as 1994, Ms Anna WU, then a Legislative Council Member, already put forward a private Members' Bill in which a specific proposal on the establishment of a Human Rights Commission was made.

The Human Rights Commission should comprise a tribunal, in order that all complaints can be handled expeditiously and flexibly. The Human Rights Commission shall conduct investigations to ascertain whether allegations are substantiated and to seek reasonable and effective compensation for the aggrieved, such as the issuing of binding enforcement orders.

The Human Rights Commission should first conduct conciliation in respect of a complaint, and it is only when conciliation fails that the complaint should be referred to the tribunal for handling. And, a case should be brought before the Court only after all these procedures have failed. At this stage, the Human Rights Commission may provide legal advice and assistance to the aggrieved in initiating proceedings. If necessary, it may even follow the example of the EOC and instigate a lawsuit on behalf of the aggrieved.

In addition, the Human Rights Commission should take over the responsibility of reporting to the United Nations on the implementation of human rights covenants from the Home Affairs Bureau and the Health, Welfare and Food Bureau. Currently, there are no established mechanism and dedicated personnel in these two Policy Bureaux for conducting systematic monitoring from the perspective of human rights. What is more, as part of the Government, these two Policy Bureaux are able to play the role of monitoring the Government. Reports are drafted without any transparency, and there is no participation from members of the public and non-governmental organizations. All these have long been the subjects of criticisms. In addition, there are currently no specific mechanisms through which Concluding Observations can be followed up. All these are the defects of the existing mechanism.

In the past, when the authorities responded to the recommendations of the UNCESCR, they once admitted that the institution that could best realize the Paris Principles was the EOC. It was in principle considered feasible to expand the EOC's terms of reference, so that it could deal with other forms of discrimination or even monitor the Government's compliance with international human rights standards. Therefore, I hold that as a practical alternative, we may expand the terms of reference and role of the EOC. That way, it can play the full role of promoting and protecting human rights, enhancing human rights protection and conducting promotion and publicity work on international human rights covenants.

President, in New Zealand and Canada, a human rights commission was set up as early as the 1970s. And, in Britain, the establishment of the Commission for Equality and Human Rights was also announced in August 2003. If we look at our nearby countries, we will see that a national human rights commission is already found in many countries, including Australia, New Zealand, Indonesia, Malaysia, the Philippines, Thailand, South Korea and even India, Sri Lanka, Nepal and Mongolia.

According to international experience, the judicial system alone cannot provide sufficient protection to human rights. As Asia's world city, Hong Kong should really bring itself on a par with the international community and set up an independent human rights commission with solid powers, so as to fully promote and implement the protection of human rights and help us build up a really fair and just society that upholds justice.

President, I so submit.

DR KWOK KA-KI (in Cantonese): President, I must first thank Ms Emily LAU for moving such a timely motion today because on the 20th of this month, the United Nations Human Rights Committee (UNHRC) will hold a meeting on examining the second report submitted to it by the SAR Government. I do not know whether I will be able to attend the meeting, but even if I cannot, I still hope that my views on this issue can be recorded in the Official Record of Proceedings of the Legislative Council.

Hong Kong is an international city. We respect the rule of law and the international status of Hong Kong. As a matter of fact, the UNHRC was

founded by virtue of the International Covenant on Civil and Political Rights (ICCPR). And, according to Article 39 of the Basic Law, the provisions of the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. All this tells us clearly that as a State Party to these United Nations covenants, Hong Kong is actually obligated to act according to the spirit of the ICCPR.

Actually, the composition of the UNHRC carries a very high degree of credibility. Its 18 members are elected by the relevant State Parties and they are all noted for their high status and expertise in human rights. Their routine responsibility is to examine whether all State Parties can give effect to the relevant civil and political rights.

Hong Kong already submitted a report as early as 1999. If we can turn the clock back, we will be able to see what the UNHRC recommended to the Government in that particular year. At that time, it told the Government in paragraph 13 of its Concluding Observations that it noted that although the Interception of Communications Ordinance had been passed in 1997, it had not yet been brought into effect. It was also pointed out that no attempts had been made to protect the public against interception of communications in accordance with human rights legislation. Paragraph 16 of the same document also expressed concern about the many problems faced by girls in regard to the allocation of primary school places under the education system of Hong Kong.

If our Government had had any sense of responsibility at all, it would have taken actions a long time ago after receiving the recommendations of the UNHRC. As we all know, because of all those incidents involving interception of communications, the reputation and credibility of the Government have been completely shattered. The relevant law was passed as early as 1997 and it involves something that the SAR Government must do according to the United Nations report in 1999, but why has the Government turned a blind eye to it over the past six years? As for the school place allocation mechanism, the Government was not aware of the problem until the matter was brought before the Court. Why has a place often proclaimed as an international city or a world city behaved in such a way?

I have become increasingly uncomfortable after listening to Mr MA Lik's remarks. Unfortunately, he is not in the Chamber now. He spoke so eloquently, pointing out that many countries, including Canada, the United States and Britain, had failed to follow the recommendations of the UNHRC. He seemed to be suggesting that Hong Kong might as well follow suit. What kind of attitude is this?

Hong Kong has always taken pride in its rule of law, respect for human rights and honouring of covenants. Recently, we have done two things in accordance with United Nations covenants. For example, after signing the framework covenant on smoking, we have enacted legislation on prohibiting indoor smoking. However, it seems that the Government has failed to treat the ICCPR with the same standard and attitude.

In 1999, the UNHRC already expressed concern about the impacts suffered by the judicial system in Hong Kong as a result of the interpretation of the Basic Law by the National People's Congress (NPC). It also pointed out that the existence of functional constituencies constituted a contravention of Article 25 and Article 26 of the ICCPR. All the problems mentioned by Members just now, such as the enactment of legislation to ban discrimination on the grounds of sex and race, the Independent Police Complaints Council, the National Security Ordinance and the Societies Ordinance, were all raised by the UNHRC as early as 1999.

After receiving the report submitted by Hong Kong last year, the UNHRC also raised many issues. We find it most saddening to note that these were just the same old issues raised by the UNHRC in 1999 — concern about the interpretation of the Basic Law by the NPC and the enactment of legislation to implement Article 23 of the Basic Law, the failure of Hong Kong to plan for and implement elections based on universal and equal suffrage, the self-censorship of the mass media, the ICAC operations to search the offices of seven newspapers, the lack of improvements to the Societies Ordinance, the absurdity of the Notice of No Objection, the deportation power of the Chief Executive, the protection of refugees, and so on. I believe that even though all these issues are raised in the report, the Government will still ignore all of them.

Basically, I should not oppose Mr Tommy CHEUNG's amendment because it contains the expression "having regard to the actual situation in Hong Kong". But what is meant by "having regard to the actual situation in Hong

Kong"? The actual situation in Hong Kong is that 500 000 people once took to the streets to oppose the enactment of legislation on Article 23. The actual situation in Hong Kong is that 200 000 people took to the streets last year to express their support for democratic elections. Why are these factors not taken into account? Mr Tommy CHEUNG advocates the retention of functional sectors and unfair elections. Can all this be called the actual situation in Hong Kong? What rationale is there?

We will take the UNHRC's hearing on the 20th of this month very seriously. We will also continue to request the Government to fulfil its duty of implementing the recommendations of the UNHRC. I support the original motion and oppose Mr Tommy CHEUNG's amendment. Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, I am very grateful to Ms Emily LAU for moving yet another motion on the implementation of various international covenants. At the same time, I am even more grateful to Mr MA Lik for citing so many examples just now. He cited the examples of many hypocritical countries, such as the United States, Britain and Australia, which have done absolutely nothing despite their avowed respect for human rights. History tells us that despite their profuse praises of moral principles, these countries have in fact been invading and looting other powerless countries. This is the most immoral thing about them and we must expose their hypocrisy.

That said, I must still say that I am totally against the conclusion drawn by Mr MA Lik. And, I must express my deep regret as well. According to him, since all these countries, which flaunt their respect for human rights, have failed to implement the recommendations, and since they have refused to comply despite the condemnation of the UNHRC, Hong Kong should really consider whether it should make its decisions having regard to its actual situation. In other words, his conclusion is that although it may be condemned, Hong Kong can still decide not to implement the recommendations.

President, I am very worried about the consequences of following this type of logic. Does he mean that if law-makers break the law, we may follow suit? Does he mean that if civil servants commit any mistakes, it will be alright for Legislative Council Members to do the same? President, what kind of logic is this? Does this mean that since others steal, we should follow their example?

Such a perspective is completely detached from the reality, wholly abstract and conceptual. This is also pure sophistry, an attempt to distort the truth as a means of defence.

We want to join the International Covenant on Civil and Political Rights (ICCPR) and the existence of the ICCPR in turn owes itself to our common recognition of all these facts. And, we have applied a yardstick or drawn a line to assess whether what we are doing is proper on the basis of all these facts. With such a yardstick, we do not need to consider whether any specific country has been professing any respect for human rights. Once the things done by this particular country or the laws it enacts cannot meet the requirements, it should be condemned. This is the only proper attitude. This is where the value of the ICCPR lies. If the ICCPR does not possess this value, there will be no need for its existence at all. Therefore, we must not confine our attention to just a small facet of the very great problem.

We are aware of the actual situation in Hong Kong nowadays. And, as mentioned by many Members, contraventions of international covenants on human rights can be found in many areas. Actually, as also pointed out by Ms Emily LAU, in the reports in 1995 and 1999, the UNHRC already set out all the inadequacies of the Hong Kong Government. Unfortunately, instead of learning from the good examples, the Government has followed the practice of those countries mentioned by Mr MA Lik just now. Despite the UNHRC's request for improvement, the Government has shamelessly refused to do anything, claiming that it must take account of its actual situation.

President, I feel that this approach is not proper at all. Since we are a member of the ICCPR, we must be bound by its fundamental principles and respect its provisions. Since the UNHRC has made so many recommendations, we do not have any reasons for refusing to comply. Unless we can put forward cogent reasons, we cannot possibly explain why we do not adhere to the ICCPR.

For example, the right to vote and be elected in elections is a very important right indeed. We already have 20 years of experience in representative government. But so far, we have been marking time, and we are still unable to elect our Chief Executive and Legislative Council Members by "one person, one vote". It is something very regrettable, isn't it? How can our Government so shamelessly refuse to follow the required practice? What is even more miserable, President, is that we were sold down the river by the

colonial administration in 1976. At the time when the British Government signed the ICCPR, it already made a reservation exempting Hong Kong from implementing universal suffrage as required by Article 25. The Government has now discovered this loophole and resorted to it as an excuse. It has even presented the text of the reservation to the Commission on Strategic Development, telling it that universal suffrage was ruled out a long time ago. It therefore argues that we can now proceed slowly without any haste.

I find all these incidents very regrettable. There were simply no representatives of the people in the former colonial government, and the people of Hong Kong were never consulted before something like that was done. But the Government has resorted to this loophole as an excuse for deferring the implementation of universal suffrage. The situation has thus worsened.

President, since a review of the overall human rights situation in Hong Kong is mentioned today, we must of course take account of the actual situation in Hong Kong. But this may not be used as an excuse for refusing to comply with the requests of the UNHRC. Instead, we should examine whether we have omitted anything. We should tackle the issues from such a perspective instead of following the regressive approach of Mr Tommy CHEUNG. His approach is totally opposite to the proper approach.

President, as I mentioned just now, we already have 20 years of experience in representative government, so, frankly speaking, I fail to understand why we should still be denied universal suffrage today. The UNHRC has made a very simple request — the establishment of a statutory Human Rights Commission to monitor the human rights situation in Hong Kong. Why is it impossible to comply? What problems are there? The Human Rights Commission will act as a fair and neutral organization in the handling and monitoring of human rights issues. Why is the idea considered not feasible? The Government cannot give a satisfactory explanation. It simply says that the idea is not feasible. Is this a way out?

Therefore, I will support the original motion and oppose the amendment today. President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): I find the examples cited by Mr MA Lik just now very ridiculous. What is the point of making a comparison

with Canada, the United States and Britain? It is much better to compare Hong Kong with China, isn't it? Some of our colleagues will fast every Wednesday and the reason is precisely that lawyers in the Mainland are not only beaten up but also arrested. What is point of presenting all this sophistry? I often hear children argue like this whenever there is a dispute of some kind. A child will say that although he came second last in the examination, he is still better than the one who came last. How can anyone argue like this? Shameful indeed.

I very much respect the peoples of the United States, Canada and Britain. I suppose Mr MA Lik was simply trying to say that since Canada, the United States and Britain were also doing so poorly, we were not so bad after all. I can remember that I once staged a protest before the United Nations High Commissioner for Human Rights, Mrs Mary ROBINSON. At that time, Mr TUNG had not stepped down. During the protest, she came out and asked an aide to receive the protest letter from me. On that particular occasion in China, I could even have some formal discussions with her. It was 1998 and China had just announced that it would soon become a State Party to the covenant. But then, we also knew that the mainland authorities had just arrested the backbone members of the Chinese Democratic Party and other trade unionists. Four people had been arrested altogether and they were given very heavy sentences.

Mr MA Lik cited the wrong examples, but all Hong Kong people should be thankful for these examples because so far, they have not had to face the same suffering as their compatriots on the Mainland. But the problem is that when a government ignores the human rights of people (most fairly indeed) regardless of colour and race, it must be condemned. The Chinese Communist Government does not want Hong Kong to implement universal suffrage, so the United Nations states very clearly in the covenant Secretary Stephen LAM, have you brought along the document? If yes, please show it. Have you brought it along? *(Laughter)* You have not, of course. In that case, my dear friend, even if I mess things up when quoting from the covenant, you will not know. But this will be something very serious. May I ask you what is said in Article 25 of the International Covenant on Civil and Political Rights (ICCPR)? Please tell me. You probably cannot. In that case, I do not want to hear any more sophistry from you. Well, he has not brought along the document and it is wrong for him not to do any homework beforehand. But I have brought along the document so the United Nations states very clearly that there will be an exemption, meaning that there will be no universal suffrage for us. Deprivation

of universal suffrage means allowing an unreasonable system, that is, a system of frequent contraventions of the ICCPR, to limit the legitimate powers of Hong Kong people, so that our legislature and Government can from time to time contravene the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is dialectics.

Let me talk about dialectics here. We are first deprived of the legitimate rights of human beings, so we can no longer be regarded as humans. As a result, we are not allowed to ask for the treatment enjoyed by human beings. There was a popular question during the times of slavery: What are slaves? The answer to this question is: Slaves are animals that can speak. Our sovereign and the SAR Government under it both regard us animals that can speak. What are they thinking anyway?

Honourable Members, what is the actual situation in Hong Kong? The actual situation is that Hong Kong has been reunited with the Motherland. In other words, Hong Kong is no longer under colonial rule, meaning that our political system, or who should be in power, should no longer be determined on the basis of racial distinction. However, the colonial advisory system is still adopted nowadays. And, attempts are still made to institutionalize the colonial system. The Legislative Council is thus reduced to an advisory organ for the Chief Executive.

Our Chief Executive has recently commented that the Legislative Council has over stepped the line in frequently criticizing him. Does he not understand the Basic Law? He doesn't understand the Basic Law. Oh, do you have a copy of the Basic Law? Oh, you do. Article 48 of the Basic Law provides that the Chief Executive shall be accountable to us. We have made huge efforts to fight for democracy for the people of Hong Kong and to safeguard their economic, social and cultural rights. On the topics of a minimum wage and maximum working hours, there were 38 positive votes and just 18 negative votes in this legislature. But once again, due to this notorious system of separate voting, the well-being of some 3 million people was ignored by all those Members returned by coterie elections. And, most of these Members are representatives of business tycoons.

All the damage done to the ICESCR is due to the fact that no consideration has ever been given to implementing the provisions of the ICCPR. For example, Article 17, the subject of the lawsuit between Donald TSANG and me,

was ignored entirely. This explains why the outdated Telecommunications Ordinance enacted by the former colonial administration was used as the basis of legality. And, when the trick was exposed, an executive order was issued. What do they take us for? We are now asked to rush through the Third Reading of the bill. What do they take us for? A rubber-stamp?

To sum up, the remarks of Mr MA Lik are totally illogical. What the United States, Canada and Britain have failed to do in respect of human rights is already well-known to all. Even the United Nations could not stop George W. BUSH from waging wars. Why have they tried to cover up a scar by a filthy coat? In this very Chamber, I want to fight for the well-being of not only Hong Kong people but also the political prisoners in the Mainland. They are always on my mind. I hope Mr MA Lik will not forget this point. Our Motherland is still under servitude. And, as a result, we are also subjected to servitude.

I hope that Mr MA Lik (*the buzzer sounded*)

In that case, I stop here.

MR FREDERICK FUNG (in Cantonese): President, as requested by the United Nations Human Rights Committee (UNHRC), the Government of the Hong Kong Special Administrative Region (SAR) submitted its second report in early 2005. There are 123 pages in this report if the Preamble and the Annexes are not counted. Responses are made to the concerns and recommendations put forward by the UNHRC in the past, and the progress in various human rights issues is also reported. I appreciate the meticulous and serious attitude of the authorities towards the writing-up of the report. But it is a pity that however serious and detailed the report is, there is still one fact which can never be explained away — the fact that the SAR Government has failed to implement the recommendations made by the UNHRC simply cannot be glossed over. In other words, we can say that while the UNHRC says one thing, the Government simply does another. All is just like "singing to a mule", and such an approach and attitude really make us wonder how much importance the Government has attached to the implementation of the International Covenant on Civil and Political Rights (ICCPR).

To begin with, Article 39 of the Basic Law provides that the ICCPR shall be implemented through the laws of the Hong Kong Special Administrative

Region. And, in regard to elections and participation in the conduct of public affairs, Article 25 of the ICCPR provides (and I quote) as follows: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;" (End of quote)

Various distinctions are mentioned in Article 2 of the ICCPR, and the whole point is to provide that no one shall be deprived of the rights recognized in this Covenant due to any distinctions of race, colour, sex, language, religion, political or other opinion, national or social origin, property, and so on.

The UNHRC is concerned that the existing electoral system for the Legislative Council is not in compliance with the two Articles of the ICCPR mentioned above. As we all know, by universal and equal suffrage, it is meant that all qualified citizens shall be able to exercise the right to voting, and that all votes shall carry equal weight. Understandably, due to technical problems in the delineation of constituencies and distribution of seats, it may not necessarily be possible to ensure that all votes can carry equal weight. Such differences can still be accepted by the governments and peoples of different countries though it is also considered that it is best to minimize such differences. However, in Hong Kong, the SAR Government has been blatantly creating class distinctions and differences in vote weight by implementing functional constituency elections. This can be found nowhere else in the world. In the agriculture and fisheries functional sector and the transport functional sector, for example, as few as some 100 votes can already return one seat. And, the number of Legislative Council seats returned by the privileged few of less than 200 000 is equal to that returned by 3.2 million electors. The logic here is indeed absurd. They say that this is balanced participation, but in reality, the aim is just to ensure the participation of selected social strata, with a view to controlling election outcomes and affecting the natural political ecology. However, the Government has been turning a deaf ear to the concerns of the UNHRC. The Hong Kong Association for Democracy and People's Livelihood (ADPL) hereby strongly urges the Government to expeditiously implement universal suffrage for the Legislative Council and introduce an electoral system based on universal and equal suffrage. It must not delay our constitutional development anymore and must fully respect the requests of the UNHRC in this respect.

Moreover, the UNHRC is also concerned about the executive's request for an interpretation of the Basic Law by the National People's Congress (NPC) to overrule the verdict of the Court of Final Appeal. The case was no doubt just about the right of abode, but subsequently, in 2004, there was another interpretation of the Basic Law by the NPC on 26 April. And, in 2005, the NPC was again requested to give an interpretation of the Basic Law to clarify questions about the term of office of the Chief Executive. I believe the UNHRC will certainly follow up all this. All these incidents have seriously undermined judicial independence and the rule of law in Hong Kong. They have set a very bad example of resolving legal disputes by political means. And, the Government has refused to promise that it will never again seek any interpretation of the Basic Law from the NPC. This has shaken people's confidence in the rule of law.

Besides, in regard to the practice of allowing the police themselves to investigate and handle complaints against the police, the UNHRC also questions the credibility of such investigations. Currently, the police and the Independent Commission Against Corruption (ICAC) are apparently subject to the independent monitoring of the Independent Police Complaints Council (IPCC) and the ICAC Complaints Committee. But in fact, the functions of these two organizations are basically confined to monitoring and review, and investigations are still conducted by the Complaints Against Police Office under the Police Force and the Operations Department of the ICAC. Such a practice of allowing people to conduct investigations into allegations against their own peers is certainly against procedural justice. The Government should reconsider the monitoring powers of these two organizations or review the scope of complaints handled by the Office of The Ombudsman, with a view to extending its ambit to cover the police and the ICAC.

The UNHRC has also made other recommendations, including the establishment of an independent Human Rights Commission and the enactment of legislation on interception of communications and covert surveillance. Besides, the UNHRC has mentioned the enactment of legislation against discrimination on the ground of sexual orientation. In this connection, views in society are still sharply divided because the issue involves moral value judgements and a wide range of complex and controversial topics. The education sector and religious bodies, in particular, do have many worries. What is more, the enactment of legislation on this may lead to far-reaching consequences, affecting the future structure of society, marriage as an

institution, education and freedom of expression. In regard to the enactment of legislation, I agree that we must first conduct adequate discussions in society before taking any appropriate course of action and measures.

President, overall, I agree that the Government should implement the recommendations of the UNHRC, especially those provisions of the ICCPR in relation to election.

President, the UNHRC has already raised a series of questions regarding the second report submitted by the Hong Kong Government and it is going to hold a hearing later this month to listen to the explanation of the authorities. I hope that apart from responding seriously to the recommendations of the UNHRC, the Government can also put forward specific timetables and arrangements for the implementation of the relevant recommendations.

With these remarks, I support the original motion.

MR LEE CHEUK-YAN (in Cantonese): President, one of the three Bureau Directors in attendance today is not present at the moment. Let me for the time being put aside the question of politics and speak to the two remaining Bureau Directors first.

The first one I would like to speak to is Secretary Dr Patrick HO, who must put one of the provisions into effect. May I ask the Secretary this question: Does it occur to you when you travel on a plane that the flight attendants — male or female — must be under the age of 45? Will it upset you if the flight attendant serving you is more or less of your age or mine? When you want to buy some cakes, will you confine yourself to cake shops where the shop attendants are under the age of 25, and will you avoid those where the shop attendants are over the age of 25? Will you behave in this way? I believe the Secretary, being a fair person, will definitely not behave in such a manner. If that is the case, why could you allow employers to act in this way? Why would you allow the major airlines in Hong Kong — Cathay Pacific, Dragonair, British Airway — to require all flight attendants to retire when they reach the age of 45, which is an act of age discrimination?

We were originally very pleased with the enactment of the Sex Discrimination Ordinance. However, Cathay Pacific's male flight attendants

were not happy. They are now in dire straits, why? Male attendants and female attendants of the airline were previously required to retire at 55 and 45 respectively. To correct this unequal situation, Cathay Pacific decided to lower the retirement age of its male flight attendants to 45 to bring them on a par with their female counterparts. As a result, there is no more discrimination, for both male and female attendants are in the same plight. Furthermore, as female workers are no longer allowed to work overtime, all employees, whether female or male, are forced to work even harder. Hence, instead of enacting a law to protect male employees, all legislation is now against working overtime. While the legislation was originally intended to eliminate age and sex discrimination to create a fairer situation, both men and women now end up suffering terribly, even though age discrimination is prohibited.

I earnestly hope that the Secretary can refrain from making those remarks. I know what he will say when he replies later. If I were the Secretary, according to his reply years ago or the reply of his predecessor, I would surely say that education would be promoted. However, education is useless and deceiving. It is completely useless no matter how many advertisements are run. I have seen the Secretary's advertisements. They are absolutely useless, as employers will not pay attention to them. Fundamentally, discrimination is *per se* conceptual. Nothing can be changed without enacting legislation, the best form of education. Things can be sorted out upon the enactment of legislation. Therefore, insofar as age discrimination is concerned, the first thing we would like the Secretary to do is to do something.

Of course, the case with discrimination on ground of sexual orientation, as well as all other forms of discrimination, should be the same. It only occurred to me recently that racial discrimination does not cover new arrivals. This is really outrageous. By equal opportunities, it does not mean only a certain group of people can enjoy equal opportunities. In short, all forms of discrimination, whether they fall into racial discrimination, have to be eliminated. Clearly, discrimination against new arrivals has to be eliminated. This is one of the recommendations of the United Nations Human Rights Committee (UNHRC) as well as our obligation under the Covenant.

Next, I would like to speak to Secretary Ambrose LEE about the Public Order Ordinance (POO), which is relevant to demonstrations. Under the POO, the police possess enormous powers. The police may, at any time, designate a

place as a prohibited zone where public access is disallowed and the public can, at the most, proceed to another designated place. The World Trade Organization (WTO) meeting was a prominent example. Even if not for the WTO meeting, public demonstrations would be barred from certain places under many circumstances in the past. Why are the police so powerful? Why are the police empowered to designate prohibited zones barring access by the public? The designation of prohibited zones is not for public safety consideration, but purely to facilitate the police in performing their duties. Insofar as the POO is concerned, I would like to hear what the Secretary will say later to see if a review can possibly be conducted.

Lastly, I would like to speak to Secretary Stephen LAM. Yesterday, the Secretary and I attended a workshop organized by the Commission on Strategic Development to learn more about the bicameral system. I was told by Secretary LAM that he and I had reached a consensus. However, the consensus is extremely ridiculous, and that is, it is prescribed in the Basic Law that universal suffrage will be implemented in the end. The consensus is really great. Today, I want to ask the Secretary a follow-up question: Can I reach a consensus with you again that universal suffrage must be implemented according to Article 25 of the International Covenant on Civil and Political Rights (ICCPR)? Even if the Secretary may say that there is a reservation, it is stated clearly by the UNHRC that, once the Legislative Council is elected, Article 25, concerning universal and equal suffrage, must be complied with, and no one is to be discriminated against because of his family background or assets. It has now become very clear that members of functional constituencies are either wealthy people or businessmen. Given their business interest, they are allowed to join this Council or a specific functional constituency. This is obviously in breach of the covenants of the United Nations.

In this connection, I wish to ask the Secretary today this question: Does he share the consensus that, once universal suffrage is implemented, there will absolutely be no room for the retention of functional constituencies? The Secretary has left a redundant anticipatory remark in the Fifth Report, that the retention of functional constituencies has to be further studied. What is there to study? If universal suffrage is implemented, functional constituencies must be abolished. I hope I can reach a consensus with the Secretary again today to enable us to take at least one step forward, instead of merely confining ourselves to the consensus of implementing universal suffrage ultimately.

President, this is extremely important because we are most worried about the recent suggestion that, for the sake of implementing universal suffrage, functional constituencies can nominate candidates for election by the public. This tactic is absolutely deceiving, for only functional constituency members can then be nominated. In doing so, Article 25 of the ICCPR will definitely be violated because the provision concerns not only suffrage, but also the right to be nominated and participate in elections. If functional constituencies can nominate candidates for election by the public through universal suffrage, the right of the public to participate in elections will be violated. I therefore consider the suggestion very dangerous. We have been campaigning for universal suffrage with the public for years. I certainly do not want to get a sham universal suffrage in the end. I earnestly hope that this will not happen.

Lastly, I have to declare that I oppose Mr Tommy CHEUNG's amendment to add "having regard to the actual situation in Hong Kong" because this is absolutely deceiving and unacceptable to me. Thank you, President.

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

MISS TAM HEUNG-MAN (in Cantonese): I support the original motion and oppose the amendment.

I would like to talk in particular about the Equal Opportunities Commission (EOC) because I am one of its appointed members. The EOC is also regarded by the Government as a so-called effective human rights body. But still I wish to take this opportunity to reflect certain issues.

Regarding the several reports published by the EOC lately, we as members of the EOC are extremely disappointed by the slow progress of the management in following up the three reports. I believe Mr Stephen FISHER and I wish to express the same view. I know that the Government is very anxious and tries very hard to follow up the three reports, and a lot of efforts have been made. It is a pity that the management has acted too slowly. I regret to see this as I am a member of the EOC.

Furthermore, I wish to express my personal opinions on the appointment system. I hope the Government can upgrade the EOC's appointment system, in

relation to the appointment of both its Chairman and members. Broadly speaking, the members appointed this time are all pragmatic persons. Apart from being able to conduct analyses in a more rational and independent manner, they have worked very hard and actively engaged in a lot of work for the EOC. From whatever angles, the members appointed this time are well-chosen, even better than those of the previous term.

Under this mechanism, however, I hope the Government can enhance transparency to let us know on what basis the Chairman is appointed and the reasons for appointing those members. For instance, why have I, TAM Heung-man, been appointed to the EOC? Was it because I was considered by the outsiders as a member of the pro-democracy camp, not because of my accountancy expertise? I personally want to find out on what basis the Government appointed the Chairman and members of the EOC under the existing mechanism. If the transparency of the mechanism can be enhanced, we as Members of this Council will pay even more respect to what is done by this so-called human rights body and be more assured that it can really meet our requirements in respect of human rights bodies.

Another issue I wish to reflect concerns the five-year tenure of the EOC Chairman. Actually, many of the EOC members of the present term (including me) oppose a five-year tenure. Actually, the three reports have stated clearly that the tenure should last preferably three years. However, the tenure of the incumbent EOC Chairman is five years. I have no idea why he was offered a five-year tenure when he was initially appointed by the Government. Is it true that, as reported by the media, the Chairman has asked for five years and promised that he would retire upon the expiry of his five-year tenure? I have no idea of the reasons. Nevertheless, I hope that the tenure of the chairman to be appointed in future should preferably be three years at the most. There will be no problem if he is performing well. If he is not, and his tenure is five years, then we have to put up with him if, for instance, he acts very slowly and fails to follow up many matters. What can we do by then?

Some women's groups have recently approached me and other Members for assistance. Actually, before they came to us, they had approached the Chairman or management of the EOC in the hope that the EOC could follow up some women issues. But regrettably, the EOC has failed to follow up their requests even after six months, or even a year. Further to their recent meetings with other members of the EOC, we have also privately discussed with members of the EOC to find out what has happened. Even members of the EOC have no

idea why the EOC could have progressed so slowly in following up women issues.

In respect of the policy, we are very unhappy because we have no idea what the policy is all about. Is not doing anything the best approach? I know that Mr FISHER has been working very hard in following up the affairs of the EOC. Moreover, he has maintained very close contact with me in tackling the issues. I am very grateful to him for the efforts he made under the supervision of the Secretary. However, I cannot see the policy ambit in relation to the direction of the EOC and how it will handle issues relating to human rights bodies. I have been a member of the EOC for almost a year. Since last May when I was appointed, I have not seen anything done by the EOC. I hope the Government can continue with its effort in urging the EOC to do more to make Members feel more at ease.

Thank you, President.

MS MARGARET NG (in Cantonese): Madam President, my speech today will focus on the freedom of peaceful demonstrations and association in relation to two pieces of legislation on public order and societies, as contained in the recommendations made by the United Nations Human Rights Committee (UNHRC).

Let me start with the Public Order Ordinance (POO). The UNHRC is concerned that the POO, particularly the "notice of no objection", might improperly restrict the freedom of procession and freedom of demonstration.

However, the recommendations of the UNHRC have been completely ignored. According to the recommendations, the POO should be reviewed to bring it in line with human rights covenants. As the recommendations of the UNHRC were not heeded, it ultimately led to the "LEUNG Kwok-hung case", in which the Court of Final Appeal (CFA) pointed out in its judgement that "in the Ordinance, the objection to procession and demonstration on the ground of 'public order' (*ordre public*) is unconstitutional". To date, the authorities still show no intention to amend the legislation. More importantly, although the CFA did not declare the entire "notice of no objection" system unconstitutional, it stated clearly that the conditions set out by the police in the "notice of no objection" must be essential and proportional, or else the conditions would be considered illegitimate, or unlawful.

In view of the CFA judgement, the Government should take the initiative to review and amend the existing legislation instead of delaying any further. This is because law must be clear and specific to give the public a clear idea of how far the police can attach conditions lawfully, thus obviating the need for the public to waste their money and time by resorting to litigation in every case before they can ascertain which conditions are lawful or unlawful. It is a pity that the authorities have refused to review and amend the legislation. One of the reasons held is that if any person disagrees with the relevant conditions, he may appeal to the Appeal Board. This channel is actually unrealistic because processions and demonstrations are mostly urgent. Even if the conditions imposed by the police are extremely unreasonable, the applicant must first lodge an appeal, and the procession can only be arranged after a judgement is made. This is utterly unacceptable. Generally speaking, groups will thus be forced to proceed with the processions at all cost and risk violating the law.

Meanwhile, the public have little confidence in the Appeal Board, which is by nature an administrative organ. The number of appellants so far has been very small.

In response to a candlelight vigil initiated recently in support of the representatives of Korean farmers prosecuted for their anti-WTO demonstrations, the police attached an additional condition in the "notice of no objection" prohibiting the use of candle light for fire safety reasons. Only torches could be used for light! Naturally, the organizer could not accept such a ridiculous condition or reason because it is generally accepted in society that candle light is a symbol of peace. Furthermore, candlelight vigils are nothing unusual. The organizer was left with no alternative but, on the one hand, held the assembly in breach of the condition and, on the other, decided to appeal afterwards. However, we were shocked that the appeal was dismissed by the Appeal Board. Owing to this precedent, all demonstrators will certainly face a greater threat and difficulty in exercising their right to peaceful demonstration. Even if the organizers are not intimidated by the threat, members of the public will definitely be affected because they defy the risk involved when joining the processions.

I do not know whether the relevant organization will apply for a judicial review in respect of the ruling. However, people will not dare demonstrate freely if litigation has to be instituted on every occasion by first submitting the

case to the Appeal Board and then for a judicial review, and so on. Amending the POO is actually a matter of the utmost urgency. The refusal to conduct a review precisely reflects that the Government is greatly satisfied with the consequences of freedom being stifled by the present uncertainties.

Furthermore, I would like to say a few words on the Societies Ordinance. The Government has, on the one hand, refused to implement democracy and universal suffrage for lack of sophisticated political party politics and, on the other, acted indifferently to the fact that the Societies Ordinance is not conducive to the formation and operation of political parties.

The UNHRC has expressed concern about the requirement of the Societies Ordinance for societies to apply for registration. In this connection, the UNHRC has suggested the Government of the Special Administrative Region review the Ordinance to bring it in line with Article 22 of the International Covenant on Civil and Political Rights (ICCPR) — notification will suffice, hence making registration unnecessary.

When the Article 45 Concern Group was still the Article 23 Concern Group, we already stood firmly for an amendment of the Ordinance. In the course of forming a new party recently, we were once again confronted with the stringent requirements of the Ordinance with respect to societies registration and the scope of police interference. At present, none of the political parties in this Council are registered under the Societies Ordinance; they are all "limited companies". As Members may recall, some representatives of the community pointed out when expressing their views in this Council that political parties in Hong Kong were immature because none of them were genuine political parties, as they were all registered merely as "limited companies". This fact has certainly raised eyebrows among the people. If the Government insists on not reviewing the Ordinance, it will only expose its hypocrisy of saying one thing and doing another and its lack of commitment to implementing human rights covenants.

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

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

MR ALBERT CHENG (in Cantonese): It is an objective fact that Hong Kong is still unable to implement the recommendations made by the United Nations Human Rights Commission (UNHRC) in many aspects. This is an objective fact that cannot be denied. Some people have blamed the implementation of the recommendations of the UNHRC on the British Hong Kong Government, I am of the view that, with the return of sovereignty to China, Hong Kong people are ruling Hong Kong. The territory has also become a special administrative region of the People's Republic of China. Even if the previous government might have done something wrong, it does not mean that the Government today should follow. As for the remarks that some countries have not fully implemented the recommendations of the UNHRC, there is simply no need for us to care about other countries. It is most important to implement the recommendations that have been and will be made by the UNHRC having regard to the actual situation in Hong Kong.

Mr Tommy CHEUNG has proposed in his amendment to add "having regard to the actual situation in Hong Kong" for the implementation of the recommendations of the UNHRC. The wording of the amendment is actually not problematic. So, why should we oppose the amendment today? Of course, we understand that Mr CHEUNG does not simply look at the amendment "having regard to the actual situation in Hong Kong" from its wording like I do. Objectively, there is no problem with "having regard to the actual situation in Hong Kong" because some of the recommendations made by the UNHRC may not be compatible with public sentiments or the situation in Hong Kong. But most importantly, President, as pointed out by a number of colleagues earlier, the Legislative Council and the Government are not returned by universal suffrage. If they are, they will have to be accountable to the public, and there will be no difference. However, the reality is not like this. This is most unfortunate and subjective.

The report by the UNHRC today has also mentioned the issue of freedom of speech. If Members have read today's newspapers, they must have learnt that *Epoch Times* (*DaJiYuan*) is staging a protest at the Chater Garden because their printing house was attacked by rioters yesterday. I think the Government must face squarely any crime involving attack on media agencies. I was at the Chater Garden a moment ago, and I was invited to speak. I decided to come back because the banner read "*Epoch Times* was attacked by Communist gangsters". Now that no one has been arrested and I have no idea of the identity of the Communist gangsters, the wording of the banner is, in my opinion,

not objective. This is why I came back. However, this does not mean I do not support them. As I mentioned earlier, it is most important that the Government must face squarely any acts of violence against media agencies or acts affecting the freedom of speech. I also hope that the Secretary for Security — he is present at the moment — can instruct the police to conduct a serious investigation, and preferably bring the assailants to justice.

The UNHRC has also mentioned 2004 and some so-called prominent media workers in Hong Kong. I do not know whether I am a prominent media worker, but I was told by Ms Emily LAU to make a direct reference to myself. I believe I can do so because years ago, I, my colleague and Mr Allen LEE, a National People's Congress Deputy (Mr LEE has testified in this Council before), were intimidated and pressurized. Because I was intimidated and attacked violently by some triads, I applied for a five-month leave from the Commercial Radio I was serving at that time for a break. However, in less than a month since my leave had begun, I received a letter from the Commercial Radio and I was dismissed without any reason. This explains why I have the opportunity to stand here today. If not, I believe I will still be sitting upstairs or watching the television today, instead of standing here speaking. A commercially-run radio can even run counter to its commercial principle. To put it somewhat crudely, I am like a goose that can lay gold eggs. Our programme enjoyed a high rating of being number one for 10 consecutive years and brought the Commercial Radio very high ratings and huge profits. Nevertheless, I was still dismissed without any reason.

Can the implementation of human rights covenants protect the freedom of speech? I do not think so because this way of thinking is not objective either. Can the implementation of human rights covenants guarantee that Albert CHENG can go on air? I cannot be a radio host unless I am given an offer. Even I am now standing here today, no one has given me an offer. Commercial Radio is not the only radio station in Hong Kong. There is Radio Television Hong Kong (RTHK) too. However, even if I am willing to work for no pay, RTHK will still not hire me. Even Raymond WONG is being barred from hosting radio programmes on RTHK. He has indicated his willingness to host radio programmes free and has even told the Director of Broadcasting through me that he will work for free. But still, he has not been offered a chance. Besides, there is one more radio station, namely Metro Radio. Mr LI Ka-shing has said that all businesses run by Hutchison are lucrative — he made this comment years ago, not today. Now, only Metro Radio is losing money. The

radio station has been compared to "chicken ribs" — tasteless to the buds, but a bit of a waste to throw away. Since our going off air in 2004, the performance of Metro Radio has reportedly been improved.

All commercial broadcasters should definitely want to have some trumps, that is, hosts that can lay gold eggs — with his goose-like voice, Raymond WONG meets the requirement of being a goose that can lay gold eggs — there should be many who chase after him by queuing at his doorstep with a cheque in their hands. However, this is not the case in reality. Even if he is willing to work for no pay, he is still unable to host any programmes. What is the main reason? President, it is because radio broadcasting is being regulated in the sense that radio stations have to obtain a licence. In Hong Kong, all FM frequencies have been allocated (this matter will be brought up for discussion in the panel). Meanwhile, the digital broadcasting policy is yet to be implemented. Neither is the Government willing to issue more licences. Even trial broadcasting is not allowed. In my opinion, the only way to uphold the freedom of speech in Hong Kong is to adopt the "Open Sky" policy and let a hundred flowers blossom.

Only through the "Open Sky" policy can everyone, including A45, will not need to operate online radio stations. If A45 is allocated a frequency, FM45 will come on air. The issue of the freedom of speech will no longer be debated because a hundred flowers can blossom. By then, "Tai Pan", A45, the Frontier, the Hong Kong Association for Democracy and People's Livelihood, the Liberal Party, the rich party, and the Hong Kong Federation of Trade Unions can all run their own stations. Even the President can have her own station to teach Members of this Council how to observe the rules. Therefore, I feel that the only way to safeguard the freedom of speech is not to impose any restrictions.

Thank you, President. I so submit.

MR ALBERT CHAN (in Cantonese): President, whenever such issues as human rights and freedom, implementation of the international human rights covenants and the recommendations of the relevant committees of the United Nations are discussed, the hypocrisy and ugliness of the Hong Kong Government will be fully exposed.

What we can see now is that Hong Kong is, in many aspects, extremely backward compared with many so-called civilized, advanced and liberal societies. Politically, as many of my friends have pointed out, Hong Kong still remains in a colonial era. This is what I often say: Hong Kong used to be a colony under the British Hong Kong Government. Now it has turned into a sub-colony under the rule of the Communist Party of China. Hong Kong people are still second-class citizens: the majority of the 6-million Hong Kong people are second-class citizens, still being manipulated in this colony monopolized by the privileged class. The proposal of the concept of equality can be considered utterly hypocritical. The word "equal", when applied to equality among human beings, carries the same meaning as the word appeared in *Animal Farm*: "All pigs are equal, but some pigs are more equal than others."

Animal Farm can be considered a perfect reflection of Hong Kong's social and political ecology. Actually, we can compare ourselves to small pigs. Of course, some may be fatter; some are so fat that they cannot even put on socks, right? These pigs control everything. By frequently talking about how Hong Kong people enjoy suffrage and how democratic Hong Kong is, and even describing functional constituency elections as equal and fair, the Government is actually employing a mean trick of distorting and confusing right and wrong, and calling a stag a horse. The Government probably thinks that by employing this usual tactic time and again, telling more lies, and using more dirty tricks, a bleaching effect can be achieved. This situation, mentality, and political skills and tactics are really shameful. Therefore, so long as universal suffrage founded on full equality is yet to be implemented and nearly 7 million people are completely excluded from the system of electing the Chief Executive by universal suffrage, do not tell me Hong Kong enjoys equality in terms of human rights, democracy and freedom.

Regarding the freedom of speech and freedom of the press, Mr Albert CHENG, or "Tai Pan", has earlier told of his pathetic experience. Insofar as the freedom of speech and freedom of the press are concerned, it can be said that collusion between business and the Government and transfer of benefits have truly occurred. The Government is way behind such places as Europe, the United States, and so on, in the regulation of the news media. In many other places, large consortia are not allowed to control the news media, including radio, television, and so on. The situation in Hong Kong is somewhat different: one of the three radio stations is in the hand of the wealthiest person in Hong Kong. While whether the business is lucrative is a separate issue, controlling a radio

station gives one political leverage. Radio stations of a similar nature will never criticize the Government severely. Neither will they invite democrats to their programmes, not to mention inviting people like "Tai Pan" or "Raymond WONG" to host their programmes.

The Government has, through licensing control, brought some licences under the control of certain consortia. In return for the benefits, the major consortia will react to the Government's administration in an extremely mild manner without any adverse or strong criticisms. What is more, they will not benefit the democrats by allowing them to disseminate political messages through the radio stations under their control. What is it if this is not collusion between business and the Government and transfer of benefits? What is more, the Government will make no attempt to control the issuance of licences to these major consortia through legislation and licensing conditions, not to mention newspapers and magazines. At present, all but two newspapers are indirectly or directly manipulated and controlled by people associated with consortia.

It has recently been rumoured that a newspaper will be acquired by another consortium. If this is true, only the newspaper bearing the name of a fruit will probably remain in the future. Other newspapers are, to a certain extent, inter-connected. When it comes to the freedom of speech and freedom of the press, the examples of the three talk-show hosts having to go off air have been cited by many of my friends, and so I am not going to repeat. This precisely reflects that, after the reunification of Hong Kong in 1997, the freedom of speech and freedom of the press have gradually be influenced by the north wind. With the grip gradually tightened up, the freedom of speech and freedom of the press have gradually been suppressed too. This once again manifests that human rights and freedom are being threatened.

Then there are the issues relating to eavesdropping. As stated by many of my friends earlier, while the Government can defy law and order, the Court takes no notice of the Government's unlawful behaviour and allows the Government to continue violating the law for six more months. Where are human rights and freedom? All these examples have simply exposed the hypocrisy and ugly face of the Government. If the motion proposed by Ms Emily LAU today cannot be passed in this Council, it just reflects the hypocritical and ugly face of the Council. I find it really extremely sorry. Now that Hong Kong has developed to such a stage. If in such a prosperous and affluent society as Hong Kong the people are still subject to suppression,

exploitation and oppression in the enjoyment of the basic human rights and such basic rights as democracy and freedom enjoyed by others a century ago, I shall describe this a shameful and lamentable page of history.

MS AUDREY EU (in Cantonese): President, I would like to thank Ms Emily LAU for moving this motion and, furthermore, for attending the relevant meetings held by the United Nations over the years.

I would like to say a few words on Mr Tommy CHEUNG's amendment. If we look merely at its wording, the amendment *per se* should not be problematic. The amendment reads: "..... this Council urges the Government of the Hong Kong Special Administrative Region to implement the recommendations that have been and will be made by the Committee having regard to the actual situation in Hong Kong." In his speech, Mr CHEUNG mentioned that some countries have applied the margin of appreciation, which implies that every country will, having regard to its actual situation, examine ways to implement the resolutions or requests of the United Nations. Although this is right, Members will realize that this is not what Mr CHEUNG really means if they listen carefully to his speech. Instead of suggesting implementing the recommendations having regard to the actual situation or discussing the procedure and *modus operandi* of the implementation, he was actually suggesting the Government not to implement the recommendations having regard to the actual situation. This is what Mr CHEUNG really means. His words also echo Mr MA Lik's words. According to Mr MA Lik, there is no need for us to implement the recommendations, as the British and Americans have not done so. Therefore, when Mr CHEUNG referred to "having regard to the actual situation", he was actually suggesting that the recommendations ought not be implemented. As it is on this basis that his amendment is proposed, we cannot possibly agree with the amendment. Actually, we have to abide by the Covenant. As the United Nations Human Rights Committee (UNHRC) is an international organ enforcing the Covenant, we certainly should meet its request. We were asked by Mr MA Lik how we could know in advance the recommendations to be made by the UNHRC. In his opinion, we are like issuing a blank cheque — we will do whatever the UNHRC asks us to do. However, it is exactly like we support the rule of law. We have to act according to the Court's judgement. We cannot decide whether we will act accordingly depending on the Court's judgement. Such an act is a disrespect of the rule of law. In this connection, if we examine the original motion, it is impossible for us to oppose its wording.

President, I would like to say a few words in particular about the right to election because both Mr Tommy CHEUNG and Mr MA Lik mentioned today in their speeches that democratization should have advanced if not for the disapproval from 24 Members of the pro-democracy camp. This issue has actually been discussed many times before. We in the democratic camp cannot possibly accept a government proposal with appointment elements. Neither can we accept the inclusion of more functional constituencies. This is because the elections referred to in Article 25 of the International Covenant on Civil and Political Rights (ICCPR) must be conducted by universal and equal suffrage. The Government's proposal is in breach of elections by universal and equal suffrage. The remarks made by Mr MA Lik and Mr Tommy CHEUNG are totally irrelevant, as the United Nations holds that we have yet to implement elections by universal and equal suffrage. To date, Hong Kong has not yet complied with the requirements of the ICCPR in this respect.

In their speeches today, a number of Members from the democratic camp have mentioned subjects concerning various fields. While we very much agree with them, I do not wish to repeat the points here. I only wish to say a few words on racial discrimination and new arrivals, issues mentioned by Dr Fernando CHEUNG earlier. While I greatly support Dr CHEUNG's views, I would like to mention specifically the issue of gender equality.

On the face of it, discrimination against women has been improved, with more and more women managing to climb up the higher social ladder, and even more female students than male students are found on university campuses. However, the upgrading of the position of certain women does not mean that the overall problem of discrimination against women has been resolved. Poverty-stricken women, in particular, are subject to even more serious discrimination because the problem has often been overlooked.

I would like to mention in particular the views presented by the Hong Kong Federation of Women's Centres during its visit to this Council. During the visit, feminization of poverty, a concept raised by Diana PEARCE, a United States scholar, was mentioned. PEARCE pointed out the following:

- (a) Women are more likely than men to become poor;
- (b) Female-headed households are more easily trapped in poverty than male-headed households; and

- (c) Unless society offers equality programmes and comprehensive social security programmes, not only women will suffer from poverty, but her children as well. This will result in intergenerational poverty, a matter of concern to all of us.

The scholar has also mentioned the need to face squarely the issue of "hidden poverty". Why? Her reason is that family is considered the basic unit of society. As many assume that family assets are shared among family members, family income is used as the standard in assessing a family's financial situation. But in reality, women generally have the least income and assets, compared with other family members, because they do not receive any pay for their work, or household work. As a result, they do not have their own income. Their income will rely mainly on contribution by other income-earning family members. If we look solely at the family's financial situation, the poverty of the household labourers will easily be overlooked. Their poverty-stricken situation will be hidden as well. When attending seminars, we will very often hear some housewives talk about the money they have saved end up being surrendered to their families. They will therefore be in particular trouble when they encounter marital problems.

Let us also look at the pay issues of men and women. We can see that, of the 500 000 poorest people earning \$5,000, 130 000 or so are males, 410 000 or so, more than double the number of males, are females. If we examine the high-income population and take the second quarter of 2005 as an example, 100 000 or so are females, 2 300 less compared with the previous year, whereas 230 000 or so are males, 13 000 more compared with the previous year. The gap between the income of males and females is evidently huge.

Lastly, given that there are more females than males in Hong Kong, the women participation rate in statutory and advisory bodies should not be set at 25%. In my opinion, the women participation rate in statutory and advisory bodies should be raised.

Thank you, President.

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

MR JAMES TO (in Cantonese): President, I have just obtained a copy of the "hot and fresh" bill on interception of communications and covert surveillance. Of course, I have not read the document because I got hold of it just minutes ago.

Perhaps I shall start from here. As mentioned by a number of Members earlier, we can take note of the implementation of international human rights standards. After examining its various contracting parties and jurisdictions, the United Nations Human Rights Commission (UNHRC) will put forward its views and they are indeed most forward-looking and authoritative. Actually, it has been raised repeatedly by the UNHRC since a couple of years ago that the practice of interception of communications does not comply with international human rights standards. However, the Government has paid no intention to the advice and even considered it foolish. The mentality of the Government is very simple; it is also consistent with the actual situation mentioned by many colleagues today and that is, it simply acts according to its likes and dislikes. It was not until the Court had passed a binding judgement that the Government commenced the relevant legislative work by drafting this piece of legislation. Actually, the Government is not sincere in talking forward this piece of legislation.

Why is the Government surrendering the executive's authority of intercepting communications to the Court (actually, the matter was not really handed over to the Court; it was dealt with by a few Judges chosen by the Chief Executive from many Judges)? Although the legislation will not be debated in detail today, it will be subject to frequent scrutiny in the coming six months in the hope that a proper balance can be struck in public interest. I am saying this just to point out that, according to my preliminary judgement, the Government is not sincere in surrendering the authority to the Court as an independent third party to vet and approve such actions. The Government is still seeking to find some strange, unorthodox solutions. Such being the case, how can a proper piece of legislation be enacted?

Actually, we are sick of talking about history. A number of former Secretaries for Security, including the incumbent, were given enormous responsibilities when they took office. I still remember when the Secretary for Security assumed his post a year or two ago, I requested him to carry out the relevant legislative work expeditiously (I actually felt embarrassed). I also told him that, should he fail to do so, he might have to step down when being held

accountable. Despite our attempt to discuss the matter on several occasions, we could touch on the matter only slightly, because of the time constraint, after accommodating each other's schedules. Meanwhile, a court warning was issued nearly a year ago, and we were requested to enact legislation expeditiously within a specific timeframe.

I remember I once asked in a meeting held by the Panel on Security these questions: How many meetings should be held weekly? Should a meeting be held twice weekly? At what interval should the meetings be held? I even hated myself for asking such questions. The executive and the legislature have their own functions. Why should I force the executive to give me such a detailed report? It is all because I am very concerned and I do not want the Government break the law. I only hope that the relevant work can be completed expeditiously. I do not want to see, as in this case, the hasty completion of the legislative work within six months. Actually, this is not the first time the Government acts in this manner; it acted in a similar manner in drafting other legislation too. For instance, the Government was criticized by the UNHRC for its proposed enactment of legislation on Article 23 and was told that such an enactment would affect the enjoyment of rights and freedom. The fact that the legislation was not enacted in the end had nothing to do with the Court. It was rather because the people were so powerful that even some political parties had to back down.

After the reunification, I sometimes doubted whether only the TUNG Chee-hwa government would act in this manner. Yet, judging from the present situation, it seems that the government under Donald TSANG is taking the same view that "authority" should preferably be vested in the Government. The tactic of going slow would be adopted should the authority be surrendered to the Court. This could be done by first attempting to issue executive orders. When it failed, the Government invited a legal professional to tell law-enforcement officers that there was nothing to fear and it could hold. This has actually caused great repercussions among the law-enforcement officers. They hope that the Government, led by bureaucrats, can give them adequate authority. Why are they working day and night braving the elements and "wearing all sorts of disguise"? Should our Government, our bureaucrats give them adequate and effective power to enable them to perform their tasks properly instead of tackling everything first with an executive order and then trying this and that method?

I believe the Government is contemplating to act on the exigencies of the situation should the legislation prove infeasible. The Government is still adhering to this mentality. It has never clearly understood the situation, despite the repeated advice offered by the UNHRC over the years. Frankly speaking, even regarding rights, the Government should be able to gain a lot of wisdom from the previous assemblies and processions. I am not going to repeat this point for Honourable colleagues have mentioned it earlier.

The Government has often resorted to litigation. It will not agree to conduct a review until the lawsuit is over and a precedent has been set. The Government simply hopes to rally all the powers. However, if this mentality is maintained, I will be very worried that, as pointed out by the Chief Justice at the inauguration ceremony of the legal year, the executive and the Court have their own functions in dealing with everything. We expect the Government to be open-minded, reasonable, respectful of human rights (international human rights standards in particular) and take the initiative in amending the law to reasonably balance powers in various areas, instead of frequently obliging the people to take their matters to the Court. In so doing, the executive will be put in a very embarrassing position because of the lack of time for carrying out the legislative work. At the same time, the Court will also face great difficulties and thus be forced to set a precedent.

I actually hope that the Government can listen more to the good advice offered by international human rights experts. Their recommendations are based on the universally applicable international human rights standards established after examining nearly 200 countries. In this connection, I hope the Government can draw experience from it.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Ms Emily LAU, you may now speak on Mr Tommy CHEUNG's amendment. You have up to five minutes to speak.

MS EMILY LAU (in Cantonese): President, a number of colleagues have expressed their views on Mr Tommy CHEUNG's amendment, and I very much

agree with them. However, I find it very strange that the majority of Members who disagree with the motion have targeted their criticisms mainly at Mr MA Lik instead of Mr CHEUNG. Members should really learn from Mr MA if they want to become the target of everyone. Despite his extremely tender and soft voice, and even though he has spoken for just a few minutes, Mr MA has been condemned for two whole hours.

Nevertheless, the two Members share exactly the same thinking, that we have to act according to the actual situation. Mr CHEUNG raised several points and asked us why we disagree because he considers that our usual standard should be followed. First, he talked about legislation targeting discrimination. He said he could support legislation against racial discrimination, but he could not support legislation relating to sexual orientation. Actually, two bills will be submitted separately by Secretary Ambrose LEE and Secretary Stephen LAM for scrutiny next week. I have no idea what Secretary Dr Patrick HO is waiting for in respect of the legislation on racial discrimination. If the related information is still not available when the United Nations meeting is held, there will be a great problem. He may support the proposal of prohibiting racial discrimination. President, racial discrimination was once highly controversial for some time. Therefore, the Government should make some efforts to rationalize the views from various sides. However, I cannot see what the Government has done in respect of discrimination against sexual orientation.

As regards elections, Mr Tommy CHEUNG said that he could not agree because of their objection, particularly about the functional constituency elections of the Legislative Council. President, what is the actual situation of the elections? Subsequent to the interpretation of the Basic Law by the National People's Congress, hundreds of thousands of people took to the streets on 1 July calling for the implementation of universal suffrage in 2007 and 2008. This was what actually happened at that time. As a matter of fact, this has been the actual situation for years. As revealed by the opinion surveys conducted by universities as well as other institutions, more than half of the respondents demanded the implementation of universal suffrage either in 2007 and 2008 or expeditiously. This is the actual situation. The actual situation is not, as described by Mr Tommy CHEUNG or Mr MA Lik, that a handful of very rich people who are closely associated with Beijing can now "impede the earth in revolving" and criticize the "universal and equal" elections, whereas the elections are not actually conducted in accordance with Article 25 of the ICCPR by "universal and equal suffrage". This is inconsistent with the actual situation.

However, the actual situation reflects precisely the misery of Hong Kong. Of the 7 million people in Hong Kong, a few thousand or even fewer influential people associated with Beijing can probably repudiate the wishes of millions.

President, Mr CHEUNG has condemned the United Nations Human Rights Committee (UNHRC) as no good. Mr MA Lik has also mentioned redundancy. I have no idea what he was talking about. All Members also query what he meant by redundancy. Earlier in the meeting, Mr MA was criticized by some Members for his reference to the situation in Britain, Canada and the United States. According to Mr Ronny TONG, Canada has already established its own Human Rights Committee. Yet, Mr MA has chosen not to quote this example. Instead, he selectively quoted some examples to illustrate what should not be done. President, others will certainly quote some good examples for comparison, in Hong Kong the worst cases were picked instead for comparison for no reason at all. I have never seen other places doing anything like this. Whether being hypocritical or not, other people will always try to do better. There is no reason to compare oneself with the worst case. Is there anything wrong? He has deliberately mentioned the countries which are not acting in this way but avoided those which are doing so.

I was quite "shocked" by Mr MA Lik's words — let me borrow the words of Mr IP Kwok-him. President, Mr MA said the "uncompleted task" has to be finished. When he made such comments, whose uncompleted task was he talking about? Of course, he was referring to the uncompleted task of the British people. But what was he referring to exactly? Have Members read Article 39 of the Basic Law? According to the Article, the provisions of the International Covenant on Civil and Political Rights (ICCPR) and other covenants as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. Secretaries probably need to respond to this later and explain to the relevant Member that the Government is not "finishing the uncompleted task". Instead, this provision is included in the Basic Law drafted on the Mainland in 1990 (without our participation). Therefore, we cannot describe the "task" as "uncompleted". Ms Audrey EU was right in saying that Members thought that there was no problem when they read the document, but something — having regard to the actual situation, the recommendations need not be implemented — was actually missing. If this is really the case, the problem is actually not yet resolved.

I have no idea of the Administration's view. The Administration is actually very supportive of the amendment because it also states in its document that "the actual situation" has to be taken into consideration. However, in most cases, it prefers not doing anything or, in its words, considers it not worthwhile to do anything having regard to the actual situation.

In the end, President, I feel sorry for the colleagues in making those remarks. I personally cannot support the amendment. I now appeal to all Members — a number of Members have not spoken; only we, the pan-democratic camp, and two other Members have spoken — to object the amendment.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I thank Ms Emily LAU for her motion, and Members' trenchant observations just now. And I welcome this opportunity to explain the Government's position in regard to its obligations under the international human rights treaties.

The Government's position was explained in Part II of the Second Report in the light of the International Covenant on Civil and Political Rights (ICCPR), which is, the subject of the impending hearing. But, in view of some of the things that we have heard today, I think it worth rehearsing what we said in the report.

Despite we have stated many times, and doubtless will state again, it must be clearly understood that the Government of the Hong Kong Special Administrative Region (HKSAR) hold Treaty Bodies in the highest esteem and accord their concluding observations the utmost respect and the closest attention. But the fact remains that those observations — the expressions of concern and the related recommendations — are not binding as a matter of international law. Our international obligations are clearly defined by the treaties that apply to us, and by any relevant declarations and reservations. Our current position, which we believe is shared by many, if not most, governments, derives primarily from a section of the United Nations Manual on Human Rights Reporting on "The essence of dialogue". Let me quote this verbatim: "At this point, one must stress that the Committees are neither courts nor quasi-judicial bodies. The nature of their activity may be of a different quality with regard to the competence of some Treaty Bodies to receive and to examine individual complaints or communications. However, it has never been claimed that the Treaty Bodies may perform judicial or quasi-judicial functions in the

consideration of States Parties' reports. The Committees, as a result of the dialogue, do not issue a judgement regarding the degree of implementation of the provisions contained in the relevant instrument in the reporting State."

"The purpose of the dialogue is rather to assist the reporting State in the implementation of its treaty obligations. The dialogue should clarify the scope and the meaning of the treaty obligations and should highlight those aspects that may have been neglected by the authorities of the reporting State. It is in this spirit that the members of the Committees raise issues of concern to them, ask their questions, and formulate their comments accordingly at the end of the consideration of a report. And it is in the same spirit that the written comments of the Committee as a whole are formulated at the conclusion of the consideration of a report." (End of quote)

As non-judicial entities, the Treaty Bodies have greater flexibility than do Courts in the conduct of their business. For example, the way in which Treaty Bodies hold hearings on Party States' reports are different from those held by the Courts. The former are not constrained by the need to confine conclusions to matters actually addressed in the course of proceedings. Thus, it is increasingly common for the concluding observations to include expressions of concern and/or recommendations about matters that were not raised during the hearing, or even in the preceding list of issues.

Thus, the Treaty Bodies enjoy considerably more latitude than do judicially constituted Courts. This not only clearly has many advantages but also serves to demonstrate that, as the United Nations Manual on Human Rights affirms, the Treaty Bodies are not Courts, they do not behave as Courts, and their observations, concerns and recommendations — while always attended to with seriousness and respect — do not carry the authority of a court ruling. In essence, therefore, they are of an exhortatory nature and, while parties to the treaties will normally endeavour to implement them to the extent they judge to be practicable, they are not bound by them.

Hong Kong, while not a state party, is no exception to that generality. As we made clear in the report, we do seek to implement Treaty Body recommendations, where we consider that doing so would be consistent with the principles I have outlined just now. Essentially, we will implement a recommendation when we judge that to do so is required as a matter of international law. Where this is not the case, we will do so where this meets the following three criteria:

- firstly, the recommendation is feasible in practical terms, which may include legal and constitutional considerations, as well as the more obvious question of physical, political, or economic constraints;
- secondly, the recommendation is affordable, either immediately or within a given timeframe to the Government and the community at large; and
- thirdly, the recommendation is necessary to achieve the objectives that it seeks to attain.

The approach I have outlined just now reflects the varying nature of the recommendations of Treaty Bodies. In some cases, a recommendation does no more than reflect a specific obligation in the particular treaty. In that case, the relevant jurisdiction will be obliged to take action, not because the Treaty Body has recommended it, but because the treaty requires this. However, in many cases, recommendations go beyond what the treaty specifically requires, for example, by suggesting how a particular obligation may best be implemented. In that case, the jurisdiction may properly decide to implement the obligation in another way. And, in some cases, the recommendations are to the effect that a jurisdiction should withdraw a reservation or declaration that was entered into when the treaty was acceded to. In those cases, there is clearly no obligation, either under the treaty or as a result of the recommendation, to do this.

But let there be no misunderstanding: the HKSAR Government has acted on past recommendations of the United Nations Human Rights Committee (UNHRC) and will act on any future ones to the extent that we judge feasible and desirable, but it is inappropriate for us to undertake to implement recommendations yet to be made by the UNHRC in future hearings. Examples of past endeavours include bringing the sex discrimination law into effect, closing the former Vietnamese refugee detention camps, and making police charge sheets and charge forms available in Chinese as well as English. Those things required time and we were not in a position to implement them at the time the UNHRC originally asked us to. But when we judged the timing to be right, we acted without further delay. An example of a long-standing recommendation by the UNHRC that has yet to be put into effect is the establishment of a human rights commission. We have not, as some have asserted, ignored the UNHRC's recommendation. We have kept the matter in

view, testing its implications against the criteria for implementing Treaty Bodies' recommendations that I have rehearsed and ready to move forward when the conditions are met. Tentative steps have already been taken in that direction to ensure greater transparency on our human rights status to the public. One such step includes the establishment of new public forums for regular and formal exchange of views between the Government and human rights monitoring bodies (such as non-governmental organizations). Options for further development are under exploration, though we are not — as yet ready to commit to a timetable.

When dealing with large issues — and most of the issues addressed in the concluding observations are, very large — caution is simple prudence. Unless we are required to act as a matter of international law, we will not, for the sake of a few brief kudos, jeopardize the interests of Hong Kong by precipitously giving effect to the recommendations of Treaty Bodies that, with the best will in the world, are familiar with our circumstances only at a distance and whose members live far away in places whose circumstances and concerns may be very different from those prevailing here. We will act on our best judgement for the well-being of the people of Hong Kong.

At the same time, however, I must point out that, while the recommendations in the concluding observations and the decisions of the Treaty Bodies are not directly binding on the Courts in Hong Kong, the Courts have often used them in the construction of statutes and cases. For example, in the case of *Shum Kwok Sher v HKSAR*, the Court of Final Appeal held that (and I quote) "In interpreting the provisions of Chapter III of the Basic Law and the provisions of the Bill (the Hong Kong Bill of Rights Ordinance), the Court may consider it appropriate to take account of the established principles of international jurisprudence as well as the decisions of international and national courts and tribunals on like or substantially similar provisions in the ICCPR, other international instruments and national constitutions." (End of quote)

Action on the recommendations in the concluding observations is not, of course, the only way in which governments give effect to treaty obligations. It is also important that they ensure that their laws, policies and administrative measures are consistent with those obligations. Thus, in Hong Kong, when legislation is being prepared, or when government policies are formulated, the Secretary for Justice advises the responsible bureau or department on the compatibility of those proposals with the ICCPR provisions as applied to Hong Kong. When providing such advice, the Secretary for Justice draws

substantially on the relevant concluding observations and general comments of the Treaty Bodies.

In summary, therefore, we act in good faith in deciding how and when to act on the Treaty Bodies' recommendations in the concluding observations. That is, we most firmly assert, the prerogative of governments that have the ultimate responsibility for the governance and well-being of their people. In implementing their international obligations, they must exercise their best judgement as to what is or is not conducive to the common weal and act upon that judgement even when that may entail action on a particular Treaty Body recommendation. We have to do what is right. In this regard, our position is entirely consistent with the view expressed in the UNHRC's General Comment 3 of 1981, where it noted (and I quote) that "..... Article 2 of the Covenant (the ICCPR) generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article." (End of quote)

Our approach to the hearing process and the conclusions that flow from that process affirms the General Comment. We have consistently acted in accordance with it and will continue to do so. That is the spirit in which we will approach the impending hearing of Hong Kong's report in New York.

In this regard, Ms Emily LAU criticized the relevant principal officials for not leading the HKSAR Government delegation to the UNHRC's hearing of Hong Kong's report in New York in mid-March, saying that it was disrespect to the UNHRC and the ICCPR. However, as far as we understand it, most other State Parties have their representatives to the United Nations or officers responsible for human rights policy, rather than political-appointed officials, head their delegations. We think that it is more appropriate for the officer responsible for human rights policy to lead the delegations to those hearings. Moreover, the Solicitor General of the Department of Justice as well as representatives from the Constitutional Affairs Bureau and the Security Bureau will also attend the upcoming hearing and answer questions from the UNHRC. I would like to reiterate that the Government accords the UNHRC and this hearing the utmost respect. As a matter of fact, in terms of ranking and size, the Hong Kong delegation compares favourably to those of other State Parties. The United Nations' relevant committees have also acknowledged that the HKSAR Government has respect for the hearings.

As far as upholding freedom of press is concerned, the freedom of expression and freedom of the press are fundamental rights enjoyed by all people in Hong Kong. They are enshrined in Article 27 of the Basic Law and Article 16 of the Hong Kong Bill of Rights Ordinance. The Government is firmly committed to protecting those freedoms and to maintaining an environment in which a free and active press can operate under minimum regulation that does not fetter either the freedom of expression or editorial independence.

Some Members have raised queries on the existing anti-discrimination laws and the proposed race discrimination legislation. The Government does not agree with any kind of discrimination. The Hong Kong Bill of Rights Ordinance prohibits all forms of discrimination in the Government and the public sector. Currently we have three pieces of anti-discrimination laws in place, namely the Sex Discrimination Ordinance, Disability Discrimination Ordinance and Family Status Discrimination Ordinance. We are now working on the fourth anti-discrimination legislation to prohibit racial discrimination in the private sector. We understand the public expectations for this legislation, and are now trying to iron out the legal and technical issues involved and proceed with the relevant legislative work. We are now in the final stage of the drafting work and we hope to introduce the bill to the Legislative Council soon.

Concerning new arrivals from the Mainland, we agree that they occasionally suffer from discrimination by the local Chinese in Hong Kong. However, since the majority of them are of the same ethnicity as the local Chinese, that is, Han Chinese, the discrimination they suffer is not based on race, but rather, it is a kind of social discrimination. Therefore, it is not included in the proposed legislation against racial discrimination.

As regards sexual orientation discrimination, it impinges on deeply ingrained values and notions of morality. The proposal of legislating against this form of discrimination requires public support for effective implementation. If the public does not stand by the values embodied by the legislation, its implementation may have to take a bumpy ride, or may well rebound. Our considered view is that, at this stage, we should best address discriminatory attitudes through public education, with a view to changing public attitudes on discrimination and fostering in the community a culture of greater objectivity, tolerance and mutual respect. Public attitudes cannot, of course, be altered within a short period of time. These measures take times to pay off.

Mr Alan LEONG asked about children's right. With respect to children's right or the possibility of setting up an independent children committee, as we explained in both HKSAR's report under the Convention of the Rights of the Child as well as at its hearing last September, the best interests of the child are necessary considerations in all relevant decision-making in Hong Kong, including legislative proposals and policies, and are taken into account as a matter of course. The Administration has specific laws dealing with different aspects of children's right. The impact of legislation and the execution of policies are monitored by the Legislative Council, The Ombudsman and the press, and are reviewed by the bureaux concerned.

Thank you, Madam President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the Secretary for Home Affairs has explained earlier the position of the Government of the Hong Kong Special Administrative Region (SAR) on the implementation of the International Covenant on Civil and Political Rights (ICCPR). I will further respond to the points raised by Members in relation to constitutional affairs.

Some Members said earlier that the constitutional development in Hong Kong is not consistent with the ICCPR provisions. As Secretary Dr Patrick HO pointed out in his speech, when implementing the provisions of the ICCPR, the SAR may take account of the actual situation in Hong Kong, such as legal and constitutional considerations, in order to decide in what way the provisions of the ICCPR will be implemented.

There is the view that the political structure of the SAR must have regard to paragraph (b) of Article 25 of the ICCPR. I must reiterate that the political structure of the SAR is established in accordance with the Basic Law. When extending the ICCPR to Hong Kong in 1976, the British Government made a reservation against paragraph (b) of Article 25, which means that the provision relating to election in paragraph (b) of Article 25 does not apply to the Executive Council and the Legislative Council. This is the arrangement made then. According to the notification given by the Central People's Government in June 1996 (Appendix 1) to the Secretary-General of the United Nations and Article 39 of the Basic Law, this reservation will continue to apply to the SAR.

While the provision in paragraph (b) of Article 25 of the ICCPR does not apply to the Executive Council and the Legislative Council, we have not put aside constitutional development in Hong Kong. The SAR Government attaches great importance to constitutional development in Hong Kong, consistently taking it forward in accordance with the Basic Law. Articles 45 and 68 of the Basic Law provide that the methods for selecting the Chief Executive and forming the Legislative Council shall be specified in the light of the actual situation in Hong Kong in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures, and with regard to the Legislative Council election, the ultimate aim is the election of all Members of the Legislative Council by universal suffrage.

Universal suffrage is provided for in the Basic Law as the ultimate aim of the development of democracy in Hong Kong. The SAR Government has endeavoured to develop democracy gradually. The Constitutional Development Task Force which was established in 2004 has studied ways to further open up the methods for the election of the Chief Executive and the Legislative Council in 2007 and 2008, and it has been working towards the ultimate aim of universal suffrage.

Under the framework of the Basic Law and the Decision made by the Standing Committee of the National People's Congress (NPCSC) on 26 April 2004, we put forward in October last year a package of proposals on the methods for the two elections in 2007 and 2008. Had the proposals been passed by the Legislative Council, more than 25% of members of the Election Committee and close to 60% of the seats in the Legislative Council would basically be returned by more than 3 million voters through direct election in geographical constituencies or indirect election. This package of proposals would enhance democratic representation and broaden the electoral base to the farthest extent under the framework of the Basic Law and the Decision of the NPCSC. But much to our regret, although this package of proposals was supported by a majority of members of the community and over 50% of Members of the Legislative Council, it was not passed by a two-thirds majority of all Members of the Legislative Council as required by the Basic Law in the end. According to the Interpretation of the NPCSC on 6 April 2004, if no amendment can be made to the methods of the two elections, the relevant provisions on the methods of the two elections in Annexes I and II shall continue to apply. Under such

circumstances, the existing arrangements will apply to the Chief Executive election in 2007 and the Legislative Council election in 2008.

Now, Madam President, perhaps let me respond to the comments made by several Members.

Ms Emily LAU mentioned again the question of *status quo*. However, Ms LAU and other Members in the opposition camp actually know only too well that they had neglected the wish of 60% of people for the passage of the proposals for the two elections in 2007 and 2008 by voting down the package of proposals put forward by us, a package that will take a great step in democratization. During a certain period of time in the past, and over the last few months, Members in the opposition camp claimed that they would vote against this package even though the *status quo* would hence be maintained. So, one must stick to his principle from the beginning till the end, and since they had unequivocally decided at that time to choose to maintain the *status quo*, they must face the reality of maintaining the *status quo*.

Dr KWOK Ka-ki said in his speech that he accepted in principle that work should be carried out in the light of the actual situation, but he would not support the amendment proposed by Mr Tommy CHEUNG of the Liberal Party. He said that 200 000 people had taken part in the march in early December last year, but we remember that according to the surveys conducted by most academic institutions, the number of participants was found to be between 70 000 to 90 000. So, when talking about the actual situation, it is necessary to state the fact and not to exaggerate.

I wish to further respond to the speech of Mr LEUNG Kwok-hung. Mr LEUNG has a penchant for citing authoritative sources. Today, he cited the International Covenant on Human Rights and the Basic Law. But he made one mistake. He said that the Chief Executive is accountable to the Legislative Council under Article 48 of the Basic Law. I need to put this right. Article 48 is about the powers and functions of the Chief Executive, and the SAR Government is accountable to the Legislative Council under Article 64 of the Basic Law. I think this is just oversight though. However, Mr LEUNG made another point that is even more inaccurate. He said that the existing Legislative Council in Hong Kong inherited the status of the legislature back in the colonial era. This, I beg to differ. It is because after the reunification in 1997, Hong

Kong has made progress in the development of democracy. At present, 50% of the seats in the Legislative Council are taken up by Members directly returned to represent geographical constituencies, and before the reunification, only one third of the seats at most were directly elected. Moreover, under Article 73 of the Basic Law, the Legislative Council shall exercise specific powers and functions. For instance, it has to approve bills and budgets introduced by the Government before the Government can proceed to the next step of work.

Madam President, although the package of proposals regarding 2007 and 2008 was negated, the SAR Government shall continue to promote the development of democracy in Hong Kong in accordance with the provisions in the Basic Law. The SAR Government and the Chief Executive do understand that Hong Kong people wish to see the early implementation of universal suffrage, and the Basic Law also provides that universal suffrage is our ultimate aim in Hong Kong. Therefore, what we need to examine is how and in what way we should work to achieve the aim of universal suffrage.

A democratic system can be established in various forms. If we look at the many places where a democratic system is practised, the political structure and electoral methods implemented will depend on the actual situation of a place, such as the people's sentiments, history, traditional culture, economic conditions, the situation of ethnic groups and the established beliefs. To promote constitutional development in Hong Kong, we must seriously study the blueprint of constitutional development as laid down in the Basic Law, so as to find out what model is most suitable to the SAR while complying with the relevant provisions of the Basic Law. For example, when taking measures that are conducive to the development of a capitalistic economy, such as measures to achieve a fiscal balance for the SAR Government and maintain a low tax regime as provided for in the Basic Law, we must at the same time have regard to such principles as effectively ensuring that the interests of various strata of the community are duly taken care of and maintaining balanced participation in society, and so on.

In fact, the Chief Executive took the lead to kick-start discussions on the roadmap for achieving universal suffrage through the Commission on Strategic Development in November last year. After some three months of effort, the Commission has made some progress in its discussion. For example, members of the Commission generally agreed that the concept of universal suffrage should

include the principle of universal and equal suffrage. Generally speaking, universal suffrage basically should mean "one person, one vote", and it also means returning representatives through direct or indirect elections. So, I believe insofar as these two principles are concerned, disregarding whether or not Mr LEE Cheuk-yan and I are distanced from each other, we share a common view.

The Commission on Strategic Development will continue to study the arrangement for the election of the Chief Executive and the Legislative Council by universal suffrage and put forward some specific proposals for Members' reference and discussion, so that members of the public can further understand this issue. Our objective is to draw a conclusion in mid-2006 from the discussions on the principle and concept of universal suffrage and to draw another conclusion in early 2007 from the discussions on the design of the electoral system for the elections of the Chief Executive and the Legislative Council by universal suffrage. We hope to embark on the next step of work on the basis of these conclusions.

Madam President, the SAR Government fully appreciates the public's aspiration for universal suffrage. The Commission on Strategic Development will continue to follow up this issue and encourage discussion on universal suffrage in the community of Hong Kong as a whole. We consider that extensive discussions can enhance the community's understanding of this issue, which is very important to the implementation of universal suffrage in the future. In the meantime, we believe that more contacts and more discussions with various sectors of the community, together with communication on this issue, will certainly be conducive to drawing conclusions and reaching an overall consensus on this issue in the future.

Madam President, I so submit.

MR MARTIN LEE (in Cantonese): President, I wish the Secretary to elucidate one point. He has repeatedly mentioned "opposition" Members. Was he actually referring to Members of the pro-democracy camp? If the answer is affirmative, may I ask him to elucidate whether it is his wish that he does not want us, Members of the pro-democracy camp, to support the Government in all issues?

PRESIDENT (in Cantonese): Mr Martin LEE, according to the Rules of Procedure of the Legislative Council, you should immediately ask him what he meant by "opposition" when he mentioned the word, instead of raising the question after he has finished his speech. Now that he has finished his speech, I will not call upon him again to answer your question. Nevertheless, I believe you will have the opportunity to raise your question on other occasions.

MR MARTIN LEE (in Cantonese): President, is the Secretary not allowed to do so even if he wishes to elucidate now?

PRESIDENT (in Cantonese): I am not prepared to call upon the Secretary to elucidate.

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Secretary for Home Affairs and the Secretary for Constitutional Affairs have already explained the Government's position on issues within their policy areas earlier. In the remaining time, I would like to give a brief account to Members on the response of the Security Bureau to some of the recommendations made by the United Nations Human Rights Committee (UNHRC).

Basically, the Government has explained in detail the relevant issues in its Second Report submitted to the UNHRC earlier. But today, I wish to recapitulate a number of key points and briefly explain how the Government of the Hong Kong Special Administrative Region (SAR) will carry out follow-up work with reference to the latest development in individual aspects, in order to ensure our compliance with the provisions of the International Covenant on Civil and Political Rights (ICCPR).

In respect of the Independent Police Complaints Council (IPCC), the UNHRC is of the view that the IPCC has not the power to ensure proper and effective investigation of complaints against the police. Moreover, the UNHRC has remained concerned that investigations of police misconduct are still carried out by the police, which will undermine the credibility of the investigations.

In relation to these comments of the UNHRC, we would like to emphasize that the Complaints Against Police Office (CAPO) responsible for conducting

investigations of police misconduct is fully independent of other operation and support units of the police. It is subject to the close monitoring of the IPCC, which will review the cases of complaint handled by the CAPO. The IPCC is an independent non-disciplined-service body comprising non-official members from various sectors of the community. Its members include professionals, Members of the Legislative Council, The Ombudsman or his representative, and so on. The IPCC has a Secretariat manned by full-time staff to assist the IPCC in carrying out its work.

We have put in place effective check and balance measures to ensure that the complaints are dealt with in a thorough, fair and honest manner. The CAPO is required to prepare a detailed investigation report on each complaint for submission to the IPCC for its detailed scrutiny. If members of the IPCC have questions about any investigation, they can interview the complainant, the complainees or the witness. The IPCC can demand the CAPO to submit any document or information on the relevant complaint, and members of the IPCC can conduct surprise or scheduled visits to monitor the investigation of the CAPO. If the IPCC is not satisfied with the results of investigation, it can require the CAPO to explain anything in doubt, or it can investigate anew the case concerned. Moreover, the IPCC can submit a report to the Chief Executive on any complaint and put forward suitable recommendations. This shows that the IPCC is obviously sufficiently capable of ensuring proper and effective investigation.

We have even implemented many measures over the years to enhance the credibility and transparency of the existing system. Specifically, we have introduced the Observers Scheme under which retired IPCC members and community leaders are appointed as observers who will conduct scheduled or surprise visits to monitor the investigation work of the CAPO. The IPCC has also established a special panel to monitor investigations of serious complaints. The CAPO is required to submit a progress report on a monthly basis on the cases selected by the panel. The panel can also request the CAPO to clarify the relevant matters in the progress report before the latter draws a conclusion on its investigation.

To further improve the existing system, we are currently drafting a bill to make the IPCC a statutory body. We are consulting the views of the IPCC on the contents of the bill. We will, later on, consult the Legislative Council Panel on Security and formally table the bill to the Legislative Council as soon as possible.

In respect of the Interception of Communications Ordinance, we all know that the interception of communications is an indispensable tool of law enforcement. In early February this year, we already published the key points of the legislative proposal to regulate the interception of communications and covert surveillance operations by law-enforcement agencies. Three meetings were held with the Legislative Council Panel on Security and views were exchanged with other concerned parties and organizations on this issue. As I pointed out earlier, we will table the Interception of Communications and Surveillance Bill at the Legislative Council on the 8th of this month. Insofar as the interception of communications is concerned, our proposal is broadly in line with that of the Law Reform Commission in its Report on interception of communications in 1996 as well as that in the 1997 White Bill on the same issue. Besides, we have also included additional safeguards.

This package of proposals will provide a comprehensive structure for regulating interception of communications and covert surveillance operations by law-enforcement agencies. Reference has been made to the ICCPR and other relevant international conventions and laws, and a number of important safeguards are introduced, with a view to striking a balance between the need to protect individuals' privacy in communication and the need to protect public safety. Compared with the existing mechanism and even the mechanism previously discussed by the Legislative Council and the public, this package represents a great improvement.

In drafting these proposals, we have considered the views of the Legislative Council and various relevant organizations. We will fully co-operate with Members of the Legislative Council, in order to complete the scrutiny of this bill expeditiously. We hope that with the co-operation from various sides, the bill can be enacted in this legislative year, so that law-enforcement agencies can effectively perform their duties to protect public safety and maintain law and order.

With regard to the Interception of Communications Ordinance, the procedures and criteria as set out in the Ordinance may, in many cases, preclude law-enforcement agencies from operating effectively, and the Ordinance does not provide such safeguards as an independent monitoring body. Moreover, the application of the Interception of Communications Ordinance does not cover covert surveillance, which is a very important tool in law enforcement. Given the many drawbacks of the Ordinance, we consider that the current legislative

proposal far more superior. We hope that Members can focus their discussion on the bill to be introduced by us, in order to provide a solid legal basis for law-enforcement agencies to better protect people's privacy in communication while continuously providing effective protection to the public.

In respect of the public's right to peaceful assembly, the law requires members of the public to be reasonably accommodating and understanding in using public places. In *LEUNG Kwok-hung and Others v HKSAR*, the Court of Final Appeal pointed out that the right to peaceful assembly also means that the Government has the explicit responsibility to take reasonable and suitable measures to ensure that an assembly held in accordance with law can be conducted peacefully. The Court of Final Appeal also accepted that the notification system is necessary and constitutional. The Court of Final Appeal judged that the offence committed by the appellants of failing to notify the Commissioner of Police in accordance with law before the public procession took place and ignoring the warning issued by the police is substantiated. As for the opinions expressed by the Court in the judgement in relation to other relevant issues, our law-enforcement officers have also made full reference to these opinions in executing their daily duties.

It has always been the Government's policy intention to maintain a proper balance between the protection of individuals' freedom of speech and right to peaceful assembly and the protection of the overall interest of the community. In fact, demonstrations and processions have become part of the life of Hong Kong people. Between July 1997 and January 2006, a total of 18 628 public assemblies and processions were held in Hong Kong; the police objected or prohibited only 21 of these assemblies or processions, nine of which could be held ultimately after revising the route, the place or scale of the activity.

Madam President, I must stress that Chapter III of the Basic Law is the constitutional basis for the protection of the fundamental rights and freedoms of Hong Kong people. Article 27 of the Basic Law specifically provides that Hong Kong residents shall have freedom of speech, expression, and so on. The Hong Kong Bill of Rights Ordinance has even codified the provisions of the ICCPR applicable to Hong Kong to form a statutory basis.

The SAR Government fully appreciates that these freedoms and rights are indispensable elements of our society nowadays. We will implement policies

strictly in compliance with the law to protect the human rights and freedoms of Hong Kong residents. I believe the achievements made by us in the past are there for all to see.

Madam President, the SAR Government attaches great importance to the observations of the UNHRC. We will certainly take actions to implement its future recommendations if they are practicable and in line with the overall interest in society. We entirely understand the intention of Ms Emily LAU's motion, but we do not consider it prudent to mention in it recommendations that the UNHRC may make in the future.

I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Tommy CHEUNG to Ms Emily LAU's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr SIN Chung-kai rose to claim a division.

PRESIDENT (in Cantonese): Mr SIN Chung-kai has risen to claim a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the amendment.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr LI Kwok-ying, Mr MA Lik and Mr CHEUNG Hok-ming voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG 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, 24 were present, 16 were in favour of the amendment, seven against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, eight were in favour of the amendment and 18 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

PRESIDENT (in Cantonese): Ms Emily LAU, you may now reply and you have one minute 25 seconds.

MS EMILY LAU (in Cantonese): President, I would like to thank the 18 Honourable colleagues for having spoken on this motion. However, among those who have spoken, 16 are from the pan-democracy camp, all of them are from the opposition camp. I really feel apologetic for having moved a motion that makes all other royalist Members speechless, apart from having only one representative from each of the Liberal Party and the DAB to make a speech. So all the other Members from these two parties are unwilling to indicate their stances regarding the need of Hong Kong to honour its obligations under the human rights covenants. However, what they have done is already an expression of their stance. I shall convey this voting result and this message to the United Nations, so as to enable it to realize what this Council is really like.

All the three Bureau Directors said that only those recommendations that are practical and suitable would be implemented. I do not know which provisions of the ICCPR stipulate that implementation may be selective. If you say that it will take some time before they can be implemented, we would still find it understandable. But if you say that they are not feasible, so there is no need for discussion, and Secretary Dr Patrick HO even said he does not know whether the United Nations Human Rights Committee have any knowledge of the issues at stake, and they are at such a long distance away from us, and does not know what they are doing. If so, why should more than 10 officials fly all the way there and make a presentation to a group of people who are not versed in the issues? That would be a waste of taxpayers' money. Sometimes, I really find that very incomprehensible.

With these remarks, I hope Members can support the motion.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Emily LAU 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)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr LI Kwok-ying, Mr MA Lik and Mr CHEUNG Hok-ming voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, eight were in favour of the motion and 16 against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 18 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Second motion. Development Planning for Lantau.

DEVELOPMENT PLANNING FOR LANTAU

MR CHEUNG HOK-MING (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed. The principle of the Government in drawing up the Concept Plan for Lantau in 2004 is to achieve the goal of sustainable development through balancing economic, social and environmental needs. However, in Hong Kong society nowadays, one can easily get blamed for whatever one does, with "sustainable development" often turning into "refusal to carry out development". As a result, the important task of developing Lantau is completely entrusted to the Concept Plan for Lantau, thereby bringing other improvement works to almost a complete halt. In the end, we suffer the disadvantages before we can get the benefits. Let me cite a simple example. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has been urging the Government to improve land transport on Lantau by building an additional coastal highway linking Tung Chung and Tai O. Yet, the Government has paid no attention at all to the proposal. Because of a rainstorm more than six months ago, the Tung Chung Road, the only link between North Lantau and South Lantau was jammed for more than 40 hours,

trapping more than 200 people at Po Lin Monastery. Not only was the normal life of the residents in the area disrupted, business operators were seriously hit as well. Fortunately, there were no tragedies involving casualty. While a holistic development concept is a good idea, I do not hope to see Lantau being developed in a "bundled up" manner because of the consultation document with no progress made. We request the Government to, besides carrying out nature conservation and preservation of historical and cultural heritage, expedite development in three directions. First, develop Lantau into a quality tourism area; second, capitalize on the infrastructural facilities on Lantau to develop new economic activities; and third, complete, as soon as possible, the feasibility study on the construction of a logistics park on Lantau.

The first proposal is to develop Lantau into a quality tourism area. President, when I was a student, travel did not necessarily mean an overseas trip by air or by sea. Lantau was already a nice destination. Covering approximately 140 sq m, Lantau is the largest island in the territory, with more than two thirds of it being the countryside. In my memory, the mangrove in Tai O and dragonflies in Shek Pik Reservoir represented the most primitive and natural face of the island. The customs and traditions preserved by the indigenous residents of Tai O were even more unforgettable.

To date, Tai O has still kept some of its old customs and culture. Its folk songs are one form of its unique folk music. In the old days, most fishermen were not educated and illiterate. Therefore, they relied on singing to memorize everything. With the departure of the old generation, preservation of the folk songs has become increasingly difficult, with some of them already forgotten. We request the Government to help rescue the precious culture to prevent it from disappearing with the passage of time.

Besides the folk songs, a kind of people's wisdom, Tai O even enjoys the reputation of being the Venice of the Orient. The fishing settlement in Tai O dates back to hundreds of years ago. Their stilt houses are characteristic of Tai O as a traditional fishing village. Earlier, Hong Kong was publicized by the former Hong Kong Tourist Association as a fishing village. However, the new generation of Hong Kong people can only get a faint glimpse of such Hong Kong tradition from textbooks. Instead of letting Hong Kong history covered in dust in museums, why do we not preserve it in its original form for public viewing? The Study on Revitalization of Tai O conducted by the Government was completed as early as 2002, but no new progress has since been made. We

propose that the Hong Kong Tourism Board expedite the improvement of Tai O's existing facilities, promote the place as a heritage fishing village while linking it with famous scenic spots, such as the Great Buddha Statue, to complement the imminent commissioning of Tung Chung cable cars to map out a tourism route combining history and culture.

One of the favourites things for my son, also as a student, to do when he visits Lantau is to check into a bungalow with his classmates and enjoy the beautiful scenery of the natural beaches. There are many resort areas in South Lantau. Moreover, there are lots of shops and a wide range of facilities. However, the resort facilities there are quite scattered and traffic is very inconvenient. The Government may study ways to improve the existing resort facilities to, for instance, give Mui Wo a facelift, turn Silvermine Bay into a gourmet and water sports centre, and redevelop the existing Mui Wo Rural Committee Road into "Mui Wo Street" with local characteristics. At the same time, the facilities near the Mui Wo ferry pier must be improved and the existing village cycling track further extended. All these measures are designed to integrate Lantau's unique rural and natural characteristics to turn the island into a leisure tourism district.

For my daughter, the greatest attraction of Lantau is Hong Kong Disneyland, which opened last year. However, the theme park is very small. The chaos occurred there during the Chinese New Year aptly reflect the need for expediting the expansion works. Otherwise, the appeal of Hong Kong Disneyland will diminish with the commissioning of a new Disneyland in Shanghai.

In my eyes, President, Lantau is the treasure of Hong Kong. To carve it into a precious piece of jade so that it can become a quality tourism area, the Government, the tourism sector and the residents there must join their efforts before such a rosy picture can be painted.

The second development direction is to capitalize on Lantau's infrastructural facilities to develop new economic activities. In martial arts novels, it is very easy for one having a strong internal force to achieve a high level of martial arts accomplishments. With its excellent transport networks, Lantau can be compared to a martial arts talent. The question remains how its enormous potential can be developed to the fullest.

Hong Kong International Airport, located at Chek Lap Kok, Lantau, is connected with all parts of the territory with transport networks. In addition, the landing point of the Hong Kong-Zhuhai-Macao Bridge (HZMB) is situated on Lantau. In other words, Lantau is a direct link between Hong Kong and the Pearl River Delta (PRD), thereby greatly strengthening the economic and social ties between Hong Kong, Macao and Zhuhai. The wide range of infrastructural support facilities mentioned above has not only consolidated the status of Hong Kong as a shipping and aviation centre, but also promoted the development of logistics, tourism and financial services in Hong Kong.

The HZMB, for instance, is a strategic, cross-boundary land passage linking Hong Kong and Zhuhai. Upon the completion of the HZMB, a car trip from Hong Kong to Zhuhai can be shortened by more than three hours to less than half an hour. As estimated by some experts, the connection of Hong Kong with Zhuhai by the land passage can boost Hong Kong's freight traffic by 30% and the exports from Western PRD by US\$40 billion per annum. In the days to come, the exports value of Western PRD will be comparable to that of Eastern PRD. This will vigorously promote the development of Western PRD, and facilitate the industrial integration of Hong Kong and Macao economies with Western PRD.

While tourism will definitely benefit direct from easy transport access, we should also examine how best to enhance the economic revitalization ability of Lantau in the course of planning for Lantau to ensure long-term economic prosperity. Having regard to the future completion of the HZMB, the DAB has put forward a "ridgehead economy" concept whereby land will be zoned at the landing point of the HZMB for the development of motels and entertainment businesses by the operator of the HZMB in future. The relevant proceeds will then be used to subsidize the exorbitant costs of constructing the HZMB. This concept is similar to the development of superstructures by railway corporations to subsidize their railway operation. It is hoped that the toll for crossing the HZMB can thus be brought down substantially. Meanwhile, the proposal can also create employment opportunities for Lantau residents. My colleague, Mr LI Kwok-ying, will explain the proposal in detail later.

Third, the feasibility study on the construction of a logistics park on Lantau should be completed as soon as possible. The former Chief Executive announced in the 2003 policy address his plan to develop North Lantau into a modernized logistics park to consolidate Hong Kong's status as Asia's regional

transport and logistics hub to ensure free flow of cargo between Guangdong and Hong Kong and lower the operating costs of the logistics industry.

This is definitely good news for the logistics sector. As pointed out by the Chartered Institute of Logistics and Transport in Hong Kong, the local logistics industry has to move towards high added-value and develop the territory into a global supply base. The Hong Kong Government proposed, in the past, a number of initiatives in relation to the development of the logistics industry. They include carrying out development planning for Hong Kong ports, developing logistics pipelines and inland freight villages in collaboration with the Mainland, developing a value-added logistics park on Lantau, constructing a new container terminal, and so on. However, these bold visions appear to have progressed too slowly. In the opinion of the DAB, in order to develop the logistics industry, the Government must formulate a comprehensive set of development policies, define clearly the primary and secondary priorities of various projects and how the projects can complement each other operationally and achieve co-ordination. Our ultimate goal is to enhance the smoothness and efficiency of Hong Kong's logistics.

It is proposed that the conceived Lantau logistics park be built on reclaimed land near the Siu Ho Wan Mass Transit Railway Corporation Depot. The location has strategic advantages because of its proximity to the airport, Kwai Chung Container Terminal and HZMB. According to estimates, the logistics industry accounts for more than 5% of the Gross Domestic Product and provides some 200 000 openings for the local working population.

The Lantau logistics park project mentioned by me earlier involves reclamation and this is the most contentious issue at present. According to a report by the United Nations Committee on Environment and Development, "sustainable development" is defined as a development model that could meet the needs of the present generation without weakening its ability to similarly satisfying those of the future ones. Will the present proposal of constructing a logistics park on Lantau weaken the ability of the future ones? Therefore, we request the Government to expeditiously submit information on the logistics park and its siting study for public consideration and decision so as to prevent new disputes from arising in the community.

With its extremely high versatility, Lantau can be described as Hong Kong's paradise. We certainly cannot destroy it. The DAB has been

sponsored by the Hong Kong Construction Association to undertake a study on the long-term planning of Lantau. The study report is expected to be completed in July this year. We hope the Government will not slow down in the interim to prevent Lantau residents from waiting again and again.

With these remarks, President, I beg to move. Thank you, President.

Mr CHEUNG Hok-ming moved the following motion: (Translation)

"That, given the slow progress of work since the Government drew up the Concept Plan for Lantau in 2004, this Council urges the Government to expedite the planning study on Lantau and, provided that nature conservation and preservation of historical and cultural heritage are taken into consideration, to expeditiously put the following development directions into effect:

- (a) developing in the area theme tour routes which have historical and cultural value and ecological characteristics and which complement existing recreational facilities, so as to develop Lantau into a quality tourism area;
- (b) in line with the construction of the Hong Kong-Zhuhai-Macao Bridge and other infrastructural facilities, creating favourable conditions for developing new economic activities in the area; and
- (c) completing, as soon as possible, the feasibility study on the construction of a logistics park on Lantau."

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

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, Dr KWOK Ka-ki and Mr LEE Wing-tat will move amendments to this motion respectively. The motion and the three amendments will now be debated together in a joint debate.

I will call upon Mr LEUNG Yiu-chung to speak first, to be followed by Dr KWOK Ka-ki and Mr LEE Wing-tat; but no amendments are to be moved at this stage.

MR LEUNG YIU-CHUNG (in Cantonese): President, Lantau is the largest island in the territory, with more than half of it being country parks or the countryside. A great variety of species unique to Hong Kong, such as Romer's tree frogs, white-bellied sea eagles, Chinese White Dolphins, mangrove, protected pitcher-plants, and so on, can be found there. Therefore, Lantau has always been known as the backyard of Hong Kong. What is more, Lantau is a historical and cultural treasure box — the relics unearthed there date back even to the New Stone Age. This proves that the earliest settlement of Hong Kong's indigenous residents could be found on Lantau. Furthermore, Tai O, Hong Kong's fishing village, is a renowned tourism destination.

Meanwhile, the completion of Tsing Ma Bridge and the new airport has greatly facilitated access to and from Lantau. As a result, a lot of virgin lands now offer great potentials for development.

President, we in the Hong Kong Neighbourhood & Workers Service Centre have always greatly supported development projects that will bring enormous livelihood and economic benefits, provided that the economic value and local community culture of Lantau will not be compromised. However, this does not mean that we will agree that all mammoth projects on promoting Hong Kong economy, such as the logistics park, Hong Kong's transport hub, Container Terminal No. 10, a new theme park, resort areas, golf courses, race car courses, and so on, be concentrated on Lantau, for not only our backyard will thus be destroyed, a profound impact will also be produced. Furthermore, we can see that, subsequent to the publication of the consultation document on the Concept Plan for Lantau, it is essential to develop tourism spots compatible with the local community culture as well as giving full play to the recreational development potentials of country parks. In general, despite great public approval of and support for these two proposals, the community is actually divided on other parts of the Concept Plan, including its overall development concept and direction, economic and infrastructural facilities, tourism development projects, the mode of development of integrating conservation needs advocated by the Government, the expansion of Lantau country parks and the marine park in the north, and so on. Moreover, the community still has not yet reached a consensus and established a united position.

The public consultation launched for the Concept Plan for Lantau has been criticized by various sectors for a lack of in-depth discussions throughout the whole process. Moreover, it is very often difficult for the public to participate in the discussion, thus giving an impression that the Concept Plan seems to have been finalized in many aspects. It goes without saying that a consultation after a final decision has been made is, like the usual practice, simply a sham consultation.

President, why did I say that? If Members have paid attention to the siting of the Hong Kong-Zhuhai-Macao Bridge and logistics park, they will notice that the Government has already made its decision. It was merely consulting the public in a window-dressing and routine manner. Given that the final decision has already been made, what was there to discuss? There was simply no room for discussion. Some green groups have even pointed out that the recommendations made in the Concept Plan are self-contradictory. In our opinion, it is really not opportune for the Government to speed up planning and study according to the Concept Plan.

This is why I propose an amendment today to delete the related wordings proposed by Mr CHEUNG Hok-ming and call on the authorities to, given Lantau's unique conservation significance, conduct stringent and proper environmental impact assessments and respect the views of the affected residents in the course of developing Lantau. We know that many people have chosen to live on the island simply because of its intense tranquillity and beautiful environment, and more opportunities of contact with nature. This is why they prefer living on Lantau, even at the expense of spending more money and time. They will definitely be very disappointed if their views are not taken seriously. Moreover, they will feel that they have been victimized by the development.

The rest of my amendment targets mainly the current environmental and community problems confronting Tung Chung and Lantau. President, according to the Observatory's record, the number of days with visibility of 8 miles or below, as recorded at the Chek Lap Kok Airport, accounted for 57%, or nearly 60%, of the whole of last year. The air quality index recorded at Tung Chung last September even reached 173, a historical new height. According to the five-grading Pearl River Delta Regional Air Quality Index introduced last year, Tung Chung was classified as grade 3. This reflects the extreme seriousness of the air pollution problem in the district.

For this reason, I urge the Government to, in considering the development of Tung Chung, restrict the number of high-rise buildings in the district to prevent a barrier effect from being created as a result of too many high-rise buildings, thereby aggravating the air pollution problem. If Members have visited Tung Chung, they will see rows and rows of buildings there. This is extremely worrying because air circulation is thus impeded. Members should be aware that many people chose to relocate to Tung Chung because they thought that air was fresher there. However, the present situation is just the opposite. This is very pitiable indeed. Therefore, if Tung Chung is to be developed, I hope the Government can pay more attention to this problem to examine how improvement can be made in air quality.

Furthermore, the waters north of Lantau actually define the boundary of the territory's most precious marine park, where our Chinese White Dolphins frequent. The waters there are also fishing grounds. Should reclamation be allowed to go on, we will be extremely worried, for reclamation will then be carried out in the waters for the third time. Reclamation was previously carried out twice for the construction of the airport and Disneyland. Should a third reclamation be launched in the future, the damage to the environment and ecology will be conceivable. The extent of the impact on the fishing industry will also be evident without further elaboration. Therefore, I strongly request the Government not to proceed with reclamation in nearby waters anymore, for the impact will be so profound that no remedy can be possible.

Actually, not only do I think reclamation should stop, a number of resident organizations and green groups have also expressed a strong concern during the consultation on the Concept Plan for Lantau that no more reclamation projects should be pursued on Lantau. I hope the Government can really pay more attention to this.

In addition to the environmental problem, Tung Chung New Town also faces a serious lack of community facilities. So far, a major hospital, not to mention specialties, has not been provided in Tung Chung for public use. Tung Chung residents have to travel very far for treatment. Though it does not really matter for people suffering from common ailment, it will be most terrible when emergency incidents occur. A journey to Princess Margaret Hospital in Kwai Chung will indeed be too time-consuming and too long. I am worried that the timing of patients receiving treatment will be delayed. During a meeting with

the Financial Secretary last year, I asked him this question: Why did the Government not bring the completion date of the hospital forward when the economy was performing well? We have now been told by Secretary Dr York CHOW that, having regard to the population growth of Lantau and the residents' demand for emergency medical services, he reckoned that the construction of the hospital on Lantau would not be commenced until 2008 or 2009 for completion in 2011 or 2012. Furthermore, the services will be provided in phases, not on a full scale at commissioning. This is very worrying indeed.

President, according to the information provided by the Census and Statistics Department, 24.3% of the population of the Islands District is aged below 18, which is higher than the average ratio of 19.1% of the entire territory. This reflects that the District has a large number of young people. Yet, it is a great pity that the community facilities in the District are grossly inadequate. Insofar as community facilities are concerned, there is no swimming pool nor a stadium. Therefore, I hope the Government can expeditiously implement its plan to provide better facilities for use by young people, or else community problems might arise.

I hope the Government can pay attention to the various aspects mentioned by us earlier and refrain from merely proposing "grand, big and hollow" proposals. President, I so submit.

DR KWOK KA-KI (in Cantonese): First of all, Madam President, I would like to thank Mr CHEUNG Hok-ming for proposing the motion to give us an opportunity to discuss the development of Lantau. As it is known to all, Lantau is very important to Hong Kong. It can be said to be Hong Kong's last remaining backyard where we can take a break. In particular, the New Territories has been developed to such an extent that not many leisure places remain. The significance of Lantau has thus become even more prominent.

Undeniably, Hong Kong is a developing or growing city. It was already decided during the British Hong Kong Government era that a new airport would be built on Lantau, to be followed by Disneyland. Today, when we visit Lantau, we will surely sense its rapid transformation. However, such transformation might bring irreversible changes to the ecology of Lantau and its overall planning. But this is not necessarily what the people would like to see.

The Concept Plan for Lantau was drawn up by the Government in 2004. During the consultation, however, the plan was found by the public to be very problematic. Let me start with a few words about the membership. The fact that all members are government officers, with no participation by people outside the Government or independent people, has actually made the Plan inherently inadequate. According to the Government's response, extensive consultation, including two forums, were held from November 2004 to February 2005. In addition, 170 000 people browsed the relevant website and 540 submissions were received. However, the final conclusion drawn by the Government has brought worries and disappointment to many of those who are concerned or care about Lantau.

I have proposed some amendments to Mr CHEUNG Hok-ming's motion. First, I hold a different view on "slow progress of work". The Government has often put consultation and public views in an insignificant position under the pretext of urgency. I do not wish the Government to take this opportunity to reject public views as it did previously — including the enactment of legislation on Article 23, constitutional reform, and so on — and deny the public opportunities to express their views under the pretext of urgency.

Like any other places in Hong Kong, Lantau belongs to the people. Therefore, the Government must obtain the people's consent before taking every step forward. I believe the Government has learned countless lessons from previous incidents such as the reclamation case. Members will notice that my amendment is different from Mr LEUNG Yiu-chung's. I have even added "in line with the principles of minimum reclamation", a move apparently not consistent with my view on reclamation in the Victoria Harbour. I have to tell the Government that I consider myself the kind of persons who "commend what is right and criticize what is wrong". The Government cannot continue to carry out reclamation in the Victoria Harbour because the latter is protected by the law. However, Lantau is not yet put under legislative protection. Notwithstanding this, there is absolutely no reason for unnecessary reclamation to be carried out on Lantau. This is why "in line with the principles of minimum reclamation" is stated clearly in my amendment. Of course, I will also support Mr LEUNG Yiu-chung's proposal of disallowing reclamation on Lantau.

I would also like to take this opportunity to say a few words on my proposed addition, "having regard to the needs of the local residents, the size of population and the characteristics of the local community". In carrying out

planning in the past, the Government always adopted a short-sighted attitude by treating these people who were willing to live in new towns as guinea pigs by moving them to new towns without providing community facilities until the actual needs arose because of population growth. The gradual relocation of people to Tung Chung New Town actually began in 1997. Now, after nine years, Lantau has a population of 88 000. Although the Government no longer insists that a hospital will not be built until the population reaches 200 000 and a swimming pool and indoor games hall will not be built unless the population exceeds 270 000, I still find it very disappointing that, according to the Government's present development pace, a site will not be identified until 2009 and a regional hospital will not be available for Tung Chung residents until 2012.

As it is known to all, people very often choose to move to Tung Chung because they cannot afford to live in the urban areas. Surveys have shown that 40% of the people living in Tung Chung are Comprehensive Social Security Assistance recipients, and 50% of the young people in the district are aged below 24. Given the present situation in the district, there is a serious lack of gathering places (such as swimming pools, games halls, libraries) for the young people there, thus making it impossible for them to lead a normal social life. Members should also be aware of the exorbitant expenses for travelling from Tung Chung to urban areas. Furthermore, employment opportunities in Tung Chung are at present inadequate. This is why the Government must do Tung Chung residents justice in dealing with the development of Lantau. Planning should be commenced immediately on the construction of essential facilities, including the hospital, multi-purpose games hall, library and swimming pool mentioned by me earlier. The residents are entitled to all these facilities.

The Government should also alter its previous way of handling new town residents by moving them to a new district and wait until the district has become prosperous before providing the required facilities. In short, this approach must be changed radically.

Second, I would like to look at the overall development. In my personal opinion, the conservation carried out by the Government on Lantau is not at all comprehensive. The Government proposed for the first time to convert North Lantau into a country park in its 1999 policy address — paragraph 134 of the policy address reads: In 2001, we will also substantially extend managed country park areas on Lantau Island. It is now 2006 and yet a concrete plan for the North Lantau country park is still nowhere in sight. We only know that the

peripheral area of the proposed country park, that is, San Shek Wan, has been chosen as the landing point of the Hong Kong-Zhuhai-Macao Bridge (HZMB). We find this very puzzling.

If the Government really attaches great importance to the 1999 policy address and strive to implement its proposal by 2001, why did it allow using San Shek Wan as the landing point of the HZMB without conducting environmental impact assessments. In contrast, the planning work of the logistics park proposed in the 2003 policy address has proceeded very quickly. As Members may be aware, the Government has its own planning — the economy and market, including property development, are always regarded as the key priorities. Even though such proposals as "future sustainable development, country park development and preservation of Lantau's ecology" may sound very appealing, their priorities are actually extremely low when it comes to actual implementation.

In this connection, I have in my amendment requested the Government to perfect and enhance the country parks on Lantau. I also attach great importance to the future development of the country parks for the use by the whole community as a tourism area, not for the development of facilities for the exclusive use by a minority of people or to be introduced by the Government, as recommended in the plan, such as the construction on Little Green Island of a golf course, some high-end hotels, spa facilities, and so on.

The Government should conduct a stringent environmental impact assessment on the HZMB and the problems thus arisen. Before the completion of the assessment and an extensive consultation, the Government must not hastily commence its construction works, particularly the works related to the logistics park and the future usage of the Container Terminal No. 10 (for 200 hectares of land will have to be reclaimed).

In the final analysis, I have in my amendment merely requested the Government to put its people-oriented policy into concrete implementation by putting Lantau residents in the number one position, giving the Hong Kong people the backyard they need, and attaching the greatest importance to tourism areas with ecological value, instead of being influenced by its guiding philosophy of putting economic development and money in the number one position. I hope Members will support the amendment.

I so submit. Thank you, Madam President.

MR LEE WING-TAT (in Cantonese): President, regarding the issues being discussed in today's debate, namely, the development of Lantau and the conservation of the environment, I feel they do present a great challenge to the Government. We all know that the debate on the balance between the development of Lantau and nature conservation has been continuing for many years. I believe both Secretary Michael SUEN and Secretary Dr Sarah LIAO have received many different opinions in this regard. To the Government, I think it is a very major challenge. To the Democratic Party, of course we would not adopt a concept of zero development in handling the issue of Lantau, nor would we accept the option of developing Lantau haphazardly without any proper direction or planning because Lantau is one of the last two vast pieces of land used as country parks with very little human habitation. Just now Dr KWOK Ka-ki said it was the last piece of vast land, but actually Sai Kung is also a very good place. We all know that, once development has ushered in the construction of buildings, the trend cannot be reversed. Therefore, I hope Secretary Michael SUEN would realize that, regarding many different constructions and approaches mentioned in the present planning consultation, the Democratic Party may not oppose them, but we hope the Government can exercise great prudence in implementing them.

With regard to the issues of the Logistics Park and the Hong Kong-Zhuhai-Macao Bridge, from our own perspective, their developments have been quicker than expected. As some Honourable colleagues have said, since the Government has already adopted a preliminary viewpoint, the pace of development can be speeded up. I have even heard some green groups say that the concept of a logistics park actually did not exist in 1998, and it suddenly emerged roughly between 1999 and 2001, and its planning and implementation have become very speedy since then. I hope the Secretary can see that as it is one of our significant pieces of land in our country park or our backyard, we must do all that is required in terms of consultation or related environmental impact assessments, no matter what kind of transportation needs we have or whether there is a need to develop a Logistics Park after the assessments are done.

Many of my friends who advocate development often complain to me, asking why we should do so much just for tens or hundreds of dolphins. Yesterday, I watched a television programme on ATV's World Channel, in which a famous film actress (I have forgotten her name) was said to have produced a documentary. It was about two giant bears which had been raised

by two persons for over a decade or nearly two decades. But prior to that, these two bears had been abandoned when they were very small. This documentary cited some figures which surprised me a lot. It was disclosed that there had been some 100 000 bears in North America 100 years ago. It is beyond my imagination that there had once been so many bears in North America. But there are only 1 000 bears left now — only 1% is left. In other words, in a short span of 100 years, we have eliminated 99% of the bears in North America. That is, our two generations of people have destroyed what our ancestors have left us.

I have quoted these examples just to illustrate that we should not be too short-sighted in considering certain issues in life. Regarding development, we can proceed with it if it is necessary, but only with caution. In particular, we must bear in mind the sustainable development of ecology as well as the preservation of bio-diversity. Once these are gone, they cannot be brought back anymore. Even for many artificial things, such as the clone sheep, it can never take the place of the real ones. Therefore, the Secretary must pay attention to this.

My amendment mentions the issue of South Lantau; this is particularly important. I know many of our friends think that South Lantau, that is, those places that are in the south of the Lantau Country Park such as Mui Wo, Pui O, Cheung Sha and even the Fan Lau Trail, which I liked very much when I was small, deserves preservation. Although, in general, the developments at these places are only some very low-density projects, certain people owning land there may not like the idea. However, frankly speaking, if these places are open to development, I believe we shall not be able to keep these two remaining backyards of Hong Kong. I mention my concern for South Lantau in my amendment because I wish to present the explicit opinions and demands of the Democratic Party in the implementation and planning of the conservation areas and we hope the Government can implement our suggestions.

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

Of course, there are a lot of cultural relics and sites on Lantau that should be preserved and there are many places on the island that deserve our efforts to protect them. For example, we have the fishing village at Tai O, the wetland,

small rivers and streams in Mui Wo. Even if we do not launch development projects at these places, the Government still has to do a lot of work there. I hope the Bureau can pay attention to this point when it co-ordinates with other departments. Very often, some unruly elements may do something for the sake of convenience. We have all heard of the incident that took place two years ago. Some people filled up the Tung Chung River. It has taken a long process to restore it; and after the river has been restored, can the original living creatures re-emerge in it? Can bio-diversity be preserved? Now, it will take time to prove these. Therefore, I hope the Government can do all the so-called conservation or law-enforcement measures in such aspects.

Deputy President, I have strong sentiments for South Lantau because I like hiking very much, though I have had less time to go hiking during the past few years. I have gone on hiking trips to Fan Lau, Kau Ling Chung, Nam Shan, Lantau Peak, and so on. However, as I am heavily engaged in all kinds of businesses, so I have had much less chance to go hiking now. But I still find such places very beautiful, though the serious pollution has already affected Fan Lau, from which one cannot see too far and wide. However, it is still a relaxing journey for one to walk from Kau Ling Chung to Tai O and Yi O. I mentioned this because very often when we talk about making a trip to Lantau, actually we may not necessarily talk about going to the Big Buddha or taking a ride on the cable car. Very often I would meet some friends who tell me that they like Hong Kong very much because it is a place where one can start a hike just by taking a 30-minute bus ride from the urban area. This is one of the things they treasure so much.

I hope the Government can make some extra efforts in promoting eco-tourism. I know that the Hong Kong Tourism Board and the relevant departments have done a lot of work in promoting eco-tourism in Sai Kung and have been quite successful. Many Japanese and Korean travellers have come all the way to Hong Kong to go hiking here. In fact, Lantau is also a very good option. You can take a ferry ride from Central to Lantau. After arriving at Nan Shan, you can walk up to the Lantau Peak, then you will find yourself in a very cozy and pleasant place. This should really be recommended. Therefore, I hope that when the Government thinks about tourism, it will not limit itself to the Big Buddha or the cable car. Actually, by making use of natural resources, we can still come a long way.

Deputy President, with regard to places in North Lantau, I also agree with what some Honourable colleagues have said, that is, there have been a lot of changes and fluctuations in the Government's present planning and development work. In the past, the Government did not do too well in the planning of Kwun Tong and Tsuen Wan, but it has done quite well in the planning of Sha Tin and Tai Po. But when it comes to Tseung Kwan O — Secretary, I am really sorry, he is smiling now — Tseung Kwan O is a planning disaster. I have visited the district on many occasions, but each time I would want to leave it as soon as possible because all you can see in the district is nothing but the concrete walls — I am sorry, Mr Fred LI is also living there — I really do not want to visit him. The density of the district is very high, why? The Secretary knows that too; it is all because of the Letter B's. Before 1997, since the problem could not be solved, so all the developments are crammed together at Tseung Kwan O, which has become the worst community among all the newly developed districts. May I ask the Government not to repeat the Tseung Kwan O saga in the development of Tung Chung and North Lantau, and I hope the Government can carry out developments with a more suitable density.

Besides, earlier on, some Honourable colleagues have mentioned that the facilities of the district are very poor and the construction of the hospital still has not been completed. Today I have met with a group of residents and learned that there is no large-scale library in the district, nor is there any swimming pool. I hope the Government can step up its efforts on these issues. When we are relatively better off now, we should be able to speed up the provision of such facilities. Besides, some of these projects are just small ones, each of which may just cost several million dollars. It should be within the terms of reference of the Secretary if he really wishes to speed them up. But for the ordinary people, they would definitely find it a blessing if they can have access to one more park, one more leisure ground and one more jogging track. They would definitely feel thankful towards the Government.

Thank you, Deputy President.

MR TAM YIU-CHUNG (in Cantonese): Deputy President, by moving today's motion debate, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) is hoping that, apart from focusing on the development of Lantau, the Government and the general public can give some thoughts to questions like how Hong Kong should position itself, what should Hong Kong's new path of

economic development be, and where lies our new hope. Lantau has all along been identified by the Government as a prospective site for building a logistics park and a new container terminal. In other words, if Hong Kong intends to further develop the logistics industry, Lantau is the hot spot. Yet, year after year, it has just been "all smoke, no fire". Why? It is because Hong Kong has failed to identify a proper economic positioning for itself. The Government always stresses that the logistics industry is one of the pillar industries in our economic development, whereas, in reality, our competitive edge in this area has been on the wane. According to government statistics, in the first three quarters of 2005, our cumulative container throughput recorded only a slight increase of 2%, as compared to the corresponding period in 2004. On the other hand, the ports in both Shanghai and Shenzhen recorded a double-digit growth. Meanwhile, the container throughput of Singapore had even surpassed that of Hong Kong to regain the position as the port with the highest throughput. In terms of the capacity of the container terminals, Hong Kong has lagged behind these three cities. At a time when our neighbouring areas are rapidly developing and expanding their port facilities, Hong Kong has kept its arms folded. The construction of the new container terminal appears to have no commencement date in sight, whereas the logistics park and the Hong Kong-Zhuhai-Macao Bridge projects have not started yet. Since the Government has failed to identify a proper economic positioning for Hong Kong, coupled with a lack of competitive awareness, Hong Kong's container terminal operators have now devoted more efforts in building terminals in neighbouring cities. This being the case, how can Hong Kong maintain its leading position? Now this is no longer just an issue about the development of Lantau, it is an issue that has a direct bearing on the employment of hundreds of thousand of Hong Kong people.

Secondly, with regard to the development of the tourism industry in Lantau, though new tourist hot spots are now in place with the opening of the Disneyland theme park and the near completion of the Tung Chung cable cars, these major development projects have failed to bring about realignment and further development of other tourist locations in the vicinity, due to the lack of overall planning. Tai O is a well preserved fishing village in Hong Kong, yet no development plan has been devised in this regard. No support facilities, from as minor ones as tourist information signs, to major ones such as a decent pier, are in place. Mui Wo, which is located at the south-eastern part of Lantau, is facing similar problems too. In a bid to revive the local tourism industry, the

Rural Committee and local resident groups of Mui Wo have submitted a series of development proposals to the Government, including beach improvement projects, provision of water sports centres, and tours to the Silvermine Cave, and so on. They took the initiatives to contact various relevant government departments, only to get cold-shouldered by the Government, which keeps dragging on, to the effect that a tourist spot with great local characteristics has become totally desolate. Recently, the Government approved a fare increase for the ferry company, which will lead to a decrease in the number of visitors from other districts. This has made angry local residents plunge into the sea in protest of the move. But is the Government aware of that at all?

Promoting tourism in Lantau can directly assist the local economy and create more employment opportunities for the local residents. Job opportunities are rare in outlying islands in the first place. If the grass-roots people have to travel a long way to work in the urban areas, the high transport costs involved may make it totally unworthy for them to do so. Therefore, the only way to increase job opportunities and promote the local economy is to develop tourism. In this regard, the Government should make tourism a key development for Lantau. This would achieve the double benefits of enhancing the attraction of Hong Kong to tourists, as well as boosting the local economy of Lantau.

Thirdly, due consideration must be given to overall planning at the community level in Lantau's development. According to the planning blueprint for the development of Lantau, the Government estimates that the total population of Lantau will increase from 88 000 to 267 000. In the past, the focus of the planning and development of new towns was placed on the hardware facilities only, but the corresponding support facilities for local communities were unavailable. As a result, the new towns suffered from a severe shortage of cultural and leisure facilities, local support network, medical support and facilities, and so on. In the '90s, Tuen Mun experienced serious youth problems and rampant family tragedies. These are the results of inadequate planning in the development of new towns. Yet, the Government has not learnt a lesson. The same mistakes are being repeated in the development of Tung Chung in Lantau.

The various infrastructure projects that will be implemented in Lantau will certainly have a direct bearing on the development of Tung Chung as well as the daily lives of the local residents. We advocate that a foundation should be built

in a timely manner for the further development of the economy of Hong Kong, and in the meantime, the Government should step up the provision of support facilities to the local communities in Lantau. The residents of Tung Chung have strongly demanded the early provision of an indoor sports complex, a library, a community hall, and additional leisure facilities. They hope to have a community hospital as well, so that the residents can receive adequate medical attention in a timely manner. These are basic necessities catering for the people's livelihood that must be given further consideration when the Government proceeds with the planning development of the district.

Lantau has multiple significant roles to play. It is the strategic base for the future economic development of Hong Kong, and it is also a treasure island for nature conservation as well as the preservation of historical and cultural heritage. Furthermore, it is the testing grounds for new town development and new modes of development. Therefore, if the Government can carry out proper development planning for Lantau, it will ensure the continued prosperity of Hong Kong, which is a very important task that cannot be overlooked.

I so submit.

MR LAU WONG-FAT (in Cantonese): Deputy President, Lantau is the backyard of Hong Kong with vast green areas and enormous land resources to be tapped. The Concept Plan for Lantau released by the Government mentions that the future development of Lantau shall be centred around two aspects, namely, logistics and tourism. Such developments shall tie in with four major projects, that is, the existing Hong Kong International Airport, the Hong Kong Disneyland, the soon-to-be-constructed Hong Kong-Zhuhai-Macao Bridge (HZMB) and the logistics park which is under active planning and preparation. All these development projects will be closely connected with the sustainable development of both Lantau and Hong Kong and will play a significant role in the economy of Hong Kong.

Recently, the Disneyland, which has commenced its operation in Lantau, has injected new elements into the tourist activities in Hong Kong. In addition, Lantau still has a large amount of land reserve that offers extremely good potential for developing green tourism, which is most suitable for complementing the theme attractions based on heritage, local character and

natural landscape. From these, we can see that Lantau does possess the right conditions for development into an excellent tourist area, while at the same time, it is suitable for fulfilling nature conservation needs.

In a meeting with Members of the Legislative Council on 3 February 2005, members of the Islands District Council said they hoped tourism could be promoted in Lantau through the Concept Plan for Lantau. They urged the Government to inject more resources into constructing the infrastructure and developing communication and road networks. Besides, when carrying out town planning, the Government should consider promoting eco-tourism and education; relax the restrictions on land use as well as those on coastal protection areas, so that more places with tourism potential can be opened up and developed into tourist spots, and be ready to cope more specifically with the development need of Lantau.

The Islands District Council also hopes that the Government can expedite the implementation of planned Rural Public Works projects, so as to boost tourism facilities, thereby promoting the development of the tourist industry in the outlying islands. Unfortunately, many Rural Public Works projects cannot be implemented because the Government has declined to resume land by paying compensations, and residents concerned are also unwilling to voluntarily surrender the land without compensation. On the other hand, the Government should separate the funding for Rural Public Works and Urban Minor Works projects, so as to facilitate the early implementation of the former projects.

The landing point of the HZMB has already been designated at San Shek Wan. The construction of the HZMB will strengthen the land transportation for both passengers and goods among the three places, and it will further promote the development of Hong Kong in such aspects as tourism, logistics, finance and commerce. It will also consolidate Hong Kong's status as the international shipping and aviation centre. At present, of the 25 subject-specific feasibility studies in preparation for the HZMB, only two projects, namely, the environmental impact assessment and financing arrangement, are still ongoing. From this, we can see that the construction of the HZMB is imminent. So, Hong Kong should carry out the necessary planning work expeditiously in order to complement the overall project of the HZMB, thereby facilitating the early establishment of a transport link between Hong Kong and the Pearl River Delta Region.

The logistics industry of Hong Kong has been facing very keen competition from its counterparts in the region. Among its competitors, the container terminals at Yantian port and Chiwan port in Shenzhen have been developing rapidly during recent years, and they have already dealt some heavy blows to the local logistics industry. The logistics industry of Hong Kong has always suffered from the lack of a central operating ground, resulting in scattered distribution of the operators in different parts of Hong Kong. This has hindered the development of the local logistics industry. In order to address the long-standing lack of land for constructing a distributing venue for the logistics industry, people of the industry think that it is necessary to build a logistics park in Lantau so as to enable the industry to maintain the existing advantages and acquire new business opportunities. For the economic development of Hong Kong, it has become imperative for the Government to complete the feasibility study expeditiously on the construction of a logistics park in Lantau.

Deputy President, there are extensive land resources in Lantau to be tapped. Lantau is like an excellent piece of raw jade, which will become a precious jewel after expert carving. It will contribute positively to enhancing the overall economy as well as the quality of life of the people.

With these remarks, I support the motion.

MR WONG KWOK-HING (in Cantonese): Deputy President, it has been two years since the Financial Secretary set up the Lantau Development Task Force (Task Force) in February 2004 to proceed with the planning for the future development of Lantau. During these two years, the most impressive work the Task Force has done must be the public consultation conducted on the planning for Lantau. Unfortunately, after the consultation was over, everything became quiet again. Regarding the Government's intention of developing Lantau, is it true that all that it has got is only the concept, but no concrete planning proposal at all? I still recall that when the Task Force was first established, Financial Secretary Henry TANG said, "The Lantau Island possesses extremely strong development potential as well as nature conservation and recreational values. I hope we can join hands with the people in formulating a set of planning statements in the hope of proper balancing economic development, nature conservation in the districts and the preservation of cultural heritage." I am

glad that a motion can be moved today in this Council to give Honourable colleagues a platform to discuss this subject. More importantly, we can make use of our collective wisdom in the process, and I hope the Government can take such non-government wisdom into consideration, so as to allow the people to have a chance to take part in the development and planning of the districts.

In the development of Lantau, the most significant issue is to ensure that there must be smooth and efficient road links. At the same time, the development must be implemented with regard to the special characteristics of individual districts, and the practical circumstances must be considered. Only in this way can we ensure that the planning is practical and feasible and compatible with the objective and actual needs. I would like to take this opportunity to discuss my suggestions with special reference to three places, namely, Tung Chung, Tai O and Mui Wo.

First of all, in Tung Chung, the Government has actively developed the new town of Tung Chung, resulting in the gradual increase in population. In the planning of matching community facilities for the new town of Tung Chung, it has fallen way behind the demands arising from the increase in the population. As a result, contradictions have gradually emerged. For example, with a population of 80 000, Tung Chung has an acute shortage of cultural and recreational facilities. There is no swimming pool, no stadium, no gymnasium and no large-scale leisure park. As for school places, among residents who have just moved into Tung Chung, they often face the problem of a shortage of school places in the district. Many students have to travel a long way to other districts for schooling. Some may even have to spend over an hour on travelling to schools in Tai O. Besides, there are 80 000 residents in Tung Chung now. With such a sizeable population, coupled with travellers and working staff in the new airport, it means that there are a lot of people moving around. However, there is no hospital taking care of them in the district. Although in answering my question, Secretary Dr York CHOW promised that the North Lantau Hospital would be constructed, I hope the Government can complete the construction of the hospital as soon as possible. In the meantime, the Government should review once again the integrated development of the entire Tung Chung and North Lantau. The Government should act in advance, instead of only taking remedial measures afterwards.

Besides, with regard to Tai O, some representatives of Tai O residents have staged a demonstration in some innovative and interesting forms outside the Legislative Council Building. They have staged the local wedding ceremony of Tai O; and they have sung some local folk songs. Through their performances, the local residents have fully demonstrated their aspiration for reconstructing the traditional village outlook after the recent outbreak of a major fire at the stilted houses of Tai O. They hope that the traditional Tai O stilted houses can be reconstructed and become premier tourist attractions in the promotion of Hong Kong's cultural tourism campaigns. They also hope that they can obtain substantial funding from the Government to finance tourism and economic development projects using Tai O's local cultural heritage as the main theme. In effect, the newly rebuilt stilted houses and the Rope-drawn Ferry Bridge, and so on, can be promoted as the major tourist attractions, which, in conjunction with the local traditional food such as the shrimp paste, will help develop and promote tourism in Tai O. With regard to shrimp paste, I would like to mention a historical anecdote that could have vanished into oblivion. There was a characteristic place selling shrimp paste where I found an inspection record. It so happened that it was an inspection record that shown that Mr Donald TSANG had once inspected that place in his capacity as a health inspector. If the authorities do not treasure and explore interesting anecdotes such as this one, they could have vanished altogether. If the Government really treasures such anecdotes, I believe they can attract visitors to come and examine such a record showing that Mr Donald TSANG had inspected such a shrimp paste workshop at the stilted houses when he was a health inspector. I think this is a special spot that can definitely be developed by the Government as a tourist attraction. However, if the Government really intends to develop the local cultural economy of Tai O, of course it must tackle the transportation problem by providing it with smooth and efficient road links.

Besides, let us discuss the situation of Mui Wo. Earlier on, I joined the representatives from the various districts of Lantau in a meeting with the Financial Secretary. We also put forward suggestions on the future development planning of Mui Wo. I still recall that, more than 10 years ago, Mui Wo was synonymous with Lantau Island. On every holiday, we could witness the hustle and bustle at the Mui Wo Pier and the bus terminal — some of them hurried to catch the bus to go to the beaches at Pui O, Cheung Sha, Tong Fuk to enjoy their holidays; some went camping and hiking in Lantau; some took the bus to Tai O to experience the life in a fishing village; and some just strolled

leisurely or went cycling at Mui Wo. It was so prosperous and full of life then. Unfortunately, nowadays, Mui Wo has declined miserably. The situation is really shocking. It is quiet and desolate even on holidays. As such, the Government must allocate resources to assist the development of Mui Wo. However, in order to assist the development of Mui Wo, I think it is most important to provide it with smooth and efficient road links. Earlier on, when some outlying islands residents and I were having a meeting with the Financial Secretary, we submitted to him a proposal compiled by Prof WONG Wah-sang of the University of Hong Kong. This is a good proposal and right now it is being held by me. This proposal advocates the concepts of nature conservation and eco-tourism as well as the revitalization of Mui Wo. For example, it is proposed to construct a seaside promenade along the Silver Mine Bay, the Main Street of Chung Hau Village, the Mui Wo Museum, bird-watching eco-tours and forest eco-tours, and so on. I think the Government should consider the advice of such an expert.

Finally, I hope that the Government can really treasure the historical culture and customs of the districts in the future planning for Lantau, and that it can learn from the experience of Macao

DEPUTY PRESIDENT (in Cantonese): Mr WONG Kwok-hing, your speaking time is up.

MR WONG KWOK-HING (in Cantonese):in reconstructing our "homes". Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, I feel that the focus of today's debate is not the facilities of Lantau because if we have to criticize the community facilities of Lantau, there would be many aspects that can be the subjects of criticism. I think today's discussion should be focused on the concepts and ideas, that is, whether the Concept Plan for Lantau proposed by the Government is good for Lantau and Hong Kong.

As we take a closer look at the planning proposal, the plan was actually drawn up under the leadership of the Financial Secretary. Although the plan is

said to be balancing development and conservation needs, obviously the guiding mindset of the overall concept is economic development. So development is the name of the game, and everything will start in this direction. Therefore, if we support this concept, there will be a great danger, that in effect we are supporting development more than conservation. Of course, the Secretary will definitely deny this later on. He will surely say that the Government has made it clear that it intends to strike a balance. But the situation is very obvious. Lantau is already a very nice place by itself, but now the Government would like to build a logistics park, a golf course, and so on — in fact, the Hong Kong-Zhuhai-Macao Bridge has already been introduced into it. So it will be transformed into a place that is no longer the Lantau we have known for years. I would like to clarify that I do not oppose the construction of roads. I do not oppose such things. I oppose those many large-scale economic projects. In the Concept Plan, the Container Terminal 10 is not mentioned, and even by now, we do not know where it will eventually be located. This is another issue because it is not even mentioned in the Concept Plan. Therefore, Members can see that the entire development mentality is guided by economic considerations.

If it is guided by the economy, then it will lead to changes to the entire Lantau, and eventually it will no longer be the same Lantau we used to cherish so much. At the moment, Lantau is very precious. Why? Let us consider this: It is not the "treasure" of Hong Kong alone. I think even in the entire China, or in the Pearl River Delta, it is very difficult for us to find such a vast piece of land that is not heavily inhabited, but with a lot of natural landscape. On Lantau, there are still a lot of precious ecological sites which are very rare and precious even in the whole world — it is better for me not to talk about it against the context of "the whole world". But it is true at least in the entire mainland China, and is especially true for the Pearl River Delta Region, and of course it goes without saying that it is true for Hong Kong. Therefore, if the development continues in this way, there is a very great danger of dividing Lantau into two parts. A part of it will be heavily developed with lots of construction and reclamation projects. And the dolphins will have nowhere to go. The Government may conserve certain places, but on the whole, the concept of conservation will be defeated.

Secondly, I find that there is a major problem in the entire consultation process. There are really problems with the consultation approach because the Government has just consulted the public on the overall concept. To a certain extent, consulting the people on the overall concept is an attempt to deal with the

issue in question in its entirety, but the details are sacrificed, and the scope covered will be very extensive. Yet, with an extensive scope covered, the consultation will suffer from a lack of depth, and the issues cannot be discussed item by item. However, if the issues are not discussed in an item-by-item manner, it will be very dangerous because in the planning process, we may not or cannot study the individual development projects in detail to see whether each one of them is good or bad for Lantau, as well as how substantial the impact of each development is on the environment. I find the entire consultation approach too extensive, thus making it impossible for the Government to conduct in-depth studies on each development project.

Just now, I have said that this development project is mainly guided by economic considerations. If we take another look at the Plan, we would realize that the Government has said that there are four major themes in the development of Lantau, namely, first, economic infrastructure and tourism; second, theme attractions based on heritage, local character and natural landscape; third, maximizing the recreation potential of country parks; and fourth, meeting conservation needs.

Although it appears that the four major themes are mostly about tourism and conservation issues, a closer examination will reveal that the emphasis of the real essence of these themes is still on the economic aspect. As far as this aspect is concerned, it covers the Lantau Logistics Park, a cross-boundary transport hub, the Sunny Bay Tourism Node — there are also problems with the concept of a tourism node. It has always been such a nice place by itself that people are attracted to it for its natural beauty. So the more highly developed that area is, the less inclined the people will be to visit it. For example, I have heard that the Government intends to build (I do not know what kind of concept this is — I have never heard of such facilities) boardwalks and water sports centres, and so on. Personally, I am not inclined to go to any water sports centres. If I go to a beach where there is a water sports centre, I will not proceed to visit such a centre. Of course, there are people who like to visit such water sports centres. However, there are already too many venues with artificial activities. Is it possible to provide a venue for Hong Kong people that are more natural and less artificial, so that they can tread on the sand, instead of the boardwalks, as they walk in the beach hand in hand with their loved ones? I am bewildered: Is it very uncomfortable for the people to tread on the sand? Why should they have to tread on the boardwalks? Why do the people need the

water sports centres? We have already a reservoir designated for paddle-driven boats, why should they go all the way to Lantau to engage in such activities?

In short, with regard to the overall Concept, I think the people would feel most relaxed if the Government chooses to do nothing. The more changes the Government wishes to introduce I very much worry that the Government would develop tourism facilities, which may not necessarily be very attractive. This is because when the construction projects have progressed to a certain stage, they will become artificial, and will eventually lose their appeal.

Therefore, Deputy President, I strongly hope that the Government can leave some space for the natural landscape and the residents of Lantau. Of course, if the Government wants to proceed with the work of protecting cultural heritage and conservation, I would absolutely support it. I fully support the conservation of the environment. However, if the Government intends to commence major construction projects there, I think it would be ideal if it chooses to do nothing and leave everything there intact.

Thank you, Deputy President.

MRS SELINA CHOW (in Cantonese): Today, Lantau is not just the backyard of Hong Kong, but it also provides a strong impetus for supporting the development of Hong Kong. For example, in 1998, a new airport was built in Lantau. Last year, the theme park of Disneyland was built in Penny's Bay, and the AsiaWorld-Expo has also been built at a location adjacent to the new airport. These new developments have altogether attracted millions of visitors to Hong Kong, and successfully attracted about 30 world-class major exhibitions and conferences to Hong Kong. All these have generated enormous economic benefits. Just now, I have been listening attentively to the speech of Mr LEE Cheuk-yan, who said that it would be ideal if the Government chooses to do nothing and allows Lantau to remain intact. If we really had not done anything, we must have more vacant land in Lantau than we have now. But I doubt by doing nothing, could we have succeeded in attracting 2.3 million visitors to Hong Kong in 2004-05? From the perspective of the Hong Kong Tourism Board (HKTB), I can tell you this is absolutely impossible.

In future, Lantau will keep on undergoing major transformations to provide more employment and development opportunities and to create a really

self-sufficient community with balanced development for the residents there. Therefore, we must ensure the expeditious implementation of all these planning work without any further delay. In this connection, I wish to take this opportunity to share with Members something I feel unhappy about. During the past 10 years, there have been many planning projects. Let us skip the West Kowloon project for the time being because I know many people hold different opinions on it. However, we still have many other planning projects which have been the subjects of incessant discussions. But they have always stayed at the discussion stage, while no concrete action has ever been taken. This has never been the working style of Hong Kong in the past. I do not know why our progress has become gradually slower now. On the other hand, the planning projects in the Mainland have displayed increasingly quicker progress. This is not all. Our neighbouring cities in Asia are also developing at a much quicker pace than ours. I think we really need to reflect upon ourselves.

Of course, we are not advocating to develop the entire island of Lantau all at the same time and this is not the idea proposed in the Concept Plan for Lantau. However, let us take North Lantau as an example. There are a lot of opportunities for tourism development in North Lantau. For example, the Government intends to develop a super entertainment hub at Sunny Bay which should provide entertainment, restaurant, shopping and performing facilities; and it also intends to develop a theme park or major recreational facilities at Tung Chung East. All these will help attract more business and family travellers visiting Hong Kong. These are initiatives that merit our support. In this regard, I also agree with some Honourable colleagues who have said earlier that these facilities will not only attract foreign visitors, but also local visitors. I often say that there is always scope for developing local tourism. For example, many Hong Kong people would like to take public transports to visit the Inspiration Lake where they can enjoy for free the beautiful natural scenery there. Besides, this may make them stay in Hong Kong and spend money here, thus reducing their travelling out of Hong Kong and spending money elsewhere. This is really a point we must note.

The beautiful landscape in South Lantau may enable us to develop a spa resort which has become increasingly popular in recent years. For example, the beautiful beach at Cheung Sha has already been chosen by the HKTb as the destination for developing spa resort facilities with a combination of Chinese and western medicines. All we have to do is to construct a 300-room resort centre, complemented with comprehensive club facilities and good transportation links,

then that would be sufficient for attracting groups of high-spending travellers to Hong Kong.

However, at the moment, there are many sharp turns on the present Tung Chung Road, which connects North and South Lantau. The road is also very narrow at certain points which make the journey quite dangerous, threatening the safety of residents and travellers who make use of the road quite frequently. Furthermore, not too long ago, a traffic accident occurred there and led to the complete closure of this trunk road connecting North and South Lantau. This has nearly jeopardized the external transport link of Lantau with the outside world, thereby causing great inconveniences to the people. Therefore, it is really imperative for us to build another major road link between North and South Lantau. It will definitely promote the development of Lantau. I would also like to stress that we may preserve and develop theme tour routes that may have historical and cultural value as well as ecological characteristics. As Mr CHEUNG Hok-ming has said in his speech, he used to see many beautiful scenic spots there many years ago, and in fact we should develop these scenic spots. However, I would like to remind Members that this is not the responsibility of the HKTB, but the Tourism Commission may help. Of course, if the authorities do go ahead developing these scenic spots, the HKTB would definitely do its best to promote them and make full use of such tourism resources.

On the other hand, with the ever-increasing economic activities and population in Lantau, the already insufficient social services or facilities will only become further stretched. So the Government must proceed with early and careful planning in this regard. Earlier on, some Honourable colleagues have mentioned that Tung Chung needs a hospital. I do not wish to repeat this point, but this is really necessary. It is not just a need of the local residents, but it will be an important facility when the authorities really proceed to develop Lantau as a significant tourist district.

Secretary Dr York CHOW said that the hospital under their current planning will be commissioned in 2011 — which means a time gap of five years from now. Actually is it possible to speed up the progress, so as to improve the facilities of that district? Five years are really a rather long period of time. I hope the Government can speed up the construction of the hospital. I also hope that the Government can allocate more resources to provide adequate medical services for residents in Tung Chung such as resuming the evening clinic services.

According to the Government's development planning for Lantau, the population of Tung Chung will eventually reach 220 000. Furthermore, limited by its own geographical conditions, Tung Chung is not connected with other neighbouring districts, and the transportation expenses are expensive. For all these reasons, it is really necessary for the Government to expeditiously provide more community services such as a swimming pool complex, so that the people can live and work happily there..... *(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MRS SELINA CHOW (in Cantonese): Thank you, Deputy President.

MISS CHOY SO-YUK (in Cantonese): Deputy President, Lantau Island is the largest island in Hong Kong. It has an area of 140 sq km, or 350 times of the proposed West Kowloon Cultural District. Great care must be exercised in the full-scale planning of Lantau Island. For apart from its great size, a more important point is that developments will impinge on some of the famed ecological treasure troves of Hong Kong. Besides vast stretches of country parks and mangrove, half of the dragonflies species found in Hong Kong, more than 70% of the amphibians and reptiles, as well as some rare plants and the Chinese White Dolphin, are all found there. Therefore, while we do not oppose to developing Lantau Island, we must be sure that the Government will act with great care. This will prevent irrevocable damages from being done to the vulnerable ecology of the Island should there be any planning blunders.

Unfortunately, ever since the introduction of the Concept Plan for Lantau in 2004, there have been worries that the Government has not given any serious thoughts to how sustainable development can be guaranteed on Lantau Island. First of all, since full-scale planning is to be undertaken on the long-term development of Lantau Island, the Government should list out all the factors so that the public can be given a full picture in making some judgement on the plan. However, it is apparent that the Concept Plan has omitted certain issues which may have a far-reaching impact, and they include the huge reclamation project involved in the construction of Container Terminal 10 and the liquefied natural gas terminal which the CLP Power Hong Kong Limited (CLP) plans to build,

and so on. In the absence of detailed assessments of the above projects, can it be said that the development plan proposed by the Government is in any way comprehensive? Would public opinion be comprehensive if it is expressed on the basis of incomplete information?

An inherent inadequacy of the Concept Plan is insufficient public participation in the formulation process of the Concept Plan. Once the Concept Plan was released, it looked as if all the recommendations had been finalized and there was not much room for deliberation and constructive discussions. As a matter of fact, when the Government expressed its intention of developing the Old Central Police Station heritage cluster and the Marine Police Headquarters in Tsim Sha Tsui, the public had expressed the aspiration that members of the public must be allowed to take part in the formulation process of any development project. The case is much stronger now because the project we are talking about is Lantau Island which is much greater in area and has a population of some 90 000.

If civil society is to be developed in Hong Kong, a good testing ground is the development planning of Lantau Island. The Government must seize the opportunity and allow the public, through participation in this brewing process of proposals to put forward their views on a future development project. For the authorities, their responsibility is to take on board different opinions in this process and then formulate a proposal for comprehensive development. Meanwhile, in the decision-making process of the development project, the authorities must encourage the expression of public opinion, including that from the representatives of the residents affected. This is because it is the only way through which all the stakeholders will have a chance to take part sufficiently and it would prevent the people from forming an opinion that the only reason why the Concept Plan is launched is that the authorities want to evade professional planning procedures or fair and open public consultation and they are bent on having their own preconceived target of effecting a complete overhaul of the planning of Lantau Island.

Deputy President, owing to the enormous scale of the Concept Plan for Lantau, it would not be possible for us to express our views on each one of the recommendations made. Therefore, I will only talk about some of the planning principles and express my opinions on them. First of all, 70% of the area of Lantau Island is country parks and the Government simply cannot make use of this development opportunity to change Lantau Island completely from a place

noted for nature conservation and leisure activities and eco-tours compatible with the environment into a place focused on property development and where the port and property sectors will reap the lion's share of the benefits. Should this happen, the ordinary people will lose a good place where they can come into close contact with nature.

In addition, we urge the Government to develop theme tours which genuinely make use of the natural landscape, heritage and local character. It must not claim to champion a cause it seeks to subvert and sabotage. In other words, it must not claim to promote theme tours but, in planning for future development, only focus on revenue from tourism and simply ignore the fact that these attractions are very vulnerable. In the end, those environmental and cultural attractions which badly need conservation would be the first ones to come under reckless destruction. This is totally unforgivable. This kind of blunder is the greatest cause of concern to us.

Such concern is not unfounded. The Po Lin Monastery on Lantau Island is widely recognized as one of the most important Buddhist monasteries in Hong Kong and the neighbouring region. The Government of the Hong Kong Special Administration Region has the responsibility to see to it that the religious character of the Po Lin Monastery will not be undermined in any way. But four years ago, in a bid to promote tourism, the Government made an outrageous proposal to launch some large-scale construction projects right in front of the Po Lin Monastery. The major vehicular access to the Monastery was sealed off, bus stops were relocated and the place was turned into a pedestrian walkway filled with food establishments. Not only has this move encroached on the solemn and tranquil nature of the monastery surroundings, the restaurants and eateries nearby which serve meat are a great offence to the monks avowed not to kill living creatures. But the Government has been blind to the strong opposition from the Po Lin Monastery and the Buddhists, including me. The event later developed into a move made by the Monastery to cordon off its precincts. This shocked all the people in Hong Kong.

The DAB urges the Government to learn the lesson from this event and it must recognize the ultimate aim of theme tourism is not economic development or increasing public revenue, but to provide economic incentives so that both the Government and the private sector can work hard to protect the ecology, folklore and cultural relics which are fast disappearing in Hong Kong. Deputy President, I so submit.

MS AUDREY EU (in Cantonese): Deputy President, I have just heard the speech made by Miss CHOY So-yuk and I agree very much with the contents of her speech. Financial Secretary Henry TANG who heads the Lantau Development Task Force once quoted a well-known remark by DENG Xiaoping: Development is the absolute principle. From this consultation paper, we can see that the guiding principle of Lantau development is this remark: Development is the absolute principle.

Over the years the Government has suggested many ideas on planning Lantau Island. There is some slight difference in how they are elaborated each time and though the conservation value of Lantau Island is always stressed, the overall direction is more and more developments and they are getting more and more specific. Unfortunately and in contrast, recommendations on nature conservation remain on paper and the study list, while there is no pledge that more resources will be committed to it.

The policy address in 1999 suggested the following: "Taking advantage of the beautiful natural landscape of Lantau Island and Sai Kung District, we intend to develop these two areas into centres for recreational and leisure activities compatible with the principle of nature conservation. In 2001, we will also substantially extend managed country park areas on Lantau Island". In addition, the consultation booklet "Hong Kong 2030: Planning Vision and Strategy" says that Lantau Island "will remain as recreational and leisure gardens of Hong Kong, as well as important resources for eco-tourism". It follows therefore, that the positioning of Lantau Island with respect to its basic development is very clear indeed.

But with the completion of the new airport, the development of Tung Chung into a new town, the opening of the Hong Kong Disneyland and the commencement of the Hong Kong-Zhuhai-Macao Bridge project, the positioning of planning for Lantau Island has undergone fundamental changes. Page 4 of the consultation paper lists nine planning principles, including those which aimed at turning Hong Kong into an international aviation hub, a regional logistics centre and a major tourism hub, and so on. Putting aside all those vague references to hubs and centres, put simply, the Government plans to build a cross-boundary transport interchange, a logistics park, two theme parks, one golf course cum resort, a cross-country cycle track, a museum of Lantau, plus an unspecified number of resort facilities and hotels, as well as water sports centres and even a motor racing track.

As for recommendations related to conservation, the consultation paper suggests that the Tai O fishing village should be preserved, while a cycle track network, heritage trails and camping sites should be built. While all these suggestions merit consideration, this part on conservation would seem to be outshone and overshadowed by the development projects which are far greater in scale and number.

In the policy address in 1999, the Government undertook to substantially increase the country park areas on Lantau Island. One of the government advisory bodies has designated the waters to the southwest of Lantau Island as a marine park with a view to preserving the Chinese White Dolphins and other rare marine life. However, when the consultation paper discusses these two recommendations, it is done in a slipshod manner. Page 19 of the paper only says the following: "The Government is considering the timing for implementation of the designation proposal, taking into account the planned developments in Lantau and resource availability." In other words, the relevant plans may never materialize.

I have quoted extensively from the consultation paper because I wish to tell Members that the consultation paper has obviously not taken the principle of balanced development into account and the consultation exercise is flawed. Many Honourable colleagues have spoken earlier on the following points. First, there was no public consultation in the planning process. Second, the various development plans mentioned in the paper are not backed up by any cost analyses and environmental impact assessment data to facilitate meaningful discussion by the public. Third, the paper has omitted a very important part and that is, there is a need to reclaim 245 hectares of land from the sea to build Container Terminal 10 on Lantau Island and the plan of CLP to build a liquefied natural gas terminal on the Soko Islands southwest of Lantau.

So what we can see seems to be a whole host of piecemeal development plans and put simply, the concept behind it is to fully utilize all the existing facilities and give full play to the so-called synergy effect. That is why if the new airport is to be fully utilized, a logistics park has to be built. In order to make full use of the Hong Kong-Zhuhai-Macao Bridge, a transport interchange has to be built. In order to make full use of the Hong Kong Disneyland, land from reclamation has to be designated for its phase 2 and phase 3 developments, as well as a new theme park and a leisure and entertainment node. All these grandiose developments may have their own merits, but overall speaking, what

would be their impact on the natural landscape and ecology of North Lantau? As these projects complete one after the other and as patronage and vehicular flow increase, what kind of impact will they cause on Tung Chung where air quality is already very bad? The consultation paper is silent on all these and the report on public consultation released subsequently by the Government only gives a vague sketch on these issues.

The focus of the original motion moved by Mr CHEUNG Hok-ming and some of the amendments is the hope that the Government could speed up the projects concerned. When speaking earlier, Mrs Selina CHOW asked why some of the projects were progressing so slowly, such as those about building a hospital and the roads, as well as those aimed at improving the life of residents living on Lantau Island. I agree to these views. I am not saying that the pace of these works should be slowed down, but for some recommendations which may cause a great impact on the ecology, the Government should not launch the projects rashly before any hard data are available or environmental impact study is undertaken. It follows that though I support this motion, I would like to point out clearly that with respect to the conservation of the environment, as at today, in term of consultation, data or project proposals, what the Government has done is not sufficient. Thank you, Deputy President.

MR LI KWOK-YING (in Cantonese): Deputy President, Lantau Island has rich natural resources. It has clusters of buildings with historical and cultural value, such as the houses built on stilts, Ling Yan Monastery, Po Lin Monastery, and so on. There are mangrove areas with significant ecological value, plus a variety of rare flora and fauna. Vast stretches of land on the island can be used for development. As land in Hong Kong is scarce and population is large, a plan to develop Lantau in many aspects merits our in-depth study. Now there are many large-scale development projects on Lantau and these include the Chek Lap Kok International Airport, the Hong Kong Disneyland, and so on. Other large-scale projects like the cable car system which runs from Tung Chung to Ngong Ping will soon complete. By then Lantau may become a densely-populated development zone. However, if the unique competitive edges of Lantau Island are to be capitalized, not only should there be enough infrastructure, but there should also be matching measures and planning as well. Take for example the building of the Hong Kong-Zhuhai-Macao Bridge (HZMB), it is only when there is detailed planning that the strategic function of the HZMB can be brought into full play to boost the economic development of Lantau Island.

The HZMB is a strategic cross-boundary overland access linking up Hong Kong, Zhuhai and Macao. It is similar in nature to the tunnel in the British Channel in that it carries great economic significance. For when the superhighway between Hong Kong and the Mainland is complete, the geographical distance between the two places will be reduced substantially. According to some estimates, when the HZMB is commissioned, it will only take 45 minutes to drive from Hong Kong to Zhuhai and the time spent will be more than three hours less than using the Guangzhou-Humen Bridge as people do nowadays. With this great reduction in travelling time, it would help foster more direct links between Hong Kong and Zhuhai and hence increase co-operation. Tourist development in the region will also stand to benefit.

It is expected that the HZMB will break the geographical barrier between Hong Kong and Guangdong. However, the huge costs of development are the greatest problem facing the HZMB. It is learned that the development costs of the bridge are as much as \$50 billion to \$60 billion and it can be worked out that the bridge toll is expected to be as high as \$300 to \$500. If expensive bridge tolls are levied because of the high costs of construction, it would mean a low utilization rate for the bridge and hence it would adversely affect the recovery of construction costs. Apart from high bridge tolls, another factor detrimental to the vehicular flow of the bridge would be the licensing restrictions on vehicles from the two places.

At present, the authorities impose a quota on the number of private cars in Hong Kong with licence applicable to both Hong Kong and the Mainland. Hence there are only nearly 30 000 private cars in Hong Kong each with a licence that permits travel in both places. As for vehicles from the Mainland, they will not be able to use the HZMB because they do not have this kind of licence. As costs are high and vehicular flow is low, there may be pressure on these two fronts for the HZMB to raise tolls further and hence produce a vicious cycle of high tolls and low patronage.

Despite uncertainties in the development prospects of the HZMB, provided that there is proper planning, the bridge can give full play to its role in fostering economic and social exchanges. With the aim of providing a solution to the low vehicular flow of the bridge and achieving an early recovery of the construction costs, the DAB has an innovative idea and that is to complement the inadequacies of the bridge by fostering a "bridgehead economy". As the area of

Macao is small and there are technical restraints, so the "bridgehead economy" concept we have in mind will focus on the landing points of the HZMB in Zhuhai and Hong Kong. Now I would like to go into the details about this concept.

First of all, with respect to increasing the vehicular flow, there should be no restrictions at the border control points and vehicles from the respective cities can pass the borders freely. Some people may worry about the fact in recent years the number of private cars in the Pearl River Delta (PRD) has been growing extremely rapidly and the number of private cars owned by people in the PRD ranks number one in the whole of China. People are worried about the possibility that opening the HZMB up to these vehicles may produce an adverse impact on land transport in Hong Kong. Actually, the idea has taken into account the worries people may have about opening up the border control points. That is why the second measure related to this "bridgehead economy" is to set up a parking area before each of these control points, that is, in the second closed area. The suggestion is to enable vehicles carrying licences in both places to drive through freely while those without such licences will be required to go through another access and the vehicles are required to park in some specialized paid car parks. Then the vehicle owners will need to clear customs and ride on other public vehicles to other places on Lantau Island or the urban areas in Hong Kong.

In order that the development of areas near the bridgehead can be taken care of, the authorities may consider turning the landing points at both ends of the HZMB into an entertainment cum shopping district with hotels, shopping arcades and entertainment facilities. With the consumption of travellers from the Mainland on Individual Visit Scheme in mind, the authorities may set up a large duty-free area for mainland visitors or reference may be taken of some emerging cities on the Mainland and divide up the shopping district into a number of pedestrian zones with each one focused on distinctive colours of a country and where quality brand products from abroad and direct-sale goods from local manufacturers will be sold. This will make Hong Kong live up to its reputation of being a shoppers' paradise. As people may want to eat as they shop, so some sort of food corners may be set up to offer all sorts of exotic delicacies. This will enable shoppers to savour cuisines from around the world and by working on great shopping and good food, Hong Kong's image as a vibrant business city of the world can be given a big boost.

In sum, this "bridgehead economy" idea is a most innovative and practicable matching plan for the HZMB. Of course, the suggestions made just now are no more than rudimentary concepts and there are many other equally workable ideas that can be advanced for discussion. In any case, in order to dovetail with the rapid developments on Lantau Island, the authorities must work from the basics, think well ahead and do everything it possibly can to raise the patronage of the HZMB. Only when this is done that the bridge can play its part in integrating the economic development of the three places of Hong Kong, Zhuhai and Macao. Otherwise, if the commencement of the HZMB project remains uncertain and there are no matching facilities in place, this will in the end erode Hong Kong's competitive edge and make it lag behind other fast-emerging provinces and municipalities on the Mainland.

With these remarks, Deputy President, I support the original motion.

MR DANIEL LAM (in Cantonese): Deputy President, both the Heung Yee Kuk and the Islands District Council support the development of this land of treasure of Lantau Island by the Government. This is because an all-out effort to drive the development of Lantau Island is surely a way out for Hong Kong and our economy will certainly benefit. With the finalization of the Hong Kong-Zhuhai-Macao Bridge project and as the advance works are about to commence soon, together with the opening of Hong Kong Disneyland, expansions of the airport and a proposal to set up a gold storage facility, plus the soon-to-open Ngong Ping 360, one might say that considerable development has taken place in North Lantau and the conditions for infrastructural projects there are excellent. Such developments mean benefits for residents of North Lantau and people can envisage what will become of South Lantau as it develops later. Unfortunately, the delays and procrastinations on the part of the Government have brought more harm than good to the residents of South Lantau.

(THE PRESIDENT resumed the Chair)

There can be no more delays to the development of Lantau Island and this applies especially to the traffic link between North and South Lantau. The Financial Secretary said in the Budget that the Hong Kong-Zhuhai-Macao Bridge project would soon commence and so would be the connection with the North

Lantau Highway, and so on. Most of the residents, the Heung Yee Kuk and the Islands District Council have repeatedly urged the authorities to speed up transport planning for North and South Lantau in order to solve the problem of road connections caused by insufficient roads in Tung Chung. Unfortunately, the Government has never given any response to this. Should the residents be always kept waiting?

President, the natural order of things in the development of any place is for transport to go first. With the completion of the cable car system in Ngong Ping, the number of visitors to South Lantau is expected to rise drastically. But the Government, with its mentality of not according any development priority to transport, will only spoil things and cancel out the great development potentials of Lantau Island.

President, there is an imbalance in the development of North and South Lantau and it is worrying that there is no overall direction for development.

The Government is thinking in the right direction in its intention to achieve the aim of conservation while transforming Lantau into a destination for holiday-makers. The Islands District Council supports this idea. But just how planning is to be done with respect to the vast stretches of beautiful places in South Lantau, that is, from Mui Wo all the way to Cheung Sha, Pui O, Tong Fuk, Tai O, and so on? What is the overall planning strategy? It has been two years since a proposal was put forth but people still find it hard to understand what is in the mind of the Government. Residents on Lantau Island, in particular, are unable to learn about the details of this development project that may affect their life and means of living.

President, I agree with Mr LAU Wong-fat and Mr CHEUNG Hok-ming when they suggest that in the short run the Government should develop theme tour routes on the Island with special historical or cultural interest or ecological attractions in tandem with the development of recreational facilities there. This will turn Lantau Island into a quality green-tour destination.

The Government should respond expeditiously to the demand from the residents and the District Council and change this over-emphasis on North and East Lantau at the expense of South and West Lantau in its development concept for the island. Then the Government should suggest a clear way forward for its plan to develop Lantau Island.

With these remarks, President, I support the motion moved by Mr CHEUNG Hok-ming.

DR RAYMOND HO (in Cantonese): Madam President, country parks in Hong Kong take up more than 40% of the total area and the largest island in Hong Kong, that is, Lantau Island, has a vast expanse of country parks. All along most of the developments there are concentrated in the north and these include projects like the Hong Kong International Airport, the Tung Chung new town, the Disneyland theme park, the AsiaWorld-Expo, the cable car system from Tung Chung to Ngong Ping, as well as the planned Logistics Park, and so on. South Lantau has always been preserved as a beautiful tourist area and so developments have been sparse. However, the Government has not provided enough transport infrastructure for South Lantau and so its development has been greatly hampered.

In my opinion, the planning concept for Lantau should embrace both balanced development and conservation. The developments should match the rural landscape and the impact on the natural environment should be minimized. It is inevitable that there are conflicts and difficulties in the course of development, but it is imperative that the Government should put forth a suitable proposal that will meet the needs of all parties and it should strive to achieve a good balance.

In recent years, there has been neglect on the part of the Government of southeast Lantau, that is, places like Mui Wo, Tong Fuk, Pui O, Shui Hou, and so on. The consequence is that the pace of development in these places is slow. Due to inconvenience in transportation, the number of visitors to these places has declined drastically in recent years. Economic activities in Mui Wo and in the vicinity of South Lantau Road have shrunk. Population is falling. Ever since the commissioning of the Lantau Link and the Tung Chung line of the Mass Transit Railway, the number of people going on tours in Mui Wo or for transfer to other public vehicles has fallen. The Government should look closely into the problem, devise a policy to improve transport, enhance passenger flow, encourage private sector tourism development efforts as well as speeding up minor repair works in the rural areas so that the overall tourism facilities can be enhanced.

In addition, the Government should put in resources as appropriate to link up landscape and heritage spots in Mui Wo and other places, give support to the

private sector in operating facilities with local and indigenous flavours and hence develop a route in Mui Wo for the travellers. This will revitalize local economic activities so that more tourists and Hong Kong residents can get a close encounter with the Romer's tree frogs and the mangrove with great conservation value and view the built heritage there.

Lantau Island is endowed with rich tourist resources like a long and beautiful coastline, beaches, old villages, houses built on stilts above the river in Tai O, and the silver mine cave in Mui Wo, and so on. All these spots need adequate transport facilities. However, the problem of a poor transport network between North and South Lantau still exists and this must be addressed.

The entire planning concept for Lantau Island must take into account the needs of balanced development and conservation. In the course of development, efforts must be made to ensure that the development is compatible with the rural surroundings and that the impact on the natural environment will be minimal. A healthy natural environment is the cornerstone of a stable economy. Fresh air, clear water and beautiful landscape are added values for economic development. They can enhance our quality of life. So unless it is absolutely necessary, the Government should avoid reclaiming land at the coast, hence reducing the possibilities of causing damage to the natural environment.

The commissioning of the Hong Kong-Zhuhai-Macao Bridge will mean more developments on Lantau Island. The logistics and tourist industries will lead to greater vehicular and passenger flows. Factories in Zhuhai may grow in number and the air pollution in Tung Chung may deteriorate. When the Government carries out environmental impact assessment, it must also consider the cumulative effect of these factors.

Any large-scale planning will certainly have an impact on the entire district and even all the people of Hong Kong. Therefore, it would be a daunting task to achieve a balanced development of Lantau while meeting the aim of conservation there. The Government must carry out extensive public consultation in order come up with a proposal which is the product of consensus and acceptable to all. This would be another great test in store for the Government.

I so submit. Thank you, Madam President.

MR ALAN LEONG (in Cantonese): Madam President, in the policy address of 2004, the then Chief Executive TUNG Chee-hwa proposed to set up a Lantau Economic and Infrastructural Development Co-ordination Task Force comprised of many top officials from various bureaux and departments under the chairmanship of the Financial Secretary. The Task Force is responsible for high-level policy supervision of the economic and infrastructural development of Lantau Island. The Concept Plan for Lantau was subsequently drawn up in 2004. Four development themes were identified and these are: Economic infrastructure and tourism; theme attractions based on heritage, local character and natural landscape; maximizing the recreation potential of country parks; and meeting nature conservation needs.

With these four themes in mind, the Task Force made specific recommendations for new developments on Lantau Island. These include a logistics park, theme parks, a resort, a golf course, an eco-tourism centre, as well as facelifting and preserving Mui Wo and Tai O. By all appearance, these recommendations from the Government seem to be all-embracing as they are meant not just to promote economic development but also preserve the natural landscape and local character. Furthermore, they can open up new tourist resources and take care of the divergent needs of the entire community.

Madam President, but if only we look at the composition of this Task Force carefully, we cannot help but feel worried. This planning of Lantau Island is just another occasion where officials devise grandiose plans in air-conditioned rooms dictated by an unmistakably paternalistic mentality while ignoring participation by a civil society. It would not be hard for us to imagine that Lantau Island in future may look vastly different from public expectation and there may be a possibility that the plan will be postponed due to strong public reactions. It may become a replica of the West Kowloon Cultural District fiasco.

The entire Task Force is composed of public officers and the development concept is worked out by the Task Force alone. During the brewing stages of the Concept Plan, there was no involvement of local people, experts on economics or conservationists. It was in end 2004 when that the Government began to go about with this Concept Plan that the residents, people in the trades and conservation groups were consulted. At that time, the Concept Plan had already been fine-tuned and it was a layout plan with painstakingly drawn details, with location for facilities like a logistics park, theme parks and resorts. Just

imagine when the public is consulted about this Concept Plan, what kind of argument can the public put up against it? What the public can do is just to confine their discussions to these four major development themes and to voice their opinions on some trivial and minor details.

Madam President, we must be on guard against this. For when consultation is carried out in the absence of sincerity, what the Government will do is to act in blatant disregard of the established due process and force its way to complete some infrastructure avowed to complete by the officials. In the case of the logistics park, as early as in 2001 the Government had done a consultancy study and at that time the report suggested that the market demand for a logistics park should be looked into. When the Government invited more than 3 000 companies in the trade to hand in submissions, the return rate was deplorably low and it was less than 1%. Even those trade participants who responded were doubtful of the economic benefits of the logistics park.

A more serious problem is that the entire consultancy report does not contain any feasibility study on locations other than Siu Ho Wan on Lantau Island with similar conditions suitable for the construction of a logistics park. According to the Technical Memorandum on Environmental Impact Assessment Process of the Environmental Protection Department, other feasible locations should also be considered. In the Long Valley incident four years ago, it was because Kowloon-Canton Railway Corporation had not taken into consideration other sites that the original plan fell through. If the Government is bent on going ahead with the logistics park project, it is very likely that the same thing like the Long Valley incident will happen again.

In recent years, due to the rapid development of Lantau Island and the great number of people coming to the Island for housing, the problem of environmental pollution is getting more and more marked. Previously Lantau Island used to have clear and blue skies, now in places near Tung Chung, the air quality frequently ranks the worst in Hong Kong. It should be noted that climatologists hold that air pollution in Tung Chung comes mostly from other places and even south China. But if there are massive developments on Lantau Island, with a growing population and increased traffic flow caused by the Hong Kong-Zhuhai-Macao Bridge, we have reason to believe that the quality of air and environment on Lantau Island will further deteriorate.

Madam President, Hong Kong is already in great shortage of vast expanse of green belts in the countryside where people can roam freely to enjoy themselves. With population growth in Lantau, the need for community facilities is more likely to increase than not. Now there are some 100 000 people living in Lantau. They can be said to be pioneers of the community there. How can we engage in massive constructions and developments in their home without their consent simply because of the need to develop the economy or the tourist industry? The development of Lantau Island is not just a question of some 100 000 residents there who will be affected, it is also an agenda item for Hong Kong as a whole. What exactly does Hong Kong society as a whole want to see Lantau Island become? In 20, 30 or 50 years, what kind of a Lantau Island will be left to our posterity? Madam President, we must respect the feelings of the people of Hong Kong and we must devise plans and engage in planning for Lantau Island together with the residents affected. We must give extra attention to the needs of the residents in the community in which they live and together we should strive hard for the preservation of this last piece of unspoiled land in Hong Kong.

Madam President, I so submit.

MS MIRIAM LAU (in Cantonese): Madam President, the motion on "Development planning for Lantau" moved by Mr CHEUNG Hok-ming today is mainly about how when environmental protection considerations are taken into account, the economy of Lantau can be developed and be given a boost in areas like the tourist industry, the logistics park and the Hong Kong-Zhuhai-Macao Bridge. The Liberal Party agrees with these ideas.

Now I would like to talk about the problems related to constructing a logistics park on Lantau. Actually and way back in early 2003, the then Chief Executive TUNG Chee-hwa proposed in his policy address that a site on Lantau Island would be selected to build a logistics park. Then in November 2004, the Government invited the trade to submit development proposals while on the other hand in the Concept Plan for Lantau confirmed that a logistics park would be built in the Siu Ho Wan reclamation area at North Lantau.

As that piece of land has to undergo reclamation and formation, and as there are environmental protection considerations, so the Government may use these as the reasons to explain why the project has been delayed for so long.

However, the fact is, according to the Government's original schedule, the logistics park should be completed by 2010. Now it is already the first quarter of 2006, but the Government has not yet finalized any details of the project and has not said anything to the effect that the project would commence. It looks as if this project which the logistics trade has been eagerly waiting for so long would be put off to an indefinite date.

But on the other hand, developments in logistics industry in our neighbours have been fast progressing and they are catching up. Some of them are even threatening our position as a logistics hub. One example is that works for the first phase of the South China International Logistics Center in Shenzhen which has an area of 650 000 sq m has completed. The Center has been commissioned too. Works for the subsequent phases have commenced and are progressing at full steam. This Center will focus on the provision of all-round services like cargo transshipment for containers, the interconnection of the forwarders, stockpiling of containers, forwarding agents, container agents, storage in bonded warehouses, supervision of cargoes stored in warehouses, logistics distribution, and so on.

The Eleventh Five-year Plan for Guangdong Province states that key projects in logistics would be the Asia-Pacific transshipment centre of Federal Express (FedEx), the international logistics park in Yantian of Shenzhen, the South China foodstuffs logistics centre, and so on. All these are direct threats to the logistics and shipping industries of Hong Kong. For this reason, we cannot help but urge the Government to speed up the infrastructure construction for the logistics industry. If the development potentials for the logistics industry which is regarded as one of the four pillar industries of Hong Kong is threatened, then how can our economy be sustained?

For at least six or seven years in the past, the industry has been telling the Government that though Hong Kong has excellent aviation transport services and highly efficient container terminals, there is a need for new hardware and that is, a sizable logistics park. This park would enhance our capacities in the distribution and handling of cargo, as well as providing other value-added services. Mr Alan LEONG has just said that earlier on the Government had consulted some 3 000 logistics companies on the logistics park and their response was at best lukewarm. However, Mr Alan LEONG might not be aware of the fact that the consultation exercise at that time was on the proposal made by the

Government to build a logistics park in Siu Ho Wan and that reclamation works would be required. The industry was asked if it was interested in that. But the Government did not know how much would the costs be. Then when should the project be completed? The project would be completed only after a few years. Just imagine how the industry could say to the Government with enthusiasm and excitement something like this, "Now I will give you a blank cheque and I am willing to bear all the expenses. This logistics park must be built at all costs. Just fill out the amount of money you need and I will pay." This is actually the main reason why the industry did not feel excited about this consultation.

I am also aware that in last November the Lantau Development Task Force led by the Financial Secretary said that with the commencement of the Hong Kong-Zhuhai-Macao Bridge project at the end of this year, and taking into consideration the ever-increasing logistics volume in Hong Kong and Guangdong Province, the authorities would accord priority to building a logistics park in Siu Ho Wan near the bridge and a consultancy firm was hired to conduct a feasibility study. But all the authorities are doing is just talking and no concrete result has been seen. Water which is so far away can never put out a fire which is so close. Even if this logistics park would complete one day, it could well be quite a few years or even 10 years from now. But how can the pressing problem now be addressed? Apart from medium-to-long-term planning, can we also think up some short-term contingency measures to help our logistics industry stay competitive?

As for the Hong Kong-Zhuhai-Macao Bridge which will use San Shek Wan on Lantau Island as the landing point for the Hong Kong section, though Guangdong Province has said that the project would commence next year, to date we still have no clear idea as to how the Hong Kong SAR Government can work together with Guangdong Province and what kind of concrete financing proposals would be put forward. Despite the remark made by Dr Sarah LIAO, Secretary for the Environment, Transport and Works, last year that she hoped that engineering studies such as environmental impact assessment would complete at the end of last year, the study has not been completed to date. We are therefore worried that this new project would not be able to commence as scheduled.

Lastly, I would like to point out one thing and that is, Lantau Island is frequently called the backyard of Hong Kong and so any development on the island should be consistent with the development principle which stresses the

importance of nature conservation. But this does not mean that we will not build anything and do nothing.

Madam President, I so submit.

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

MR LEUNG KWOK-HUNG (in Cantonese): The common saying that "He who gets the West Kowloon gets the world" may need some changes. Someone had once said that if the West Kowloon was not developed, then Hong Kong would "perish". Now, its development is delayed. One or two months ago, we also mentioned that a certain zone might be established along the border of Shenzhen, and then there was immediately some speculation in the media to the effect that a certain tycoon would do something at a certain place.

We all know that Hong Kong actually has to undergo an economic restructuring. How should such an economic restructuring take place? The Vice Chairman of the Chinese People's Political Consultative Conference, Mr TUNG, who also suffered from a pain in his leg, had said that there were four pillar industries, namely, the logistics industry, financial services industries and tourist industry, and so on. The development planning for Lantau was naturally put forward by Mr TUNG during his most troubled times as one of the panaceas of his governance. We cannot forget that there is something called "Nine plus Two". In other words, the development planning for Lantau was proposed under a very unique situation — that the economy of Hong Kong then could not find a way out, so it must pursue development in a way that complements the development in the Mainland. I can see that the Government will soon proceed with this planning, and I can also see that the planning has actually been done 70% to 80%, and it has explicitly said how it would be developed.

With regard to today's motion under discussion, it is put forward by us and it is a motion debate that does not carry any legislative effect at all. In other words, the development planning for Lantau was proposed by Mr TUNG at a time when he did not have any other planning projects to offer, apart from the four pillar industries. We can see that this planning in fact consists of a bit of everything; and it declares that it would do all kinds of everything. But what

we can see now is this planning project falls far short of our expectations of making Lantau our so-called backyard. What we can see is the unbalanced development between the southern and the northern parts of Lantau will not be improved by this project. What we can see is we shall build the Hong Kong-Zhuhai-Macao Bridge. To many people, the Hong Kong-Zhuhai-Macao Bridge is certainly very important. But I have once joined my colleagues in making a site visit there. We find that, at present the planning for Huanggang crossing and Shenzhen has yet to complete, but we already have to do such things to complement the planning in the Mainland. Therefore, to be fair, what we are doing with the development planning for Lantau is in fact something we have to do in order to cope with the development in the Mainland, that is, this is the effects of the "Nine plus Two".

What do we mean by the effects of the "Nine plus Two"? That is, Guangdong Province, acting as the leader of the mainland consortia, is holding negotiations with Hong Kong. What we can see is not just the collusion between business and the Government within Hong Kong, but we have to develop our Lantau in the light of the needs of Guangdong Province.

What I want to point out is, we have made many such experimental attempts. Take the Disneyland as an example. We said we must build this Disneyland theme park or we would "perish". Let us not discuss what the present situation is like after the Disneyland is constructed in Hong Kong. But now we eventually find out that Shanghai is going to build another Disneyland. What we can see is, the planning for Lantau is implemented hastily without giving a full explanation to Hong Kong people as we are proceeding to develop such a vast piece of land. I would like to ask all the Honourable colleagues who will support this planning project: Have we really studied this issue? Have we gained a thorough understanding of the issue? I feel we have not.

The overall planning of Lantau has actually fallen into the same pattern as in the case of the West Kowloon. I hope Honourable colleagues will bear this in mind when they cast their votes on this motion: The West Kowloon project was also approved by the Legislative Council and it was said that everything would be alright. But in the end, under the pressure of public opinion, we opposed the Government. Therefore, as Members of an impartial Legislative Council, we should absolutely not vote in support of the development planning for Lantau just for the interests of the consortia of the Mainland and Hong Kong.

We should vote against this planning and force the Government to conduct a full consultation on it, thereby making use of the people's power to check and balance the collusion between the consortia and the Government.

Thank you, President.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, two years ago the Government launched a consultation exercise on planning for Lantau Island. Against such a backdrop, the motion moved by Mr CHEUNG Hok-ming today portrays the expectations which many people hold for this. But unfortunately, had it not been for the motion debate today, I think we would never have known how far this plan for Lantau has proceeded. Having said that, I would like to talk about the kind of, should I say, sentimental attachment to Lantau Island I have formed over these past three years or so.

Tung Chung lies in North Lantau. Whenever I go to Tai O, I would set off from Tung Chung and walk all the way to Tai O. I would hike past San Shek Wan which is one of the landing points of the big bridge to be built. Then I would pass a place now called Shum Wat and then I can go all the way down to Tai O. This is a favourite hiking trail for me.

There are some people in Hong Kong who love hiking like me and when we want to go to places known as the backyard of Hong Kong, our feet would naturally take us to Sai Kung, Tung Chung, Lantau Island and even those hiking trails on the hills of Pokfulam on Hong Kong Island, that is, places like Sir Cecil's Ride, and so on. I am very worried when I think of the possibility that these hiking spots would be lost with the development of Lantau Island. During the days of the SARS outbreak, we could see that traffic was heavily congested in Tai Po, but on this route as we walked from Tung Chung on Lantau Island, as we were not affected in this way, so we would just walk on and that would be alright.

The Government has said that it would look into the northern and southern parts of Lantau. Things in the north have set a very bad example. What I mean is the poor air quality there. The reason for this is the situation in the Pearl River Delta. We should also pause and think: What kind of buildings is erected in Tung Chung? All the buildings along the coast there are like a screen and this screen-style construction has killed most of the space between the

buildings. So this is the reason for bad air quality there. Then, as Mr WONG Kwok-hing has said in the debate, facilities provided by the Government do not really match the pace of development. What I mean is that these matching facilities lag behind the development. When the community there has a population of more than 80 000, facilities at the district level are lagging behind. This is the problem I see in North Lantau.

Then I would like to talk about South Lantau. If we go south from Tung Chung, we would reach the southern part of Lantau. Once there, we would see the protected environment there. This includes the place we see as we walk from Mui Wo to the other end and it is still a very beautiful place, punctuated by beaches along the coast. Even the area near the Big Buddha is also very charming and there are many trails for ramblers. In these experiences we have heard many residents complain — once Mr WONG Kwok-hing and I went there to hear their grievances. They said that things were very difficult for them because there were restrictions on going from south to the north. Therefore these natives of Lantau would like the Government to offer them some sort of convenience.

Besides, there are many places on Lantau which are full of local character. Places like San Shek Wan and Shum Wat which I have just talked about are very beautiful. They are incredibly charming. Had I not been walking on a lot of these trails over these past three years, I would never have known that there were such beautiful places in Hong Kong. They are comparable to those in Sai Kung.

So I think that when the Government plans to develop these places, it should know that the residents there do have some aspirations. We all cherish these places and the residents hope very much that their voices and views can be heard in the process of development. Like the case of Shum Wat which I have just said. If we start a hike from Tung Chung, we would reach there after a short two hours' walk and from there we can ride on a bus to Tai O or back to the city. But do we know that in such a beautiful place as that, there are not enough matching facilities? There is no public toilet there. There is a noodle stall called Cheung Kee or what not, I do not remember the name so well, which I go there often. Whenever I was there, the owner would complain to me and ask why a dry latrine was not installed there. People like us who love to go hiking on the hills would know that there is really a need for it. For me, though I am a Member of this Council, I would be quite embarrassed when I meet these residents. I know that Mr LAM is also very concerned about this issue.

However, there is nowhere to lodge our complaints. Even for us Members of this Council, we have a feeling that we have no one to turn to. In my opinion, I do not care what the Government will do about it, but the people have already regarded these places as important spots where they can relax, regain health and vigour and engage in all sorts of family and recreational activities. But the Government has not provided any facilities there.

Or take the case of San Shek Wan which I have just mentioned. It is a gorgeous bay and at its far end one can see aeroplanes land and take off. Once I stood there for 10 to 15 minutes, completely indulged in watching aeroplanes landing and taking off. There are a lot of relics and old folks there. They lead a happy life. I want to ask, "How can all these be kept as they are?" The people living in Lantau think that there is some inconvenience in the place they live. They can see that there are no matching facilities in the developments in the north. Then they start to think up many ideas. They hope all the more that their views can be heard by the Government in the course of planning. There is a village built on water called Tai O in Lantau. Whenever I go there, I would get a lot of complaints from the residents there. Some people who sell salted fish complained to me, those who dry the salted fish in the sun did the same and so did a Mr CHENG who makes shrimp paste there. As I come to Tai O, every time I would have a feeling like returning home. This makes me feel very happy.

We should think of how the local economy can be developed there. I would hope that this village on water can be endowed with a more distinctive colour. There is a famous Chinese restaurant there known as Lin Heung and it is famous for its steamed buns with egg paste filling. Then we can also go to eat in some of these bistro cafes. It has been a very long time since I have tried such delicious toasts sold there. And there are lots of other things with a strong local flavour. I only hope that the Government can lend the people there a helping hand. In my opinion, had the consultation exercise undertaken by the Government in 2004 been done better, people would not have chased us hikers for such a long way in order to lodge a complaint with us. I had been chased by many people from many places on Lantau as they wanted to tell me what they had in their mind. Residents living in North Lantau have something to say, and so have residents in South Lantau. For those from the south, they have a lot to say about the existing facilities, especially on those related to the village on water.

So do not doze off, Mr SUEN, let me go hiking with you once. *(Laughter)* And after that you will understand how I feel and see why ramblers like us would attract so many people coming to lodge their complaints with us. Once I invited Mr WONG Kwok-hing and two of our colleagues to walk with us. If Mr SUEN would go there, we will certainly meet more people making complaints. Regardless of whether they are indigenous people of Tai O or people belonging to some newly set up groups, they all hope that the Government can tell them clearly the information concerned. They know nothing about what the Government is doing and so Mr CHEUNG Hok-ming is urging the Government to "expeditiously put thedevelopment directions into effect". I think the residents have some very profound feelings about this and they do not know what the Government has done over such a long time.

Madam President, in general, we support the original motion and the amendments. However, I think that views from the people are vital to any development in Hong Kong. I do not want to see a repeat of the West Kowloon Cultural District saga, nor do I want to see a conflict of views from various parties and in the end the Government putting the blame on the Legislative Council for impeding the development.

I hope very much to go hiking once with Mr SUEN to Lantau Island and to receive complaints in the process.....

PRESIDENT (in Cantonese): Speaking time is up.

MISS CHAN YUEN-HAN (in Cantonese): Thank you, Madam President.

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

MR HOWARD YOUNG (in Cantonese): Madam President, the public consultation for the Concept Plan for Lantau ended in February last year. The Liberal Party agrees that planning should be done for the future development of Lantau, based on the principle of sustainable development and striking a balance between the development of economic and tourist facilities as well as environmental conservation. Such an approach will consolidate the development of two pillars of our economy, namely, the tourist and logistics industries.

Lantau Island has been developing rapidly after the Hong Kong International Airport is built. The Hong Kong Disneyland and the AsiaWorld-Expo which have recently opened have injected new vigour into tourism, the exhibition and convention industry and other economic activities in Hong Kong. As early as in 2004, the Financial Secretary recognized the development potentials of Lantau Island but unfortunately, there is to date no finalized plan on the future development of Lantau Island. People will just worry that this is another case where no decision is made after discussions.

Lantau Island has abundant resources for tourism. It has religious and rural traditions with special cultural and historical values. All through these years, Lantau is a favourite destination for tourists and local people alike. The Big Buddha and the Po Lin Monastery have long been attractions for foreign visitors and it is expected that the soon-to-open Ngong Ping cable car and the nearby Ngong Ping Village will draw in more tourists.

Apart from these, situated in South Lantau is the famed "Venice of the East" Tai O fishing village. Tai O has preserved some of the unique features of a Hong Kong fishing village, included a rope ferry, houses built on stilts and relics from the colonial times. The Government may even consider building a museum to highlight this fishing village character of Tai O. Actually, there are quite a number of temples around Tai O and to facilitate travellers, the Government may build some heritage trails with signposts to link up all these temples.

Although Lantau Island has vast stretches of greenery and therefore it has good potentials to develop eco-tourism, unfortunately such potentials have not been widely recognized. The Liberal Party has long since advocated the development of eco-tourism. There are lots of hiking trails on Lantau Island, of which the Phoenix Trail is the most attractive hiking trail in Hong Kong. The Wisdom Path which was opened earlier is an attraction on the trail. Cheung Sha is a place which the Liberal Party has been advocating for use as an ideal location for water sports. Cheung Sha is endowed with a 2 km long beach where people can also watch a gorgeous sunrise. It can be turned into a tourist attraction like the Venice Boardwalk in Los Angeles. At the same time, the Government should enhance conservation of Chinese White Dolphins in the waters off southwest Lantau and organize tours to watch the Chinese White Dolphins and hence attract high consumption tourists.

Madam President, with respect to tourist facilities on Lantau Island, I would like to mention a controversial issue. As early as at the beginning of 2005, the Liberal Party advocated the building of a Las Vegas-style leisure cum entertainment centre with a casino element on Lantau to attract more high consumption tourists to come to Hong Kong. I know that this idea is controversial, but the Liberal Party believes that if restrictions are imposed on entry so that only visitors to Hong Kong or a small number of local people are allowed, then not only would it not encourage gambling but will also attract family travellers to Hong Kong. The children may go to Disneyland or the resort while the adults may go to other places for entertainment. The potentials in economic growth and job opportunities are quite substantial. Moreover, even Singapore which used to stick to a very conservative stand on gambling has decided to build casinos to attract tourists. This move is like breaking a taboo that has been with the city state for 40 years since its foundation. For Hong Kong, the Government should rethink whether it should follow the latest trend and permit the building of a casino cum recreation and entertainment centre in Hong Kong to ensure that the territory will not lose its leading edge amid fierce competition. The Tourist Commission of Hong Kong has singled out business and family visitors as the target groups and if we can build a tourist resort on Lantau which embraces family attractions like recreation and entertainment facilities as well as other activities like spa, mountain hikes and a casino of a limited scale of operation, plus all sorts of high-end leisure pursuits, then I am sure this will make Lantau more attractive than ever.

Of course, in developing and promoting new tourist attractions, the Government must also step up its conservation work in order to prevent any damage to nature. The Government should also improve the basic facilities on Lantau Island like toilets, signs for tourist routes, information systems and emergency telephones, and so on, to provide conveniences to the tourists. Enough matching facilities such as hotels, medical facilities and parking spaces for coaches should also be provided.

If tours based on religious and cultural heritage and eco-tours are given a further boost, the tourists will have a taste of the multifarious nature of tourist activities in Hong Kong and this will be a far cry from the present reliance on long-time selling points like shopping and cuisines. I think that this dependence on shopping as a tourist attraction will not be sustainable.

All in all, I think the Concept Plan for Lantau should be given the green light with planning work being undertaken as soon as possible. This will be beneficial to the overall economic and tourist development of Hong Kong. As the sustainable development of Lantau is promoted, advantages will be gained in both nature conservation and economic development.

I so submit.

MR ALBERT CHAN (in Cantonese): President, Miss CHAN Yuen-han has just said that she wants to invite the Secretary to go on a trip to Lantau Island. A few months ago, I also invited the Secretary to visit quite a number of scenic spots on South Lantau. An unfortunate experience was that a telephone call from that place would be regarded as a call from the Mainland and the Secretary was questioned by his wife why he was on the Mainland. I would like to apologize to the Secretary here for the misunderstanding which might have been caused but could otherwise have been avoided. I think that from now on if people take a top official to visit Lantau Island, they must remember to remind the official to reset his or her telephone manually, for otherwise the calls would be transferred to the mainland stations and hence the official may be asked by family members why the call is transferred to the Mainland when the official says he or she is in Hong Kong.

President, Lantau Island is in fact a treasure trove. I have heard people who are experts on geography say that Lantau Island is the second oldest island in the whole of China. It is unique. With respect to landscape and ecology, Lantau Island has some of the rare flora and fauna not found elsewhere in China. But often times our Government would treat these treasures as rubbish and does not care about these precious natural resources or make any conscious efforts to develop them. There are many valuable places all the way from Tai O to Mui Wo, like the mangrove near Tai O, the salt pans, and so on. All these can be developed into attractions with educational and tourist values. It is a pity that the salt pans have been left in dereliction for so many years.

It has been four or five years since I began to ask the Government to develop the silver mine cave in Mui Wo. Last year, I led a group of people and my two daughters to venture into the cave. This was against the law. Inside the cave there were a lot of things to be seen. The cave is some tens of metres deep and there are hundreds of bats living in it. There are some other animals

inside the cave as well. It is a very unusual place. If this silver mine cave can be developed into a scenic and tourist spot, it would be an ideal attraction for Hong Kong people, especially for a weekend family outing. I suggest that the Government should develop this silver mine cave. A museum on minerals found in Hong Kong can be built at the cave entrance. This will give people a good place to go to. It is unfortunate that even to date, the Government is still saying that it would need to look into the proposal and there is no sign that the place would ever be developed.

Mr Howard YOUNG said earlier that the Liberal Party had suggested that a spa resort be built in Cheung Sha. The Government actually hired some consultants to look into the matter. Then it was said that other locations in South Lantau could be used to build spa resorts. Then at last Cheung Sha was chosen. At that time, I snapped at the consultants and said that they were ignorant. It turned out that the suggestion had come from the Liberal Party and no wonder the consultants just followed. Why did I raise such a strong opposition and say that Cheung Sha is not a suitable place? The beach in Cheung Sha is an open area and it is not commonly found in Hong Kong. Spa resorts are usually located at rather secluded places. If a spa resort is built in a place well-liked by the people, there are bound to be clashes between the spa patrons and other people. So a spa resort should be built in a remote and tranquil place so that its patrons can have a quiet time to spend their holidays. If a location for a spa resort is to be found, I can suggest another option to the Government and that is Lo Kei Wan. There is a natural beach there and many trees will provide good shelter. It is also a quiet place formerly used by the British forces for drills. I have gone there with many friends for an inspection and we think that it is a very suitable site for a spa resort.

Besides, Pui O in South Lantau is also an excellent scenic spot and it can be developed into an attraction with a very special character. Once I brought along some friends from overseas and Southeast Asia, including some from Thailand, to Pui O. They were surprised to see that there was a place in Hong Kong where they could see buffalos in the wild. It is certainly a lovely sight to see buffalos bathing in the sea at sunset. People from Cable TV and Radio Television Hong Kong have shot a special feature on the place but the response of our officials is so..... I have raised the issue with Patrick HO a number of times and he has undertaken a few times that the matter would be handled and followed up. In fact he lives in Discovery Bay and the place is on Lantau Island. But the Government has never shown any sincerity or made any efforts in respect

of this issue. Mr LAU Wong-fat and Mr Daniel LAM who is the chairman of the Islands District Council are also very much in support of these plans. But there is no timetable whatsoever as to how these plans will be put into practice.

I have also heard villagers of Tai Long Wan on Lantau Island say that turtles used to lay eggs there 30 years ago, but this scene could never be seen again because people did not care so much about environmental protection. Many of these natural and rare scenic spots should be developed. Of course, I understand that some sort of consultation is being carried out. I hope that when an overall development plan is devised for Lantau Island, facilities which are not compatible and proper would not be included. For example, if logistics activities are to be undertaken in North Lantau, it would ruin the overall planning of Lantau, for Lantau Island should be developed with a focus on tourism, ecology and leisure activities. The goal is to make Lantau the ideal destination if people want to have fun, sports or to go on an eco-tour. What the Government must never do is to add something which will spoil this island with such a unique character. The case would be like putting a moustache on the face of Mona Lisa, turning the eternal and enchanting smile into a nasty and vulgar grin. This would never be any blessing to Hong Kong. The design of this plan should never be piecemeal, like putting everything in a dish of chapsuey. The plan should be well-designed, focused and compatible with geographical, historical and other like factors so that it can materialize. I hope that after this debate, the Government can change its mindset and the people of Hong Kong can have a big and beautiful backyard which truly belongs to all the people of Hong Kong. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr CHEUNG Hok-ming, you may now speak on the three amendments. Your speaking time is five minutes.

MR CHEUNG HOK-MING (in Cantonese): Madam President, three Honourable colleagues have proposed amendments to my motion today. All the amendments share one point in common: Lantau is a piece of valuable land.

The DAB strongly supports the principle that in the course of developing Lantau, the Government must also take account of nature conservation and the protection of historical and cultural relics.

The contents of my motion are precisely about the expeditious and three-pronged development of Lantau on this very basis. However, I notice that the views presented by Mr LEUNG Yiu-chung and Dr KWOK Ka-ki in their respective amendments are different from those of the DAB.

I shall first respond to Mr LEUNG Yiu-chung's amendment. He proposes to amend point (b) of the original motion. The original motion urges the Government to create favourable conditions for developing new economic activities in the area in line with the construction of the Hong Kong-Zhuhai-Macao Bridge and other infrastructural facilities. Our idea is to capitalize on the opportunity of constructing the bridge to develop a "bridgehead economy" at the landing point. That way, the economic development of Lantau as a whole can be fostered. Regarding this idea, Mr LI Kwok-ying has already offered an explanation. Mr LEUNG's amendment will completely alter our idea. On the other hand, Mr LEUNG advances some arguments relating to a logistics park, saying that reclamation is not a practicable option. In this regard, the DAB has always held an open attitude. As pointed out by Dr KWOK Ka-ki, if reclamation can be kept within acceptable limits, what is so bad with giving the go-ahead? Therefore, the DAB cannot accept Mr LEUNG Yiu-chung's amendment.

There is still Dr KWOK Ka-ki's amendment. In his amendment, it is proposed to delete "slow progress of work" from my original motion. Mr LEUNG Yiu-chung has actually proposed the same alteration. We are worried that all future projects may be caught in a quagmire of endless consultations and fall through in the end. The DAB holds that the consultation work in regard to Lantau development has truly been extremely slow. As I mentioned at the beginning of my earlier speech today, the Government has already called a halt to all work, including projects that people have been fighting for or projects that will greatly affect the local residents' life. It now wants to defer everything until the consultation on the entire Lantau planning is completed. This bundling approach to development will not do any good at all to the residents of Lantau. For this reason, the DAB will not support Dr KWOK Ka-ki's amendment. However, in regard to Dr KWOK's remark that there are insufficient community facilities on Lantau and improvements are called for, the DAB would like to express its agreement.

Lastly, it is Mr LEE Wing-tat's amendment. The wording of his amendment is similar to that of the DAB's. If the first two amendments cannot be passed, we will support Mr LEE Wing-tat's amendment.

Thank you, Madam President.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, I thank Mr CHEUNG Hok-ming for proposing this motion today, for he has given us an opportunity to discuss the development plan for Lantau in the Legislative Council. I also thank the 20 Members who have expressed their valuable views on this subject.

The Lantau Development Task Force chaired by the Financial Secretary formulated the Concept Plan for Lantau in 2004 to provide an overall planning framework to ensure balanced and sustained development for Lantau. The Concept Plan gives recognition to the potentials of Lantau in economic development and also its significance in nature conservation and recreation, and proposes a diversity of development themes and suggestions. Broadly speaking, the Concept Plan proposes to focus major economic infrastructure and urban development in North and Northeast Lantau to optimize existing and planned transport links and infrastructure, while protecting the other parts of Lantau, which comprise primarily beautiful landscape and natural environment with high ecological value. We will endeavour to conserve these areas and propose suitable recreational and visitor uses for them.

The proposals in the Concept Plan are ideas and concepts covering a wide range of areas. On 26 October 2004, the Panel on Planning, Lands and Works was briefed on the Concept Plan. A three-month public consultation was conducted at end November, and during the consultation period, 29 consultative sessions and two public forums were held. Various sectors of the community have been widely engaged in the public consultation and they responded positively to the Concept Plan. Apart from the comments and suggestions received at the consultative sessions and public forums, over 540 written submissions were also received. We had subsequently analyzed in detail all the views received and after some preliminary assessment, the views were categorized into proposals that merit further consideration and those that are not suitable for such. On 22 November 2005, the Panel on Planning, Lands and Works and the Panel on Environmental Affairs were again briefed on the outcome of public consultation and the way forward.

From the public opinions received, over 100 proposals are summed up for further consideration. The Task Force is currently reviewing and revising the proposals in the Concept Plan and also conducting technical assessments in the light of the opinions received in the public consultation. We expect to complete the revised Concept Plan in the latter half of this year. We will explain to the Legislative Council in due course on the work to revise the Concept Plan.

Mr CHEUNG Hok-ming has proposed three directions for development which are in line with the development themes and proposals in the Concept Plan. We will certainly consider these suggestions in detail in revising the Concept Plan. With regard to the three development directions suggested by Mr CHEUNG Hok-ming and the relevant suggestions made by other Members, I would like to respond to them altogether here.

(1) Developing Tourism

The Government very much agrees that the Lantau has scenic spots with beautiful scenery and high natural value and historical significance, which are conducive to promoting the development of tourism in Hong Kong. In fact, the Home Affairs Department (HAD), the Agriculture, Fisheries and Conservation Department (AFCD) and the Hong Kong Tourism Board (HKTb) have been actively promoting through various channels the diversified characteristics of Lantau, such as introducing the many sightseeing routes highlighting the natural and historical characteristics of Lantau, providing in country parks country and hiking trails of different themes and lengths, and so on. Besides, the HKTb has also published a guidebook called *Exploring Hong Kong's Countryside* to introduce hiking routes in places including Lantau. The HKTb also recommends to visitors quality private tours to the outlying islands. To make it more convenient for tourists to visit Lantau on their own, the Tourism Commission has provided tourist signage at various major attractions on Lantau, including Tai O, Ngong Ping, Mui Wo, Tung Chung, Pui O, Tong Fuk, and so on, and more suitable signage and map boards will be provided on Lantau this year. The relevant departments, such as the HAD, AFCD and Leisure and Cultural Services Department (LCSD), have been making continuous efforts to improve and upgrade the recreational facilities on Lantau to complement long-term publicity and promotional campaigns targeting at both local residents and foreign visitors.

With regard to major tourism infrastructure projects, following the completion of the Disneyland, the "Ngong Ping 360" on Lantau will be completed in the middle of the year.

To further promote Lantau as a quality tourism spot, the Concept Plan proposes to develop countryside recreational facilities and theme attractions based on heritage, local character and natural landscape. This can enhance the attraction and recreational potential of Lantau while conserving the ecology, landscape and heritage significance of Lantau. We are actively studying ways to follow up these projects.

(2) Planning of Infrastructure Facilities

To optimize the existing and planned infrastructure facilities and transport links, such as the Hong Kong-Zhuhai-Macao Bridge (HZMB), the Concept Plan proposes to develop in North Lantau major infrastructure facilities and tourism uses, including the Lantau Logistics Park, a cross-boundary transport hub, the Sunny Bay leisure and entertainment node and a possible theme park or major recreational uses at Tung Chung East. All these are conducive to the development of new economic activities on Lantau.

Mr LEUNG Yiu-chung and Dr KWOK Ka-ki expressed concern about the environmental impact of the infrastructure facilities. I would like to briefly respond to this point, in order to allay the concern of Members. When planning infrastructure facilities, we will certainly consult the public and the relevant trades and industries. We will also conduct various technical assessments to ensure that the facilities are compatible with the principle of sustainable development. Take the HZMB over which Members have expressed concern as an example. The Highways Department has commissioned consultant engineers to conduct a study of "Investigation and Preliminary Design for the Hong Kong Section of HZMB and Connection with North Lantau Highway". The Study will explore the alignment of the roads and assess the impact on traffic and the environment. This project will be carried out in strict compliance with the relevant statutory procedures and laws, including the requirements of the Environmental Impact Assessment Ordinance. The Government has consulted the Islands District Council, the relevant rural committees and the Town Planning Board on the road links of the HZMB, and the project is widely supported by the public. We will continue to report the work progress to the Legislative Council Panel on Transport in due course.

(3) *Logistics Park*

On infrastructure facilities, some Members expressed concern about the planning of the Lantau Logistics Park. The proposed Logistics Park is a major infrastructure which aims to bring long-term benefits to the logistics industry, a major economic pillar in Hong Kong accounting for 4.9% of the Gross Domestic Product and providing about 190 000 jobs for the local working population. Given the importance of the Logistics Park to the logistics industry in Hong Kong, the Government must handle this project seriously with prudence and care.

To ensure that the Logistics Park can provide a suitable operating environment to cater for the needs of the industry, the Government completed a study in 2004 to define the operational features and planning targets of the Logistics Park, and invited views from the industry in early 2005. As it is necessary for the Government to conduct a detailed feasibility study on the Siu Ho Wan site of the Logistics Park and the reclamation works involved, the Civil Engineering and Development Department commenced a study in February 2005 to map out plans for and ascertain the feasibility of the Logistics Park. The Study will cover assessments of the project's impact in various areas, including the environment and traffic, in order to make preparations for future reclamation works and for meeting the relevant statutory requirements. The Study is expected to be completed in the first half of 2006. As I said just now, the Logistics Park project will commence only after all the relevant statutory procedures are completed, including the environmental impact assessments conducted in accordance with the Environmental Impact Assessment Ordinance. We will also consult the public in accordance with the relevant statutory procedures.

(4) *Planning the Development of South Lantau into a Conservation Area*

As Members mentioned earlier, we must strike a balance between development and conservation, and this is the objective of the Concept Plan. The planning intention in relation to South Lantau is to facilitate conservation while developing it for recreational and visitors uses in line with the principle of sustainable development. These uses must also be compatible with the countryside and natural environment.

At present, over 50% of the land on Lantau is used as country parks, and the Lantau South Country Park even measures 5 600 hectares. To ensure that the natural ecology is properly protected, the AFCD has been actively managing land inside the country parks. Besides, other places on Lantau with ecological value or places that are ecologically sensitive are also protected by statutory town plans. For instance, according to the South Lantau Coast Outline Zoning Plan, about 480 hectares and 160 hectares of land are demarcated as green belts and marine reserves respectively. The Government will study the suitable timetable for constructing the South West Lantau Marine Park.

(5) Development and Planning of Tung Chung

While exploring the strategic development of Lantau, we have also paid attention to the needs and living conditions of the residents there. In respect of cultural and recreational facilities, the LCSD is actively planning to implement many projects in Tung Chung, such as an open space area in Tung Chung Area 2, an indoor recreation centre, community hall and library in Tung Chung Area 17, an open space area in Tung Chung Area 18 and a swimming pool complex in Tung Chung Area 2. These projects are expected to complete one after another from end 2007 to end 2011 to meet the residents' needs for recreational facilities.

We understand that the public is concerned about air quality in Tung Chung and the reclamation works in Tung Chung Bay. The Government will conduct assessments carefully and reduce the scale of the reclamation works as far as possible, while at the same time carrying out urban design and landscaping works. Issues such as the further development of Tung Chung New Town and building height will be explored in detail in the Feasibility Study for Remaining Development in Tung Chung. As for air quality, Guangdong Province and the SAR Government have agreed on plans and a mechanism to address the problem of air pollution in the Pearl River Delta Region.

Moreover, the Government very much appreciates the concern of residents in North Lantau over the lack of hospital facilities in the district. As some Members have mentioned, the Secretary for Health, Welfare and Food initially plans to build a North Lantau Hospital in Areas 13, 22 and 25 in Tung Chung. The Government will formally consult the District Council and Tung Chung Rural Committee on this proposal, and we will formally submit an application to the Town Planning Board for the construction of a hospital there. If the application is approved and with funding provided, the North Lantau Hospital will be commissioned in phases in 2010 or 2011.

Since the publication of the Concept Plan, members from various sectors of the community have enthusiastically expressed their views to us. We understand that the community has very high expectation of the development plan for Lantau. We will endeavour to expeditiously implement those projects that are widely supported by members of the community, in order to give Lantau a facelift and inject new momentum into it. In the process, the Government will continue to work with members of the public in planning the future development of Lantau.

Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mr LEUNG Yiu-chung to move his amendment to the motion.

MR LEUNG YIU-CHUNG (in Cantonese): President, I move that Mr CHEUNG Hok-ming's motion be amended.

Mr LEUNG Yiu-chung moved the following amendment: (Translation)

"To delete ", given the slow progress of work since the Government drew up the Concept Plan for Lantau in 2004," after "That"; to delete "to expedite the planning study on Lantau and" after "this Council urges the Government" and substitute with ", in considering the development planning for Lantau, to put the following directions into effect"; to delete ", to expeditiously put the following development directions into effect" after "taken into consideration"; to delete "in line with the construction of" after "(b)" and substitute with "the plans to construct"; to delete ", creating favourable conditions for developing new economic activities in the area; and" after "other infrastructural facilities" and substitute with "should be implemented only after they have gone through strict environmental impact assessments and secured extensive support from the local residents affected;"; and to add "; (d) expeditiously building a hospital on Lantau; and providing arts, recreational and sports facilities in Tung Chung; and (e) shelving the plan for further reclamation in Tung Chung; and restricting the number of high-rise buildings in the district, so as to alleviate the deteriorating air pollution problem there" after "logistics park on Lantau". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr LEUNG Yiu-chung to Mr CHEUNG Hok-ming's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division.

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

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

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

Functional Constituencies:

Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Daniel LAM and Mr Andrew LEUNG voted against the amendment.

Mr CHEUNG Man-kwong and Mr SIN Chung-kai abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG and Mr LEUNG Kwok-hung voted for the amendment.

Mr Jasper TSANG, Mr LAU Kong-wah, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Mr Albert HO, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr Albert CHAN and Mr LEE Wing-tat abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, six were in favour of the amendment, nine against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 17 were present, six were in favour of the amendment, four against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further division being claimed in respect of the motion "Development planning for Lantau" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raise their hands)

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

(No hands raised)

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

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

PRESIDENT (in Cantonese): Dr KWOK Ka-ki, you may move your amendment.

DR KWOK KA-KI (in Cantonese): President, I move that Mr CHEUNG Hok-ming's motion be amended.

Dr KWOK Ka-ki moved the following amendment: (Translation)

"To delete "slow progress of work" after "That, given the" and substitute with "diverse views and grave concern expressed by the public"; to add "and commenced public consultation" after "Concept Plan for Lantau"; to delete "expedite" after "this Council urges the Government to" and substitute with "allow public participation in"; to delete "provided that" after "the planning study on Lantau and," and substitute with "in line with the principles of minimum reclamation,"; to delete "are taken into consideration, to expeditiously" after "cultural heritage" and substitute with ", to"; to add "(a) expeditiously providing relevant community facilities (including hospitals, sports complexes and libraries) on Lantau, having regard to the needs of the local residents, the size of population

and the characteristics of the local community; (b) perfecting and enhancing the country parks on Lantau;" after "development directions into effect:"; to delete the original "(a)" and substitute with "(c)"; to delete "tourism area" after "develop Lantau into a quality" and substitute with "eco-tourism area for the enjoyment of all Hong Kong people"; to delete the original "(b)" and substitute with "(d)"; to delete "in line with" before "the construction of the Hong Kong-Zhuhai-Macao Bridge" and substitute with "conducting environmental impact assessments regarding"; to delete ", " after "other infrastructural facilities" and substitute with "; providing suitable complementary facilities to minimize the adverse impacts of the construction on the local environment; and"; to delete the original "(c)" and substitute with "(e)"; and to delete "completing, as soon as possible," before "the feasibility study" and substitute with "including the conduct of an environmental impact assessment and extensive public consultation in". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr KWOK Ka-ki to Mr CHEUNG Hok-ming's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Dr KWOK Ka-ki rose to claim a division.

PRESIDENT (in Cantonese): Dr KWOK Ka-ki has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

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

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Daniel LAM and Mr Andrew LEUNG voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG and Mr LEUNG Kwok-hung voted for the amendment.

Mr Jasper TSANG, Mr LAU Kong-wah, Mr LI Kwok-ying and Mr CHEUNG Hok-ming 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, 17 were present, eight were in favour of the amendment and nine against it; while among the Members returned by geographical constituencies through direct elections, 17 were present, 12 were in favour of the amendment and four against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

PRESIDENT (in Cantonese): Mr LEE Wing-tat, you may now move your amendment.

MR LEE WING-TAT (in Cantonese): President, I move that Mr CHEUNG Hok-ming's motion be amended.

Mr LEE Wing-tat moved the following amendment: (Translation)

"To add ", give an account of the work progress" after "the planning study on Lantau"; to add "; and submitting a concrete proposal for implementing the original planning intention of retaining Lantau South as a conservation area" after "a quality tourism area"; to delete "feasibility study on" after "as soon as possible, the" and substitute with "environmental impact assessments, feasibility studies and demand assessments regarding"; to add "the Hong Kong-Zhuhai-Macao Bridge and relevant road links as well as" before "a logistics park on Lantau" and to add ", and publishing the results of such assessments and studies" thereafter."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEE Wing-tat to Mr CHEUNG Hok-ming's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Tommy CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG has claimed a division. The division bell will ring for one minute, after which the division will begin

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

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

Functional Constituencies:

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

Dr Raymond HO and Mr Bernard CHAN voted against the amendment.

Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Daniel LAM and Mr Andrew LEUNG abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr CHEUNG Hok-ming voted for the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, eight were in favour of the amendment, two

against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present and 17 were in favour of the amendment. 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 CHEUNG Hok-ming, you may now speak in reply. You have two minutes 35 seconds.

MR CHEUNG HOK-MING (in Cantonese): In this motion debate today, some 20 Members have spoken. The Secretary has also responded. All these show that great attention is paid to this motion topic.

By all appearances, this is a motion debate, but in fact it has been more like a consultation session. The motion today may not be legally binding but since Members come from all walks of life and various sectors across the community, they have put forward many valuable opinions on tourism, logistics, nature conservation, and so on, from different perspectives.

I wish to make a request on the Secretary here. Actually and in terms of time, the plan has been delayed for too long and for those people living on the outlying islands, especially Lantau, they are very upset about the fact that the plan has not really been put into practice and hence the works projects have been delayed. I hope that after the consultation this time, the Secretary can hear our opinions and accept them. This will enable the projects to commence at once and so it would prevent residents of Lantau from airing more grievances.

I would like to thank the 20 Honourable colleagues who have spoken. I hope Honourable colleagues can, as the saying goes, walk the Buddha home to the West and do me a last favour by supporting my motion. Thank you.
(Laughter)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr CHEUNG Hok-ming 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 LEUNG Yiu-chung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Andrew LEUNG and Mr KWONG Chi-kin voted for the motion.

Dr Fernando CHEUNG voted against the motion.

Dr KWOK Ka-ki abstained.

Geographical Constituencies:

Mr Albert HO, Mr James TO, Miss CHAN Yuen-han, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG and Mr CHEUNG Hok-ming voted for the motion.

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Albert CHAN and Mr LEUNG Kwok-hung voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, 15 were in favour of the motion, one against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 17 were present, 12 were in favour of the motion and four against it. 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.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 8 March 2006.

Adjourned accordingly at nine minutes past Nine o'clock.

Annex I

PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for the Environment,
Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>(a) By deleting the definition of "commercial purposes" and substituting -</p> <p>" "commercial purposes" (商業目的) means -</p> <p>(a) a purpose relating to trade or business; or</p> <p>(b) a purpose of obtaining profit or other economic benefit (whether in cash or in kind) and directed towards sale, resale, exchange, provision of a service or other form of economic use or benefit, whether direct or indirect,</p> <p>and "non-commercial purposes" (非商業目的) shall be construed accordingly;".</p>

(b) In the definition of "Convention export permit", by deleting "'Convention export permit" (《公約》出口准許證)" and substituting "'Convention certifying document" (《公約》證明文件)".

(c) By adding -

"'former licence" (前許可證) means a licence within the meaning of section 7 of the repealed Ordinance;"

3

By deleting the clause and substituting -

"3. Meaning of "in transit"

For the purposes of this Ordinance, a thing is in transit if -

- (a) it is brought into Hong Kong from a place outside Hong Kong;
- (b) it is in the process of being taken to another place outside Hong Kong; and
- (c) it remains under the control of the Director or an authorized officer from the time it is brought into Hong Kong up to the time it is taken outside

Hong Kong.”.

- 5(1)(b)(ii) By deleting “Convention export permit” and substituting “Convention certifying document”.
- 5(2)(b) By deleting “Convention export permit” and substituting “Convention certifying document”.
- 11(1)(b)(ii) By deleting “Convention export permit” and substituting “Convention certifying document”.
- 11(2)(b) By deleting “Convention export permit” and substituting “Convention certifying document”.
- 17 (a) In paragraphs (a) and (b), by deleting “Convention export permit” and substituting “Convention certifying document”.
- (b) In paragraph (c) -
- (i) by deleting “Convention export permit” and substituting “Convention certifying document”;
- (ii) by deleting “that permit” and substituting “that document”.
- 18 In paragraphs (a), (b) and (c), by deleting

"Convention export permit" and substituting
"Convention certifying document".

19(1) In paragraphs (a)(i) and (b), by deleting
"Convention export permit" and substituting
"Convention certifying document".

21 (a) By re-numbering the clause as clause 21(1).
(b) In subclause (1), by adding "by documentary
evidence or otherwise" after "the Director".
(c) By adding -

"(2) In subsection (1),
"documentary evidence" (文件證據)
includes but is not limited to a former
licence, a certificate in lieu or other
Convention certifying document."

22(1) By deleting "Convention export permit" and
substituting "Convention certifying document".

22(2) (a) In paragraph (a), by deleting "Convention
export permit" and substituting "Convention
certifying document".

(b) In paragraph (b) -

(i) by deleting "date of the expected

- arrival of the vessel, vehicle,
train or aircraft in" and
substituting "intended date on";
- (ii) in subparagraph (iii), by adding
"where the animal is to be brought
into Hong Kong by a vessel,
vehicle, train or aircraft," before
"providing".
- 22(3) In the English text, by deleting "purpose" and
substituting "purposes".
- 29(1) By deleting "state" and substituting "give".
- 41 (a) In the heading, by deleting ", 38".
(b) By deleting ", 38".
- 42(1) By deleting ", 38".
- 44(3) By adding "and to imprisonment for 6 months" after
"level 6".
- 55 By deleting subclause (1) and substituting -
"(1) In this section, "relevant date"
(有關日期) means the date of commencement of

this Ordinance.”.

- 55(6) By deleting “3” and substituting “6”.
- Schedule 1,
Part 1,
section 6 By deleting “countries” and substituting “places”.
- Schedule 1,
Part 2,
Appendix III By deleting “*Pelodiscus sinensis*<Chinese softshell turtle>(China)”.
- Schedule 1 In paragraph 2 of the annotations set out at the end of the Appendices -
- (a) in sub-subparagraph (ii), in the Chinese text, by deleting “是”;
 - (b) by deleting “state” where it twice appears and substituting “place”.
- Schedule 1 In paragraph 8 of the annotations set out at the end of the Appendices -
- (a) in subparagraph (e), by deleting “country” where it twice appears and substituting “place”;
 - (b) by deleting “Convention documents” and substituting “Convention certifying documents”.

Schedule 3,
Part 1,
item II

By deleting "state" and substituting "place".

Schedule 3,
Part 1,
item III

(a) In paragraph 1(b), by deleting "country" and substituting "place".

(b) In paragraph 3, in the English text, by deleting "are" and substituting "shall be".

(c) In paragraph 4(a)(ii), by deleting "country" and substituting "place".

(d) In paragraph 5 -

(i) in the English text, by deleting "are" and substituting "shall be";

(ii) by adding "shall" before "be treated as".

(e) By deleting paragraph 7(a) and substituting -

"(a) any plant species or other taxa listed in Appendix I shall be annotated in accordance with Article XV of the Convention if the provisions of this Ordinance relevant to Appendix I are to apply to artificially propagated hybrids derived from such species or taxa;".

(f) In paragraph 8, by deleting everything after "containers," and substituting "shall not be

considered as specimens of a scheduled species for the purposes of this Ordinance if they have been artificially propagated.”.

Schedule 3,
Part 1,
item IV

- (a) In paragraph 3(b), by deleting “country” and substituting “place”.
- (b) In the heading immediately before paragraph 4, by deleting “the trade in” and substituting “marking of”.
- (c) By deleting paragraph 4 and substituting –

“4. A specimen bred in captivity shall be marked in accordance with the provisions on marking in the Resolutions adopted by the Conference of the Parties and the type and number of the mark shall be indicated on any Convention certifying document issued in respect of the specimen.”.

Schedule 3,
Part 1

By deleting item V.

Schedule 3,
Part 1,
item VI

- (a) By deleting paragraphs 2 and 3.
- (b) In paragraph 4, by deleting everything after “fragments” and substituting “shall not be considered as specimens of a scheduled

species for the purposes of this Ordinance.”.

(c) By deleting paragraph 5 and substituting -

“5. In this Schedule -

(a) “coral sand” means coral material not identifiable to the level of genus and consisting entirely or in part of finely crushed fragments of dead coral no larger than 2 mm in diameter and which may also contain, amongst other things, the remains of Foraminifera, mollusc and crustacean shell, and coralline algae;

(b) “coral fragments” means unconsolidated fragments of broken finger-like dead coral and other coral material between 2 and 30 mm in diameter, which are not identifiable to the level of genus;

(c) “coral rock” means hard

consolidated coral
material not identifiable
to the level of genus but
identifiable to the level
of order, larger than 3 cm
in diameter, formed of
fragments of dead coral
and which may also contain
cemented sand, coralline
algae and other
sedimentary rocks, and
includes live rock and
substrate, but does not
include dead coral;

(d) "live rock" means pieces
of coral rock to which are
attached live specimens of
invertebrate species and
coralline algae not
included in the Appendices
and which are transported
moist, but not in water,
in crates;

(e) "substrate" means pieces
of coral rock to which are

attached invertebrates (of species not included in the Appendices) and which are transported in water like live corals;

(f) "dead coral" means pieces of coral identifiable to the level of species or genus, which are dead when exported, but which may have been alive when collected, and in which the structure of corallites (the skeleton of the individual polyp) is still intact;

(g) "live coral" means pieces of coral identifiable to the level of species or genus, which are alive and transported in water."

Schedule 3,
Part 2,
paragraph 1

By deleting "should" and substituting "shall".

Schedule 3,
Part 2,

By deleting "should" and substituting "shall".

paragraph 2

Schedule 3,
Part 2,
paragraph 3

- (a) In subparagraph (a), by deleting "country" where it twice appears and substituting "place".
- (b) In subparagraph (b), by deleting "country" where it twice appears and substituting "place".

Schedule 3,
Part 2,
paragraph 4

- (a) By deleting "The" and substituting "Subject to paragraph 16 of this Part, the".
- (b) By deleting "should" and substituting "shall".
- (c) In the English text, by deleting "may" and substituting "shall".

Schedule 3,
Part 2

By deleting paragraphs 5 and 6.

Schedule 3,
Part 2,
paragraph 9

By deleting everything before "either" and substituting -

"9. All pre-Convention certificates shall include".

Schedule 3,
Part 2

By deleting paragraph 10.

Schedule 3,
Part 2,

- (a) By deleting "should" and substituting

- paragraph 11 "shall".
- (b) In the English text, by deleting "may" and substituting "shall".
- Schedule 3,
Part 2 By deleting paragraph 12.
- Schedule 3,
Part 2 By deleting paragraph 13 and substituting -
- "13. A phytosanitary certificate used as a certificate of artificial propagation in accordance with Article VII, paragraph 5, of the Convention for the purpose of the export of an artificially propagated specimen of an Appendix II species shall include the scientific name of the species and the type and quantity of the specimens covered by the certificate, and bear a stamp, seal or other specific indication stating that the specimens are artificially propagated.".
- Schedule 3,
Part 2,
paragraph 15 By deleting everything after "trade in specimens" and substituting "of coral rock, where the genus cannot be readily determined, the scientific name for the specimens shall be *Scleractinia*".
- Schedule 3,
Part 2,
paragraph 16 (a) In subparagraph (a), by deleting "the port of

final destination" and substituting "a place of import".

(b) In subparagraph (c) -

(i) by deleting everything before "and the new date" and substituting -

"(c) the appropriate enforcement personnel of the place of import who extended the validity of the permit or certificate has included the date of arrival in that place";

(ii) by deleting "export permit or re-export certificate" and substituting "permit or certificate".

(c) In subparagraph (d), by deleting everything before "before" and substituting -

"(d) the shipment is to be imported into another place for consumption from the place of import".

(d) In subparagraph (e) -

(i) by deleting "export permit or re-export certificate" and

substituting "permit or
certificate";

(ii) by deleting "country" and
substituting "place".

Schedule 3,
Part 2

By deleting paragraph 17 and substituting -

"17. A permit or certificate issued
retrospectively shall not be accepted unless
it was issued in accordance with the
requirements concerning the retrospective
issue of documents under the Convention or
any Convention instrument.".

Schedule 3,
Part 2

By deleting paragraphs 18, 19 and 20.

Schedule 3,
Part 2,
paragraph 21

(a) By deleting everything before "been altered"
and substituting -

"21. Where a permit or certificate has".

(b) By deleting "unless".

(c) By deleting "has been authenticated" and
substituting "shall be authenticated".

Schedule 3,
Part 2

By deleting paragraph 22 and substituting -

"22. Where a security stamp is affixed to a
permit or certificate, the security stamp

shall be cancelled by the stamp or seal and signature of the relevant authority issuing the document.”.

Schedule 3,
Part 2

By deleting paragraph 23.

Schedule 3,
Part 2,
paragraph 24

(a) By deleting “that do not” and substituting
“shall”.

(b) By deleting “shall not be accepted”.

Schedule 3,
Part 2,
paragraph 26

(a) By deleting “sample collections be” and
substituting “sample collections shall be”.

(b) In subparagraph (a), by deleting everything
before “, on which” and substituting -

“(a) a sample collection shall be
covered by an ATA carnet and be
accompanied by a document”.

(c) In subparagraph (b) -

(i) by deleting “permit issued under
the Convention” and substituting
“document”;

(ii) by deleting “should” and
substituting “shall”.

(d) In subparagraph (c) -

(i) by deleting “permit issued under

the Convention" and substituting
"document";

(ii) by deleting "countries" and
substituting "places".

(e) In subparagraph (d), in the Chinese text, by
deleting "等".

Schedule 3,
Part 2,
paragraph 28

By deleting everything after "lost," and
substituting "the owner of the collection shall
inform the relevant authority issuing the document
and the relevant authority of the place in which
that matter occurred as soon as practicable.".

Schedule 3,
Part 2,
paragraph 29

- (a) By deleting "not be accepted by Parties
unless they".
- (b) In subparagraph (c), by deleting "country"
and substituting "place".
- (c) In subparagraph (d) -
- (i) by deleting "should" and
substituting "shall";
- (ii) by deleting "state" and
substituting "place".
- (d) In subparagraph (e), by deleting "country"
and substituting "place".

Schedule 3,
Annex to Part
2

- (a) In the cross-heading, by deleting "**should**" and substituting "**shall**".
- (b) In paragraph (g), by deleting "The" and substituting "In the case of an export permit, the".
- (c) In paragraph (l), by deleting "handwritten".
- (d) By deleting everything after paragraph (m) and substituting -
 - "(n) In the case of a certificate of origin, a statement that the specimens originate in the place that issued the certificate."

Schedule 3,
Part 3

- (a) By deleting "should" and substituting "shall".
- (b) In paragraph (b), by adding ", frozen museum specimens, duplicate herbarium specimens" after "embedded museum specimens".

Annex II

REVENUE (PROFITS TAX EXEMPTION FOR OFFSHORE FUNDS) BILL 2005

COMMITTEE STAGEAmendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>In the proposed section 20AB(4)(c), by deleting subparagraph (ii) and substituting –</p> <p>“(ii) not being a trustee of the trust estate or, where the trustee is a corporation, a director of the trustee, is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income, otherwise than through another person.”.</p>
2	<p>In the proposed section 20AB, by adding –</p> <p>“(9) A reference to the issued share capital of a corporation does not include a reference to the shares comprised in the issued share capital that do not entitle their holders to receive dividends, whether in cash or in</p>

kind, and a distribution of the corporation's assets upon its dissolution other than a return of capital.”.

2 In the proposed section 20AC, by deleting subsections (1), (2), (3) and (4) and substituting –

“(1) Subject to subsections (5) and (6), a non-resident person is exempt from tax chargeable under this Part in respect of his assessable profits, for any year of assessment commencing on or after 1 April 1996, from –

- (a) transactions falling within subsection (2); and
- (b) transactions incidental to the carrying out of the transactions referred to in paragraph (a).

(2) A transaction falls within this subsection if it –

- (a) is a transaction specified in Schedule 16; and
- (b) has been carried out through or arranged by a specified person.”.

2

In the proposed section 20AC, by adding –

“(7) The Commissioner may by notice published in the Gazette amend Schedule 16.

(8) In subsection (2), a “specified person” (指明人士) means –

(a) in relation to a transaction carried out before 1 April 2003 –

(i) a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

(ii) a person registered as a dealer or commodity trading adviser under Part IV of the Commodities Trading Ordinance (Cap. 250) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571);

(iii) a person registered as a dealer or an investment adviser under Part VI, or as a securities margin financier under Part XA, of the

Securities Ordinance (Cap. 333) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571); or

- (iv) a person licensed as a leveraged foreign exchange trader under Part IV of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571); or

- (b) in relation to a transaction carried out on or after 1 April 2003, a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on, or an authorized financial institution registered under that Part for carrying on, a business in any regulated activity within the

meaning of Part 1 of Schedule 5 to that Ordinance.”.

2 In the proposed section 20AD, by adding “for any subsequent year of assessment” before the full stop.

2 In the proposed section 20AE, by deleting subsection (1) and substituting –

“(1) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2005 (of 2005) commences or in any subsequent year of assessment –

(a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person to the extent set out in subsection (2); and

(b) the non-resident person is exempt from tax under section 20AC,

the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as

the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.”.

2

In the proposed section 20AE, by deleting subsection (3) and substituting –

“(3) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2005 (of 2005) commences or in any subsequent year of assessment –

(a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person who is exempt from tax under section 20AC; and

(b) the non-resident person is an associate of the resident person,

the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as

the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.”.

2 In the proposed section 20AE, by deleting subsection (11).

New By adding –

“5. Schedule 16 added

The following is added –

“SCHEDULE 16 [s. 20AC]

SPECIFIED TRANSACTIONS

1. a transaction in securities.
2. a transaction in futures contracts.
3. a transaction in foreign exchange contracts.
4. a transaction consisting in the making of a deposit other than by way of a money-lending business.
5. a transaction in foreign currencies.
6. a transaction in exchange-traded commodities.

In this Schedule –

“collective investment scheme” (集體投資計劃) means

arrangements in respect of any property –

- (a) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of the management;
- (b) under which –
 - (i) the property is managed as a whole by or on behalf of the person operating the arrangements;
 - (ii) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
 - (iii) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the

profits or income from which
payments are made to them
are pooled; and

- (c) the purpose or effect, or pretended
purpose or effect, of which is to
enable the participating persons,
whether by acquiring any right,
interest, title or benefit in the
property or any part of the property
or otherwise, to participate in or
receive –

- (i) profits, income or other
returns represented to arise or
to be likely to arise from the
acquisition, holding,
management or disposal of
the property or any part of
the property, or sums
represented to be paid or to
be likely to be paid out of
any such profits, income or
other returns; or

- (ii) a payment or other returns

arising from the acquisition,
holding or disposal of, the
exercise of any right in, the
redemption of, or the expiry
of, any right, interest, title or
benefit in the property or any
part of the property;

“contract for differences” (差價合約) means an

agreement the purpose or effect of which is to
obtain a profit or avoid a loss by reference to
fluctuations in the value or price of property of
any description or in an index or other factor
designated for that purpose in the agreement;

“debenture” (債權證) includes debenture stocks, bonds,

and other securities of a corporation, whether
constituting a charge on the assets of the
corporation or not;

“deposit” (存款) means a loan of money –

- (a) at interest; or
- (b) repayable at a premium or repayable
with any consideration in money or
money's worth;

“exchange-traded commodity” (在交易所買賣的商品)

means gold or silver traded on a commodity exchange in Hong Kong to which the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) does not apply by virtue of section 3(d) of that Ordinance;

“foreign exchange contract” (外匯交易合約) means a

contract other than a futures contract and an options contract, whereby the parties to the contract agree to exchange different currencies at a future time;

“futures contract” (期貨合約) means –

- (a) a contract or an option on a contract that is listed or traded on the Hong Kong Futures Exchange Limited; or
- (b) any other contract for differences –
 - (i) that is listed on a specified stock exchange, or traded on a specified futures exchange, within the meaning of section 1 of Part I of Schedule 1 to the Securities and Futures

Ordinance (Cap. 571);

- (ii) that an authorized institution within the meaning of the Banking Ordinance (Cap. 155) may enter into under that Ordinance; or
- (iii) the transaction in respect of which is regulated by or under, or is carried out in compliance with, the Securities and Futures Ordinance (Cap. 571);

“options contract” (期權合約) means a contract that

gives the holder of the contract the option or right, exercisable at or before a time specified in the contract to –

- (a) buy or sell –
 - (i) at an agreed consideration an agreed quantity of a specified futures contract, share or other property; or
 - (ii) an agreed value of a specified futures contract,

share or other property; or

- (b) be paid an amount of money calculated by reference to the value of such futures contract, share or other property or by reference to the level of an index, as may be specified in the contract;

“property” (財產) includes –

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

“securities” (證券) means –

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal

government authority;

- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests in any collective investment scheme;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities,

but does not include shares or debentures of, or rights, options or interests (whether described as units or otherwise) in, or in respect of, shares or debentures of, a company that is a private

company within the meaning of section 29 of the
Companies Ordinance (Cap. 32);

“share” (股份) means any share in the share capital of a
corporation, and, except where a distinction
between stock and shares is express or implied,
includes stock.”.”.

Appendix 1**REQUEST FOR POST-MEETING AMENDMENTS**

The Secretary for Constitutional Affairs requested the following post-meeting amendment

Line 5, third paragraph, page 177 of the Confirmed version

To amend "..... given by the Central People's Government in June 1996"
as "..... given by the Central People's Government in June 1997"
(Translation)

(Please refer to line 8, fifth paragraph, page 5191 of this Translated version)

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Mr WONG Kwok-hing's supplementary question to Question 5**

As regards the number of squatters applying for public rental housing, according to the information provided by the applicants, there are at present 780 squatter households on the Waiting List for public rental housing.