

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 11 July 2001

The Council met at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

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

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

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

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

MR MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MISS DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE TREASURY

MRS LILY YAM KWAN PUI-YING, J.P.
SECRETARY FOR THE ENVIRONMENT AND FOOD

MRS REGINA IP LAU SUK-YEE, J.P.
SECRETARY FOR SECURITY

MS SANDRA LEE SUK-YEE, J.P.
SECRETARY FOR ECONOMIC SERVICES

MS ELAINE CHUNG LAI-KWOK, J.P.
SECRETARY FOR HOUSING

MR THOMAS TSO MAN-TAI, J.P.
SECRETARY FOR PLANNING AND LANDS

CLERKS IN ATTENDANCE:

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

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Specification of Arrangements (Government of the Republic of Estonia Concerning Air Services) (Double Taxation) Order	152/2001
Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) (No. 2) Regulation 2001	153/2001
Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) (Amendment) (No. 2) Regulation 2001	154/2001
Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) (Amendment) Regulation 2001.....	155/2001
Merchant Shipping (Safety) (GMDSS Radio Installations) (Amendment) Regulation 2001	156/2001
Merchant Shipping (Safety) (Life-Saving Appliances) Regulation.....	157/2001
Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation.....	158/2001
Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation.....	159/2001
Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) (Amendment) Rules 2001	160/2001
Continuing Professional Development (Amendment) Rules 2001	161/2001

Solicitors (Professional Indemnity) (Amendment) Rules 2001	162/2001
Securities (Miscellaneous) (Amendment) (No. 2) Rules 2001	163/2001
Banking Ordinance (Amendment of Third Schedule) Notice 2001	164/2001
Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2001	165/2001
Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2001	166/2001
Fugitive Offenders (Indonesia) Order (Cap. 503 sub. leg.) (Commencement) Notice 2001	167/2001

Other Papers

- No. 100 — Sir Robert Black Trust Fund
Annual Report for the year 1 April 2000 to 31 March 2001
- No. 101 — J.E. Joseph Trust Fund Report for the period 1 April 2000
to 31 March 2001
- No. 102 — Kadoorie Agricultural Aid Loan Fund Report for the
period 1 April 2000 to 31 March 2001
- No. 103 — Report by the Trustee of the Customs and Excise Service
Children's Education Trust Fund for the period 21 July
2000 to 31 March 2001
- No. 104 — Hong Kong Trade Development Council
Annual Report 2000/2001

No. 105 — Clothing Industry Training Authority
Annual Report 2000

No. 106 — Construction Industry Training Authority
Annual Report 2000

No. 107 — Airport Authority Hong Kong
Annual Report 2000/2001

Committee on Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region
Progress Report for the period October 2000 to June 2001

Report of the Panel on Financial Affairs 2000/2001

Report of the Panel on Economic Services 2000/2001

Report of the Bills Committee on Chief Executive Election Bill

Report of the Bills Committee on Revenue (No. 3) Bill 2001

Report of the Bills Committee on Fixed Penalty (Public Cleanliness
Offences) Bill

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Mr Jasper TSANG will address the Council on the progress report of the Committee on Rules of Procedure for the period October 2000 to June 2001.

Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region Progress Report for the period October 2000 to June 2001

MR JASPER TSANG (in Cantonese): Madam President, in my capacity as Chairman of the Committee on Rules of Procedure, I would like to submit to this Council the Committee on Rules of Procedure of the Legislative Council of the

Hong Kong Special Administrative Region Progress Report for the period October 2000 to June 2001.

This report highlights the Committee's studies in three areas over the past year, which include:

- (1) review of the procedural arrangements relating to Council meetings;
- (2) review of the procedures and working mechanism of the committees of the Council; and
- (3) fine-tuning of provisions and expressions used in procedural rules.

First of all, as regards the review of procedural arrangements relating to Council meetings, the Committee has studied and discussed in detail the procedural arrangements for the debate on the policy address. Having regard to the functions of the Legislative Council to, among other things, receive and debate the policy addresses of the Chief Executive under Article 73(4) of the Basic Law, the Committee has reviewed the current procedure relating to the Motion of Thanks, including the appropriateness of the wording of the motion and the arrangement for proposing amendments to the motion.

After consideration, the Committee finds that the current arrangement of debating the policy address upon a motion is not inconsistent with the Basic Law. On the wording of the motion, the Committee considers that its present wording, that is, "That this Council thanks the Chief Executive for his address" should be retained.

As regards amendments to the motion, the Committee is of the view that the existing arrangement of allowing amendments to the motion only by adding words at the end of the motion should be retained.

While reviewing the procedure of the Motion of Thanks, the Committee held that the present mode of debate could be improved. After making reference to the practice in other jurisdictions, the Committee considers that structuring the debate by policy areas has the merits of making the debate more focused and efficient. Having consulted the House Committee and the

Administration, the Committee proposed that the current procedural arrangement, whereby Members speak on two days and public officers respond on one day, be changed to a new mode comprising a three-day debate with six sessions on specific policy areas and one day on general policies. The relevant Policy Secretaries will respond in the relevant sessions of the debate.

The Committee will continue to study the details of the arrangement, so that the trial implementation of the new mode can be carried out in the debate on the 2001 policy address in the next session.

With regard to the review of the procedures and working mechanism of the committees of the Council, the Committee has, at the invitation of the House Committee, studied Miss Margaret NG's proposal on the working mechanism of Panels and Bills Committees for the scrutiny of legislative and financial proposals.

In the course of its study, the Committee had examined the current arrangements for scrutinizing legislative and financial proposals in the legislature of Hong Kong and made reference to the practices in legislatures overseas, including the United Kingdom, Australia, Canada and the United States. The Committee also invited views from the Chairmen and Deputy Chairmen of various Panels and representatives of the Administration on the current working mechanism as well as Miss Margaret NG's proposal.

Having considered the views of Panel Chairmen and the Administration, the Committee came up with a series of improvement measures. They included requesting the Administration to consult the relevant Panels on major legislative and financial proposals as early as practicable and provide papers at least one week in advance of the relevant Panel meeting, and also requesting the Administration to provide periodic updates of the Legislative Programme. These measures have been referred to the Administration for follow-up after they were accepted by the House Committee in January this year. The Committee subsequently conducted a review in May and submitted a report to the House Committee on 15 June, further proposing to request the Administration to make improvements in respect of the timing for provision of discussion papers and the information in its papers on financial proposals on which Panels are consulted.

On the fine-tuning of provisions and expressions used in procedural rules, the Committee proposes to fine-tune some provisions of the Rules of Procedure, and has reviewed in detail the wording of the Chinese text of the House Rules and made amendments to it. I will move a resolution later to amend the Rules of Procedure on the basis of the Committee's proposals.

Finally, I wish to take this opportunity to thank Honourable Members for supporting the work of the Committee and giving valuable views on it.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Ambrose LAU will address the Council on the Report of the Panel on Financial Affairs 2000/2001.

Report of the Panel on Financial Affairs 2000/2001

MR AMBROSE LAU (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Financial Affairs, I would like to submit the Report of the Panel on Financial Affairs 2000/2001, and speak briefly on several areas of work as highlighted in the Report.

In the current session, the Panel has conducted in-depth studies of Hong Kong's economic development, management of public finance, and the development of Hong Kong's financial system. In respect of the overall economic development of Hong Kong, we have met with the former and incumbent Financial Secretary to understand the latest economic situation of Hong Kong, and have exchanged views with them on the direction of development. During the briefing on 4 June this year, the new Financial Secretary, Mr Antony LEUNG, shared with Members his vision and aspirations in managing his policy portfolio, and his views on how he would work with Members in bringing forward government policies to enhance Hong Kong's economic development.

At the meetings with the Financial Secretary, members explored the various means to enhance Hong Kong's competitiveness and to help the small and medium enterprises and lower-skilled workers confront the difficulties arising from the economic restructuring in Hong Kong. Given the large fiscal

reserves in Hong Kong, members consider that the Government should increase public spending to stimulate the economy and create more job opportunities. Some members also take the view that the Government should freeze its fees and charges, so as to alleviate the burden of the low-income group and the business sector.

The Panel recognizes that financial prudence for attaining a fiscal balance has always been the strategy of the Government in public finance management. The Government considers that fiscal reserves need to be kept on a healthy and robust level, in order to maintain international confidence and favourable credit rating for Hong Kong.

However, members maintain that there is a need to study from different perspectives how the fiscal reserves can be used properly. In this connection, apart from listening to briefings by the Government on the relevant policies, the Panel also invited academics and experts in the relevant fields to give their views. Members are glad that a total of 11 academics attended the meeting and submitted written submissions, providing valuable input on the management and utilization of the fiscal reserves. The Panel will continue to follow up this subject and has decided to conduct a research into the management and use of fiscal reserves in overseas jurisdictions.

With regard to the freezing of government fees and charges, the Panel welcomes the statement made by the new Financial Secretary at the meeting of the Panel on 4 June, reiterating that the Government would keep its earlier promise of not increasing the four major kinds of livelihood-related fees and charges in 2001-02, namely, water charges, sewage charges, school fees and medical fees.

During the session, the Panel received briefings by the Chief Executive of Hong Kong Monetary Authority (HKMA) on the work of the HKMA. Members expressed concern about the plan of some banks to raise charges for banking services. The Panel noted that the revision of charges was a commercial decision and the HKMA was not inclined to interfere in such matters. However, the HKMA would ensure that banks would operate in a fair and transparent manner, so that customers could make free and informed choices on banking services. In view of members' concern over the protection of the interest of bank customers, the Panel has decided to conduct studies on the related matters and it will follow up the matter.

The Panel is gravely concerned about the Financial Secretary's decision to use \$3.699 billion from the Exchange Fund to purchase office accommodation for the HKMA. Members noted that the legal adviser of the HKMA and the Legal Adviser of the Legislative Council Secretariat hold different views on the legality of this decision. At the Panel's request, the new Financial Secretary is currently seeking advice from the Department of Justice, so that the Panel can pursue the matter further in the next session.

Given that the Government has proposed in this session a number of legislative proposals which will have far-reaching impact on the financial infrastructure and practices of the banking, securities and futures industries in Hong Kong, the Panel formed a delegation jointly with the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 in April this year, and visited London, Washington, DC and New York. The purpose of this visit was to share their experiences in introducing changes to the financial systems in the face of challenges arising from globalization and the diversification of businesses of enterprises. I already submitted the relevant report at the meeting of this Council on 4 July for Members' reference.

The other highlights of the Panel's work are set out in the Report. I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr James TIEN will address the Council on the Report of the Panel on Economic Services 2000/2001.

Report of the Panel on Economic Services 2000/2001

MR JAMES TIEN: Madam President, I speak in my capacity as Chairman of the Panel on Economic Services. As the report has already given a detailed account of the work of the Panel, I would only highlight a few points here.

During the session, the Panel has expanded its scope of work in meeting the changes in the responsibilities of the Economic Services Bureau. Apart from overseeing the policy matters relating to the development of our economic infrastructure and services to support the overall development of Hong Kong, the Panel has also taken up the responsibility for monitoring the Government's policy in respect of consumer protection and competition policy.

The Panel recognizes the need and importance of safeguarding the legitimate interests of consumers while preserving the freedom of business transactions. We have, therefore, taken every opportunity to remind government entities, and public and private sector bodies to adhere to the pro-competition principles for the purpose of enhancing economic efficiency and free trade, thereby benefiting consumer welfare.

In this session, we reviewed with the Administration and the Consumer Council the legislation to enhance consumer protection, and the means available to aggrieved consumers for appropriate legal remedies. In keeping with changing environment and new demands, we have identified areas where improvement is needed to further the interests of consumers, including the dissemination of information to promote consumer awareness. We would also monitor the Administration's discussion with the Consumer Council regarding the legislation to curb deceptive and misleading trade practices and the empowering of the Consumer Council to sue on behalf of aggrieved consumers in cases of crucial consumer interest.

The Panel has closely monitored the pricing of ultra low sulphur diesel (ULSD) and whether oil companies have passed on the full benefit of the concessionary duty on ULSD to consumers. With efforts from parties concerned, the four major oil companies have reduced their pump price for ULSD, since its introduction in July 2000, by about \$0.6 per litre up to mid January 2001.

The Panel has reviewed the work of the Competition Policy Advisory Group chaired by the Financial Secretary and looked into a number of competition-related complaints. We have called on the Administration to promote competition by identifying obstacles and constraints imposed by different entities which limit market accessibility and contestability. Various suggestions have been made on how to remove the obstacles and constraints through voluntary, administrative and legislative measures as appropriate. We would continue to monitor and review business practices in sectors prone to anti-competition behaviour.

The high terminal handling charges in Hong Kong remains a concern of the Panel. The Panel generally considers that the present charges level is not conducive to enhancing the competitiveness of our port operation. Whilst the

development of Container Terminal 9 would widen the choice of facilities for shippers and shipping lines, we consider it necessary to explore measures to assist the industry to improve the efficiency of various cargo transportation and handling processes with a view to lowering the relevant costs.

The Panel also reviewed with the Administration the latest cargo demand for Hong Kong's container terminals, mid-stream sites and river trade terminals, and the need for additional infrastructure. We have called on the Administration to formulate strategies to maintain the competitive edge of Hong Kong, lower the terminal handling charges, improve the business operating environment of the industries and gear towards the provision of a "total logistics solution" to users, taking into account the competition from other major ports in Shenzhen.

The contention between major stakeholders in the container freight industry over the imposition of a mid-stream fee by mid-stream operators have resulted in industrial actions taken by truck drivers. Given the disruptions caused to port operation and the general public, the Panel held a series of meetings with representatives in the industry and the Administration with a view to resolving the matter. We also examined with the Administration on various ways to prevent the recurrence of similar incident in future.

The Panel also recognizes the importance of tourism industry as one of the economic pillars and a major foreign exchange earner for our economy. During the session, the Panel continues to monitor the development of tourism infrastructure, facilities and products in Hong Kong. In order to achieve the target opening date of the Hong Kong Disneyland theme park in 2005, the Panel has regularly reviewed the progress of the development of the project, including the necessary infrastructure and government, institution and community facilities to support the development of the project, as well as the proposed construction of a cable car system linking Tung Chung and Ngong Ping on Lantau Island.

Madam President, I believe that the Panel will continue to monitor the progress of all major events. I would like to take this opportunity to thank my colleagues on the Panel, the Administration and the Secretariat for their support which has enabled the smooth functioning of the Panel.

Thank you.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. Question time normally does not exceed one and a half hours, with each question being allocated about 15 minutes. Supplementaries should be as concise as possible and Members should not make statements when asking supplementaries.

First question.

Residential Developments

1. **MR ERIC LI** (in Cantonese): *Madam President, regarding the residential developments undertaken by the Hong Kong Housing Authority (HA), the Hong Kong Housing Society (HS), the Urban Renewal Authority (URA), the MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC) respectively, will the Government inform this Council whether it knows:*

- (a) *for this year and the next two years respectively, the number of flats to be produced by each of these organizations, those planned to be put up for sale (broken down by districts), as well as the number of flats left for sale at the end of the year; and*
- (b) *how the completed residential flats which are not for sale will be disposed of?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, Table 1 in Annex A shows the number of flats to be completed by the HA and the HS in the years 2001 to 2003. Table 2 in Annex A shows the projected completion of private housing developments undertaken by the URA, the MTRCL and the KCRC in conjunction with private property developers.

Annex B shows the numbers of flats which the five organizations expect to put up for sale in the years 2001 to 2003, broken down by district.

Other than rental flats, all public sector flats produced by the HA and HS are for sale to eligible households in the low and middle income groups. We

expect that all these organizations will make their best efforts to dispose of their flats, but the actual number of flats sold in any one year will depend on the situation of the market.

Annex A

Forecast of flat completions from 2001-02 to 2003-04

Table 1

<i>Public Sector</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>Total</i>
HA	38 293	39 664	25 550	103 507
PRH	33 376	17 557	16 563	67 496
HOS	3 377	14 267	6 977	24 621
PSPS	1 540	7 840	2 010	11 390
HS	472*	1 152*	0	1 624
HA and HS	Total: 38 765	40 816	25 550	105 131

Note: * Flat for Sale Scheme

Table 2

<i>Private Sector</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>Total</i>
URA	298	850	3 076	4 224
MTRCL**	2 461	6 782	2 582	11 825
KCRC	0	0	0	0
URA, MTRCL and KCRC	Total: 2 759	7 632	5 658	16 049

Note: ** Based on awarded development packages.

Forecast of flats for sale from 2001-02 to 2003-04

Table 1

<i>Public Sector</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>Total</i>	
HA	19 510	19 798	15 020	54 328	
Hong Kong	0	0	1 216	1 216	
Kowloon	8 424	12 810	5 778	27 012	
New Territories	11 086	6 988	8 026	26 100	
Sai Kung	1 920	0	4 528	6 448	
Sha Tin	6 934	0	799	7 733	
Tsuen Wan	0	512	0	512	
Kwai Tsing	1 920	2 070	1 499	5 489	
Yuen Long	312	4 100	0	4 412	
Islands	0	306	1 200	1 506	
HS	1 077	1 797	0	2 874	
Hong Kong	14	0	0	14	
Kowloon	601	0	0	601	
Sai Kung	0	645	0	645	
Kwai Tsing	462	0	0	462	
Tuen Mun	0	1 152	0	1 152	
HA and HS	Total:	20 587	21 595	15 020	57 202

Table 2

<i>Private Sector</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>Total</i>
URA	298	850	3 076	4 224
Hong Kong Island	298	850	596	1 744
Kowloon	0	0	576	576
Tsuen Wan	0	0	1 904	1 904

<i>Private Sector</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>Total</i>
HS*	1 821	1 325	0	3 146
Hong Kong Island	496	0	0	496
Sai Kung	763	763	0	1 526
Sha Tin	562	562	0	1 124
MTRCL**	7 502	4 127	4 020	15 649
Islands	4 918	1 240	2 960	9 118
Kowloon	2 584	2 476	1 060	6 120
Sai Kung	0	411	0	411
KCRC	0	0	0	0
URA, HS (private housing) and MTRCL	Total: 9 621	6 302	7 096	23 019

Note: * Completed ex-Sandwich Class Housing flats for which full land premium was paid and converted to sale in the open market.

** Representing all anticipated number of flats with presale consent and based on awarded development packages.

MR ERIC LI (in Cantonese): *Madam President, there seems to be some differences between the Secretary's main reply and the information that we have at hand, but it does not matter. I will follow up on the basis of the Secretary's reply.*

From the statistics provided by the Secretary, the number of subsidized public housing flats supplied by the Government, excluding the statistics relating to the KCRC and the MTRCL, has exceeded 50 000, which is more or less the same as that in the private sector. Does the Government want the property market to be dominated by public housing? If not, will the Government take measures in the next few years to enable the private sector to take the lead again in the market?

PRESIDENT (in Cantonese): Which Secretary will answer the question? Secretary for Housing.

SECRETARY FOR HOUSING (in Cantonese): Madam President, the Government, in fact, has a set of clear policies insofar as the demand for public housing is concerned. In 1997, the Government undertook to clear Temporary Housing Areas and large squatter areas in urban districts and so, there is a large demand for public housing in society. Besides, the HA has undertaken to launch a number of redevelopment projects by 2005, and we certainly have to rehouse the affected residents if these projects are implemented. The Government has also undertaken to reduce the average waiting time for public housing to three years by the end of 2003. Therefore, we need to build public housing flats to meet such demand. As for the private sector, the Government allows the private market to operate freely. In this regard, we will take into account the wish of the people, and property developers will also take concerted action.

On the question raised by Mr LI, I can say that in respect of public housing, the Government has made plans and undertakings, and we are committed to meeting the public demand. As for private housing, the market operates freely. So, regarding the statistics of public and private housing, we will not seek to replace the statistics of one sector by those of the other. In fact, we already reached an agreement with the HA at the end of 1999 to reduce the number of subsidized home ownership flats by 21 000 in the four financial years from 2003-04 to 2006-07, and to replace these flats by granting housing loans. Sites originally earmarked for Home Ownership Scheme (HOS) flats will then be redesignated for private housing development purposes, with a view to maintaining a balance between land supply and the supply of residential flats. So, the Government has already implemented the measures suggested by Mr LI. The plan will be rolled forward annually. As for the number of flats to be reduced after 2006-07, we will continue to look into the matter in conjunction with the HA.

DR PHILIP WONG (in Cantonese): *Madam President, if the Government temporarily suspend the sale of public housing flats, how long afterwards will the relevant organizations encounter financial problems and how big will the financial problems be?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, Dr WONG has a point indeed. The sale of subsidized home ownership flats constitutes a major source of income of the HA and the HS. The income is used for subsidizing public rental flats, loan schemes and the cost centres. Should the

demand for HOS flats fall in the market, the Housing Bureau, together with the HA, will study how the HOS can be dealt with flexibly in order to balance the aspirations and needs of various sectors of the community. We are now considering the relevant issues. As I have just said, the Government already embarked on this at the end of 1999, and reached an agreement with the HA for the first phase in January 2000. Our plan is now rolled forward annually.

DR PHILIP WONG (in Cantonese): *Madam President, my supplementary question was this: If the Government suspends the sale of public housing flats, how long afterwards will the HA and the HS encounter financial problems? Six months, one year or two years after the suspension?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, it is the belief of the Housing Bureau that subsidized home ownership flats are still generally welcomed by members of the public, and serve as a channel for home ownership by the people. Some families can purchase their homes through the HOS but they cannot achieve home ownership through loan schemes. So, the suspension of the sale of public housing flats must be thoroughly considered. Certainly, we will hold internal discussions to find out how many flats should be built, how much should be granted as loans to the public, or is it possible to subsidize the people in other more innovative ways to facilitate their access to reasonable housing. We have conducted studies into these areas, but we have not considered effecting a moratorium on the sale of HOS flats across the board.

MR ABRAHAM SHEK: *Madam President, just now, the Secretary said that the private sector market must work according to the market mechanism. I would like to ask the Secretary if she is aware that the HOS and the Tenants Purchase Scheme are affecting the private sector to the extent that they probably kill the secondary market and affect the first hand development in areas which are primely allocated or reserved for private sector market, such as Java Road and Shum Wan area?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, in formulating housing schemes, the Government hopes to strike a balance among the interests of all parties. We know that housing is inextricably linked with every member of the community. On the one hand, we must particularly take care of the people in need, and on the other hand, we must ensure the free

operation of the property market as far as possible. Indeed, this is no easy task. With regard to the supplementary question raised by Mr SHEK just now, many sites of the HA, particularly those in the urban areas, are where demolished HA estates used to be located, and redevelopment is underway on most of these sites. So, the HA do have some sites which are popular and easily accessible in urban districts. As for the other sites — in fact, we already answered a relevant question by Mr SHEK in May this year. The HA has several types of land. Apart from the sites for estate redevelopment in urban districts, others, such as sites in the New Territories or new development zones, were selected in accordance with the results of the Government's planning and development studies; and some housing sites were selected for public housing development after the Housing Department had consulted other government departments.

We appreciate that the operation of the entire housing market is inter-linked. For example, the construction of HOS flats in a district may affect the secondary market of that district. But as I have said earlier, in Hong Kong where there is a scarcity of land but a large population, we certainly have to balance the interests of all parties when we allocate land to the HA to build HOS flats or to the private sector to launch private housing developments.

MR ABRAHAM SHEK (in Cantonese): *Madam President, can I follow up?*

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

MR ABRAHAM SHEK (in Cantonese): *Madam President, just now the Secretary mentioned striking a balance. But building 1 000 public housing flats which will affect tens of thousands of*

PRESIDENT (in Cantonese): Mr SHEK, you can only ask a question on the part of your supplementary question that has not been answered by the Secretary.

MR ABRAHAM SHEK (in Cantonese): *Madam President, the Secretary did not answer the part about second-hand flats and new flats being affected by HOS flats of the HA in the same district. Besides, the Secretary mentioned striking a*

balance. If the construction of 1 000 new HOS flats will affect tens of thousands of private flats, how possibly can a balance be struck?

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

SECRETARY FOR HOUSING (in Cantonese): Madam President, in fact, the subsidies for public housing schemes hinge on the Government's grant of land to the HA at a cost below market value or for free. This is obvious. The HA has also listed out the subsidies on land premium in its financial report. Certainly, in granting land for the HA in each district, we must have regard for a balance in the district. In this regard, there is no clear distinction in our society. In a new district, for instance, we will decide the respective proportions of public and private housing on that piece of land in the course of planning, and we will allocate the part of the land meant for public housing to the HA.

DR LO WING-LOK (in Cantonese): *Madam President, in continuously putting up so many public housing flats for sale, has the Government estimated the number of people eligible for buying these flats? Besides, what percentage do these flats actually take up in the market? Have they already absorbed the entire home ownership market?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, in fact, we have monitored the various types of demand in the market from time to time, such as the demand for public rental flats, HOS flats or housing loans. Take public housing flats as an example. If we see the need to assist a certain group of people in need, we will, according to certain policies, work out the relevant statistics on the basis of which housing schemes will be formulated to meet the demand.

MR JAMES TIEN (in Cantonese): *Madam President, in recent years, the Hong Kong economy has slackened and consumers have lost confidence. A reason for that is a relatively substantial fall in private property prices. I think this may be attributed to the sale of public housing flats by the HA annually. My question is: in relation to Table 1 in Annex B of the main reply, the HA has decided to put up*

about 19 500 flats for sale in 2001-02 and 2002-03 respectively. Assuming that a flat costs several hundred thousand dollars, 19 500 flats will cost some \$10 billion only. Is the Chief Secretary for Administration or the former Financial Secretary willing to make a compensation to the HA in the amount of some \$10 billion and then sell the land to private developers? The reason is that this could end up be more lucrative, for the HA may in turn gain a profit of tens of billions of dollars, and this is beneficial to both the Government and the public.

PRESIDENT (in Cantonese): Will the Secretary or the Chief Secretary for Administration answer this question? Chief Secretary for Administration.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, the Government of the Special Administrative Region does not have this arrangement.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, the impact of public housing on the private sector has been discussed at some length. Instead, I wish to ask the Housing Bureau: Insofar as the housing policy is concerned, I can see that this year, the Government has put most of the land on the list of sites for marking-out by developers. But for public bodies, such as the MTRCL, the URA or the HS as cited by the Secretary, while the Government may have better control over the HA and the HS, how can the Government guarantee that the land or flats put up for sale by other public bodies will be in line with the Government's housing policy? The Government, on the one hand, puts its land on the "marking-out list" to reduce land supply, on the other hand, it cannot stop those public bodies from selling land to developers.*

PRESIDENT (in Cantonese): Which Secretary will answer the question? Secretary for Housing.

SECRETARY FOR HOUSING (in Cantonese): Madam President, just now Mr LAU mentioned the sites of the two railway companies. As I have pointed out in the main reply, these sites are for the purpose of private housing development.

Members must understand that the two railway companies undertake those private housing developments in collaboration with private property developers. While the KCRC is wholly-owned by the Government, the Government is also a major shareholder of the MTRCL, Members cannot correlate the status of the developer with the quality and type of the flats. The flats built by the two railway companies are not subsidized flats, and are therefore private flats. As for the "marking-out" system, it is a flexible way of land grant for allocating sites to private developers, and developers can obtain the requisite land in the light of market demand.

PRESIDENT (in Cantonese): Mr LAU, is your supplementary question still not answered?

MR LAU PING-CHEUNG (in Cantonese): *Madam President, it seems that the Secretary does not catch the meaning of my supplementary question. I was asking how the Government can guarantee that the flats and land put up for sale by these public bodies are in line with the Government's housing policy or land supply policy. It is because the Government, on the one hand, wants to.....*

PRESIDENT (in Cantonese): Mr LAU, you need not go on with your explanation. Please sit down. Secretary, please answer the question.

MR LAU PING-CHEUNG (in Cantonese): *Thank you, Madam President.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, the HA will certainly work closely with us to implement Hong Kong's public housing and HOS policies. As for the HS, though it is a private body, its mission is oriented towards society. The HS has always maintained close liaison with us in this regard. The URA has its own mission too, that is, to redevelop old urban districts. The KCRC and the MTRCL want to undertake property development along the railway lines or above their stations or depots, in terms of planning, these developments have attractions. The companies follow the practices of private developers and land premium of the relevant sites have to be calculated at market value.

I do not know if I have answered Mr LAU's supplementary question. I believe Mr LAU was a bit confused just now, because not all of the five organizations are involved in subsidized housing schemes.

PRESIDENT (in Cantonese): This Council has spent over 18 minutes on this question. Although there are still eight Members waiting in line to ask their questions, I can only allow one last supplementary question from Members.

MR NG LEUNG-SING (in Cantonese): *Madam President, I notice that in the last paragraph of the main reply, it is mentioned that other than rental flats, all flats produced by the HA and the HS are for sale to eligible households in the low and middle income groups. In this connection, does the Government have a reasonable criterion in setting the selling price, given that these flats are for sale to households in the low and middle income groups, or how can the selling price be rationalized with reference to the income of these households?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, all housing schemes of the HA and the HS, under which flats are put up for sale, are based on the affordability of their targets, that is, households in the low and middle income groups. Therefore, the principal criterion is the affordability of these households. Other considerations, of course, include the districts and facilities, as well as the popularity of these flats among purchasers.

PRESIDENT (in Cantonese): Second question.

Views Expressed by Chief Executive in Question and Answer Sessions of Legislative Council

2. **MR SZETO WAH** (in Cantonese): *Madam President, will the Government inform this Council whether the views expressed by the Chief Executive in reply to questions raised by Legislative Council Members during the Question and Answer Sessions in the Legislative Council represent the Government's stance and policy or merely his personal opinions?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, according to Article 62(1) of the Basic Law of the Hong Kong Special Administrative Region (SAR), the SAR Government shall exercise the power and function of formulating policies. Article 48(4) of the Basic Law also provides that one of the powers and functions of the Chief Executive is to decide on government policies. In addition, according to the specific provisions in Article 64 of the Basic Law, the SAR Government must be accountable to the Legislative Council, including answering questions raised by Members of the Council. To implement this provision, the Secretaries and Directors attend the weekly meetings of the Legislative Council to answer questions raised by Members, and the Chief Executive attends Question and Answer Sessions of the Legislative Council on a regular basis. As the head of the SAR Government, the views that the Chief Executive expresses in reply to questions raised by Legislative Council Members during the Question and Answer Sessions in the Council represent the stance of the SAR Government.

MR SZETO WAH (in Cantonese): *Madam President, may I ask whether the Chief Secretary for Administration has told the media that, in a Question and Answer Session of this Council, the Chief Executive took the view that the Falun Gong was no doubt an evil cult? If so, is this contradictory to his main reply just now?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I think Mr SZETO Wah was referring to my remarks in response to a question raised by a foreign reporter after I had delivered a speech at the Foreign Correspondents' Club on 21 June. It was Mr Philip BOWRING who raised the question, and I answered his question. So, Members must know the context of my reply before they can understand what I meant. In my reply to his question, I said that insofar as the legal system of Hong Kong is concerned, there is not any official legal definition of an evil cult. Under such circumstance, different groups, people and religions and the Government have their own interpretation and stance. I read the newspaper report of my remarks and, on the following day (22 June), I expressly stated that my reply on that occasion was not in conflict with the remarks made by the Chief Executive in the Legislative Council Chamber on 14 June. I did not say in my reply that the remarks of the Chief Executive in reply to Mr CHAN's question in this Chamber were the personal opinions of the Chief Executive.

MR MARTIN LEE (in Cantonese): *Madam President, Mr Donald TSANG has precisely displayed the virtue of "one country, two systems" by wearing two hats today, for he is concurrently holding the offices of Acting Chief Executive and the Chief Secretary for Administration. Since the Chief Executive had said that the Falun Gong was no doubt an evil cult in the last Question and Answer Session of this Council, and as the Government has not yet defined an evil cult, can the Government tell this Council what definition does the SAR Government base on to support the stance as expressed by the Chief Executive on that occasion that the Falun Gong is an evil cult?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I have already stated the stance of the SAR Government towards a particular group. The Chief Executive also gave a detailed account of his view in the Question and Answer Session of the Legislative Council on 14 June, and there are open records of what he had said. So, Members should have known it already, and I do not need to repeat it here. I think the view was thoroughly expressed.

MR MARTIN LEE (in Cantonese): *Madam President, the Chief Secretary for Administration did not answer my question as to what definition does the SAR Government base on to support the stance that the Falun Gong is an evil cult as expressed by the Chief Executive?*

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I wish to add that if Members read the records of the Question and Answer Session attended by the Chief Executive on that day, they will know that the Chief Executive had already given a very detailed explanation of the reasons why he would take this stance and that he was speaking on behalf of the SAR Government.

MR TOMMY CHEUNG (in Cantonese): *Madam President, on 14 June when he attended the Question and Answer Session of the Legislative Council, the Chief Executive mentioned overseas experience, stating that the revenue of the*

catering industry and restaurants is still quite good in many countries after a total ban on smoking is implemented in restaurants, and that in some cases business is even better than before. If he was stating the stance of the SAR Government, may I ask whether the Government has decided to implement measures to ban smoking in all catering establishments?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, as far as I remember, the Chief Executive did speak of a ban on smoking in the Question and Answer Session of the Legislative Council on 14 June, saying that this is one of the issues on his agenda. Madam President, I believe the Chief Executive was considering whether the income of restaurants would drop once smoking is banned across the board. The Chief Executive cited overseas experience only for reference purpose. However, as the Chief Executive has stated clearly, at present, the Government is only conducting a public consultation on the proposal to ban smoking in all catering establishments, and I know that the Secretary for Health and Welfare has started the consultation exercise, which will end in mid-September.

A point of order please. I hope that Madam President can do me a favour. Over the past four years or so, the Chief Executive has met with Members and answered Members' questions in this Chamber for over 15 times. Numerous policy statements and policies were covered. If we have to discuss or debate them again, or try to reverse the decisions made on them one by one, I trust that Madam President will also agree that we might not be able to finish them all even in two days. I hope that Madam President would be sympathetic to my situation, and will not reopen debate on each of these issues.

PRESIDENT (in Cantonese): Chief Secretary for Administration, please rest assured that Members only spend about 15 minutes on asking supplementaries on each question. *(Laughter)* So, there is no question of reopening debates.

As this main question is about whether the views that the Chief Executive expresses in the Question and Answer Sessions of the Legislative Council represent the stance and policies of the Government, I therefore allowed Mr Tommy CHEUNG to ask his question and I called upon you to give an answer. As to how you will answer the question, it all rests with your wisdom.

MS AUDREY EU (in Cantonese): *Madam President, I ask this supplementary question because Mr TUNG had defined the Falun Gong as an evil cult and alleged that the Falun Gong was a danger to society when he attended the Question and Answer Session of the Legislative Council. In his main reply today, the Chief Secretary for Administration said that Mr TUNG has the duty to formulate government policies. I would like to ask the Chief Secretary for Administration: Can policies formulated by the Government make serious or even defamatory allegations against a particular person or organization without going through legal procedures and without legal liabilities?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, regarding the statements made by the Chief Executive in the Legislative Council Chamber on 14 June, I believe I need not repeat them here, for there are open records of his remarks. All I can say is that the Chief Executive answers Members' questions in the Legislative Council Chamber in discharge of his duties, and this also reflects the duty of the Chief Executive as stated in a provision of the Basic Law that I have mentioned earlier on. The Chief Executive has no other ambitions and purposes. His remarks should not be conceived as having other effects.

MS AUDREY EU (in Cantonese): *Madam President, the Chief Secretary for Administration did not answer my supplementary question. My supplementary question is this: Does the Government have policies that can make serious allegations against a particular person or organization in public, without going through legal procedures and without legal liabilities? My question does not concern ambitions or purposes.*

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I trust that he, being the Chief Executive of the SAR, will be responsible for his words, and what he says is also authoritative. As for the legal liabilities for the remarks made in the Legislative Council Chamber, I believe Members and Madam President know them very clearly. I believe the Chief Executive also know them well.

MR MICHAEL MAK (in Cantonese): *Madam President, I guess that the Chief Secretary for Administration should be able to answer my supplementary question, which mainly relates to the "85 000" policy. The Chief Executive had stated in this Chamber that the "85 000" housing policy was abolished. For such remarks which state the stance of the Government, what mechanism does the Government have to make public these remarks which indicate the stance of the Government besides their extensive coverage by the media?*

PRESIDENT (in Cantonese): Mr Michael MAK, I would like you to tell me when the Chief Executive had stated in a Question and Answer Session of the Legislative Council that the "85 000" policy had ceased to exist.

MR MICHAEL MAK (in Cantonese): *I am sorry, Madam President. Perhaps as I am new to this Council, I may have recalled it wrong. The Chief Executive should not have remarked during a Question and Answer Session of this Council that the "85 000" policy was abolished, but that is indeed what he has said. I think he made this statement when he was interviewed by a television station. (Laughter) But anyway, that is what he has said on behalf of the SAR Government. My question is: Through what mechanisms does the Government release these statements which are meant to be made public?*

PRESIDENT (in Cantonese): Mr MAK, as the theme of this question is about the remarks made by the Chief Executive in the Question and Answer Sessions of the Legislative Council, your supplementary question has deviated from the theme. So, please follow this up through another channel.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, back to the Question and Answer Session that the Chief Executive attended on 14 June. On the question of whether legislation should be made against racial discrimination, the Chief Executive had stated his personal opinions, saying that more efforts should be made on education because the result would not be good if we invariably resorted to legislation in all cases. If the Chief Executive was stating the stance of the SAR Government, I would like to know if the Government has already turned down legislating against racial discrimination?*

PRESIDENT (in Cantonese): Chief Secretary for Administration, I would like to remind you that the theme of this question is about whether the remarks of the Chief Executive in the Question and Answer Sessions of the Legislative Council represent the stance and policies of the Government. You may now answer the question.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, thank you for reminding me because sometimes I do find it difficult to differentiate whether Members want me to respond to remarks made by the Chief Executive in the Legislative Council Chamber or those that he made outside this Chamber. But it seems that lots of issues are involved. The Chief Executive has answered many questions here and he has made a lot of comments. It is utterly difficult for me to fully grasp everything. Coupled with the fact that I may be old and my memory is failing, I am not too sure whether I can recall everything clearly. However, I remember that racial discrimination was an issue discussed on 14 June. The remarks made by the Chief Executive in the Question and Answer Session on whether racial discrimination should be prohibited reflect the existing policies of the Government. As far as I remember, he had stated that those comments were his personal opinions. He had specifically pointed out that they were his personal opinions, but what he had said does reflect the current status of our laws.

On racial discrimination, it has always been the stance of the Government to change the attitude of some people towards and their views on racial discrimination through education and persuasion as far as possible, instead of employing mandatory means. However, we are very concerned about this issue, and we have to adopt an open attitude towards it. As far as I know, the Home Affairs Bureau consulted various organizations and members of the public on racial discrimination early this year. We will assess the need to legislate after we have studied the results. But so far, we hold that under the current situation in Hong Kong, this particularly sensitive issue can be more effectively addressed through education and persuasion.

DR YEUNG SUM (in Cantonese): *Madam President, I wish to thank the Chief Secretary for Administration for clarifying that the remarks made by the Chief Executive in the Question and Answer Sessions of this Council represent the stance of the Government, not his personal opinions. The Chief Executive said*

in this Council on that day that the Falun Gong was no doubt an evil cult. Is it the stance of the Government that the Falun Gong is regarded as an evil cult?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I have just said twice that the statements made by the Chief Executive in the Legislative Council Chamber represent the statements of the Government. There are open records of everything that he had said, and his remarks are documented. So, I see no need to explain them again here.

DR YEUNG SUM (in Cantonese): *Madam President, I just want the Chief Secretary for Administration to clarify if it is the stance of the Government to regard the Falun Gong as an evil cult.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, if Dr YEUNG reads the records of the Chief Executive's remarks on that day, he will know the answer clearly.

MR HENRY WU (in Cantonese): *Madam President, when the Chief Executive attended the last Question and Answer Session of this Council, he was asked about the restrictions that Hong Kong reporters are subject to when covering news in the Mainland. The Chief Executive said that Hong Kong reporters could enjoy a very high degree of freedom when covering news in the Mainland. I believe all of us are glad to hear this. But we still hear that many members of the local media are subject to varying degrees of restrictions when covering and reporting news in the Mainland, for covering news in the Mainland is part of the policy of the Central Authorities. My question is: If what the Chief Executive had said on that day truly represents the stance of the SAR Government, has the SAR Government ever discussed this issue with the Central Government? After obtaining confirmation from the Central Government, can the Chief Executive conduct affairs as authorized by the Central Authorities as stated in Article 48(9) of the Basic Law? If discussions have really been held in this regard, when did the Government discuss this with the Central Authorities and when was a confirmation given? If Hong Kong reporters really cannot cover news freely in the Mainland or if they are subject to restrictions when covering news there in future, how will the SAR Government take up the matter with the Central Government?*

PRESIDENT (in Cantonese): Mr WU, your supplementary question is really long. *(Laughter)*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I believe you are also aware that we have spent 17 minutes on this question *(laughter)*. Under "one country, two systems", the arrangements for mainland and Hong Kong reporters in covering news are different, and this is understandable. When covering news abroad, Hong Kong reporters are also subject to different arrangements, which is also understandable. But under the arrangements in the Mainland, I believe Hong Kong reporters in the Mainland have a relatively high degree of freedom. As far as I remember, over 50 Hong Kong reporters accompanying the Hong Kong delegation led by me to the Mainland not long ago were allowed to ask questions freely and I did not find any problem. Besides, not long ago we saw on television in Hong Kong that many Hong Kong reporters putting questions to the President of the State and were given lively responses. This reflects that Hong Kong reporters now enjoy a relatively high degree of freedom when covering news in the Mainland. However, we must also bear in mind the "one country, two systems" principle.

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

MR LEE CHEUK-YAN (in Cantonese): *Madam President, in his replies to questions, the Chief Secretary for Administration has always stressed that the Chief Executive represents the stance of the Government. But I would like to ask the Chief Secretary for Administration why he still insisted that the Chief Executive represented the stance of the Government when the Chief Executive had stated that he was expressing his personal opinions? For example, in his reply to Mr YEUNG Yiu-chung's supplementary question, despite the fact that the Chief Executive had stated that he personally considered education on racial discrimination necessary, the Chief Secretary for Administration insisted that the Chief Executive stated the stance of the SAR Government that education is*

deemed necessary now. This is in fact not too fair to the Chief Executive. Should we leave the Chief Executive some room to express his personal opinions? Today's line to take is to insist that the remarks made by the Chief Executive in this Council represent the stance of the Government. Should this line to take also be sometimes flexible, so as to leave some room for the Chief Executive to express his personal opinions?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): I am sorry, Madam President. Perhaps I am not too accustomed to debating with Members in the morning. As I have said earlier, on the question of racial discrimination, the Chief Executive had made it clear that the views he expressed were his personal opinions. Certainly, under that circumstance, what he expressed was his personal opinion, and in my reply to a supplementary question earlier, I only explained the actual situation of the laws in Hong Kong, stating the stance that the SAR Government has to take on this sensitive issue. I did not mean to insist that the personal opinion of the Chief Executive is the established policy of the Hong Kong Government. I have no such intention whatsoever.

PRESIDENT (in Cantonese): Third question.

Listing of Kowloon-Canton Railway Corporation

3. **DR RAYMOND HO** (in Cantonese): *Madam President, will the Government inform this Council whether it is considering the listing of the Kowloon-Canton Railway Corporation (KCRC) in the Stock Exchange of Hong Kong (SEHK); if so, of the scheduled listing date, as well as the size, scope of business and assets of the listed company; if not, the reasons for that?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, we have no plans to privatize, in whole or in part, the KCRC and list it on the SEHK.

The KCRC is currently in the middle of a major expansion plan under which new railways and extensions will be constructed to more than double the length of the KCRC's existing railway. It is premature to consider the KCRC as a potential candidate for privatization.

DR RAYMOND HO (in Cantonese): *Madam President, my main question was very brief, and so was the Secretary's main reply. If I have not misinterpreted the Secretary's reply, I think she is telling this Council that it is not true that the Government will never have plans to privatize, in whole or in part, the KCRC and list it on the SEHK. Will the Government consider this as a long-term development plan for the KCRC? Has the Government considered storing the information about the economic interest of the development rights above the superstructure of the depot or stations of the KCRC and the economic value of the accompanying infrastructure so that when the KCRC is listed in future, people will not say the Government subsidizes those who buy the shares of the KCRC? Will the President grant me leave to ask the Financial Secretary to answer?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I would like to thank Dr Raymond HO for the supplementary question. Nothing in this world will last forever. So, when Dr Raymond HO asked whether the Government would never consider a certain thing, the answer is certainly in the negative. It seems that Dr Raymond HO's supplementary question was about property development over the superstructure of stations of the KCRC. Have I correctly interpreted Dr Raymond HO's supplementary question?

DR RAYMOND HO (in Cantonese): *Madam President, I need to briefly explain my supplementary question.*

PRESIDENT (in Cantonese): Dr Raymond HO, please sit down first. Will Mr CHAN Kam-lam please remove the bag with the ringing of a mobile phone? *(Laughter)*

Dr HO, you may continue with your question.

DR RAYMOND HO (in Cantonese): *Madam President, I would like to ask whether, over the 10-odd years of development of the KCRC, the Government has considered storing information about the economic interest of the development rights above the superstructure of the depot or stations of the KCRC and the economic value of the accompanying infrastructure for the calculation of which part of the share price when the KCRC is listed in future is indirectly subsidized with public money, to prevent people from saying that those who buy KCRC shares are subsidized by the Government?*

SECRETARY FOR THE TREASURY (in Cantonese): *Madam President, I wish to thank Dr HO for the explanation. Let me provide a very brief answer to Dr Raymond HO's supplementary question. Before considering a privatization of any assets, the Government will surely assess the commercial value of all the relevant assets. I wish to stress that it is the commercial value of the assets that the Government will look at. Dr Raymond HO has just touched upon economic value in his supplementary question, which is totally different from commercial value. In privatizing assets, we will base on the valuation of their commercial value.*

MR LAU KONG-WAH (in Cantonese): *Madam President, in her main reply, the Secretary indicated that one of the reasons why it is not the right time for the KCRC to list on the SEHK is that the KCRC is carrying out many railway development projects and is currently in the middle of a major development plan. Well, the Mass Transit Railway Corporation Limited (MTRC) is also currently in the middle of many development projects. What is the difference between the KCRC and the MTRC? Will the Secretary give this Council several "real" reasons to explain why it appears to be ripe for the listing of MTRC but too early for that of the KCRC?*

PRESIDENT (in Cantonese): *Mr LAU Kong-wah, the theme of this question is about the KCRC, but your supplementary question was about the MTRC. Can you tell me the link between the two?*

MR LAU KONG-WAH (in Cantonese): *Madam President, the two are absolutely related. Why was the MTRC, now listed, listed so quickly but why is*

it too early for the listing of the KCR? I think the two entities are in the same position and both are developing. My supplementary question was targeted at the KCRC.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I must first of all assure Mr LAU Kong-wah that I tell Members the real reasons of the Government in my main reply. The Government thinks at present that time is not right for the KCRC to privatize. This is a point I wish to emphasize. I may be too cautious but, from Mr LAU Kong-wah's question, I feel that Mr LAU Kong-wah seems to query that the Government has not told Members some true reasons and it is just masquerading. I can definitely say there is no masquerading. The Government thinks that time is not right for the privatization of the KCRC and the reason has been clearly stated in my main reply.

Mr LAU Kong-wah has also stretched the question to the privatization of the MTRC. Well, we privatized the MTRC last year. During the privatization process last year, the MTRC was in the middle of "one and a half" project. Why did I say "one and a half" project? One project was the Tseung Kwan O Extension, which Members already know. The "half" project was the expansion of the Quarry Bay Station to cope with additional passenger traffic. I remember that the total value of the two projects was less than \$25 billion. However, the present projects undertaken by the KCRC have a total value of over \$70 billion. Furthermore, the MTRC has been operating for more than 25 years as a statutory body and we only privatized it last year. I recall that it was in the late '80s that the KCRC changed from a government department to a statutory body. Thus, the two cannot be mentioned in the same breath.

MR ERIC LI (in Cantonese): *Madam President, the main reply of the Government actually assumed that the KCRC must list on the market in its entirety. However, many companies in Hong Kong and the Mainland will list a certain portion of their businesses on the SEHK (especially the East Rail already in operation). A listing requirement is a track record of three years, not as many years as mentioned by the Government. Will the Government indicate clearly whether the Board of Directors of the KCRC or the Government has received any proposal from financial experts that it may be feasible to separate a*

line of business for listing and if new railways have to be constructed in future, this may also help the Government to relieve the needs for financing?

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I thank Mr Eric LI for the supplementary question. First, I need to state clearly I cannot answer the Honourable Member's question on behalf of the KCRC and so I hope he could ask the Board members of the KCRC on another occasion. I can only answer the Honourable Member's question on behalf of the SAR Government. As Secretary for the Treasury, I can tell Members that I receive written proposals from numerous banks and the financial sector every week in every month advising the Government to privatize this asset and that. So, my answer to Mr Eric LI's supplementary question is that the Government did receive proposals in the past from financial concerns which initiated them. However, I need to reiterate my point in the main reply: The Government has no plans to privatize the KCRC in any way.

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

MR ERIC LI (in Cantonese): *Madam President, from what I know, the Government (especially the Secretary for the Treasury) should be a member of the Board of Directors of the KCRC and I think the Secretary should get the relevant information within the Board. That was why I asked the Secretary the question. I think she should have some information to provide. Now, I hope the Secretary can answer my question from the viewpoint of a Board member of the KCRC, because she should be a member of the Board.*

PRESIDENT (in Cantonese): Mr LI, though the Secretary for the Treasury is indeed a member of the Board as you have mentioned, that is just another role of the Secretary. But for now, she is playing the role of a government official, answering questions on behalf of the Government. I will ask the Secretary to answer the supplementary question in that capacity.

Secretary, do you have anything to add?

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, as a member of the Board of Directors of a company, I am not in a position to disclose to a third party details of the discussions held by the Board. I think if Honourable Members are interested, they may pose questions directly to the Board of Directors of the KCRC.

MISS CHOY SO-YUK (in Cantonese): *Madam President, in her main reply, the Secretary indicated that the KCRC is currently in the middle of a plan under which new railways would be constructed to more than double the length of the existing railway. Did the Secretary mean to say when the plan is completed, the Government will consider the listing of the KCRC?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I thank Miss CHOY So-yuk for the supplementary question. In fact, the Government does not currently have a timetable showing when time is right to privatize the KCRC. My main reply serves to highlight that the Government sees that a major construction plan is now undertaken by the KCRC, so it regards a discussion on its privatization as premature.

MR HENRY WU (in Cantonese): *Madam President, the questions and replies centred around the possibility of the KCRC being listed on the SEHK. We understand very well there are many places, overseas and in the Mainland, for a listing. Will the Government inform this Council whether, under the present circumstances, the Government will consider listing the KCRC on the stock market anywhere? Will the Government undertake to list the KCRC on the SEHK only, if the KCRC will really be listed?*

PRESIDENT (in Cantonese): Mr WU, your supplementary question has two parts, the second one concerns an undertaking for something in future. Since Members are not allowed to ask hypothetical questions during the question time, Secretary for the Treasury, please only answer the first part of the supplementary question.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, currently, the Government does not have any plans to list the KCRC anywhere.

MR ABRAHAM SHEK (in Cantonese): *Madam President, in her main reply, the Secretary indicated it was premature for the KCRC to privatize in view of a major plan it is carrying out. Is the KCRC prevented from listing due to delays in the project? Or, does the asset value of the KCRC fall short of that required for a listing? Will the Government also inform this Council, as far as future railway development is concerned, whether the KCRC has any priority over the MTRC as the KCRC is entirely owned by the Government?*

PRESIDENT (in Cantonese): Mr Abraham SHEK, please sit down first. You have raised two supplementary questions.

MR ABRAHAM SHEK (in Cantonese): *Madam President, I would like the Secretary to answer the first supplementary question.*

PRESIDENT (in Cantonese): Secretary for the Treasury, please answer the first supplementary question only.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, in fact, the KCRC is carrying out a number of projects. It is estimated that the total value of the projects is more than \$70 billion, the figure will certainly have some bearing on the financial status of the KCRC. We have noticed this point and so we opine that time is not right to list the KCRC.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, in her main reply, the Secretary simply indicated that because the KCRC is constructing railways, there is not any plan at the present stage for the KCRC to be listed. Does it mean that only when railways of more than double the length of the KCRC's existing railway are completed will it be privatized; or was the Secretary hinting that its privatization will take place when the railway development project is completed and the length of the railway has doubled?*

PRESIDENT (in Cantonese): Mr LI, Miss CHOY has raised this supplementary question already.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I do not think the Government has accounted for the issue clearly in answering the supplementary question — or let me rephrase the question: Under what circumstances will the Government list the KCRC?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I thank Mr LEE Cheuk-yan for the supplementary question. I should perhaps broaden the issue a bit by explaining the circumstances under which the Government will consider privatizing all of its assets, not just the KCRC. Put simply, we will consider seven major points. They include: first, should the public sector carry out the work concerned now? Second, is there sufficient interest and need in the market for such assets so that it is worthwhile for the Government to privatize them? Third, will there be any economic or other benefits for Hong Kong after privatization? Fourth, will the standard of operation, efficiency, safety and quality of service be improved after privatization? Fifth, can we strike a reasonable balance between the interests of future investors and that of the public (including consumers)? Sixth, what effect will privatization have on the relevant staff, and how will the Government solve, in a responsible manner, problems that will arise? Seventh, after privatization, will the Government benefit financially, considering the revenue to be generated and the future investment to be injected by the Government into the company?

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question. We will now proceed to the fourth question.

Entry and Exit Procedures for Mainland Transitees

4. **MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, recently, a mainland university professor published an article in a Hong Kong newspaper, claiming that on his way to a foreign country via Hong Kong, he was held up for more than half an hour while going through the entry procedure at the Lo Wu*

Control Point because he did not have with him the air ticket for his overseas trip. He therefore felt discriminated against and humiliated. Regarding the entry and exit of mainland residents who travel abroad or return to the Mainland via Hong Kong (mainland transitees), will the Government inform this Council:

- (a) whether it has investigated the above case; if so, of the outcome;*
- (b) of the number of complaints about the entry and exit procedures received from mainland transitees in each of the past three years, with a breakdown by the subject of the complaints, and the percentages of the total number of the complaints in the total number of mainland transitees in the respective years; and*
- (c) of the current entry procedure for mainland transitees, and the rationale for requiring them to hold valid air tickets for their overseas trips; and whether it will conduct a review with a view to streamlining and improving the entry and exit procedures for mainland transitees; if so, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) Before giving a reply to part (a) of the question raised by the Honourable YEUNG Yiu-chung, that is whether the Government has investigated the case concerned, let me briefly explain the relevant existing immigration policy. Under our immigration policy, People's Republic of China (PRC) passport holders are required to obtain valid entry permits before entering the Hong Kong Special Administrative Region (SAR). To facilitate travel convenience of PRC passport holders who are mainland residents or those who have settled overseas to travel from the Mainland via Hong Kong to abroad, or from an overseas country to the Mainland via Hong Kong, the Government introduced a new measure since 1 August 1993. These types of travellers are exempted from the requirement of obtaining entry permits and they are allowed to stay in Hong Kong for a period not exceeding seven days while they are in transit. However, on their entry into Hong Kong, they must possess valid visas or documents and confirmed air tickets or ship

tickets for their overseas trips, although they do not have to produce traffic arrangement documents if they are en route in return to the Mainland or Macao. In addition, they have to comply with other entry conditions such as having sufficient money for their trips. In case they fail to produce air tickets or ship tickets, officers of the Immigration Department (ImmD) will exercise discretion to consider their requests for entry if they can produce other supporting documents such as records of ticket bookings or interim receipts.

According to the article published in a newspaper by a mainland university professor, he arrived at the Lo Wu Control Point on 4 June, intending to go to France via Hong Kong, but he had not yet obtained an air ticket for his onward trips. The contents of the article and the procedures described therein showed that the officers of the ImmD handled the case fully in accordance with the arrangements under existing policy. There is no question of discrimination against mainland residents. The article also mentioned that the ImmD spent "more than half an hour" contacting the airline concerned to verify the onward flight of this mainland resident. In view of the fact that the ImmD had to handle at the same time other problematic cases at the Lo Wu Control Point which had a heavy workload, it was unavoidable that transitees failing to produce valid air tickets had to wait for a while. As the professor did not disclose his name in the newspaper, it is therefore impossible for us to conduct detailed investigation into the case. However, as far as we know, no complaint was made to the ImmD at the Lo Wu Control Point on 4 June 2001.

- (b) In the last three years (that is, 1998, 1999 and 2000), there were respectively about 534 000, 668 000 and 665 000 PRC passport holders going abroad from the Mainland via Hong Kong. From January to May 2001, the figure was approximately 250 000. In the three years from 1998 to 2000, transitees holding PRC passports made 18 complaints about the service standard of the ImmD, five complaints about the clearance procedures, and 12 complaints about both the service standard and the clearance procedures. The number of complaints per year represents an average of 0.0019% of the total number of transitees holding PRC

passports. This shows that the rate of complaint is extremely low. (Detailed figures are at Annex 1)

- (c) I have explained the current entry procedures for mainland transitees in part (a) of my reply. The purpose of the arrangements is to enable PRC passport holders to stay and tour around Hong Kong while in transit. The requirement for PRC passport holders to produce valid air tickets for their overseas trips enables us to ascertain whether they are genuine transitees. Under the existing policy, non-transit PRC passport holders have to apply for entry permits if they want to come to Hong Kong.

Early this year, the ImmD conducted a review on the clearance procedures for transitees holding PRC passports with the objective of facilitating greater travel convenience. According to existing data, abuse of the arrangement of exemption from entry permits by mainland residents is a common phenomenon. In the three years from 1998 to 2000, the number of PRC passport holders who claimed to be transiting through Hong Kong but did not go to their overseas destinations was 38 700; 40 700 and 27 200 respectively. During the same period, the number of cases in which prosecution was taken against claimed transitees who violated their conditions of stay was 1 800, 1 640 and 1 240 respectively. Those who are not genuine transitees or prosecuted for violation of the conditions of stay represent an average of over 6% of the total number of transitees holding PRC passports each year. Under such circumstances, the ImmD considers it necessary to uphold the requirement for mainland residents entering Hong Kong for transit purpose to produce onward air tickets.

To sum up our response to the three parts of the question, I would like to point out that the requirement to produce onward air tickets also applies to non-visa waiver foreign nationals transiting through Hong Kong. These foreign nationals have to apply for transit visas as well. There is therefore no question of discrimination against mainland residents under existing immigration policy. Immigration authorities in other regions or countries also adopt the practice of examining the onward air tickets of transitees. The existing procedures adopted by the ImmD are in line with general international practice. Of course, in vetting individual cases, the ImmD may use its discretion and exercise more

flexibility to facilitate the travel convenience of genuine transitees as far as possible. Nevertheless, we still think that there is a practical need to require all those who claim to be entering Hong Kong for transit purpose to produce concrete evidence to show that they have made arrangements for their onward trips.

Annex 1

The number and nature of complaints lodged with the ImmD by PRC passport holders going abroad via Hong Kong in the past three years are as follows:

	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i> <i>(January to May)</i>
Number of entrants	534 453	667 949	665 352	250 776
Complaint Cases				
- Service standard				
- Clearance procedures	6	5	7	2
- Service standard and clearance procedures	2	3	0	0
	6	3	3	0
Total:	14	11	10	2

Annex 2

Statistics on the abuse of transit arrangements by PRC passport holders in the past three years are as follows:

	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i> <i>(January to May)</i>
Number of persons who did not go to their overseas destinations	38 691	40 767	27 173	6 588
Number of persons prosecuted for violating conditions of stay	1 800	1 642	1 235	393

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, in part (c) of the main reply, the Secretary said that in each of the past three years, tens of thousands of people have violated their conditions of stay. Since all these people had onward air tickets and had been cleared by the ImmD, the Secretary said she finds that it is even more necessary to enforce this policy. However, my views are exactly the opposite for I think those who violate the law intentionally will certainly comply with all the procedures, and this policy will create a big obstacle for many law-abiding citizens. Will the Secretary consider expeditiously conducting a review on this requirement?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, according to the figures I just gave, in recent years, there was a decrease in the number of PRC passport holders who claimed to be transiting through Hong Kong but have violated their conditions of stay. The figure was 38 700 in 1998, 40 700 in 1999 and 27 200 last year. The most common conditions of stay they violated are firstly, over-staying; secondly, though these people claimed that they were only transiting through Hong Kong, it was discovered that they were working here illegally. No matter whether they are transiting through or entering Hong Kong for tourism purpose, tourists should not work in Hong Kong. If tourists were found working in Hong Kong, they would violate their conditions of stay; thirdly, some travellers actually did not transit and even though they bought air tickets, they did not travel to their intended destinations. Of course, under a lot of circumstances, these people could offer explanations such as they were ill or after their arrival in Hong Kong, they discovered that their reason for transit no longer existed.

Nevertheless, we think that in order to maintain effective immigration control, transitees should only be transiting through Hong Kong and those who wish to enter Hong Kong should submit formal applications. If we do not check the onward air tickets of the transitees and do not care whether they have other destinations, then the transit exemption policy may be abused. Therefore, we do not intend to change this procedure. Moreover, the figures I quoted earlier show that very few people, only about 0.0019%, have lodged complaints.

In fact, this transit exemption policy can be regarded as a visa-free arrangement. The number of people visiting Hong Kong each year under this arrangement has remained at a high level of about 4 000 people per year. Some travel agents even complained that the business of their "Hong Kong Tour" has

been adversely affected because some transitees have taken the opportunity to tour around Hong Kong. Therefore, having carefully considered all the factors, we have no intention to change this arrangement.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, will the Secretary please tell this Council how much time do mainland residents have to spend on completing the immigration formalities when they enter Hong Kong through the Lo Wu Control Point? For example, what is the maximum, minimum and average time required? Has the authority ever considered speeding up the immigration procedures?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President, in entering or transiting through Hong Kong, mainland residents are only required to spend a little time in completing the immigration procedures. Normally, it only takes 10-odd seconds, and under most circumstances, the immigration procedures for two-way permit holders who come to Hong Kong for tourism purposes, visiting relatives or transiting through Hong Kong in particular, will take only 10-odd seconds. If all their documents such as visas and air tickets are ready, the procedures can be completed very quickly. Otherwise, we would not be able to deal with more than 200 000 travellers at the Lo Wu Control Point every day.*

As for those who come to settle in Hong Kong on one-way permits, they would have to fill out some questionnaires after being cleared at the immigration counters. Members may be aware that some organizations have set up counters at the Lo Wu Control Point to assist new immigrants, and the time spent at these counters is a separate issue. If we are simply talking about the time spent at immigration counters, it will normally take 10-odd seconds.

MRS SELINA CHOW (in Cantonese): *Madam President, from the figures quoted by the Secretary, we can see that over the past three years, one sixth or more of the mainland visitors have come to Hong Kong under visa-free arrangements. We often heard that these people have to make a detour before they can come to Hong Kong. This obviously reflects the need of the market. Will the Secretary please tell us why the immigration procedures for such people cannot be simplified? If these mainland tourists are PRC passport holders, why is it that they cannot be granted visa-free treatment, so that the number of tourists from this source can be increased?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, this transit arrangement is in fact equivalent to visa-free arrangement, that is, transitters are allowed to stay in Hong Kong for a period of seven days without a visa. As compared with the arrangement for other foreign visitors, this is already very generous. This is because if other foreign visitors are holding the passports of countries that require visas to visit Hong Kong, they will also need visas for transiting.

Why do we require mainland residents to apply for entry permits? This is because the immigration needs of mainland residents have always been very great and a large number of people are involved. Many mainland residents are not really visiting Hong Kong for tourism purpose or visiting relatives. In fact, some intend to settle or work in Hong Kong illegally, such as working as prostitutes. Therefore, it is necessary for us to check on individual travellers. Of course, it is not necessary for us to do a lot of checking on several types of visitors at the counters. They mainly include mainland residents who have already obtained two-way permits purely for the purpose of visiting relatives in Hong Kong or joining "Hong Kong Tours". I think Mrs Selina CHOW would also be aware that we would obtain information on those who joined "Hong Kong Tours" beforehand. In fact, we would be given such information one or two days before their trip. Then, we would be able to know in advance if some visitors had an unfavourable record, and they would not be allowed to come to Hong Kong. By doing so, no time will be wasted at the control points.

In order to maintain effective immigration control, we cannot allow all PRC passport holders to enter Hong Kong though they may just want to enter Hong Kong, as a visa-free arrangement.

MRS SELINA CHOW (in Cantonese): *Madam President, the Secretary has not pinpointed at my supplementary question. My question was not on the visa arrangement for all mainland tourists as a whole, but rather on that for mainland visitors who are PRC passport holders. These people are granted visa-free entry to Hong Kong for transit purpose, and they do not have to meet other requirements. Since they already enjoy visa-free treatment for transit purpose, why can they not be allowed to visit Hong Kong without a visa? Why is it that they have to make detours and can only enter Hong Kong for transit purpose?*

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

SECRETARY FOR SECURITY (in Cantonese): Madam President, I have something to add. When mainland visitors transit through Hong Kong, we have to check whether they have valid air tickets, in order to ensure that they are only transiting through Hong Kong, and this can also be regarded as a form of examination. If visa-free entry is put into practice, a large number of people may be entering Hong Kong directly and this policy may be abused. Furthermore, if there are too many visitors, our existing border control points will certainly be unable to cope with the demand. Therefore, at present, it is necessary for us to maintain the existing system that distinguishes between different categories of visitors.

MR LAU KONG-WAH (in Cantonese): *Madam President, I have also read about the case mentioned in the main question. Very strong language had indeed been used in the article and severe accusations were directed at the staff of the ImmD. Though the Secretary said the author did not disclose his real name and did not lodge any complaint, I still think that the Secretary should make further clarifications. This is really a very unique incident. Has the Secretary tried to find out whether any staff of the ImmD has come across this case on that day and what exactly had happened?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as I have just said, we have already conducted an investigation and the ImmD did not receive any relevant complaint. This is the first point. Secondly, according to the article, we do not think that the staff of the ImmD has done anything wrong in handling this case; and the author also said that the staff was not impolite to him. He admitted that the staff was not impolite or not courteous and he only felt that he was being discriminated against. I can understand this kind of feeling because I know some mainland people have questioned why the SAR is still exercising immigration control on mainland Chinese citizens after the reunification. Since Hong Kong is already reunified with China, why is it that the doors of Hong Kong cannot be opened wide to allow mainland people to

enter and exit freely? Of course, on the one hand, this goes against the concept of "one country, two systems" in principle, and on the other hand, some practical problems are involved, such as the capacity of our border control points and different immigration problems to be faced by the SAR.

Mr LAU said the complainant has used very strong language and I do understand this point. This is because I often travel to other countries and I understand that if visitors were being repeatedly questioned on arrival, he would feel that he was being discriminated. I would like to share my personal experience. A few years ago, I went to Vancouver with my daughter who was only a few years old at that time and my husband had already arrived before us. After completing all the immigration procedures on our arrival, a border control staff asked me whether I had a letter from my husband permitting me to bring my daughter to Canada. I asked him if such a letter was really needed and he told me yes. He also said if I visit Canada again in the future and was not travelling with my husband, I should carry a letter from my husband permitting me to take my daughter to Canada. I found it very strange, so I consulted the Canadian High Commission after returning to Hong Kong. Their experts told me that in North America, a lot of couples disputed over the custody of their children when they divorced, and some women would just take their children away. Therefore, their border control points need to pay particular attention to such issues. However, that immigration official told me that "I question his judgment", and that means he thought the border control staff should not have made such a decision on my case. I was very angry at that time and have thought about making a complaint. However, the border control staff did that in accordance with the prescribed procedures.

I would like to take this opportunity to make an appeal. If any visitor, regardless of whether he is from the Mainland or overseas, were being treated impolitely or being discriminated against at any of our border control points, he should lodge a direct complaint with us, so that we can take follow-up actions as soon as possible instead of writing to newspapers.

PRESIDENT (in Cantonese): This Council has already spent 18 minutes on this question. We shall now proceed to the fifth question.

Proliferation of Mikania Micrantha

5. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, it is learned that a large number of trees in Hong Kong are overgrown with Mikania micrantha, a fast growing climbing plant which withers some of them by blocking the sunshine. In this connection, will the Government inform this Council whether it has:*

- (a) assessed the damage caused to trees by Mikania micrantha; if it has, of the relevant details;*
- (b) explored more effective alternatives to manual removal of Mikania micrantha; and*
- (c) any measures to curb the proliferation of Mikania micrantha?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese):
Madam President,

- (a) Mikania micrantha is a fast-growing plant capable of climbing over other plants to gain more sunshine. The growth of plants covered by Mikania micrantha over a prolonged period may be impaired, as these plants cannot receive enough sunshine.

The Agriculture, Fisheries and Conservation Department (AFCD) and the Leisure and Cultural Services Department (LCSD) have assessed the damage caused to plants by Mikania micrantha. Results have shown that Mikania micrantha has not caused any damage to urban vegetation. The LCSD regularly inspects trees and plants within its jurisdiction and undertakes vegetation maintenance work. Whenever Mikania micrantha is found, it will be immediately removed. Other works departments also commit their contractors to carry out regular weeding and removal of climbing plants for the landscaped areas within their jurisdiction.

As regards country parks, Mikania micrantha is found growing in only a few areas, estimated to cover a total area of about 10 hectares, which equals to about 0.025% of the total country park area. The

AFCD makes regular arrangements for manual removal of *Mikania micrantha* at the affected areas and the growth of the plant in country parks is under control. As trees grown in country parks are taller and bigger, there is usually not enough sunlight for *Mikania micrantha*. This environment is not conducive to the growth of *Mikania micrantha* and the plant has not caused serious harm to the forest.

- (b) As to the second part of the question, according to the expert opinion of the AFCD, removing *Mikania micrantha* manually is the most feasible measure for the time being. Other methods, such as using herbicide, may have undesirable impact on the environment. Burning is also not viable as *Mikania micrantha* is very deep-rooted and is almost impossible to burn out the roots to exterminate the plant and prevent it from regenerating. The use of mechanical means to clear *Mikania micrantha* is also not recommended as it may cause damage to other plants nearby.

The Afforestation Bureau of Guangdong Province is conducting a "Comprehensive Study on the Preventive and Control Technologies regarding *Mikania micrantha*" which will last for two years. The objective of the study is to explore more effective preventive and control measures regarding *Mikania micrantha*. The study should be completed by the end of next year. The AFCD is discussing with the Guangdong authorities the feasibility of extending the plan to Hong Kong.

- (c) At present, the best way to curb the proliferation of *Mikania micrantha* is to take preventive measures at an early stage to check its growth. In this connection, relevant departments will step up their inspection works. If *Mikania micrantha* is found, eradication work will be conducted as soon as practicable.

MISS CHOY SO-YUK (in Cantonese): *Madam President, the Secretary said in part (a) of her main reply that the influence of Mikania micrantha was limited to vegetation in urban areas and country parks. However, besides those two locations, actually, other rural areas are also involved. We can easily find vegetation damaged by Mikania micrantha all over Hong Kong. Indeeds may I*

ask the Secretary whether the Government has assessed the damage done to trees by Mikania micrantha in other areas besides vegetation grown in country parks and urban areas?

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, besides urban areas and country parks which I have just mentioned in my main reply, the AFCD has also assessed the proliferation of Mikania micrantha in the Mai Po Nature Reserve and several egrettries. The AFCD estimates that about 10 hectares are covered by Mikania micrantha in the Mai Po Nature Reserve and several egrettries. The AFCD has provided some assistance to the World Wide Fund for Nature Hong Kong (WWF), which manages the Mai Po Nature Reserve, whilst the WWF will conduct manual removal of Mikania micrantha regularly in the Mai Po Nature Reserve. Moreover, the AFCD also co-operates with certain environmental groups on a regular basis to call for volunteers to weed out Mikania micrantha in affected egrettries. However, the AFCD has not conducted any similar assessment on private premises elsewhere.

MR LEUNG FU-WAH (in Cantonese): *Madam President, in the last paragraph of part (b) of the main reply, the Secretary said that the Afforestation Bureau of Guangdong Province was conducting a "Comprehensive Study on the Preventive and Control Technologies regarding Mikania micrantha" which will last for two years. The objective of the study is to explore more effective preventive and control measures regarding Mikania micrantha; she also said that the AFCD was discussing with the Guangdong authorities the feasibility of extending the plan to Hong Kong. May I ask the Secretary whether she is concerned that Members of this Council may misunderstand her and think that the Government has betrayed the "high degree of autonomy" of Hong Kong on the issue of the prevention and treatment of Mikania micrantha? (Laughter)*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, in fact, in such areas as environmental protection, nature conservation and the promotion of sustainable development, the Government must work closely with the authorities in the Guangdong Province. Therefore, the public would absolutely not feel that the "high degree of autonomy" of Hong Kong is being betrayed. It is because when we deal with the issue of nature

conservation and environmental protection, the Government should take the entire region into consideration with a view to finding the solution. I have said earlier that we were discussing with the Guangdong authorities to see whether it is possible to conduct the relevant study together. At present, the relevant issue is being discussed by one of the sub-groups of the Hong Kong — Guangdong Joint Working Group (JWG) on Sustainable Development and Environmental Protection, which was set up in 1999.

MR HOWARD YOUNG (in Cantonese): *Madam President, I remember I have raised a similar question in the last term, however, I put the question in English as I did not know the Chinese name of such vegetation, I only knew it was commonly known as "green cancer". The reply of the Government at that time was very similar to the one today. I wish to ask these questions. First of all, can the Government check whether the vegetation stated in the question asked by me in the last term was identical to the species in question? Secondly, with regard to the fact that just about 10 hectares of country parks were covered by Mikania micrantha, the percentage is really not very high. However, will the Government inform us whether such vegetation is sparsely grown or densely grown? If it is densely grown, we can at least get the message that the Government is able to control its growth. If it is sparsely grown, is its growth really under control as the Government has said?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I am really baffled by the English name mentioned by Mr YOUNG in the first part of his supplementary question. I remember I have seen a question concerning this kind of vegetation last year, but the English name was too long for me to recall instantaneously, as it was a scientific name of a plant. However, I will check it out later and give Mr YOUNG a written reply. (Annex I)

Concerning the proliferation of *Mikania micrantha* in country parks, just as I have said earlier, it only covered a total area of about 0.025% of the total country park area, therefore the problem is really not that serious. Meanwhile, according to the characteristics of the growth of *Mikania micrantha*, it grows more rapidly in summer and slowly in winter, thus it will give the affected plants a chance to gasp for breath and rejuvenate. As far as I know, the affected plants

are usually older and weaker, so to grown-up or stronger plants, the influence of *Mikania micrantha* is less significant. Moreover, according to the information given by the AFCD, the growth of this kind of climbing plant in Hong Kong was first recorded in 1884; therefore I trust the estimation of the AFCD that the proliferation of *Mikania micrantha* is now under control.

MISS CHOY SO-YUK (in Cantonese): *Madam President, may I ask if the Secretary will consider the introduction of a more comprehensive civic education programme, especially civic education for students, so as to plead for their help to remove Mikania micrantha whenever they see the plant in country parks? As Mikania micrantha grows rapidly, I believe if we wait for the result of the study before we can plan actions to be taken, we will have to wait for a certain period of time. Will the Secretary consider adopting measures that are faster and effective?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): *Madam President, first of all, I still have to repeat that the Government believes the situation is now under control. As to the suggestion of Miss CHOY, at present, the Government has continued to enhance the awareness of the public in this respect, so that they will know the importance of protecting nature (including natural vegetation). Nevertheless, I will urge the AFCD to consider the suggestion of Miss CHOY. I am only concerned that if educational efforts are not made satisfactorily, the public may mix it up with other plants when they have a walk in country parks, and they may weed out plants that are mistaken as Mikania micrantha, removing "innocent" plants as a result. In that eventuality, the damage to vegetation affected by Mikania micrantha will be aggravated. With regard to Mikania micrantha growing on private land, if we know that such plants are growing and that they may affect nearby sites of ecological values, I think the AFCD should step up the education of owners of private land.*

DR LUI MING-WAH (in Cantonese): *Madam President, the Honourable Miss CHOY So-yuk said earlier that Mikania micrantha proliferates rapidly, whilst the Secretary said that the Government is of the view that the growth of Mikania micrantha is under control. Given the Government has explained that the growth of Mikania micrantha is under control, so can it quantify under what*

circumstances will the so-called slowdown or cessation in proliferation begin? Why does the proliferation slow down, and why does it stop proliferating?

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, in fact, I said the condition was under control on basis of two things. Firstly, at present, the area of land covers by *Mikania micrantha* is actually very small. Secondly, I have mentioned in my main reply earlier that before the Afforestation Bureau of Guangdong Province publicizes the result of its study, we consider manual removal of *Mikania micrantha* at major affected areas the most effective measure. Furthermore, it is also the most effective measure for the Government to control the growth of *Mikania micrantha*. The Government will adopt the current approach, that is, whenever *Mikania micrantha* is found, especially in country parks and urban greening sites, we will carry out immediate extermination jobs and root it up, that is why I said that the condition was under control.

MR HOWARD YOUNG (in Cantonese): *Madam President, I wish to follow up the suggestion of Miss CHOY So-yuk. I would like to ask the Secretary whether she will reject the suggestion in a more definite way since I think encouraging the public to go to country parks and root up plants seems to make the public vigilant, it is not necessarily practical. Besides, just as the Secretary mentioned earlier, "innocent" plants may also be damaged. Will the Secretary state clearly that the suggestion is out of the question?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, since Honourable Members are holding different opinions, I believe it is worth putting forward these opinions to the relevant departments for detailed analyses and consideration, and the relevant departments will certainly make a sagacious decision. They will study the pros and cons of these opinions as well as the problems that may arise, and then make an appropriate decision.

PRESIDENT (in Cantonese): Last supplementary question.

MISS CHOY SO-YUK (in Cantonese): *Madam President, I wish to reiterate that the replies of the Secretary and the points raised by Honourable Members, such as the issue mentioned by Mr Howard YOUNG, were in fact restricted to country parks*

PRESIDENT (in Cantonese): Miss CHOY, please raise your supplementary question directly.

MISS CHOY SO-YUK (in Cantonese): *Madam President, certainly. I wish to say that in areas other than country parks and urban areas, has the Government adopted specific measures or proposed other ideas? In fact, the Secretary has been repeating when she replied my question, including the supplementary question I raised earlier that the circumstances in country parks and urban areas were under control. May I ask the Secretary whether she considers that the conditions in other areas are also under control?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, in my earlier replies, I have not only mentioned country parks and urban areas, I have also mentioned the Mai Po Nature Reserve and several egrettries where assessment had been conducted by the Government. The only area that the Government did not assess was private land, because more resources would be needed; nevertheless, the Government has been tackling the issue from various perspectives and I believe the problem is not that serious.

PRESIDENT (in Cantonese): Sixth question.

Crackdown on Crimes Involving Use of Firearms

6. **MR LAU KONG-WAH** (in Cantonese): *Madam President, regarding the crackdown by the police on crimes involving the use of firearms, will the Government inform this Council:*

- (a) *of the number of such crimes, and the number of firearms seized by the police with a breakdown by their origins, in each of the past three years;*

- (b) *of the types of the respective firearms used to kill a police officer in March, to wound police officers in May and to commit the armed robbery on 25 June; whether the police have reviewed the effectiveness of its actions to stem the smuggling of firearms into Hong Kong; and*
- (c) *whether it has reviewed if the present strength of the Police Force is adequate to combat crimes involving the use of firearms, as well as the measures in place to ensure that the morale of the Police Force will not be affected by such crimes?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) In 1998, genuine firearms were used in the commission of 16 crimes; and pistol-like objects were used in 51 crimes. A total of 54 firearms was seized by the police.

In 1999, genuine firearms were used in the commission of six crimes; and pistol-like objects were used in 68 crimes. A total of 22 firearms was seized by the police.

In 2000, genuine firearms were used in the commission of 13 crimes; and pistol-like objects were used in 81 crimes. A total of 21 firearms was seized by the police.

Firearms seized by the police were manufactured in a broad spectrum of countries, including the United States of America, the United Kingdom, Germany, several Eastern European countries and the Mainland. Whilst the percentage of such firearms manufactured in the Mainland was slightly higher than for the other countries, there is no direct correlation between the country of origin and where the firearms were smuggled into Hong Kong.

- (b) The ammunition used in the murder of a police officer in March, the wounding of two police officers in May and the armed robbery in June is believed to be 0.38 calibre ammunition, 7.62 mm calibre ammunition and 7.62 mm calibre ammunition respectively.

The police have always accorded a high priority to intercepting the smuggling of firearms into Hong Kong and preventing and detecting crimes involving the use of firearms. There are dedicated units at Police Headquarters, for example the Criminal Intelligence Bureau and the Organized Crime and Triad Bureau, which handle intelligence gathering, investigation of armed criminal syndicates and crimes involving the use of firearms.

The police have maintained a very close working relationship with mainland law enforcement agencies. During the recent bi-annual bilateral meeting between the Hong Kong Police Force and the Public Security Bureau Guangdong, it was agreed to establish a task force to jointly investigate all serious firearms cases. The areas of co-operation include the speedy exchange of information relating to all crimes involving the use of firearms, the suspects, ballistic examinations, and so on as well as joint operations to interdict criminal syndicates.

- (c) Hong Kong Police is a professional disciplined force. All of its members possess a high level of professionalism and are determined and positive in the execution of duties. The police's morale will not be affected by an isolated incident or a particular crime.

As of 1 July 2001, the Hong Kong Police Force had a total strength of 28 119 officers of which 24 881 (88.5%) were deployed on front-line policing duties. They worked in various units including Patrol Sub Units, Emergency Units, Police Tactical Units, Marine, Traffic, Crime Units, and so on. The establishment, strength, deployment of existing resources, and so on are regularly reviewed to ensure that the most effective and efficient policing service is provided to the community.

The personal safety of police officers is of paramount importance. Training in the tactical use of firearms, emergency response to incident scenes involving firearms and teamwork form the basis of regular refresher training for all police officers. Specialist units are provided with enhanced tactical training. Besides, the police Command and Control Centres are capable of applying professional judgement and flexibility in the deployment of manpower resources

to ensure prompt and sufficient support are provided to our front-line officers whenever necessary.

Morale within the Police Force remains high. By virtue of the nature of police responsibilities and duties, officers are exposed to potentially life-threatening situations on a daily basis. However, they are provided with the best tactical training, both individually and as part of a team, to afford the maximum degree of safety in the efficient and effective discharge of their constabulary duties.

MR LAU KONG-WAH (in Cantonese): *Madam President, I have noted several figures mentioned by the Secretary. If we add up the figures for crimes involving the use of genuine firearms and pistol-like objects every year, there were 66 cases in 1998; 74 in 1999 and 94 in 2000. Such crimes have evidently increased year after year. Furthermore, shooting incidents that occurred one after another early this year made the public very worried. I have also noted one of the solutions mentioned by the Secretary is to establish a task force with the mainland Government. Of course, this is an expression of a high degree of co-operation between China and Hong Kong apart from the high degree of autonomy exercised in Hong Kong. However, what is new about this task force and how does it differ from the level of co-operation in the past, and will the investigation cover the three recent cases that involved the killing and wounding of police officers?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, let me first explain the classification of cases involving the use of pistols by the Government. According to the classification by the police, firearms used by criminals must be confirmed as genuine before they are classified into cases involving the use of genuine firearms. We must first confirm that the firearms have fired before they are classified as genuine. Other firearms will just be regarded as pistol-like objects unless the relevant firearms have fired. Therefore, we should not confuse cases involving genuine firearms and pistol-like objects. Very often, some fake pistols or toy guns look like genuine firearms. However, if we do not have sufficient evidence to prove that the pistols have fired, we will only regard them as pistol-like objects. Of course, they are far less dangerous than genuine firearms.

According to the views above, in such a populated city as Hong Kong with a great variety of visitors, the number of crimes involving the use of genuine firearms per annum is less than that in many major cities. Mr LAU just said that if the figures for the two categories are added up, the number of crimes seems to be very high and has a tendency to increase year after year. However, if we look at the figures for the first five months this year, according to the information of the police, only four cases involve the use of genuine firearms while 27 cases involve the use of pistol-like objects. In fact, the figures have absolutely not increased although there were several shocking cases involving the use of firearms. In other words, the Security Bureau and the police consider law and order in Hong Kong as remarkable. There were several rather shocking cases involving the use of genuine firearms, but in fact, there is no evidence to show that large quantities of firearms have been smuggled into Hong Kong or cases involving the use of genuine firearms have increased.

Regarding the question raised by Mr LAU on whether there is anything new in the mode of co-operation between us and the Mainland, I dare not say we have any breakthrough. After we have set up a task force with the Mainland, the intelligence exchanged on cases involving the use of firearms by designated staff of both parties is undoubtedly more rapid and efficient. The scope of our co-operation also includes tracking down suspects, ballistic examinations and so on. Closer and faster co-operation between both parties are ensured, and we believe this is definitely conducive to solving cases.

MR LAU KONG-WAH (in Cantonese): *Madam President, the Secretary has not answered whether investigations on those cases will be included.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I am sorry. The answer is that investigations on those serious cases will certainly be included.

MR WONG YUNG-KAN (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary mentioned the activities of intercepting the smuggling of firearms into Hong Kong. May I ask if the total figure of firearms intercepted by the police in the last three years is 97, as mentioned by the Secretary in part (a) of her reply? May I ask the number of firearms being intercepted and the*

source of the relevant firearms including firearms intercepted at sea, on land or by air and does the Secretary have the relevant numbers?

SECRETARY FOR SECURITY (in Cantonese): Madam President, I can tell Members the total numbers: 35 firearms were seized in 1996 and 33 in 1997 but I do not have a breakdown of the source and country of production for firearms seized in 1996 and 1997; 54 firearms were seized in 1998. As for the breakdown of the country of production for firearms seized this year, I can give it to Mr WONG after the meeting. Besides, 22 firearms were seized in 1999 and 21 in 2000. However, I stress that these numbers show that the proportion of having China as the country of origin will be higher. Even if China is the country of production, it does not mean the origin is the Mainland. As for the details of interception, that is, whether they were seized locally, or by interceptions at sea or on land, I do not have the information at hand but I can also give it to Mr WONG after the meeting. (Annex II)

MR SZETO WAH (in Cantonese): *Madam President, it was shown in part (a) of the Secretary's main reply that genuine firearms were used in 16 crimes in 1998; and pistol-like objects were used in 51 crimes. Genuine firearms were used in 13 crimes in 2000; and pistol-like objects were used in 81 crimes. By comparing the figures of these two years, the number of crimes using genuine firearms has dropped whereas the number of crimes using pistol-like objects has, however, increased by 60%. Is it due to the reason that there have been changes in the standards and capabilities of the police in judging genuine and fake pistols rather than the success of the police in intercepting the smuggling of firearms into Hong Kong?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, there has been no change. In fact, as I have said just now, the method used in judging genuine and fake firearms is very simple. The firearms must have been used, that is, have fired before they are actually judged by the police as genuine. It is because firearms used in robbery cases involving the use of pistol-like objects were look like genuine firearms very much, but they were in fact fake pistols or toy guns, and such circumstances always occur. In a flick of time when the robbery took place, especially in the absence of professional police officers at the scene and there were just shop assistants and pedestrians, it was virtually

impossible for them to know whether the robbers were armed with genuine or fake firearms. Therefore, the criteria that have been adopted by the police for years are that if the firearms have been used and fired; bullets have been fired and gunshots have been heard, then the firearms will be judged as genuine. Hence, the criteria for classifying genuine and fake firearms have not changed.

DR LUI MING-WAH (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary mentioned three cases. May I ask where the firearms used by the criminals in those three cases were manufactured and does the Secretary have the relevant records?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, in connection with those three cases, I have already mentioned earlier that for the first case, that is the case in which a police officer was unfortunately murdered in March, the criminal used a 0.38 calibre pistol. For the second case, that is the wounding of two police officers on 22 May; and the armed robbery case in a watch shop at the Pioneer Centre in Mong Kok, the criminals used 7.62 mm calibre pistols which were Black Star pistols manufactured in the Mainland.

DR LUI MING-WAH (in Cantonese): *Madam President, the Secretary has not said where the pistol used by the criminal in the first case was manufactured, that is, the case that took place in March.*

PRESIDENT (in Cantonese): Secretary for Security, Dr LUI's question is: Where was the 0.38 calibre pistol manufactured?

SECRETARY FOR SECURITY (in Cantonese): Madam President, in the second and third case, the criminals were armed with Black Star pistols manufactured in the Mainland. As for the first case, the police can only confirm that the pistol used by the criminal is similar to those used by the police. We do not have other information at the moment.

PRESIDENT (in Cantonese): Question time shall end here.

WRITTEN ANSWERS TO QUESTIONS**Assistance to Formation and Operation of Youth Councils**

7. **MR WONG SING-CHI** (in Chinese): *Madam President, regarding organizations for young people to discuss public policies and monitor the operation of the Government, will the Government inform this Council:*

- (a) *whether it knows the number of youth councils in operation, together with a breakdown of their members by age and occupation;*
- (b) *whether it is aware of the dissolution of any youth councils last year; if so, of the reasons for their dissolution;*
- (c) *of the assistance and support rendered to the formation and operation of youth councils, as well as the resources allocated for such purposes last year; and*
- (d) *whether it will consider adopting the following measures to encourage more young people to participate in social and political affairs:*
 - (i) *setting up, through democratic elections, district youth councils in various districts of Hong Kong and a mock legislature for the youth; and*
 - (ii) *allocating resources for the establishment of a secretariat to provide support to youth councils?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President,

- (a) There are now five youth councils, established in the Sha Tin, Kwun Tong, Tai Po, Sai Kung and Tsuen Wan Districts. A breakdown of the 134 members by age and occupation is as follows:

By Age

<i>Age Group</i>	<i>15-20</i>	<i>21-25</i>	<i>26-30</i>
No. of youth council members	113	20	1

By Occupation

<i>Occupation</i>	<i>Student</i>	<i>Manufacturing</i>	<i>Wholesale/ Retail/Service Industry</i>	<i>Financing/ Insurance/ Business Services</i>
No. of youth council members	107	1	12	8

<i>Personal Services</i>	<i>Civil Servant</i>	<i>Occupation Unknown</i>
1	1	4

- (b) We are not aware of the dissolution of any youth council last year. However, we understand that the operation of the Sha Tin youth council, which is under the auspice of the Sha Tin District Council's Culture, Sports and Community Development Committee, is being suspended for one year in 2001-02 for the purpose of conducting a comprehensive review on its future composition and operation.
- (c) The District Councils, District Offices, other government departments, local district bodies, youth organizations and schools in the respective districts have all rendered assistance and support in the formation and operation of these youth councils. That includes the provision of financial, secretarial and other logistical support, as well as attendance of meetings of the youth councils and the giving of advices to their members. In the 2000-01 financial year, the District Councils of the five districts concerned allocated a total of \$208,600 to support the functioning and activities of their youth councils.

- (d) Setting up youth councils is one of the ways to arouse the interest of the young people in social and political affairs. The Government promotes the participation of young people in social and political affairs through the school curriculum, civic education programme, community service funding schemes for the young people and volunteer services. We also encourage young people, when they become eligible, to register as voters, to cast their votes and ran as candidates in elections of the District Councils and the Legislative Council.
- (i) Taking into consideration the nature and activities of the youth councils and the resources involved, we have no plan to conduct elections for the purpose of setting up youth councils in various districts of Hong Kong or a mock legislature for the youth.
- (ii) The District Council secretariats and District Offices concerned are already providing secretarial and other support to the youth councils in their districts. The present arrangement is working satisfactorily and we do not consider it necessary to establish a separate secretariat to the youth councils.

Regulation on Importation and Usage of Laser Devices and Phototherapy Devices

8. **DR LO WING-LOK** (in Chinese): *Madam President, I have received from skin specialists and medical equipment suppliers allegations that some beauty salons have, through unauthorized suppliers, acquired from overseas hospitals and clinics second-hand laser devices and phototherapy devices specially designed for the treatment of skin problems, and that these devices have not been used properly and safely, posing health hazards to patrons of beauty salons. In this connection, will the Government inform this Council:*

- (a) *how the existing legislation regulates the importation, possession, storage, usage and maintenance of these devices; of the licences required and the procedures involved in obtaining such licences;*

- (b) *whether it knows the number of beauty salons in the territory equipped with such devices; and whether existing legislation regulates the acquisition and usage of such devices by beauty salons; if so, of the details; if not, the reasons for that; and*
- (c) *whether, after making reference to the legislation of advanced countries in Europe and America as well as Singapore, it will consider enacting legislation to step up the control of the importation and usage, and so on, of such devices?*

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

- (a) At present there is no specific legislative control over the import, possession, use, storage and maintenance of laser devices. Nevertheless, a voluntary Laser Safety Code of Practice was prepared by the Committee on Science and Technology and distributed to laser owners, users and operators in 1992. The Code contains guidelines for laser safety in industry, manufacturing, entertainment and display, as well as beauty therapy and biostimulation. Advice on maintenance or servicing of laser equipment can be obtained from the Government Laser Safety Officer of the Electrical and Mechanical Services Department (EMSD) where required.
- (b) We do not have comprehensive information on the number of beauty salons which possess laser or intense pulsed light equipment, since such equipment is not subject to statutory control. Nevertheless, safety guidelines on the use of lasers for beauty therapy and biostimulation are included in the Laser Safety Code of Practice. The Code recommends that only competent persons with training in laser safety should be employed to handle health care laser systems of high risk levels (that is, Class 3B and Class 4). Moreover, under the Occupational Safety and Health Ordinance, employers are held responsible for ensuring, so far as reasonably practicable, the safety and health at work of their employees.

- (c) We have proposed in the Consultation Document on Health Care Reform to carry out a comprehensive review of the present statutory regulations in relation to, among other things, the use of medical facilities/equipment. We are examining the regulation of medical equipment in overseas countries and will study the feasibility of setting up a regulatory framework for medical equipment in Hong Kong in the light of the findings.

Operating Costs of Light Buses Using Alternative Fuels

9. **MR DAVID CHU** (in Chinese): *Madam President, the trial of light buses using alternative fuels (that is, electric light buses and liquefied petroleum gas (LPG) light buses) was completed early this year. It has been reported that, according to the results of the trial, electric light buses need to be recharged several times a day, while LPG light buses consume nearly double the fuel required for diesel light buses. As a result, the operating costs of such light buses far exceed those of diesel light buses. In this connection, will the Government inform this Council whether it knows:*

- (a) *the ways to reduce the frequency of recharging of electric light buses; and*
- (b) *the measures to lower the operating costs of light buses using alternative fuels?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Chinese):
Madam President,

- (a) During the trial, the electric light buses only underwent quick battery recharging during daytime. Therefore, they had to be recharged more frequently to obtain the power necessary for their operations. According to the supplier of the electric light buses, overnight slow recharging could be arranged if and when electric light buses are formally brought into operation in future. An electric light bus that has been recharged overnight using slow recharging mode could travel two to three times farther than one recharged using quick recharging mode. Moreover, the supplier

has also indicated that when the driver of an electric light bus becomes more familiarized with operating the vehicle, he should be able to make good use of the electricity regeneration device when slowing down his vehicle and use the accelerating pedal more effectively according to road conditions. These would lower battery consumption, increase the traveling range of the vehicle and reduce the need for recharging.

- (b) Although the fuel consumption per kilometre of an LPG light bus is higher than that of diesel light bus, the retail price of LPG is lower than that of diesel. Because of this, the fuel cost per kilometre of the diesel light buses refilled at dedicated LPG filling stations was lower than that of the diesel light buses during the trial. The fuel cost per kilometre of LPG light buses refilled at non-dedicated stations was higher than that of the diesel light buses during the trial. However, the LPG retail price at non-dedicated stations has since become significantly lower. If we compare the current LPG and diesel retail prices, the fuel cost per kilometre of LPG light buses refilled at non-dedicated stations should be comparable to, and in some cases even lower than, that of diesel light buses. The following factors will further reduce the operating costs of LPG light buses:
- (i) The number of LPG filling stations will increase from five at the beginning of the trial to at least 37 (including nine dedicated LPG filling stations) by the end of 2001. If the Government decides to implement an LPG light bus programme, we will further increase the number of LPG filling stations. The distance an LPG light bus would have to travel for refilling will in a number of cases become shorter than, thereby reducing the amount of LPG required for an LPG light bus to travel to and from an LPG station for the purpose of refilling; and
 - (ii) We are discussing with LPG light bus suppliers the possibility of enlarging the fuel storage tank of the vehicles. If this is possible, the frequency of refilling and the amount of LPG required for an LPG light bus to travel to and from an LPG station for the purpose of refilling could be reduced. One

supplier has already indicated that they could enlarge the fuel storage tank by 40%.

According to the trial results, the fuel cost per kilometre of an electric light bus (including rental for battery) was higher than that of diesel light buses. However, as pointed out in part (a) of this reply, the supplier of the electric light buses considers that, if and when the vehicles are formally brought into operation in future, the power they consume and thus their operating costs could be reduced.

English Standards of Local Solicitors and Barristers

10. **MR KENNETH TING** (in Chinese): *Madam President, it has been reported that several judges have on different occasions commented adversely on the poor English standards of some local solicitors and barristers and that this affects the implementation of the rule of law in Hong Kong. In this connection, will the Government inform this Council of the measures in place to ensure that solicitors and barristers practising in Hong Kong have good command of English?*

SECRETARY FOR JUSTICE (in Chinese): Madam President, in November 1999 the Government in co-operation with other stakeholders (including the Law Society of Hong Kong, the Hong Kong Bar Association, the University of Hong Kong and the City University of Hong Kong) initiated a comprehensive review of legal education and training in Hong Kong. The English language ability of law students and practitioners is one of the areas being considered.

In the Consultation Paper prepared by the consultants carrying out the review and released in September 2000, reference was made that the perception most frequently expressed during the consultations was that there has been a marked decline in the language skills of law graduates. On the other hand, mention was also made in the Consultation Paper of the observation that the two local law schools' LLB students were among the highest English intake grades of the university student population. The consultants' final report will be published next month. It is expected that in that final report, the consultants will put forth their views on perceived problem, and recommend ways to address it.

The Government will study the consultants' views and recommendations seriously. However, until the consultants' final report is published and considered, it will be premature to determine whether, and if so, what measures need to be taken in response to the perceived English language proficiency problem. The Government will continue to keep this Council informed and seek members' views through the Panel on Administration of Justice and Legal Services.

Complaints about Unscrupulous Business Practices

11. **MR FRED LI** (in Chinese): *Madam President, will the Government inform this Council of:*

- (a) *the respective numbers of complaints about unscrupulous business practices received by the Consumer Council and the police over the past three years, together with a breakdown by the following categories:*
 - (i) *business practices such as using misleading price tags, giving inaccurate or misleading descriptions of products or services, collecting money from customers with no intention to provide the products or services, inducing or unduly disturbing or coercing customers;*
 - (ii) *identity of the complainants, that is, whether they are tourists or local residents; and*
 - (iii) *the items involved in the complaints, that is, whether they are services or products; and*
- (b) *the outcome of these cases, including the respective numbers of cases ruled in favour of and against the complainants among the cases resolved through civil proceedings; and the number of cases in which prosecution could not be instituted due to insufficient evidence?*

SECRETARY FOR ECONOMIC SERVICES (in Chinese): Madam President, the respective replies to the two parts of Mr Fred LI's question are set out below:

- (a) (i) The total numbers of cases handled by the Consumer Council regarding misleading indication as to price, false or misleading representation, accepting payment without intention to supply, bait and switch, and harassment or coercion in the past three years are as follows:

<i>Year</i>	<i>No. of cases</i>
1998-1999	5 339
1999-2000	5 782
2000-2001	6 317

The Consumer Council has analysed the data for the quarter from October to December 2000. A breakdown of the data on unscrupulous practices by the categories above is as follows:

<i>Nature of complaints</i>	<i>No. of cases</i>
Misleading indication as to price	958
False or misleading representation	749
Accepting payment without intention to supply	346
Bait and Switch	259
Harassment or coercion	41
Total	2 096*

- * The total is less than the sum of the five categories because some cases involve more than one of the five categories.

- (ii) and (iii)

A breakdown by identity of the complainants (that is, whether they are tourists or local residents) and whether the cases involve the supply of services or products is as follows:

<i>Year</i>	<i>Complaints in respect of services</i>		<i>Complaints in respect of products</i>		<i>Total</i>
	<i>Tourists</i>	<i>Local residents</i>	<i>Tourists</i>	<i>Local residents</i>	
1998-1999	20	3 036	641	1 642	5 339
1999-2000	27	3 377	887	1 491	5 782
2000-2001	44	4 359	674	1 240	6 317

Statistics on consumer complaints received by the Hong Kong Police Force are not available.

- (b) The Consumer Council does not have an analysis of the outcome of the five categories of cases, but has provided the following statistics on the outcome of cases in general handled by the Consumer Council in the last three years:

<i>Year</i>	<i>No. of pursuable cases</i>	<i>Redress obtained/satisfactorily resolved</i>	<i>Satisfactory and acceptable explanations provided by traders concerned</i>	<i>Traders refused to co-operate</i>
1998-1999	19 099	77.5%	12.5%	10%
1999-2000	12 735	65%	25%	10%
2000-2001	12 124	68%	21%	11%

Statistics on civil and criminal proceedings instituted in respect of consumer cases are not available.

Safety of Using Mobile Phones during Thunderstorms

12. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, some overseas web-sites have reported that there have been cases in which people were struck by lightning during thunderstorms while using mobile phones. In this connection, will the Government inform this Council:*

- (a) *whether there is scientific evidence that lightning may be guided by the radio waves of mobile phones to strike the users; and*
- (b) *if there is such evidence, whether it will advise members of the public to refrain from using mobile phones in open areas while the thunderstorm warning is in force?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Chinese): Madam President,

- (a) Since radio wave received and emitted by mobile phones is not a conductor of electricity, lightning will not be guided by the wave to strike the mobile phone users.
- (b) As set out in Reply (a) above, lightning will not be guided by radio wave of mobile phones to strike the mobile phone users. There is therefore no need for the Government to issue the relevant warnings.

Acceptance of Preferential Treatment by Public Officers in Purchasing Properties from Real Estate Developers

13. **MISS EMILY LAU** (in Chinese): *Madam President, in reply to my question on 27 June regarding the receipt of preferential treatment by public officers from real estate developers, such as purchasing properties at prices below market value or enjoying priority in purchasing properties, the Secretary for the Civil Service stated that by virtue of the Acceptance of Advantages (Chief Executive's Permission) Notice, a civil servant might accept priority in purchasing a property and purchase a property at a discount without having to obtain special permission from the Chief Executive provided that the preferential treatment was equally available on equal terms to persons who were not civil servants and that the officer concerned had no official dealings with the tradesman or the company that offered the advantage. In this connection, will the executive authorities inform this Council:*

- (a) *given that priority in purchasing properties is not available to all members of the public, why the acceptance of such priority by civil*

servants will not constitute an acceptance of advantages so long as "the preferential treatment is equally available on equal terms to persons who are not civil servants";

- (b) whether they have thoroughly investigated the case reported by the media last month, in which three senior public officers were alleged to have purchased flats in Celeste Court, Happy Valley from Sun Hung Kai Properties Limited at prices below market value in 1992; if so, of the relevant details and findings; and*
- (c) whether they will consider amending the Acceptance of Advantages (Chief Executive's Permission) Notice and the Prevention of Bribery Ordinance (PBO) to prohibit public officers (including civil servants) from soliciting or accepting priority in purchasing properties from real estate developers; if not, of the reasons for that?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, the Administration's reply is set out below, in the same order:

- (a) Where the same method of purchase is equally available to persons who are not civil servants, a civil servant's act of purchasing a property outside or in advance of a public sale is legally permissible under the PBO provided that there is no conflict of interest with the officer's official duties and the sale is not a reward for the officer abusing his official position. Meeting the test of equal availability to persons who are not civil servants alone does not exempt an officer from provisions in the PBO.

In part (c) below, I will return to the wider question of striking a reasonable balance between the need to maintain public confidence in the integrity of the Civil Service and the rights of civil servants to engage in normal property transactions as ordinary citizens.

- (b) On 5 July 2001, the Financial Secretary issued a statement on the outcome of his examination of Mr Joseph YAM's property transactions, including the flat at Celeste Court. At the same time, the Secretary for the Civil Service issued a statement on the outcome of our examination of the property transactions conducted by Messrs

Joseph YAM, Billy LAM and Nigel Burley in 1990 to 1992 in respect of flats at Celeste Court. A copy each of the two statements are attached.

- (c) The Administration is mindful that the media reports on the purchase of the three flats have brought into sharper focus public concern over the propriety of civil servant, particularly those in senior positions, purchasing a flat through approaches to or inquiries with the developer in advance of or outside a public sale.

As has already been stated in part (a) above, where the same method of purchase is equally available to persons who are not civil servants, this is legally permissible under the PBO provided that there is no conflict of interest with the officers' official duties and the sale is not a reward for the officers abusing their official positions. Nor is it in contravention of the civil service regulations which recognize the principle that, in general, civil servants should not be deprived of their rights, as ordinary citizen, to enter into normal purchase and sale transactions.

Nonetheless, in the interest of maintaining public trust and confidence in the probity of senior civil servants, there may be a need to improve the present civil service rules governing the purchase of flats outside or in advance of a public sale. We are now considering the introduction of an additional requirement so that senior civil servants, for example directorate officers, have to take into account any public perception problem and notify their heads of department or the Secretary for the Civil Service before they enter into such transactions. (This is in addition to the present legislation and rules prohibiting acceptance of advantages by civil servants where there is a conflict of interest or abuse of office.) In doing so, we need to strike a balance between the objective of addressing the problem of public perception and the right of civil servants to engage in normal transactions as ordinary citizens. We will discuss the matter thoroughly with the Department of Justice and the ICAC and consult the Staff sides. We aim to promulgate the new rules within the next few months.

*Statement by the Financial Secretary on
Property Transactions conducted by Mr Joseph YAM*

5 July 2001

Questions have been raised in the past few weeks about certain property transactions conducted by Mr Joseph YAM, Chief Executive of the Hong Kong Monetary Authority. In view of these questions, I have carefully examined a detailed and documented account of all of Mr YAM's past property transactions in Hong Kong, prepared for me by Mr YAM. I have also sought and received advice and further information from the Department of Justice and Lands Department to help me in the consideration of this matter. In the specific case of penthouse in Celeste Court, information was sought and received from the developer concerning the method of sale.

Having reviewed the above information, I have found no evidence to suggest any conflict of interest by Mr YAM in any of these transactions. Nor do I see any reason to believe that Mr YAM has breached any law or regulation. On the pricing of Mr YAM's property transactions, having considered carefully all the information provided to me, I have no evidence that any of the purchase prices paid by Mr YAM were outside the reasonable market price range at the relevant time of the transactions.

With specific regard to the acquisition of the penthouse in Celeste Court, I have been advised by the developer that around the time of Mr YAM's purchase, the market outlook was uncertain, particularly in the sector of higher value properties. The company adopted a flexible approach to the marketing of such properties and was open to approaches by all interested parties for the purchase of the properties, irrespective of their employment status. As in any commercial transaction, the company was prepared, in the normal course of business, to negotiate terms with interested parties. The company confirmed that the marketing strategy was adopted not only for the penthouse flats in Celeste Court but also for higher value properties in its other developments and that the sale of the penthouse flat to Mr YAM was in line with the above strategy, regardless of the fact that he was a civil servant.

In view of the particular public concern over the transaction relating to this property, I have also sought and obtained advice on similar property transactions during the relevant period for reference. Such information reveals that the

property market was subdued in late 1990 and early 1991 when Mr YAM agreed to buy that penthouse and agreed the price determination methodology with the developer, whereas the market had improved by mid 1992 when other penthouse flats in the same development were sold to other buyers. It is therefore inappropriate to directly compare the prices of the different penthouse flats. In fact, a comparison of the price of comparable units sold in early 1991 has shown that the purchase price paid by Mr YAM was not lower than the fair market value at that time.

However, it is possible that the manner in which some of the other transactions were structured by Mr YAM may be subject to misinterpretation. I have discussed this possibility with Mr YAM. In response, he has sent me a note addressing a number of issues and outlining certain actions he intends to take. With his consent, this note is attached to this statement. I support these actions, which are entirely voluntary on Mr YAM's part, and which will go beyond the requirement applicable to the generality of the staff of the HKMA.

I have also reviewed the confidential declarations made by Mr YAM to the Financial Secretary over the years. My conclusion is that Mr YAM has covered in these declarations all his property transactions as detailed in his public statement dated 14 June. In the spirit of transparency, Mr YAM has voluntarily undertaken to enhance the level of information on all his investments in his future declarations to the Financial Secretary (as detailed in his attached note) and to increase the content of his record of financial interests available for public inspection, which I also support.

Note to the Financial Secretary from Mr Joseph YAM

Financial Secretary,

In the light of recent public interest in my personal property transactions, I have earlier given you a detailed and documented account of all my past property transactions in Hong Kong. I understand that you are examining it and are seeking further advice from the relevant government departments in order to help you assess the propriety of these transactions. In the meantime, I would like to address four issues of relevance to your examination and to outline the actions I intend to take in three of them.

The first issue concerns the penthouse in Celeste Court. I have explained in detail, in the materials supplied to you, the price determination methodology agreed with the developer on 28 November 1990; the fact that, to the best of my knowledge and belief, the approach I made to the developer was open to everybody; and the fact that the actual price of the flat could not be determined, in accordance with the agreed price determination methodology, until the precise area and design became available in 1992. On the question of stamp duty, subsequently raised after I issued my public statement, I have further sought legal advice, which has pointed out that the arrangement involved no contravention of the provisions in section 29B of the Stamp Duty Ordinance. I therefore do not think that there is further action that I can or should take. Nevertheless, to distance myself further from any decision relating to investment property, including the leasing of property owned by me, I will place the management of the leasing of the penthouse in Celeste Court in a discretionary trust.

The second issue concerns the use of a discretionary trust for organizing property investments. I understand that in the context of the transactions relating to the flats at Grand Panorama, there have been questions raised. After careful consideration, I am of the opinion that this practice is appropriate so as to ensure that I am not involved in investment decisions to buy, hold, lease and sell property. And I have, in my statement on financial interests for public inspection and my confidential declarations to the Financial Secretary, disclosed this arrangement and the underlying assets held. I do not see any fundamental problem in these arrangements. Subject to your views, I do not therefore propose to make any change to this practice. But I will, as before, ensure that, should such a discretionary trust be used again in future, the confidential declarations to the Financial Secretary include the details of the assets held in that trust as if the assets were held directly under my name.

The third issue concerns the holding structure of my current residence at South Bay Towers. I referred to this in my public statement of 14 June 2001. The structure is also effective in minimizing stamp duty for the transaction (through buying the entire shares of the company holding the flat rather than buying the flat itself); and facilitating future tax planning, given the choice, as old age approaches, of either instructing the trustees to transfer the shares of the company to my family members and incurring stamp duty or letting my surviving family members incur the applicable estate duty. These tax minimizing arrangements are undoubtedly legal and widely practised. However,

taking into account the public expectation that a person holding senior office should not only be beyond reproach, but should also be seen to be beyond reproach in personal transactions, I realize that they could be misinterpreted, and may be considered by some to be inappropriate for the Monetary Authority. To address this, I will, as soon as practicable, arrange for the company holding the flat to be wound up and for the flat to be held directly under my name.

The fourth issue concerns declaration arrangements. I have covered all my property holdings in my confidential declarations to the Financial Secretary. For future declarations, I will continue to observe stringent standards in reporting all my personal financial transactions to the Financial Secretary, and will enhance the level of relevant information provided, using the level of detail required of the HKMA staff as the minimum standard. Furthermore, in line with the HKMA's efforts to achieve greater transparency, I will also increase the content of my record of financial interests available for public inspection to ensure that disclosure is beyond that required under standard government practice.

(Joseph YAM)
22 June 2001

*Statement by the Secretary for the Civil Service
on the property transactions conducted by
Messrs. Joseph YAM, Billy LAM and Nigel Burley
in 1990 to 1992 in respect of the flats in Celeste Court*

5 July 2001

It is the Government's usual policy not to comment on individual cases of illegal misconduct of civil servants, in order to preserve the integrity of the staff management and discipline system and to uphold the principles of natural justice. However, since recent media reports have caused public concern, we are making an exception in this case and now disclose our findings and views as follows:

- (a) We have asked Messrs. Joseph YAM, Billy LAM and Nigel Burley to explain the circumstances surrounding their purchase of flats at

Celeste Court. Mr YAM issued a statement on 14 June 2001 which, among other things, sets out the circumstances of his purchase of a penthouse flat at Celeste Court. A copy of the relevant extract is at Annex. We have also been informed by Sun Hung Kai Properties that around the time of Mr YAM's purchase, the market outlook was uncertain, particularly in the sector of higher value properties. The company adopted a flexible approach to the marketing of such properties and was open to approaches by all interested parties for the purchase of the properties, irrespective of their employment status. As in any commercial transaction, the company was prepared, in the normal course of business, to negotiate terms with interested parties. The company confirmed that the marketing strategy was adopted not only for the penthouse flats in Celeste Court but also for higher value properties in other Sun Hung Kai developments and that the sale of the penthouse flat to Mr YAM was in line with the above strategy, regardless of the fact that he was a civil servant.

Separately we have received reports from Messrs. LAM and Burley on their purchases. Both had taken part in the general public sale of Celeste Court in 1991, paid a deposit for a flat on a lower floor and thereafter made inquiries with the sales office about the penthouse flats which were not advertised in the sales brochure. They were informed by the sales office of the availability and the purchase prices of the penthouse flats in March 1992 and decided to purchase the penthouse flats instead. We have been informed that another penthouse flat in the same development was sold at a similar price at round the same time to a purchaser who was not a civil servant.

We have considered the circumstances of these purchases. Since Messrs. LAM and Burley entered into the sale and purchase arrangements as part of the general sale of flats, which were available to members of the public, there is no question of the officers receiving preferential treatment. Civil servants are not precluded from purchasing property which is available on public sale. Mr Burley was and is still working in the Lands Department and his official duties involve land and properties matters. However, having regard to the fact that he has purchased the

property through public sale, we do not consider that there was any conflict of interest in his purchase of the property. In the case of Mr LAM, he was then Director of Government Supplies and had no official dealings with Sun Hung Kai Properties. His purchase of the property through public sale similarly did not entail a conflict of interest.

Since, as Sun Hung Kai Properties has confirmed, its marketing strategy at the time of Mr YAM's purchase was to negotiate with any interested parties (irrespective of whether they were civil servants) the terms of sale of higher value properties, Mr YAM's action was covered by the Acceptance of Advantages (Governor's Permission) Notice 1981 then in force and did not therefore constitute soliciting or accepting an advantage contrary to the Prevention of Bribery Ordinance. Nor was it in breach of Civil Service Regulations. He was the Deputy Secretary for Monetary Affairs at the time and there was no conflict of interest in the transaction.

- (b) On the question of reporting the purchase of properties by the officers concerned, it should be noted that the requirement for civil servants to report property transactions, irrespective of whether there was a perceived or real conflict of interest with the officers' official duties, was only promulgated in 1995. In 1992, these officers and indeed any other officers were not required to report property transactions which did not involve a conflict of interest. Nevertheless, as both Messrs. LAM and Burley used the Government's Home Financing/Home Purchase Scheme to finance the purchase of the penthouse flats as their homes, the particulars of the purchases were reported to the Government and recorded under the relevant Scheme. Mr YAM reported his purchase to the Financial Secretary in 1995 when the relevant report requirement came into force.
- (c) The above information reflects the outcome of our examination of incidents which took place some 10 years ago. We do not consider that there is any justification for further action in respect of the purchase of the three flats. Nevertheless, it is important to point out that the Government attaches great importance to upholding a

high degree of integrity and probity in the Civil Service. Efforts are continually made to raise the awareness of civil servants about potential conflicts of interest or embarrassment to themselves or the Government because of public views or perceptions, beyond the prohibitions under the Prevention of Bribery Ordinance or Civil Service Regulations. We are acutely conscious of rising community expectations regarding the ethical standards expected of civil servants, particularly those in senior positions and are constantly updating and improving our civil service rules and guidelines as well as making efforts to enhance awareness. Examples of such efforts in recent years include:

- (i) In 1995, following a systemic review, we introduced new declaration requirements whereby senior government officials and other officers who may face conflict of interest situations have additionally been required to declare their investments annually or biennially (and any subsequent transactions exceeding \$200,000 in value) irrespective of whether there is a conflict of interest. Further refinements to the declaration arrangements have been introduced following reviews in 1998 and 2001.
- (ii) We joined hands with the Independent Commission Against Corruption (ICAC) in our efforts to promote awareness among civil servants of the need to uphold high standards of integrity and ethics. In early 1999, the CSB and ICAC jointly launched a two-year "Civil Service Integrity Programme". A review of existing central guidelines on civil service conduct has been carried out in the light of present-day circumstances. Through an outreach programme, CSB and ICAC representatives rendered assistance to departments in reviewing and developing departmental guidelines on conflict of interest and acceptance of advantages. Training sessions on civil service integrity have been arranged for over 32 500 civil servants since 1999.
- (iii) In early 1999, a "Civil Servants' Guide to Good Practices" was issued. It sets out the standards of behaviour expected of all civil servants (from the most senior managers down to

front-line officers). In October 2000, we issued a handbook for senior managers in the Civil Service — "Ethical Leadership in Action" as part of our ongoing efforts to enhance vigilance against conflict of interest and corruption opportunities.

- (iv) In May 1998, a seminar on "Maintaining Integrity in the Civil Service" was jointly organized by the CSB and the ICAC. In March 2000, we continued the co-operation and organized a two-day "Ethical Leadership Forum 2000" Over 1 000 business leaders and government officials from 11 regions attended to examine the challenges on ethics management in the new millennium.
- (d) The media reports on the purchase of the three flats have brought into sharper focus public concern over the propriety of civil servants, particularly those in senior positions, purchasing a flat through approaches to, or inquiries with, the developer in advance of or outside a general and open sale. Where the same method of purchase is equally available to persons who are not civil servants, it is legally permissible under the Prevention of Bribery Ordinance provided that there is no conflict of interest with the officers' official duties and the sale is not a reward for the officers abusing their official positions. Nor is it in contravention of the civil service regulations which recognize the principle that, in general, civil servants should not be deprived of their right, as ordinary citizens, to enter into normal purchase and sale transactions.

Nevertheless, in the interest of maintaining public trust and confidence in the probity of senior civil servants, there may be a need to improve the present civil service rules governing the purchase of flats outside or in advance of a general public sale. We are now considering the introduction of an additional requirement so that senior civil servants, for example directorate officers, have to take into account any public perception problem and notify their heads of department or the Secretary for the Civil Service before they enter into such transactions. (This is in addition to the present legislation and rules prohibiting acceptance of advantages by civil servants where there is a conflict of interest or abuse of office.) In

doing so, we need to strike a balance between the objective of addressing the problem of public perception and the right of civil servants to engage in normal transactions as ordinary citizens. We will discuss the matter thoroughly with the Department of Justice and the ICAC and consult the Staff Sides. We aim to promulgate the new rules within the next few months.

Annex

Statement by Mr Joseph YAM: Personal Property Transactions

As a matter of principle, I do not respond to the many personal accusations made in magazines. However, given the interest expressed by the Democratic Party in a transaction undertaken by me involving a property in Happy Valley, I am providing below, for public scrutiny, the details of all the property transactions I have undertaken in the past.

These transactions have all been disclosed in a timely manner to the Financial Secretary in accordance with HKMA procedures that are consistent with the requirements of the Civil Service. I have also provided him with all the additional details, including the pricing of the transactions being questioned, to enable him to be satisfied that these transactions have been properly constituted.

Celeste Court

Having seen the construction in progress, I made inquiries and expressed an interest in this property. Subsequent to my approach to Sun Hung Kai, preliminary agreement on the terms and conditions of the sale and purchase was reached on 28 November 1990. Under the agreement, the price was to be calculated on the basis of the asking price per square foot at the time of the first sale (scheduled for January 1991) of the other floors plus a premium because the property in question was a penthouse. This amounted to 14.2% higher than the asking price for the same flat one floor below. Additional payments were to be made for the roof space and for a car park at the then market price. In terms of payment arrangements, an interest cost, at 10% per annum, was to be charged for the period from February 1991 to completion. Payments were made during 1992 (with the last payment in September 1992). The property was jointly owned by me and my ex-wife from then to 1998. Sole ownership by myself from 1998 on divorce, in accordance with our divorce arrangements.

Complaints about Telephone Nuisances

14. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, it has been reported that a magazine sponsored a game near the April Fool's Day this year, falsely claiming that participants would win big prizes if they correctly guessed a specified telephone number and got connected to it, which resulted in lots of people calling certain numbers, and thereby causing serious nuisances to the users concerned. In this regard, will the Government inform this Council:*

- (a) *of the government departments to which the users concerned may direct their complaints;*
- (b) *of the number of complaints about telephone nuisances received by each of these departments in each of the past five years, and the number of these complaints which involved games launched by the media or pranks played on April Fool's Day; as well as the outcomes of the relevant departments' handling of such complaints; and*
- (c) *whether existing legislation prohibits anyone from abetting other persons to cause nuisances to telephone users by calling their numbers; and of the measures in place to ensure that the public will not be subject to such nuisances?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) Generally speaking, members of the public who suffer from telephone nuisances may report their complaints to the police.
- (b) The information system currently used by the police to record all reported incidents has been in full operation since later 1997. The number of reports classified as "nuisance calls" for the past three years are as follows:

<i>Year</i>	<i>Number of reported cases of "nuisance calls"</i>
1998	1 877
1999	2 101
2000	2 365

However, the existing recording system does not break down the complaints in terms of their nature and types. Hence, figures regarding nuisance calls which involve games launched by media shows or pranks played on the April Fool's Day are not available.

Upon receipt of complaints on "nuisance calls", police may, subject to the consent of the victims, liaise with telephone companies concerned to attempt to trace the source of nuisance calls by keeping track of the call records. If an offence is suspected to have taken place, and there is sufficient evidence against identified culprits, prosecution action may be taken.

Separately, the Office of Telecommunications Authority (OFTA) received a complaint regarding telephone nuisance in late March this year. The case involved a game organized by a magazine which induced numerous nuisance calls. Its circumstances were similar to the one mentioned in the preamble of this question. On receipt of the complaint, the OFTA approached the organizer and advised it to stop the game and take appropriate measures to notify the participants of the game to stop making such calls. Upon the OFTA's advice, the organizer stopped the game and apologized to the people affected.

- (c) Under section 20(c) of the Summary Offences Ordinance (Cap. 228), any person who persistently makes telephone calls without reasonable cause and for the purpose of causing annoyance, inconvenience or needless anxiety to any other person commits an offence and is liable to a fine of \$1,000 and to imprisonment for two months. Furthermore, by virtue of section 89 of Criminal Procedure Ordinance (Cap. 221), any person who aids, abets, counsels or procures the commission by another person of an offence shall be guilty of the like offence.

Effectiveness of Enforcement Actions Against Speeding

15. **MR DAVID CHU** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the respective numbers of traffic accidents which occurred during the periods from December 1999 to May 2000 and from December 2000 to May 2001, and the respective numbers of prosecutions instituted against motorists for speeding in the same periods; and*
- (b) *whether it has assessed the effectiveness of the police's enhanced enforcement actions against speeding in reducing traffic accidents; if so, of the details of the assessment?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, a total of 7 268 and 7 659 traffic accidents occurred during the periods from December 1999 to May 2000 and from December 2000 to May 2001 respectively. The numbers of prosecutions instituted against motorists for speeding during the same periods were 79 609 and 104 092 respectively. The significantly smaller number of prosecutions instituted during the period from December 1999 to May 2000 was largely due to the temporary suspension of the use of hand-held laser guns by the police.

There are many contributory factors leading to the occurrence of traffic accidents and speeding is only one of them. To enhance road safety in Hong Kong, the Administration has adopted a three-pronged approach — strengthening our legislative framework; stepping up enforcement and education and publicity. In the past 12 months, the Administration introduced a number of legislative amendments aimed at enhancing road safety. These included, *inter alia*, increasing the penalties for excessive speeding offences, prohibiting the use of hand-held mobile phones while driving, introducing a probationary driving licence for newly qualified motorcyclists and extending the fitting and wearing requirements of seat belts to the rear seats of taxis. We have also worked closely with the Road Safety Council and the District Councils to spread the message of road safety. The effectiveness of our comprehensive road safety enhancement programme, with the police's effective enforcement action as an important element, can be seen in the reduction of the number of fatal accidents from 202 in 1999 to 162 in 2000.

Trend of Hong Kong Residents Working in Mainland

16. **MR KENNETH TING** (in Chinese): *Madam President, it has been reported that, according to the results of a survey conducted recently, 2% of the*

respondents are now working in Shenzhen while another 10% will consider working there in the next five years. Regarding Hong Kong residents working in the Mainland and the formulation of corresponding assistance measures, will the Government inform this Council whether:

- (a) it has conducted formal assessments on the number of Hong Kong residents who will go to work in the Mainland in the next few years and on the specific impact of this situation on the economy of Hong Kong; if it has, of the assessment results; if not, whether it will do so as soon as possible; and*
- (b) it will strengthen the communication and co-operation with the mainland authorities to work out more forward-looking measures, so as to improve the cross-border traffic network and assist Hong Kong residents in overcoming the difficulties encountered while working in the Mainland?*

SECRETARY FOR PLANNING AND LANDS (in Chinese): Madam President,

- (a) Surveys on Hong Kong residents working in the Mainland have been conducted from time to time by the Census and Statistics Department (C&SD) since 1988 to estimate the number of local residents working in the Mainland and to collect related information. The most recent survey was carried out between April and June this year and the data collected are being analysed by the C&SD. Based on the results of the last survey conducted between May and June 1998, it is estimated that about 157 000 Hong Kong residents had worked in the Mainland during the 12 months preceding the survey.

Following the vigorous economic growth and reforms for further opening-up in the Mainland, the trading and commercial relationship between Hong Kong and the Mainland will become closer and the number of Hong Kong residents working in the Mainland will further increase. Added with China's accession to the World Trade Organization and the implementation of the tenth Five-year Plan, these will together bring about extensive and ample

business opportunities for Hong Kong, thereby creating more job opportunities for Hong Kong residents. Moreover, as the posts taken up by Hong Kong residents in the Mainland are mostly professional, managerial and supervisory in nature, the skills required of them are comparatively higher, so is the remuneration offered. All these will help to enhance the occupational skills, areas of employment and level of earning of Hong Kong residents.

- (b) The SAR Government has been liaising with the mainland authorities on issues of co-operation, including improvement to the cross-border traffic network. On road transport, discussion is underway between the SAR Government and the relevant mainland authorities on the construction of the fourth cross-border link, that is, the Shenzhen Western Corridor running from the west of New Territories to Shekou in Shenzhen. On rail transport, the Sheung Shui to Lok Ma Chu Spur Line will serve as a second cross-boundary railway. For the longer term, the Railway Development Strategy 2000 recommends the development of three additional cross-boundary railways, which are the Northern Link and the Regional Express Line providing passenger service, and the Port Rail Line providing cargo service. We will work closely with the mainland authorities to ensure integration between these projects and the mainland traffic network. On air transport, the Airport Authority maintains regular contact with its counterparts in Zhuhai, Guangzhou and Shenzhen to discuss matters of co-operation in passenger, cargo and mixed transport services.

Under the existing mechanism, if Hong Kong residents are involved in an accident, have lost their identification documents or are subject to criminal compulsory measures in the Mainland, or wish to make complaints or requests to the mainland authorities, the Security Bureau, the Constitutional Affairs Bureau, the Office of the SAR Government in Beijing and the Immigration Department will provide appropriate assistance to them having regard to the nature of each case, which may include the provision of information on the channels of complaints in the Mainland and the referral of complaints to the relevant mainland authorities for action.

Optimal Level of Foreign Exchange Reserves

17. **MISS EMILY LAU:** *Madam President, in his reply to my question on 13 June, the Secretary for Financial Services informed this Council that the "Sub-committee on Currency Board Operations of the Exchange Fund Advisory Committee has recently considered the desirability and feasibility of determining the optimal level of foreign exchange reserves for Hong Kong" and "recommended that further research and deliberation on the subject should be carried out". In this connection, will the executive authorities inform this Council:*

- (a) of the factors which have prompted the Sub-committee on Currency Board Operations (the Sub-committee) to consider the desirability and feasibility of determining the optimal level of foreign exchange reserves;*
- (b) whether the public and this Council will be consulted on the optimal level of foreign exchange reserves; and*
- (c) when this Council will be briefed on the outcome of the Sub-committee's research and deliberation?*

SECRETARY FOR FINANCIAL SERVICES: Madam President,

- (a) The Sub-committee, of the Exchange Fund Advisory Committee, gave consideration to the desirability and feasibility of determining the optimal level of foreign exchange reserves in the course of its general programme of work in studying ways of strengthening the Currency Board system in Hong Kong.
- (b) No conclusion has yet been reached on whether an optimal level of foreign exchange reserves can or should be specified. Members of the Legislative Council and the public are welcome to express their views on this issue.
- (c) The Sub-committee's deliberations are made public through the publication of its records of meetings. There is currently no target

date for the Sub-committee to complete its research on this issue. The Hong Kong Monetary Authority will brief Legislative Council Members on the outcome of the Sub-committee's research and deliberations on this issue when it is available.

Permitting Vehicles Using Alternative Fuels to Operate in Hong Kong

18. **MR LAU PING-CHEUNG** (in Chinese): *Madam President, according to the findings of a recent study, liquefied petroleum gas (LPG) taxis have high levels of carcinogenic gas build-up while in operation. With the progressive lowering of the permissible concentrations of pollutants in diesel for vehicles and the tightening of the emissions standards for diesel vehicles, will the Government inform this Council whether:*

- (a) it regularly conducts tests on vehicles using different types of fuels, such as petrol, diesel, LPG, natural gas and electricity, to see how far they are environmentally-friendly; if so, of the results; if not, the criteria adopted for deciding whether vehicles using a particular type of fuel should be permitted to operate in the territory; and*
- (b) it has set up a mechanism whereby automatic approval will be granted to vehicles using any one type of fuel once they have been tested and found to have met the stipulated environmental protection standards?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Chinese): Madam President, as explained in the reply to an oral question given at the meeting of the Legislative Council last Wednesday, the level of carcinogen measured inside LPG taxis was lower than that inside diesel taxis in a study conducted by the Hong Kong Polytechnic University. Moreover, the concentrations of hydrocarbons, including that of the carcinogen concerned, inside these two types of taxis were significantly lower than the Occupational Exposure Limits set by the Labour Department and would therefore not pose a health threat to taxi drivers.

- (a) The relevant departments have not conducted emission tests on vehicles using different types of fuel to ascertain their environmental benefits. When considering whether or not to permit a vehicle using a certain type of fuel to be used in Hong Kong, the Administration will first ascertain its environmental benefits by examining the results of recognized emission tests on the vehicles conducted in other places. In addition, the Administration will also consider whether the vehicle is suitable for use on Hong Kong's roads.
- (b) The Administration has set up a mechanism for assessing applications for vehicles to be used in Hong Kong. From the environmental protection perspective, vehicles using any type of fuel must meet the emission standards stipulated in the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations. A vehicle supplier or any person who wishes to apply for permission for a vehicle to be used in Hong Kong must provide the Environmental Protection Department (EPD) with emission test results of the vehicle type concerned as certified by the vehicle manufacturer, or emission test results from an accredited local/overseas laboratory. After obtaining the EPD's endorsement, the vehicle supplier or the person concerned can apply to the Transport Department for permission to use the vehicle in Hong Kong. If a certain vehicle type has been endorsed by the EPD as compliant with the emission standards set out in the said Regulations, the vehicle supplier or the person concerned will only need to provide the Transport Department with the EPD's endorsement certification. There is no need for them to apply to the EPD for endorsement for each individual vehicle of the same type and specifications.

Under special circumstances, if the emission standards of a vehicle using a certain type of fuel are not set out in the said regulations, the EPD may exempt the vehicle from the legislative requirements after assessing and ascertaining the environmental benefits of the vehicle so as to enable the vehicle supplier or the person concerned to apply to the Transport Department for using the vehicles in Hong Kong.

Law and Order in Hong Kong Waters

19. **MR LAU KONG-WAH** (in Chinese) *Madam President, it was reported that on 3 February this year, vessels suspected to be mainland public security authorities vessels intercepted two vessels in Hong Kong waters and hijacked one of them to the Mainland. The crew members of the other vessel subsequently claimed that they had been robbed of \$300,000. Regarding the law and order in Hong Kong waters, will the Government inform this Council:*

- (a) *of the progress of its investigation into the above incident, and how it has assisted the crew members concerned;*
- (b) *of the number of incursions into Hong Kong waters by vessels of the mainland public security authorities in the past five years; and*
- (c) *whether the Guangdong Provincial Government and the Hong Kong Special Administrative Region (SAR) Government meet regularly to discuss co-operation in matters relating to law and order in Hong Kong waters?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) On 3 February this year, the Hong Kong police handled an incident involving a request for police assistance from an oil barge claiming to have been intercepted by a mainland public security vessel. After receipt of the request, a Marine police launch located the oil barge which requested for assistance in Hong Kong waters with one mainland public security officer onboard and a Mainland Patrol Vessel (MPV) in its vicinity. Investigation by the Marine police officers revealed that the MPV had accidentally entered the Hong Kong waters when escorting two oil barges they had intercepted on suspicion of engaging in smuggling activities in mainland waters back to their base for investigation. The MPV returned to the mainland waters immediately when the situation was clarified. During the process, Marine police did not find the second oil barge which was involved in the incident nor witness the interception of the oil barges. When interviewed by the Marine police afterwards, one of the crew members of the oil barge indicated that the other oil

barge had been escorted back to the Mainland for further inquiry and alleged that some cash on his vessel was seized but did not provide any further information.

The police have brought the incident of incursion to the attention of the relevant mainland authorities according to the established procedures, so that suitable action could be taken on the mainland side to prevent future occurrence. Apart from this, the police have also made inquiries with the mainland public security authorities about the details of the incident. They were given to know that the MPV suspected the oil barges concerned to be conducting illegal activities in mainland waters and therefore intercepted the vessels according to the mainland laws. There was no malpractice on the side of mainland public security officers and no seizure of cash or properties from the vessel during the process. One of the oil barges involved has been escorted to the Mainland for investigation. Since the incident happened outside Hong Kong waters, the police have no legal authority to intervene. The police have asked the crew members of the oil barge to provide further information. Up till now, the police have not received request for assistance from the concerned personnel nor further information in relation to the case.

- (b) In the past five years, there were 13 cases of incursion into Hong Kong waters by vessels of the mainland public security authorities. Annual breakdown is as follows:

<i>Year</i>	<i>No. of cases</i>
1996	0
1997	2
1998	5
1999	2
2000	4
Total	13

- (c) Maintenance of law and order in Hong Kong waters is the responsibility of the Hong Kong police. Concerning the handling of incidents of incursion into Hong Kong waters by mainland public security vessels, the police have established procedures. If the

MPV is found in Hong Kong waters, Marine police officers on the scene should direct the vessel to leave Hong Kong waters immediately. The incident should be subsequently reported to the Security Bureau and raised with the mainland authorities in writing. The police will further liaise and follow up the incidents with the mainland public security authorities if necessary. According to the police's experience, such incidents in the past could be satisfactorily resolved through this mechanism.

Assistance to Casual Workers of Poultry Trades

20. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, following the Administration's order in May to slaughter poultry, compensation or ex-gratia grants were granted to the affected poultry farmers, wholesalers, retailers and transport operators. It is learnt that some of the casual workers in these trades have not benefited from this and are suffering from financial hardships. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of cases in which casual workers in these trades applied for Comprehensive Social Security Assistance (CSSA) and emergency aid since the outbreak of avian influenza in May and, among them, the numbers of approved and rejected cases, as well as the reasons for the rejections; and*
- (b) *whether, in order to protect the interests of casual workers in similar incidents in future, it will consider establishing a compensation mechanism for them; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Chinese):
Madam President,

- (a) During the period between 21 May and 30 June, the Social Welfare Department (SWD) has received 100 applications for CSSA from those affected by the incident. Two of the applicants are poultry retailers while the rest are employees in the poultry industry.

There are 13 successful applications, and in three other cases the applicants are already CSSA recipients. Five cases are being processed.

Of the remaining 79 applications, 73 have been withdrawn by the applicants, while six applications cannot be processed as the applicants cannot be contacted.

- (b) The Government has always encouraged employers to fulfil their obligations to employees. The Employment Ordinance has also stipulated requirements regarding the rights and protection for employees. The Ordinance does not differentiate between "casual workers" or "non-casual workers". Employees are protected so long as they are eligible for the various rights under the Ordinance. At present, there is also an effective mechanism to resolve labour disputes. In case of emergency, the Labour Department will also take corresponding measures to assist employees in solving employment related problems as far as possible. Against such background, the Government's long-standing principle is not to interfere in any employer-employee relationship. We also do not consider that there is any need to separately set up a mechanism to handle incidents similar to the avian flu outbreak.

BILLS

First Reading of Bill

PRESIDENT (in Cantonese): Bill: First Reading.

TRAVEL AGENTS (AMENDMENT) BILL 2001

CLERK (in Cantonese): Travel Agents (Amendment) Bill 2001

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

Second Reading of Bill

PRESIDENT (in Cantonese): Bill: Second Reading.

TRAVEL AGENTS (AMENDMENT) BILL 2001

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I move that the Travel Agents (Amendment) Bill 2001 be read the Second time.

The purpose of the Bill is to amend the Travel Agents Ordinance to put in place a licensing scheme to regulate travel agents providing inbound travel services.

The present Travel Agents Ordinance only provides for the control and regulation of agents engaged in the provision of outbound travel services. It does not regulate agents providing inbound travel services. The Ordinance currently requires all outbound travel agents to apply for a licence from the Registrar of Travel Agents. To provide outbound travel services without a licence is unlawful. The licensing framework is supported by a self-regulatory regime administered by the Travel Industry Council of Hong Kong. Membership of the Travel Industry Council is one of the licence conditions for outbound travel agents. The Registrar of Travel Agents and the Travel Industry Council maintain close liaison and co-operation in respect of the regulation of outbound travel agents.

After careful consideration of the views expressed by the travel trade and related bodies, we propose to amend the Travel Agents Ordinance to require all inbound travel agents to apply for a licence as is the case for outbound travel agents. Any person carrying on a business as an inbound travel agent without a licence will then commit a criminal offence. The Registrar of Travel Agents will serve as the licensing authority for both inbound and outbound travel agents. We propose to extend the licensing requirements currently applicable to outbound travel agents to cover inbound travel agents. This will include membership of the Travel Industry Council. It follows that inbound travel agents will need to comply with the relevant codes of conduct and directives issued by the Travel Industry Council as formulated by the industry itself.

The amendments will result in better service standards for inbound travel agents which will enhance Hong Kong's reputation as a tourist-friendly city. It will also address public concern over the lack of an appropriate and direct means to deal with malpractices of a small number of inbound travel agents which are currently not members of the Travel Industry Council and are not subject to control under the Travel Agents Ordinance or the industry's self-regulation. Such malpractices include leaving tour groups unattended or taking them to shops which charge exorbitant prices not commensurate with the quality of the goods sold.

The Bill contains new definitions for "inbound travel agent" and "inbound travel service", "outbound travel agent" and "outbound travel service" and a section on what constitutes carrying on business as an inbound travel agent. The Bill also sets out related consequential amendments to be made to the Travel Agents Regulations. The legislation will be brought into effect on a date to be appointed by the Secretary for Economic Services by notice in the Gazette. This is intended to allow time for eligible inbound travel agents to apply for the necessary licences and for the Registrar of Travel Agents to process and issue them.

We have consulted the Advisory Committee on Travel Agents and relevant industry bodies on the proposed amendments. They generally welcome the proposals. I hope that Members will also support the Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Travel Agents (Amendment) Bill 2001 be read the Second time.

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

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): The Council shall now resume its Second Reading debate on the Chief Executive Election Bill.

CHIEF EXECUTIVE ELECTION BILL**Resumption of debate on Second Reading which was moved on 14 March 2001**

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

MR IP KWOK-HIM (in Cantonese): Madam President, the Chief Executive Election Bill seeks to provide a legal framework for conducting the Chief Executive election. A Bills Committee, comprising 31 members, was formed earlier by the House Committee to examine the Bill in detail.

As Chairman of the Bills Committee, I will now table the Committee's Report to this Council and give a brief account of the key deliberations of the Committee. The Bills Committee has held a total of 15 meetings and received submissions from 80 individuals and organizations.

Madam President, the Bills Committee has spent a lot of time discussing the question of the office of Chief Executive becoming vacant. Some members have expressed strong reservations about clause 4(c). They have queried the legal basis for the power of the Central People's Government to revoke the appointment of the Chief Executive as the Basic Law does not provide for such power. To address members' concern, the Administration has earlier proposed to amend clause 4(c), including adding clause 4(c)(iii) to provide that the office of Chief Executive will become vacant in the event that the Chief Executive is removed from office by the Central People's Government under any other circumstances. Some members consider that the newly proposed clause 4(c)(iii) gives a wrong impression that the Central People's Government has unlimited power to remove the Chief Executive from office. They opine that from the textual layout of the Basic Law in relation to other cases where power to appoint is provided, both the power of appointment and that of removal are expressly provided.

The Administration has stressed that clause 4 is not an empowering provision that confers additional powers on the Central People's Government to remove the Chief Executive from office. It only reflects all the circumstances

that the office of the Chief Executive will become vacant. The declaration of a vacancy is the necessary trigger for the holding of an election of a new Chief Executive.

Having considered the views received by the Bills Committee, the Administration has further proposed to amend clause 4(c) by amending the original clause 4(c)(iii) to provide that the office of Chief Executive will fall vacant if the Central People's Government removes the Chief Executive from office under any other circumstances under the Basic Law. The Administration considers that it is important for legislation to cater for all possible circumstances. The Administration has also advised that there is no single Article of the Basic Law containing an express empowering provision. The power arises by necessary implications from analysing a number of Articles together, including Articles 2, 12, 15, 43, and 47, in addition to Articles 52 and 73(9).

Some members strongly object to the Administration's view. They point out that what is provided for in Articles 2, 12, 15, 43 and 47 is a manifestation of the high degree of autonomy enjoyed by the Hong Kong Special Administrative Region (SAR), and that the Administration's advice that the Central People's Government could remove the Chief Executive under these Articles seriously undermines the high degree of autonomy of the SAR.

Some members express agreement with the Administration's amendment proposal. They are of the view that the Central People's Government's power of appointment of the Chief Executive is substantive and carries with it the power of removal. The power of the Central People's Government is however not unlimited, but subject to the provisions of the Basic Law. These members disagree that the Administration's position is tantamount to compromising the high degree of autonomy of the SAR.

After listening to the views expressed by members, the Government has further amended its original proposal and will introduce the amendments later at the Committee stage.

Madam President, the Bills Committee has raised concern about overlapping membership in the Election Committee (EC). According to the Administration, if a person who first acquires his EC membership through election by the relevant subsector or nomination by the religious subsector, and subsequently becomes an ex-officio member by virtue of his election to the

Legislative Council and/or National People's Congress (NPC) office, the Bill proposes that this EC member may choose to give up his elected or nominated membership by tendering a resignation to the Electoral Registration Officer. The majority of members of the Bills Committee also consider that the number of EC members should be as close to 800 as possible.

After considering members' views, the Government has proposed that once an elected or nominated EC member becomes an ex-officio member under the situation described above, he will be deemed to have resigned from his membership in the elected or nominated subsector. The Administration will move a Committee stage amendment (CSA) in this connection to give effect to the proposal.

As regards the issue of overlapping membership between the Legislative Council and the NPC offices, the Administration has explained that both Legislative Council Members and Hong Kong deputies to the NPC should, by virtue of the office they hold, assume ex-officio membership of the EC. When an ex-officio member ceases to hold the qualifying office, his EC membership should cease. The Government has decided not to transfer the overlapping seats to other subsectors, since to do so would run the risk of not having sufficient seats to accommodate newly elected Legislative Council Members and Hong Kong deputies to the NPC should the extent of overlapping membership be reduced in future.

The Bill also proposes that the polling date for the Chief Executive election shall be appointed by the Chief Executive within six months before the date on which the office of Chief Executive becomes vacant. Some Bills Committee members are concerned that the proposed arrangement may give an incumbent Chief Executive seeking re-election an added advantage. To ensure certainty and eliminate any perceived possibility of unfairness, members suggest that the Administration should consider prescribing a formula for fixing the polling date. Some members consider that the election should be held on a Sunday.

After consideration, the Administration has agreed to move CSAs to the Bill to provide for the fixing of the polling date. It has also agreed to move CSAs to the Bill to deal with the situation where it is necessary to fix another polling date because the Chief Executive election fails or the Chief Executive-elect cannot assume office.

The Bills Committee has also discussed in detail the issue pertaining to persons disqualified from being nominated for the Chief Executive election. In response to members' request for clarification, the Administration has advised that holders of British National (Overseas) (BN(O)) passports will be caught by this disqualification provision.

Some members have criticized that this criterion is discriminatory against BN(O) passport holders and treats the 3 million-odd BN(O) passport holders as second-class citizens. They also consider that it is unfair to violate the political rights of this category of persons who have acquired the passports for historical and political reasons. Nevertheless, some members consider that it is inappropriate for the Chief Executive, as a representative of the SAR, to hold a BN(O) passport for this would be inconsistent with his identity as head of the SAR.

The Administration has explained that BN(O) passport holders are entitled to receive, upon request, British consular services and protection when in third countries. In addition, they owe allegiance to the Queen of the United Kingdom. Under the Basic Law, the Chief Executive is required to swear allegiance to the SAR of the People's Republic of China and as the head of the SAR is required to represent the Region. The Administration considers that any allegiance or duty to a foreign state would be inconsistent with the representational role of the Chief Executive.

Judicial officers and prescribed public officers as defined under the Bill are disqualified from being nominated as a candidate for the Chief Executive election. This is to maintain the independence of judicial officers and the political neutrality of public servants.

A member holds the view that a person who is or has been appointed as a senior judicial officer should forever be disqualified from being nominated as a candidate for the Chief Executive election. This is to ensure that judicial independence will be maintained. The Administration considers that in the absence of lawful justification, the member's proposal would run foul of the protection of political rights guaranteed by the human rights provisions of the Basic Law and Article 21 of the Hong Kong Bill of Rights, in particular Article 21(a).

The Bill proposes that a person who has been convicted of treason or sentenced to death within the five years before the date of nomination is disqualified from being nominated as a candidate. However, such a person is forever disqualified from being nominated as a candidate under the Legislative Council Ordinance. The Administration will propose a CSA to bring the disqualification provision in line with that of the Legislative Council Ordinance.

The Administration proposes that in addition to public inspection, the names of the subscribers to candidates should also be published in the Gazette. While some members express support for making public the names of subscribers, a few other members have expressed reservations about adopting the proposal for the Chief Executive election. Their main concern is that the requirement to make public the names of the subscribers would create pressure among members of the EC.

The Bill proposes that a candidate may withdraw from the election on or before the working day immediately before the polling date. A few members have expressed concern that the proposal would lead to unfair or corrupt practices at the election, whereas some consider it inappropriate to treat the Chief Executive election and the Legislative Council election equally because the voting system of the Chief Executive election is different from the list voting system adopted for the Legislative Council election. Hence, the problems arisen because a candidate for the Legislative Council election cannot withdraw will not happen to the Chief Executive election. In view of members' concerns, the Administration has proposed to move CSAs to the effect that a candidate may only withdraw his candidature before the close of nominations, in line with the arrangement applicable to the Legislative Council election.

Members of the Bills Committee note that in the event that a candidate has died or is disqualified on the polling date but before the close of any round of voting of the poll, and that there is only one remaining candidate, this candidate will be declared elected. Members have expressed concern about public acceptance of the remaining candidate being elected as Chief Executive. The Administration has agreed that, if any candidate dies or is disqualified after the close of nomination but before the declaration of the election result, the Chief Executive election should be terminated and nomination be re-opened. The Administration will move CSAs to this effect.

According to the Administration, the proposal to require a winning candidate who belongs to a political party to resign from the political party under the Bill has taken into account Hong Kong's unique constitutional order. The Chief Executive has a unique position of power and responsibility. The purpose of the restriction is to ensure the proper functioning of the current political order and the encouragement of pluralism. Hence, prohibiting the Chief Executive from being a member of any political party is a rational and proportional means of achieving that purpose.

Some members point out that the restriction is not stipulated in the Basic Law. They are of the view that the proposal discriminates against political parties and will retard the development of political parties. The question of whether a Chief Executive is a member of a political party has no direct bearing on whether he will act impartially and in the overall interests of the SAR. It is ultimately a matter for electors to decide whether to vote for a candidate who is a member of a political party.

Some members are concerned about the application of anti-bribery legislation such as the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) and the Prevention of Bribery Ordinance (POBO), to the Chief Executive election. The Administration has explained that the ECICO is already applicable to the Chief Executive election. Under the Bill, consequential amendments have been proposed to the ECICO to make it fully compatible with the Chief Executive election process. The Administration has also explained that the application of provisions of the POBO to the Chief Executive should be considered separately from the Bill. Some members are of the view that there is urgency in extending the applicability of the POBO to the Chief Executive before the holding of the Chief Executive election in March 2002. The Bills Committee has suggested that the matter be followed up by the Panel on Constitutional Affairs.

Some members consider that an election expenses limit would ensure a level playing field for all candidates. A few members have no strong view and consider that a limit is not absolutely necessary as many democratic countries do not have such a restriction. The Administration has advised that the issue of election expenses ceiling is regulated by the ECICO. After the passage of the Bill, the Administration intends to prescribe, by regulation, an election expenses limit for the Chief Executive election under the ECICO.

The Administration advises the Bills Committee that the Electoral Affairs Commission (EAC) will issue guidelines relating to the conduct of the Chief Executive election and the electioneering activities of candidates at the election. The EAC will consult the public on the contents of the guidelines. In addition, a number of subsidiary legislation will be made by the EAC and submitted to this Council for scrutiny. As regards members' concern about participation of senior government officials in electioneering activities, the Administration advises that the Civil Service Bureau will issue a circular on the participation of civil servants in electioneering activities for the Chief Executive election, similar to that issued for the Legislative Council election.

The Administration will move a number of technical CSAs in addition to the major CSAs explained above. CSAs will be moved by some members too.

Madam President, the report presented by me as Chairman of the Bills Committee shall end here. I will now speak on the Bill on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB).

Madam President, the Chief Executive symbolizes the manifestation of the Central People's Government's sovereignty over the SAR. Likewise, the Chief Executive election manifests the implementation of the concepts of "one country, two systems" and "a high degree of autonomy", representing an important link between the Central People's Government and the Region. I remember DENG Xiaoping once said that we should be confident that Hong Kong people can govern Hong Kong well. Indeed, it has been proved that we are able to do so.

We have just celebrated the fourth anniversary of the reunification of Hong Kong with the Mainland. Under the Basic Law, the tenure of the Chief Executive is five years. It will therefore be necessary for the Second Chief Executive Election to be held before June 2002 to fill the impending vacancy. To co-ordinate with the election, the Legislative Council, as a legislature, must pass the relevant electoral legislation to enable the election of the administrative head of the SAR to be conducted according to the law.

The discussion we have held with respect to the Bill impressed me that we were back to the olden days. I felt like we were brought back to the time when the First Chief Executive Election was held more than four years ago. Many negative remarks such as "black-box operation", "small-circle election", and "pre-ordination" appeared again. Indeed, this proves that no progress will be

made if a person chooses to stay put in a certain space or time. Actually, we should be able to see progress in many different circumstances.

Throughout the 40-odd hours of discussion, some members of the Bills Committee kept analysing the problems through a tinted pair of glasses. Some even inflated the issues indefinitely, while some declared in apparent seriousness that Hong Kong's high degree of autonomy would be sacrificed should the Bill be passed. I really find it impossible to share this view. As representatives of the people in Hong Kong to monitor the Government, Members of this Council should analyse problems from a rational angle. Venting of emotions and making abuses can simply not resolve the problems. The practice of "belittling" the Chief Executive will not gain general support from the public too.

Madam President, as Members are all aware, the Chief Executive is the highest person in charge of the SAR since the reunification. For a long time, Hong Kong was under the British colonial rule, with the Governor being appointed by the Queen of the United Kingdom. No election for the Governor was ever held in Hong Kong during the more than 150 years. It would be pure daydreaming to mention the nomination of candidates for Governorship. The second-term Chief Executive is going to be returned by an 800-strong EC with extensive representativeness in accordance with the Annex to the Basic Law. In my opinion, those Members who liken this election to "pre-ordination" or "black-box operation" are either trying to deliberately confuse people, distort the facts or not brave enough to face the reality.

Madam President, it is one of the responsibilities of the Chief Executive, as head of the SAR, to come into contact with people from different spectrums and find out what they need, think and want. In the course of scrutinizing the Bill, however, some members of the Bills Committee criticized that the Chief Executive would try to canvass for more votes on the occasions of liaising with the NPC deputies and delegates to the Chinese People's Political Consultative Conference. Worse still, some colleagues in this Council even accuse the Chief Executive of exercising his power to drum up support for him to serve a second term, and complain of injustice and unfairness. If we take a look at the democratic countries or regions these colleagues have in mind, which incumbent leader in these places will give up his leadership during the long electioneering campaign? As the saying goes, "One can always give the dog a bad name and hang it". We can always find excuses if we want to criticize someone. There

is nothing improper so long as electioneering activities to canvass votes and drum up support conducted by serving candidates, including the Chief Executive or any other persons, are in compliance with the relevant electoral law.

As the key icon of the SAR, the Chief Executive is also an important person in charge of Hong Kong. During the deliberations on the Bill, another focus of discussion fell on whether a candidate for the Chief Executive election can be holder of a BN(O) passport. Some colleagues in this Council have doubted that the restriction on candidates with respect to the possession of BN(O) passports is in contravention of the provisions of the Basic Law because it is provided in the Basic Law that such candidates should hold no right of abode in any foreign countries. The DAB also shares the view that the Chief Executive, as the highest representative of the State in the SAR, should not hold any passports issued by countries other than China and the SAR, even though the Central People's Government has made it clear that the BN(O) passport is considered merely as a travel document rather than a national identity document. However, judging from a legal viewpoint, the BN(O) passport is issued by a foreign country. Members should know it very well that it is a national document issued by the Government of the United Kingdom. What will the people of Hong Kong feel if the Chief Executive of the SAR holds a foreign passport? How will other countries look at Hong Kong? Will the SAR still be able to uphold its dignity? The making of such a provision is obviously aimed at the Chief Executive *per se* rather than using the relevant provision to conduct vetting. It is definitely not targeted at the millions of BN(O) passport holders in Hong Kong. I believe this is not the original intent of the Bill. Members who have doubt about this should really look carefully at the Bill. This is called the Chief Executive Election Bill, not a bill on the vetting of BN(O) passports. Actually, there is no doubt about this issue.

Therefore, we should not expand the issue or the focus of discussion to cover all senior officials or BN(O) passport holders in Hong Kong. Actually, the existence of the BN(O) passport issue is linked to some complicated historical factors. It should be changed and resolved slowly over the passage of time and by history. Due to historical factors, Hong Kong people can naturally acquire BN(O) passports by virtue of their birth in Hong Kong. It is not because Hong Kong people have a particular political inclination. The vast majority of the people in Hong Kong or those who hold BN(O) passports do not consider themselves subjects of the United Kingdom. They clearly understand that the

passport is merely a travel document that can facilitate their travel to certain countries or regions.

Following the recognition of the SAR passports by more and more countries, I believe this historical issue, or the traces of the century-old British colonial rule, will gradually fade away with the passage of time. The BN(O) passport is just one of these examples.

Madam President, the DAB is of the view that the Bill's provision of making public the names of subscribers to candidates is open, fair and just and can effectively enhance the transparency of the Chief Executive election. It is consistent with the usual arrangement in respect of the Legislative Council and District Councils elections too.

I will speak on the position held by the DAB with respect to other issues and a number of amendments later again at the Committee stage.

With these remarks, I support the resumption of the Second Reading of the Chief Executive Election Bill.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance (HKPA), I speak in support of the passage of the Chief Executive Election Bill and the amendments proposed by the Administration, for the Bill represents an integral component in the implementation of the concepts of "one country, two systems" and "Hong Kong people ruling Hong Kong". In the course of deliberation, the Government and this Council consulted the public extensively and heeded their views. The HKPA welcomes this and hopes that the Administration can expedite the implementation of the provisions of the Chief Executive Election Bill so that the Chief Executive election to be held in the first half of 2002 can be given a legal basis and rules to follow to facilitate the return of the second Chief Executive smoothly.

The greatest controversy in respect of the Bill lies in clause 4 providing for the office of Chief Executive becoming vacant. In the view of the HKPA, the Government has provided a standard that is concrete, clear, objective and is compatible with the Basic Law for defining the three circumstances under which whether and when the office of Chief Executive becomes vacant, namely the

expiry of the term of office, the death of the Chief Executive and the revocation of the appointment of the Chief Executive by the Central People's Government. At the same time, it has been underlined that the power of the Central People's Government to remove the Chief Executive is restrained by the Basic Law and can thus prevent disputes over such power held by the Central People's Government. As for the amendments proposed by other Members, the HKPA considers them far from comprehensive and it will be difficult to ascertain whether and when the office of Chief Executive becomes vacant.

In fact, clause 4 of the Bill is not an empowering provision. Furthermore, the power of the Central People's Government to remove the Chief Executive actually comes from the Basic Law rather than the Bill. Hence, the HKPA considers it inappropriate for some Members to deny the positive effects the entire Bill will have on the political development of Hong Kong simply because they are not satisfied with the writing of clause 4.

On the other hand, the HKPA also supports the Bill proposal that all candidates should run in the election in their personal capacity and that the Chief Executive-elect must resign from his political party or refrain from joining any political party. This arrangement will not only help boost public confidence in the impartiality of the Chief Executive, but also help the Chief Executive to exercise his powers impartially and safeguard the overall interest of Hong Kong in compliance with the Basic Law.

The Bill seeks to provide a legal framework for the substantive matters incidental to the Chief Executive election. Some Members have acted improperly by mixing the issue of whether the second Chief Executive should be returned by universal suffrage with the starting point of the Bill and thus opposed the Bill. The HKPA holds that as the Basic Law and its Annex have already provided for the method to elect the various terms of Chief Executive before 2007, it is unnecessary to alter the relevant arrangement before 2007. After 2007, the arrangement should be reviewed in detail with a rational and pragmatic attitude after consulting the public fully and extensively in adherence to the principle of gradual and orderly progress.

With these remarks, Madam President, I support the Bill and the Government's amendments.

DR PHILIP WONG (in Cantonese): Madam President, following the full exchange of views on the Bill, it is now time to pass the Bill.

In the course of deliberation, a dispute arose over the relationship between the Central People's Government and the Hong Kong Special Administrative Region (SAR). One noteworthy crucial issue is that some Members and commentators appear to have failed to grasp the essence of the relationship between the Central People's Government and the SAR Government: China is not a "Commonwealth" or "Federation". Hong Kong is not a political entity separable from China. Rather, China assumes total sovereignty over Hong Kong, which is directly under the Central People's Government. The autonomy enjoyed by the SAR, including the administrative, legislative, judicial and final adjudication powers and any other power conferred by the Standing Committee of the National People's Congress (NPC) and the Central People's Government is not inherent. It is derived from the state sovereignty and is conferred by the Central People's Government. The appointment and removal of the Chief Executive is one of the matters managed by the Central People's Government. In other words, the Central People's Government possesses the actual power to make appointment and revoke the appointment. Such power is defined by the nature of the relationship between the Central People's Government and the SAR.

I have to raise this point in particular because we are obliged to uphold the guiding principle of "one country, two systems". I hope Members can have a good understanding of the relationship between the Central People's Government and the SAR in terms of its essence and characteristics and a correct understanding of the reasonable arrangement to facilitate the co-existence of the "one country" and "two systems".

Madam President, I have considerable understanding of the guiding principle of "one country, two systems" for I have taken part in formulating the Basic Law. The concept of "one country, two systems" is the product of full deliberation by the Central People's Government and contribution of ideas from various sectors of the community of Hong Kong. Moreover, it is accepted by the people of Hong Kong and approved of by the international community. The implementation of the Basic Law is based on the concept of "one country", which provides safeguard for the "two systems". It is beneficial to Hong Kong, China and the whole world.

From the formulation of the Basic Law to the successful implementation of "one country, two systems", we can see that the Central People's Government has a thorough understanding of various aspects of the Hong Kong community. It has succeeded in preserving the essential powers of a central organ of the state on the one hand and safeguarding the enjoyment of a high degree of regional autonomy by the SAR on the other. In my opinion, the Central People's Government will certainly uphold the guiding principle of "one country, two systems" under whatever circumstances. It will definitely not abandon the prerequisite of "one country" for the sake of underlining "two systems" unilaterally. Neither will it underline "one country" unilaterally to the injury of the concept of "two systems". I believe the Central People's Government will only exercise its State powers when it is absolutely necessary for the maintenance of the prosperity, stability and long-term development of Hong Kong and when it is in compliance with the Constitution and the Basic Law.

As Members are all aware, the central governments in most countries in the world have the power to appoint and remove key local officials. Such power is substantive and non-negotiable. The same goes for key local officials returned through election.

According to the Constitution and the provisions of the Basic Law, the power of the Central People's Government to appoint and remove the Chief Executive is substantive and is not to be challenged. Of course, such power shall be executed under the legal system in the context of the political reality and in accordance with the established procedure in law. It will be a joke if a local government is to legislate to restrict the power of the Central People's Government, or if the Central People's Government "can only possess the power of appointment but not the power of removal" or "can only possess restricted power of removal"!

We have never heard of any country in the world where the power possessed by the central government in accordance with its constitution is conferred by legislation made by the local government, or the local government can challenge, negate, restrict or even strip such power. Can we imagine the legislature in Hong Kong would challenge or negate the power of the British Government to appoint or remove the Governor when Hong Kong was under British rule? It is even more inconceivable that a certain piece of legislation in Hong Kong could restrict or even strip the British Government of its power to remove the Governor.

Undoubtedly, Hong Kong has been practising "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" in accordance with the guiding principle of "one country, two systems" since the reunification. It has chosen not to separate itself from the State for the sake of practising "total autonomy" as some people have advocated. Neither will it allow anyone to betray "the country within country" on the pretext of exercising "a high degree of autonomy" in an attempt to turn the relationship between the Central People's Government and the local government into a relationship between "two states" or "two counterparts".

Madam President, I agree that the Government should, in the Bill that has incorporated Members' views, specify in the provision relating to the power of appointment and removal that the Chief Executive-elect should be appointed by the Central People's Government and that the people of Hong Kong can re-elect a new Chief Executive after the Chief Executive is removed by the Central People's Government in accordance with the Basic Law.

I wish to stress that the Central People's Government's power of appointment and removal is derived from the Constitution and the Basic Law rather than from the Bill itself. The provision relating to such power is indeed a manifestation of the guiding principle of "one country, two systems". This reflects that insofar as the relationship between the Central People's Government and the SAR is concerned, there are no such questions as the local authorities legislating to "expand" their powers or "restrain" the powers of the Central People's Government. As for those who remark that "the Central People's Government should not possess the power of removal for 'one country, two systems' will be undermined and 'a high degree of autonomy' will be betrayed", they are either opposing just because they are biased against the substantive power of the Central People's Government to appoint and remove the Chief Executive, or they are trying to make a deliberate interpretation out of context disregarding the Constitution and the legal basis of the Basic Law because they do not fully understand the matter.

With these remarks, Madam President, I support the Chief Executive Election Bill.

MR MARTIN LEE (in Cantonese): Madam President, in the course of scrutiny, a colleague branded the Bill as "rubbish". In my opinion, it will be more

appropriate for the Bill to change its name from the Chief Executive Election Bill to the Tung Chee-hwa Re-election Bill. This is because many provisions in the Bill are tailor-made for the re-election of Mr TUNG Chee-hwa. Why did the Government choose not to tell the public when the 800-member Election Committee (EC) was elected in July 2000 that the EC would perform two duties? The first duty is to return six Members of the Legislative Council in September 2000, and this it has already done. The second duty is to elect the Chief Executive next year. Actually, Mr Michael SUEN has been reminded repeatedly that he should state this openly. But why has he failed to do this? I will talk about that later.

Clause 8(3) of the Bill states: "The Election Committee constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) shall be continued and regarded as having been constituted as the first Election Committee under this Ordinance". The phrase "shall be continued" is really remarkable. Even the 800 members might have thought that it is no longer necessary for the EC to be retained since they have already elected six Members of the Legislative Council. It is really surprising that the EC shall be continued!

I have heard no bigger joke than this. Eight hundred people were elected and told that there was a duty for them. After discharging that duty, they naturally presumed that the committee should be discontinued. Now they are told that the committee shall be continued because there is another duty for them. The public will definitely asked why they were not told earlier. Should they be notified earlier, they might have decided to run in the election. Even if they decided not to run in the election, they might elect someone whom they considered appropriate. Now there is no chance for them to do so.

Madam President, I am sure the Bill will be passed today. I wonder what the Government will say if someone decides to sue the Government in court. Why did the Government deliberately conceal the truth? Why did it choose not to tell the public when it should have done so? So far, the Government is still unable to come up with a reasonable explanation.

Prof LAU Siu-kai, a prominent political commentator, once remarked: "This is completely obvious since Mr TUNG Chee-hwa was aware that he was not too popular in July last year (I wonder whether his popularity has improved). He must be thinking that if the public were told at that time that the 800-strong committee would elect the Chief Executive in the coming year, some people, like

"Long Hair", would definitely run in the election in a bid to overthrow him. Naturally, Mr TUNG was afraid that the "Dung Tung" party would win because that would be detrimental to him as an incumbent Chief Executive and he would surely lose face as a result. Moreover, he would find it harder to seek a re-election though the actual impact is very small." I find Prof LAU the only credible person in terms of what he said because no one can explain to me in a more logical manner as to why the Government has deliberately concealed the fact that the 800 people elected by the public are required to perform two duties. Today, I still harbour the wish that Mr Michael SUEN or someone else could explain to me why the EC has to do it twice.

Incidentally, Madam President, I really feel that the election is not genuine. Rather it is an uncontested election. This is because I really cannot see anyone who would like to run against the Chief Executive in the election. I was told that some 100 people, out of these 800 people, came from the democratic camp and that they could make a united nomination for someone else to run in the election. Some newspapers have even named Mr Paul YIP Kwok-wah or a certain person as hopefuls. I do not believe we can secure support from 100 persons to nominate a candidate who lacks support by the Central People's Government to run against Mr TUNG, who has the support of the Central People's Government, in the election. Madam President, do you think someone will do that for fun? Even if he is brave enough to accept nomination, his wife will not let him do so if he has got a job. Is there any possibility for him to win even if he is nominated? Definitely not. What is the purpose of nominating him if he stands no chance of winning? His name will be published in the Gazette and then everyone will know about it. In particular, Mr TUNG Chee-hwa will be the first one to know. In that case, will he stand any chance of getting a promotion on the job in future?

We can thus see that all the arrangements and measures are fundamentally aimed at enabling Mr TUNG to be elected a second time. He even does not need to stand in the election. Of course, this is my personal opinion. The deadline for the submission of nominations should be 5 pm. I reckon that the nomination for Mr TUNG will be submitted at 4 pm and before reporters are given any chance to ask him to elaborate his platform or any questions, the announcement that Mr TUNG is re-elected will come 15 minutes later. Such an election will discredit Mr TUNG, even if he has gone overseas (it is fortunate that he has already gone to the United States). I am sure he will be asked this question by more people should the trip be made on a later date.

I have another reason to support my allegation that the Bill is tailor-made for Mr TUNG. The reason is that people with no political party affiliation are considered to be appropriate. A person belonging to a political party must resign from his political party after being elected even if he has the party's support. In addition, he must undertake that he will definitely not join any political party while he is in office. This obviously implies that a person belonging to a political party will only act in the interest of his political party rather than in public interest. In his speech moving the Second Reading last time, Mr Michael SUEN confirmed out of his mouth that Mr TUNG Chee-hwa is not affiliated to any party. Nevertheless, I find it really strange that even though Mr TUNG is not affiliated to any political party, he impresses us that he has not acted entirely fairly in what he has done. For instance, why did he decide not to auction the site relating to the Cyberport incident? Why has he failed to act impartially given that he is not affiliated to any political party?

There is one more point that I would like to raise when I move an amendment later. Nevertheless, I would like to say a little bit on it here. I think the argument put forward by the Government is politically incorrect. This is because all leaders of the Central People's Government are members of the Communist Party. If a person belonging to a political party will only cater to the minority interest of his party instead of that of the public in general, does that imply that the leadership of the Communist Party will only take care of the well-being of the Communist Party instead of that of the 1.3 billion people? I hope Mr Michael SUEN can give me an answer.

Madam President, the Democratic Party believes that a Chief Executive will not command credibility unless he is elected by "one person, one vote". Unfortunately, we are not allowed to move an amendment since it has been ruled by the President that it has gone beyond the ambit of the Bill. I accept the ruling made by the President with respect to this point. Nevertheless, we should not thus forget the importance of electing the Chief Executive by "one person, one vote". We must continue with our fight until it becomes a reality.

Election of the Chief Executive by universal suffrage is actually the aspirations and wishes of the general public. The findings of the opinion polls conducted by the Democratic Party, academic institutions and other organizations commissioned by the Democratic Party through the years have unanimously shown that the majority of people would like to see the election of the Chief Executive by "one person, one vote" as soon as possible, and also to elect each and every Member of the Legislative Council by "one person, one

vote", the sooner the better. This is extremely clear for the findings of every opinion poll we have conducted are the same.

Madam President, perhaps I should explain to other Members how the Democratic Party are going to vote this time. We will vote against the Second Reading of the Bill. Should the Bill fail to pass Second Reading (of course this is only my own wishful thinking for it is impossible for the Bill to be negated), the Government can simply table another bill to provide for the election of the Chief Executive in a democratic manner expeditiously. At the same time, it can expeditiously introduce amendments to the Basic Law. I am sure the Government is capable of doing that.

If the Second Reading of the Bill is eventually passed (Members are convinced that it would be passed), the Democratic Party will move two Committee stage amendments (CSAs) of great significance. The first amendment seeks to clarify when the office of Chief Executive becomes vacant. The second amendment seeks to delete the provision requiring successful candidates with political background to resign from their political parties. As for the remaining CSAs, we will support some of those introduced by the Government, such as changing the polling day from Thursday to Sunday, withdrawal before polling day, and so on. We consider these CSAs acceptable for they have taken on board Members' recommendations. Why do we give our support? This is because we want to see less rubbish in this piece of undemocratic bill on election. During the Third Reading, after the CSAs have been passed, we will vote against the Bill because this election is, in general, unacceptable to the public for it is far from being democratic.

Madam President, as I still have time, I would like to raise another relevant issue. The Secretary, Mr SUEN, recently told the media that the Government had, on past occasions, exchanged views with the Central People's Government with respect to the Bill. After learning this, the Democratic Party wrote a letter to the Government last night in a bid to clarify the matter. Our questions are: How many exchanges have been made? How, when, where and why did such exchanges take place? What are the specific contents of these exchanges? What did the Central People's Government think? Are there any discussion papers and minutes of meeting? Who took the initiative to make such exchanges? I would like to thank the Government for the immediate reply to me last night. However, there is no marked difference between the

Government's reply and its press release. This is because it is now very easy to make alterations on the computer. The Government can easily give me a reply by slightly amending its press release. Actually, the reply has not answered the questions raised by me in my letter.

Madam President, I find this very important for it has to do with Article 17 of the Basic Law. When I was appointed a member of the Basic Law Drafting Committee, I worked very hard with other members in studying the provisions of the Basic Law for fear that the legislative process might be subject to the influence of the Central People's Government and our autonomy of enacting legislation would thus be undermined. Article 17 of the Basic Law reads: "The Hong Kong Special Administrative Region shall be vested with legislative power". Of course, such power shall be exercised by this Council. In the second paragraph, it reads: "Laws enacted by the legislature of the Hong Kong Special Administrative Region must be reported to the Standing Committee of the National People's Congress for the record (for the record only). The reporting for record shall not affect the entry into force of such laws". In other words, our duty is to enact laws and such laws shall then immediately come into force. Of course, the laws shall be reported to the Standing Committee of the NPC for the record. The third paragraph continues: "If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of the Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it". In other words, if the Central People's Government considers any law promulgated by the SAR problematic in the sense that it is not in conformity with the provisions of the Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central People's Government and the Region, the Committee for the Basic Law will be consulted. If the Committee agrees that the provisions enacted have contravened the Basic Law, the relevant laws will be returned without being subject to any amendment. Our legislative power is thus duly respected. Insofar as the "returning" action is concerned, it is laid down in the Basic Law that "Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. The invalidation shall not have

retroactive effect, unless otherwise provided for in the law of the Region". In other words, in the event that some laws are returned, we have to re-examine them in the hope that we will not make the same mistake again when enacting laws in future. Any laws found to have contravened the Basic Law will be returned but no amendment can be made.

So, why should the Central People's Government be consulted? Why should there be exchanges of views? This is absolutely unnecessary. I do not care what explanation the Government gives us and what the Central People's Government will say. I find it hard to accept what the Secretary said. Clause 3(1)(b) states: "(The term of office of Chief Executive) shall commence on the date on which he assumes office being the date specified for this purpose by the Central People's Government in the instrument of appointment". What problems are there given the fact that the term of office of Chief Executive was specified by the Central People's Government? Why should the Central People's Government be consulted since we can simply follow the same method? Why should we first draft the bill before discussing with them? Will they confine the discussion to clause 3(1)(b)? What can we do if they turn to clause 4(c) instead?

Madam President, why must the Government take such a tough stand regarding clause 4(c) and insist on putting it into effect? I reckon that it is because the Central People's Government wants to have this power and that it is impossible for the Government to refuse. Why would this happen? This is all because the Government has exchanged views with them, which is utterly unnecessary. This is already stated explicitly in Article 17 of the Basic Law, which is the product of strenuous efforts of members of the Basic Law Drafting Committee. Now the SAR Government took the initiative to bring up the matter and the Central People's Government sought to interfere in the matter.

Thank you, Madam President.

MISS MARGARET NG: Madam President, the election of the Chief Executive by universal suffrage is the unswerving goal of many of us. Not only is this in itself a manifestation of democracy, but it will do much to expedite a real democratic system in the Hong Kong Special Administrative Region (SAR). For it is difficult to imagine a Chief Executive elected by universal suffrage who

would not ensure that this Council will be elected also entirely by direct election at the earliest possible date, or promote a style of government which is democratic in every way.

But this is not to be this time round. We are restricted by the Basic Law which enshrines universal suffrage in principle, but restrains its implementation by a specific timetable until the year 2007.

So the Bill which is before this Council today seeks only to implement an "election" of the Chief Executive by an Election Committee (EC) of 800 as provided in the Basic Law. The legislative power of this Council is limited. We can only pass legislation consistent with the Basic Law. As a lawyer, I have to accept that this Bill, if passed, will fall far short of our aspiration.

Madam President, once this is acknowledged, this Bill should have been non-controversial — indeed almost purely technical. Such matters generally vital to an election of a Chief Executive, such as qualification and nomination, are already laid down by express provisions in the Basic Law. What a lawyer with democratic conviction, such as myself, can do is to ensure that the greatest degree of democracy achievable within this framework is achieved, and that the autonomy the Basic Law has conferred on the SAR will not be compromised in any way. This is a simple guiding principle, and one which I myself have followed throughout.

Thus, for example, when it comes to the question of overlapping membership of the EC, I have no doubt that an ex-officio EC member who holds more than one EC seat should be required to give up his non-ex-officio seat. This is to ensure that the already small EC of 800 will not be further shrunk if possible. I am pleased that the Administration has accepted this view and will introduce the appropriate amendment to clause 3 at the Committee stage.

By the same token, I do not agree with the Administration to disqualify holders of British National (Overseas) (BN(O)) passports from being candidates. In accordance with democratic principles, there must be no unnecessary restriction to the right to stand for election. The objection that it is inappropriate for a BN(O) passport holder to be the Chief Executive because such a person is theoretically entitled to British Consular protection in a country other than the People's Republic of China is ill-founded. First, because from China's point of view, a BN(O) passport is a mere travel document carrying with

it no greater right or significance. Secondly, all that is necessary from the view of propriety is to require a candidate to give up his BN(O) passport upon being elected.

Likewise, I am opposed to the lifelong disqualification of a person who has been convicted of treason or sentenced to death. This is not required by the Basic Law. It is also either unreasonable or unnecessary. Someone sentenced to death is unlikely to be in a position to stand for any election. Treason is a horrible name which may be given to a whole range of offences, from the most repugnant to the laudable "crime of conscience". The SAR has not yet enacted laws under Article 23 of the Basic Law. The fact that such a lifelong disqualification already exists in the Legislative Council Election Ordinance is no justification. Two wrongs do not make a right.

Madam President, as stated in the Report of the Bills Committee, I did consider that judges at least of the Court of Final Appeal (CFA) should be permanently disqualified from candidature, because this is necessary to maintain confidence in the independence of the Judiciary, given the strong political bias of the composition of an EC of only 800 members. However, I have been persuaded that although my concern is reasonable, life disqualification may not be the only means. A declaration, of renunciation of any right to stand for Chief Executive election upon being appointed to the CFA, will achieve the same result.

These are, to me, straightforward matters. Equally straightforward is the question on clause 4 which, to my great astonishment and distress, has developed into a major constitutional controversy.

We have been assured by the Administration repeatedly that the function of clause 4 is to provide that when the Chief Executive's office becomes vacant, an election shall be held. Yet clause 4(c) of the Bill states that the Chief Executive's office becomes vacant "if the Central People's Government revokes the appointment of the Chief Executive". This suggests that a Chief Executive duly elected under the laws of Hong Kong, and duly appointed by the Central People's Government (CPG) under the Basic Law, can be revoked at will by the CPG, and whenever the CPG chooses to revoke the Chief Executive's appointment, the Chief Executive's office will become vacant. This suggestion rightly causes concern, because it plainly gives the public the wrong impression of the Chief Executive's office under the Basic Law. The Basic Law plainly

does not provide for the CPG to revoke the appointment of the Chief Executive at will. The Chief Executive is appointed under the Basic Law. It stands to reason that his removal by the CPG is likewise restricted by the Basic Law.

Madam President, at first blush, it may seem that amending clause 4(c) to specify the circumstances provided in the Basic Law under which the CPG may remove the Chief Executive, with a "sweep up" clause referring to other circumstances, if any, may meet the need. But upon closer scrutiny, this obviously would be highly unsatisfactory and indeed dangerous.

This is because when it comes to be the Chief Executive's office, which is pivotal to the architecture of the high degree of autonomy of the SAR, the Basic Law is extremely thoughtful. Significantly, it contains no express provision authorizing the CPG to remove the Chief Executive or revoke his appointment at all. The Bills Committee is agreed that there is a power of removal by necessary implication under Article 52 of the Basic Law which specifies the circumstances requiring the Chief Executive to resign, and Article 73(9) of the Basic Law which provides for the Chief Executive's impeachment by this Council. After thorough examination and discussion, we could find no other circumstance where an implied power of removal can be said to exist. It would, therefore, only create uncertainty where there is none on a fundamental constitutional matter for clause 4(c) to be drafted in an open-ended way, suggesting an unwarranted interpretation of the Basic Law that there are hidden causes for the Chief Executive to be removed.

Madam President, it may have been a complex issue to analyse. But once the conclusion is reached, its correctness becomes blatantly obvious. It is bewildering to me and other Members that the Administration refuses to listen no matter how patiently we explained the reasoning to them, and patiently dealt with its response, notwithstanding the strong and clear advice of highly respected bodies such as the Hong Kong Bar Association. In fact, the Administration's response is notable only for the absence of any reasoning. Reason is brushed aside. Worse, the Administration suddenly and inexplicably launched a view that the power of removal is exercisable under Articles 2, 12, 15, 43 and 47, in addition to Articles 52 and 73(9) of the Basic Law.

Madam President, such wholesale distortion of the Basic Law undermining Hong Kong's autonomy is staggering. It goes far beyond just an unsatisfactory clause in a bill. It makes a mockery of the whole exercise of providing for the election of the Chief Executive by law.

The Honourable Martin LEE has proposed an amendment to clause 4 which, in my view, reflects the true position under the Basic Law. The Honourable Ms Audrey EU, SC and I have jointly proposed an alternative which does not pre-empt the interpretation of the Basic Law. It is said that we cannot restrict or increase the power of the CPG by our legislation. This fact is, however, no licence for sloppy or sycophantic legislation. We will explain in greater detail at the Committee stage. For now, I would like to make clear that this is such a fundamental principle that, should neither of our amendments carry, I will have no alternative but to vote against the Bill at the stage of Third Reading.

Thank you, Madam President.

MS AUDREY EU (in Cantonese): Madam President, right from the very beginning, the Chief Executive Election Bill suffers a congenital defect for it can only elect the Chief Executive by a 800-member electorate owing to the constraints imposed by the Basic Law.

The Government intends to add more trouble to this piece of defective legislation by insisting on adding to the Bill a provision enabling the Central People's Government to remove the Chief Executive.

It has been argued that the Central People's Government naturally has the power to remove the Chief Executive since it is empowered to appoint him. I am afraid such an argument is over-simplistic. It took four years and eight months to draft the Basic Law after countless consultations and discussions. It is by no means a mere coincidence that the Basic Law has mentioned only the appointment of the Chief Executive without making any reference to removal. If we take another closer look, we will notice that the Basic Law mentions the removal of people other than the Chief Executive in many places, including principal officials, judges, holders of public office, members of the Executive Council, judicial officers, and so on (see Articles 48(5), 48(6), 48(7), 55, 56 and 91). In particular, on comparing Articles 15 and 45, we will find that the former makes reference to the appointment of the Chief Executive and principal officials whereas the latter makes reference to the appointment and removal of principal officials only. Obviously the Basic Law has deliberately refused to accept the argument that the power of appointment is tantamount to the power of removal.

It has been argued that the power of the Central People's Government to remove the Chief Executive is a manifestation of sovereignty. Actually, the crux lies in under what circumstances and in accordance with what procedure the Central People's Government can exercise such power rather than whether it is empowered to remove the Chief Executive. If only the removal power is mentioned without specifying under what circumstances and in accordance with what procedure it can be exercised, it will become unlimited. In that case, how can it comply with the spirit of the rule of law? There is an established procedure governing the dismissal of a public officer, not to mention the removal of the Chief Executive. How can the Government convince the people if it is unable to grasp such a simple reasoning! It is absolutely not necessary for someone to acquire any legal knowledge in order to understand the reasoning involved. Anyone who is considerably rational will be able to grasp it.

Clause 4(c) of the Bill proposed by the Government has only mentioned the Basic Law without making reference to any particular provisions. I have look up the Laws of Hong Kong and found 382 references to the Basic Law. When a certain piece of legislation is relevant to a certain provision of the Basic Law, the relevant provision will be specified in the legislation. For instance, reference is made to the declaration of the disqualification of a member of the Legislative Council under Article 79 of the Basic Law in section 15 of Chapter 542 of the Laws of Hong Kong. Even in the interpretation of the Basic Law by the National People's Congress, reference was made to both Article 22 and Article 24 of the Basic Law. If reference is made generally to the Basic Law in the laws of Hong Kong without specific reference to any particular provision, it means that reference is being made to the entire Basic Law. For instance, it is provided in Chapter 11 of the Laws of Hong Kong that the Chief Executive shall swear that he will uphold the Basic Law.

When the Government was asked which provisions in the Basic Law were being referred to in clause 4(c), the Government replied that by reading Articles 2, 12, 15, 43, 45 and 47 together, the Central People's Government would have an implied power to remove the Chief Executive. But the fact is that these provisions have not mentioned the removal of the Chief Executive or the office of Chief Executive becoming vacant. In Articles 2 and 12, it is mentioned that the Hong Kong Special Administrative Region (SAR) shall exercise "a high degree of autonomy". How can we expect the SAR to exercise "a high degree of autonomy" if the Central People's Government has an implied power of removal that is not clearly defined? If such an important issue is said to be

enshrined in the Basic Law without being stated expressly, does it mean that the safeguards in the Basic Law can be relaxed or tightened at any time? It is mentioned in Article 47 that the Chief Executive must be a person of integrity. Does the reference to this provision by the SAR Government imply that the Central People's Government can remove the Chief Executive on grounds of corruption without going through the procedure of impeachment as stated in Article 73(9)?

When I discussed this issue with some Members of this Council, I was told that this was a political issue and the solution would eventually depend on whether we trusted the Central People's Government. Madam President, the rule of law is well respected in Hong Kong. The enactment of legislation is a serious matter. The problem lies not in whether I personally trust the person in power. Rather it hinges on the obligation of this Council to pass legislation with a legal basis. By the same token, will Members of this Council be allowed to act perfunctorily in scrutinizing the Bill by devolving power to the upper level, saying that they are confident that the Central People's Government will not exercise such power indiscriminately? Having confidence in mechanisms is not tantamount to having no confidence in the person who is in power today. This is the fundamental difference between the rule of law and the rule of man. Since the Government proposes to add a removal provision to the Bill, it has to explain clearly to the public under what circumstances such power of removal can be invoked, how it can be invoked and under what procedure it can be invoked. The Government can definitely not muddle through. Though the Government is struggling very hard to explain that such power is not absolute and unlimited, it is unable to define its limit. How can we be convinced that this is the right way to legislate and to uphold the rule of law?

From the constitutional angle or the angle of the rule of law, it will set an extremely bad precedent if clause 4(c) of this Bill as proposed by the Government is unfortunately passed by this Council. If it does really happen, I will vote against the entire Bill without hesitation.

Madam President, since I still have time, I would like to talk about another provision which is relevant to me.

I am one of the EC members from the legal sector. In accordance with Annex I to the Basic Law, my term of office shall be five years. However, in accordance with the proposal of the Bill, I shall be deemed to have given up my eligibility as an EC member from the legal sector since I have become an ex-

officio member by virtue of my election to the Legislative Council. The Government has explained that this is compliant with the provision contained in Annex I to the Basic Law governing the five-year term of office. I have reservations about this point. Nevertheless, Madam President, I do not consider this a personal honour. Since the legal sector has decided that a by-election will be held to elect another EC member to represent the sector, there will not be any substantial impact. Therefore, I have decided not to raise objection to the provision concerning this issue. Thank you, Madam President.

MISS EMILY LAU (in Cantonese): Madam President, on behalf of the Frontier, I rise to speak against the Bill. We will oppose its Second, Third or whatever Reading.

Madam President, we consider the present electoral method as proposed in the Bill is an insult to Hong Kong people. Madam President, this morning the Frontier and other members from the democratic camp hung several ten thousand signatures outside the Legislative Council building. The people will, I believe, support us to bring their demands to a legislature that still has some degree of representativeness, because the executive authorities have become void of representativeness. Even if the executive authorities received the signatures, they will discard them all in the garbage can. Therefore, we exposed the signatures by hanging them outside.

Since its inception, the Frontier has been advocating a universal and equal suffrage for Hong Kong people in electing our government, otherwise, I firmly believe, and I know many Hong Kong people will do, that "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" will fail to materialize. Thus, I have the feeling that the undertakings made during the transitional period in the past have not come to fruition yet. We still do not have "a high degree of autonomy" or "Hong Kong people ruling Hong Kong". In his speech, the Honourable IP Kwok-him made a comparison with the days when Hong Kong was under British rule. I have all along opposed British colonial rule. We surely did not have democracy under colonial rule, but Hong Kong is not a colony any more. It is now a special administrative region in China, with what is said to be "a high degree of autonomy" and "Hong Kong people ruling Hong Kong". Since numerous undertakings were during the transition, I trust the people have every reason to demand that the undertakings be honoured. Hence, several hundred people cannot be representing Hong Kong now and election

cannot take place via a "small circle" — Madam President, I must call it a small circle. Though Mr IP has asked us not to use the term, I still insist on saying so, unless there is universal and equal suffrage in electing our government. Or unless I die, I will continue to say so; otherwise I will be saying so.

Madam President, we oppose the election method on basis of the International Covenant on Civil and Political Rights (ICCPR). Though Hong Kong is not a State Party to the ICCPR, it is nonetheless a party to it. Article 25 of the ICCPR states clearly that every citizen shall have the right and the opportunity without unreasonable restrictions (1) to take part in the conduct of public affairs, directly or through freely chosen representatives; (2) 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. Madam President, I do not know where these provisions have been implemented. I had a discussion with the Secretary for Justice several weeks ago and I hope the Government will give us a detailed explanation later.

I believe the Secretary for Justice and the Secretary for Constitutional Affairs may be aware that at the 1 510th meeting of the United Nations Human Rights Committee (UNHRC) on 12 July 1996, the UNHRC expressed their opinions on Article 25. It indicated that the Article confirmed and protected the rights of all citizens to take part in public affairs, including the right to vote, to be elected and to public service to his country. It also pointed out that irrespective of the type of constitution or the method by which a government is returned at a certain place, the ICCPR requires that State Parties or parties to it adopt the necessary legislative or other means to ensure citizens enjoy these rights. The UNHRC also indicated that Article 25 formed the core of a democratic government and this would require the will, consent and mandate from the people as a basis. That is what was pointed out by the United Nations. Madam President, we often visit organs of the United Nations and we will be doing it again in the second half of next month. We cannot completely ignore the opinions of the United Nations.

As regards the parts of comments of the United Nations on Hong Kong elections, the United Nations strongly opposed functional constituency elections in the concluding observations of the UNHRC after a meeting in November 1995.

At present, our election of the Chief Executive is based on functional constituency elections — an 800-member election committee is returned by 170 000 people qualified to vote. At the time, the UNHRC opined that such elections through functional constituencies granted excessive influence to the industrial and commercial sectors and other voters might be prejudiced against on grounds of assets or functions, and thus the United Nations maintained that functional constituency elections were in breach of Article 2 of the ICCPR, which states that each State Party shall undertake to ensure to all individuals the rights recognized in the ICCPR. Article 3 thereof states that the State Parties shall undertake to ensure the equal right of men and women. Moreover, there is this Article 25 which I have read out already, while Article 26 states that all persons are equal before the law.

Madam President, since we are here discussing this Bill today, I believe standards adopted by the United Nations and internationally are extremely important. We must introduce these standards into this Council. I recall that last Saturday, Prof Johannes M M CHAN of the University of Hong Kong said in the radio programme "Letters to Hong Kong" that if we were to become a cosmopolitan city, we must reach the highest standards in terms of human rights, the rule of law, freedom, democracy, and so on rather than dumping them into the trash can.

Madam President, I believe the Secretary for Constitutional Affairs will be saying in his response that we have these standards as well, and we have the Basic Law, so with the Basic Law we can keep human rights standards in abeyance. Thus, Madam President, I will object to such remarks. I hope the Basic Law can be amended as soon as possible. Madam President, you did not allow the Democratic Party to propose an amendment. That we understand. In addition to the \$300 million cost involved, the Basic Law also precludes any such amendment. The Frontier very much regrets this for the Beijing drafting committee promulgated a Basic Law in the '90s that prevents the Hong Kong Special Administrative Region (SAR), which came into being in 1997, from implementing the undertakings made by the Central leadership to Hong Kong people for a Hong Kong that is not a colony anymore, but a place with "a high degree of autonomy" and "Hong Kong people ruling Hong Kong". The undertakings have become lies for they are simply not honoured even at this moment. Our Chief Executive is not returned by universal suffrage. Not all of the Members of the Legislative Council are returned by universal suffrage.

Therefore, I think while we engage in heated discussions, we should spend some time looking at these international standards on human rights. Where have these standards been put by the SAR, an entity we mention day-in, day-out?

Madam President, I would like to speak on another topic. I joined the Bills Committee, but then some people had asked me why I did so though I oppose the Bill. Well, Madam President, I am a legislator and a full-time one, with just a salary for what I do. That I am proud of. I oppose Members having other interests, which may generate conflicts in the roles they play and the time they spend. Now, because I am a legislator, I feel I am duty-bound to join Bills Committees though I am consistently against some of the bills. During our deliberation of the bills, I exercise my power to monitor and comment on them. Despite my objections to the Bill, I regard myself as having done my utmost. There was mention of 15 meetings convened by the Bills Committee, at most of which I was present. Unlike some other Members, I did not just claim a seat at the Bills Committee and then frequently fail to attend meetings after having attained some ulterior motives. Madam President, you must have heard of reports that the Bills Committee almost failed to meet due to lack of a quorum. I do not understand why such absentee Members can face the Hong Kong people. They even fell short of performing their duties as Members of the Legislative Council. How can they muster up sufficient courage to request legislation for a Chief Executive election? *(A telephone rang in the public gallery)*

PRESIDENT (in Cantonese): Would that member of the public please leave the Chamber. Miss LAU, you may now continue.

MISS EMILY LAU (in Cantonese): Madam President, though I have tried my best in contributing to the scrutiny of the Bill, I will, as I said, be objecting to its Second to Third Readings. I will not be lending support to any of the amendments as well because I cannot give my support to the issue. However, a colleague pointed out earlier that proposing an amendment is meant to prevent a bad thing from turning worse. I do not object to this remark. Despite that, I will still object to the Bill.

Madam President, I would like to make another point which was mentioned by a number of Members. It is the power of the Central People's Government to remove the Chief Executive from office. I find that totally

bewildering. I cannot find this provision anywhere. Some say the Constitution of the People's Republic of China mentions this power. However, the Honourable SZETO Wah said if the Constitution was applicable to Hong Kong, then we do not need the Basic Law. We drafted, made and promulgated the Basic Law for the Central People's Government was mindful to exercise self-control so that it would rule Hong Kong through the Basic Law rather than through the Constitution. If there were any provisions in the Constitution that could be applied to Hong Kong, I trust they must be Articles 31 and 62, which are about the establishment of the SAR. Thus, if there were other provisions in the Constitution conferring power on the Central People's Government to remove the Chief Executive from office, I would have to read them first. However, Madam President, I have read the Basic Law and I do not think there are such provisions. But then our Legal Adviser is very smart because he pointed out it appeared there could be an implied power. In my career as a legislator since 1991 up to now, I know of nothing that is dubiously implied. I would like the Secretary for Constitutional Affairs to point it out clearly if such implications existed. We have to know so that we can tell when and how it would be exercised and what limitations there are.

The Hong Kong Bar Association (Bar Association) sent in its submission on this. (The Secretary for Constitutional Affairs does not like the opinions of the Bar Association and so he did not quote them, but he likes some of the opinions of the Law Society of Hong Kong and he quoted them. He also likes the ideas of the Legal Adviser of the Legislative Council and so he quoted them.) Though the Bar Association could not find any relevant provision in this regard, it indicated if such implications do exist, the definition must be made very narrow in its application and the provision can only be applied under very extraordinary (not common) circumstances. And the exercise of this power must not violate the objectives laid down by the Basic Law — "a high degree of autonomy" and "Hong Kong people ruling Hong Kong". Why would the Central People's Government lift a rock only to drop it on its own feet? Therefore, I object to the views of the Government.

Moreover, I am also worried about bribery of candidates. Madam President, I do not think there is going to be any amendments in this respect later. According to the present view of the Government, the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) applies to the Chief Executive election and so the issue is settled. However, the Prevention of Bribery Ordinance (POBO) does not apply to this law. It has been four years since the establishment of the

SAR. Should the Government feel ashamed? The POBO applies to all public officers but is still not applicable to the Chief Executive election. I do not know what reasons cause the executive authorities not to act. Is this dereliction of duty, incompetence or other problems that prevent the executive authorities from taking suitable steps so that the POBO is still not applicable? The issue is just at the discussion stage. I am worried that the incumbent may wish to run for a second term but he does not announce his status as a voter or a candidate, while during the interim he may make a lot of moves. This is my worry. Though the Secretary for Constitutional Affairs indicates that even if certain ordinances cannot regulate the situation, matters can still be dealt with under common law; therefore, we need not fear. Well, if the Secretary is honest, he should tell us when he speaks later to what extent we can act under common law, and under the POBO, and what differences there are in each case.

Madam President, I have voiced our worries on behalf of many members of the public. If existing laws cannot at present regulate the Chief Executive and he is delaying an announcement on his intention to become a candidate, and if he acts in a way that relates to corruption, he would not be subject to the control of the provisions against corrupt and illegal conduct designed to regulate elections. So there will be no regulation at all. This would become a very serious problem.

Madam President, I would also like to talk about the ceiling on election expenses. Some colleagues of this Council are very much worried. Though we say the Election Committee (EC) is a small circle, we need to effect regulation if election is involved. However, at present, we cannot do so. The relevant provisions in the ECICO have to be made by the Chief Executive in Council. Neither the provisions nor the subsidiary legislation requires scrutiny by the Legislative Council. I think this is unsatisfactory, especially when the issue involves his personal interest, as we consider it very likely that Mr TUNG Chee-hwa may announce that he will run in the election. Nevertheless, I think there must be a ceiling on the election expenses and the ceiling must be very low. How much should be spent in an election involving a 800-member EC? Several thousand dollars will, I believe, be sufficient. What happens under the table cannot be known or measured in money terms. Using our election as an example, I have 1 million-odd voters in my constituency and I have several ten thousand voters. The ceiling on election expenses is set at a very low level. Thus, how much should the ceiling be for an election involving 800 people? I believe Members can come up with a suitable figure. Therefore, we are very much concerned about this.

Madam President, lastly, I wish to talk about withdrawal of candidature. Or perhaps not, because an amendment will be made in respect of this later. I just have a feeling that the proposals from the Government are very unfair to political parties. I hope I have spoken on behalf of the Frontier and those people who long for a universal and equal suffrage to take place as soon as possible. I object to the Chief Executive Election Bill.

MR NG LEUNG-SING (in Cantonese): Madam President, the Chief Executive Election Bill is drafted according to the principles and method for the selection of the Chief Executive as prescribed by the Basic Law. It lays down a legal framework for the election process. Last Wednesday, this Council had a debate on a resolution proposing to amend the Basic Law to effect selection of the Chief Executive by universal suffrage. The resolution was eventually negated. I do not intend to repeat the views concerned, but there are very clear provisions under the Basic Law currently. As legislators, we must legislate for an election procedure within the framework of the constitutional document. We must not make any legislation that is unconstitutional. Any measure that goes beyond the provisions in the Basic Law will, I believe, not do any good to the steady progress of the SAR and will certainly be unacceptable.

The drafting of the Bill has attracted attention to two main issues, which I must mention first and foremost. One of them relates to the office of Chief Executive becoming vacant and the other, political party affiliation. Regarding the first issue, clause 4 of the Bill seeks to define the circumstances under which the office of Chief Executive becomes vacant. During the actual deliberation process, heated debates arose and considerable time was spent on the issue but these were not really substantially related to or proportional to the object of the clause. All these gave the impression that some people were making a mountain out of a molehill. I may expound further my personal views on the relevant provisions to this Council at the Committee stage. Put simply, the power of the Central People's Government to appoint or remove the Chief Executive from office is not determined by the Chief Executive Election Bill or other local laws for the power has been prescribed in the Basic Law and we need not harbour groundless fears.

On the issue of political party affiliation, the Bill requires that the winning candidate must declare that he is not a member of any political party. Though this attracts criticism from people who are members of political parties, there are

nevertheless many submissions from across the community reaching the Bills Committee showing support loud and clear for the idea, with reasons. This appears to indicate that there are still many among our community who lack confidence in party politics. Their worry is that political parties or the leaders of political parties may exert undue control over the Chief Executive and a backstage ruler may appear. On this issue I have an open mind, as I am an independent Member. I do think, however, that, under the present political environment, priority should be given to striking a balance among a variety of social opinions. Indeed, the operating mechanism of the relevant provisions can cater to social concerns in this respect, without limiting the rights of people from different political parties to take part in the Chief Executive election. So, it can strike a balance between the two major streams of ideas and I will support these provisions.

With these remarks, Madam President, I support the Second Reading of the Bill.

MR JAMES TIEN (in Cantonese): Madam President, the Bills Committee has been carefully scrutinizing the Bill over the last three months. Fifteen meetings were convened. Basically, the Government attached a lot of weight to the opinions of Members and had made numerous amendments. For example, the Liberal Party and some Members had questioned why nomination should not be re-opened when there was only one candidate. In the end, the Government agreed with the view of Members in respect of re-opening nominations.

Though Members had a long argument with the Government over the power of the Central People's Government to appoint or remove the Chief Executive, and some Members may continue to unleash their criticisms on this issue later, we think that the latest amendments proposed by the Administration, after listening to the views of Members, will basically remove our worries and give the relevant provisions greater clarity, meeting some objective standards. Later on, the Honourable Mrs Miriam LAU, on behalf of the Liberal Party, will state in detail our views on clause 4 at the Committee stage.

Madam President, many Members, in the course of scrutinizing the Bill, repeatedly demanded that the Chief Executive be returned through one-person-one-vote election in 2002, rather than through an election by an 800-member

Election Committee. On this issue, the Liberal Party expressed its views during the discussion in this Council last week on a resolution on a similar demand moved by the Honourable LEUNG Yiu-chung. Therefore, I will only selectively speak on several points.

The Liberal Party opines that Hong Kong is undergoing a democratization process. It is still premature to launch a full-scale direct election to return Chief Executive in 2002 by a "one person, one vote". The idea of democracy is only a means for our community now. What we really want to achieve is a good way of life for everyone. What is a good way of life? Certainly, there must be the rule of law, and freedom, job opportunities and favourable economic conditions for our people. These are what we really wish to achieve. "One person, one vote" or other modes of election are just a process through which an administrator is returned, be that person a Chief Executive, a president or a prime minister of a country. Surely, we are not saying there is any problem with electing a Chief Executive or a ruler through "one person, one vote". However, our ultimate goal is a favourable way of life for our people. Now, as we look at examples from other countries in the world, the Liberal Party finds that only the European or American models are working satisfactorily. Examples from other countries such as countries in Africa, South America and Southeast Asia, which elect their presidents or rulers through a "one person, one vote", indicate that they have succeeded only in claiming they have democracy by chanting the democratic slogan. Many of them lag behind Hong Kong in terms of standard of living. Let me quote the examples of our adjacent countries. I am not going to cite examples such as the Philippines, Indonesia or South Africa, which are not at all successful. Let me refer to regions such as Taiwan and South Korea, which are faring quite well. Their leaders are returned by "one person, one vote" but their communities are fraught with problems. Do these regions have more problems than Hong Kong on the whole? Well, it is a matter of opinion. Hong Kong people are enjoying the rule of law and decent social policies on housing, medical care, education and public order. I think all this tells us we are not any worse than countries which elect their leaders or presidents through "one person, one vote".

For Hong Kong to move forward, the Liberal Party supports the provisions in the Basic Law, that is, to conduct a review in 2007 on the method of selection of the Chief Executive so that the Chief Executive may be elected by "one person, one vote" as soon as possible. Many Members said, during the scrutiny of the Bill, that a "one person, one vote" system should be adopted in

the 2002 election. We doubt whether this is necessary. Will it be really beneficial to us if we adopt the system? If we put aside the issues of concern to the people (most opinion surveys show that the people are most concerned about employment, the economy and housing), do we find people nowadays focusing their attention on election of the Chief Executive by "one person, one vote"? I think the issue has a low priority on their agenda.

Certainly, I accept the survey findings obtained by other political parties. When asked if they will support election of the Chief Executive by "one person, one vote", it is quite true that 70%-odd of Hong Kong people will say they will. But then if we ask the people other questions on issues such as employment, how well they are being treated by their bosses recently, prospects for salary increases, and so on, I trust 70%-odd of them will support us looking into the issues. We are not saying that to elect the Chief Executive by "one person, one vote" will injure the Hong Kong economy. We mean to say we cannot find any particular reason for the economy or the employment situation to improve, given the prevalent Hong Kong economic situation, even if we do have a Chief Executive returned by "one person, one vote".

Madam President, in scrutinizing the Bill, we found that another controversial topic is the requirement for all potential candidates to be nominated in their individual capacity. Moreover, when successfully elected, a candidate must resign from his political party, from his responsibilities thereof and must give up his membership in it. I would like to speak on the views of the Liberal Party in this aspect. First of all, I wish to reiterate that our views are about the Chief Executive election next year, that is, 2002.

When the first Chief Executive Election took place in 1998, the Preparatory Committee decided that the candidates should not belong to any political party. So, the four candidates in the last election were all independent candidates. Next year will see the election of the second Chief Executive. The Government proposes that during the election a candidate can be member of a political party and the political party may engage in electioneering activities. The restriction that the Government wants to impose is that a winning candidate must resign from his political party before he can take up the post of Chief Executive. The Liberal Party supports this suggestion, to be adopted in the 2002 election. But when it comes to the election of the third Chief Executive in 2007, we hope to go one step further from the first and second elections by deleting the provision. I hope that not only the Government will agree to this.

I hope the major political parties, minor ones and independent Members will also agree with this because I hope they can be ambitious enough to develop their political parties into elaborate and more mature ones to qualify them to become ruling parties. This is then the practical course of action to take.

Madam President, sometimes I find it more useful to criticize ourselves than others. I think while Liberal Party Members have an edge in matters such as economic issues and employment and can therefore give sound advice to the Government, we are not so well versed in livelihood issues. We must redouble our efforts in respect of livelihood issues; otherwise we will not be suitably qualified to be an all-round political party, or a ruling party. Next, I will speak on the Democratic Party and the Democratic Alliance for Betterment of Hong Kong, taken together. I think they are well versed in livelihood matters, but I hope they can enhance their understanding of economic issues and labour matters. I hope they can become all-rounders so that people across the community will feel that they are qualified to become a ruling party.

If the Chief Executive-elect has political affiliations, even if he resigns from his political party, I think the resignation is just cosmetic. When a candidate from a certain political party is elected, he will certainly cherish the comrades who have worked with him through the years and will value the political party he knows so well. Now, we have not implemented a ministerial system yet. Under the system in which we have the so-called secretaries or a system of accountability, it would be impossible for the winning candidate to transfer to the Civil Service most of the colleagues of his political party, from which he has just resigned. But Members must not forget that there are many organizations within the Government, such as the Housing Authority, the Hong Kong Tourism Board, the Airport Authority, the Hospital Authority, and so on, the Chairmen of which are all appointed by the Chief Executive. So, one cannot rule out the possibility that the winning candidate with political affiliations will, after resigning from his political party, appoint people whom he can trust or who share similar views with him to be chairmen of these organizations or certain committees, thereby exerting certain influence on the respective policies. Therefore, for the time being, even if the winning candidate is required to resign from his political party in order to take up the post of Chief Executive, the candidate can still exert his influence in this way.

We need to be aware of the reality too. Let us look at, for example, the major political parties in this Council. The largest one has 11 seats, which is

well below half of all of the 60 seats, which is 30. Of course, in many overseas countries, there are coalition governments but the leading party usually holds half or close to half of the parliamentary seats. In our case, the largest political party holds only one sixth of the seats and therefore cannot be a ruling party. In the circumstances, if the winning candidate in the Chief Executive election needs not resign from his political party, I trust other political parties will find it impossible to support this winner, who has political affiliations but needs not resign from his political party.

That is why I said we must work hard. If by 2007, a certain political party manages to secure 20 seats or more, then there is not much difference whether the winning candidate resigns from his political party or not. In the absence of a resignation requirement, the winning candidate will have 20-odd supporters from his own group, and, with several votes more, he can gain over 30 votes and his party will become a *de facto* ruling party. As far as the 2002 election is concerned, however, the Liberal Party considers the proposal by the Government acceptable. I hope by 2007 (or shortly after that) our political parties may have the capabilities, through reorganization, merger, or hard work, to come up with a comprehensive policy to govern Hong Kong and also secure nearly 30 seats in this Council.

Lastly, Madam President, the Liberal Party is of the view that the Bill, as it is, fully embodies the spirit of "one country, two systems" and "a high degree of autonomy". It has laid down a fair, open and highly transparent system for the Chief Executive election. It also contains all the appropriate controls. Thus, the Liberal Party supports the Chief Executive Election Bill introduced by the Government today.

DR YEUNG SUM (in Cantonese): Madam President, I would like to thank the Honourable James TIEN for encouraging Members of the Legislative Council and political parties to do a better job. However, I believe that idealism alone is not sufficient for what we can do would have to depend on the objective environment.

Madam President, as the existing composition of the Legislative Council is constituted by Members returned through different modes of election, this Council is basically very divided. Therefore, no political party may secure a majority of votes, and thus not be able to influence government policies. So,

Mr James TIEN should actually concentrate his efforts on demanding the Government to implement election of the Legislative Council by universal suffrage as soon as possible. Only when a majority of seats in this Council is secured by a certain political party on the merit of its social and economic policies will this Council be able to influence government policies. Talents from various fields can naturally be attracted if people have the chance to participate in politics. However, since there are now so few opportunities for people to participate in politics, it is certainly difficult to attract talents from various fields.

Madam President, I speak in opposition to the Chief Executive Election Bill for two main reasons: Firstly, this Bill has completely destroyed the mechanism in the Basic Law for removing the Chief Executive from office, to our enormous regret; and secondly, once this Bill is passed, the high degree of autonomy enjoyed by Hong Kong people will be bartered away, and this has overlooked the fundamental interest of Hong Kong people. These are the two basic reasons for my objection to the Bill.

Madam President, in fact, as regards the removal of the Chief Executive from office, a specific mechanism has already been set up under the Basic Law. Article 52 of the Basic Law expressly provides that the Chief Executive must resign under any of the following circumstances: (1) when he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons; (2) when, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and (3) when, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute. This is what is basically provided in Article 52.

Another mechanism is Article 73(9) of the Basic Law. I quote as follows: "If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to

substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision."

We can all see that the two said Articles of the Basic Law have a very special significance. Firstly, it provides a specific mechanism for the removal of the Chief Executive from office; secondly, and even more important is that the trigger point of this mechanism is in the Hong Kong Special Administrative Region (SAR).

Madam President, in fact, this mechanism has been elaborately designed on the basis of a high degree of autonomy. On the one hand, it has regard to the characteristics of Hong Kong as distinguished from the Mainland, and on the other, it has also taken into account the social sentiments in Hong Kong before and after the reunification, and this mechanism also contributes to the stability of the community. Of course, the efforts made by non-government organizations at that time in fighting for the establishment of such a mechanism has also played a certain role.

On the issue of removing the Chief Executive from office, it is obvious that the Central People's Government must not exercise its power of appointment and removal in an arbitrary manner. If, according to the proposal made by the Government earlier, the Central People's Government can remove the Chief Executive from office under any circumstances, then this will virtually destroy the high degree of autonomy in the SAR and seriously destroy the design of the Basic Law. Then, if there is an opportunity for the Chief Executive to be elected by universal suffrage in the future, how can people be confident about the elect performing his or her functions as the Chief Executive in accordance with the wishes of the people and the Basic Law? Then why do we have to elect a Chief Executive? How can we have a high degree of autonomy? The public will ask all these fundamental questions. Even the Government now proposes that the Central People's Government may remove the Chief Executive from office under any circumstances under the Basic Law, no substantial improvement has really been made, for there will still be cases where the Central People's Government will remove the Chief Executive from office in an arbitrary manner. Furthermore, what is meant by "under any circumstances"? The Government has not yet given us a clear explanation.

Madam President, the question that I would like to ask is really very simple: Why is it that though the Basic Law has provided two Articles and a

mechanism that can be triggered off by the SAR Government for the purpose of removing the Chief Executive from office under the principle of a high degree of autonomy, the Government has instead adopted an extensive clause without a clearly defined scope to deal with the removal of the Chief Executive? Recently, we finally found the answer to this question. It turned out that the SAR Government had consulted the Central People's Government in regard to the relevant clause beforehand. The SAR Government cited Article 17 of the Basic Law. In fact, this Article only provides that laws enacted by the SAR must be reported to the Standing Committee of the National People's Congress (NPC), and if the NPC Standing Committee is of the opinion that the law is not in conformity with the provisions of the Basic Law regarding the relationship between the Central People's Government and the Region and the responsibilities of the Central People's Government it may return the law in question. I would like to clearly point out that though the law may be reported to the NPC Standing Committee, it does not mean that the SAR Government should consult the Central People's Government beforehand.

Madam President, what I can see is that the SAR Government has not only failed to safeguard Hong Kong people's high degree of autonomy, but it has also wrecked its own wall of defence, and quickened the pace in destroying the high degree of autonomy in Hong Kong. I find this very regrettable.

Madam President, both before and after the scrutinization of the Bill, I have less and less confidence in the prospects of the SAR. Firstly, the SAR Government has deliberately slowed down the pace of democratization in Hong Kong by refusing to launch a public consultation exercise and formulate a timetable in regard to the 2007 political review. Secondly, it requires in the relevant clause that people with political affiliation must immediately resign from the political party once he or she is elected Chief Executive. This provision will indeed seriously impact on, overlook and impede the development of political parties in Hong Kong. As such, how can Hong Kong people be encouraged to participate in politics? And, how can political talents be groomed? Thirdly, from the scrutinization of the Bill, I can see that the sycophantic culture among Hong Kong government officials is becoming more and more serious. The Government suggests that the Central People's Government may remove the Chief Executive from office under any circumstances under the Basic Law and it has consulted the Central People's Government beforehand. By doing so, it is virtually surrendering the high degree of autonomy in Hong Kong. Under such a sycophantic culture, the Government has not only failed to fight to preserve Hong Kong people's high degree of autonomy but also betrayed Hong Kong people's high degree of autonomy.

I think that under the leadership of the Chief Executive, the administration of the SAR has progressively turned a blind eye to the sentiments of the people. It has not only looked up to the Central People's Government for directions, disregarded Hong Kong people's high degree of autonomy but also acted against the interests of Hong Kong people. How can this administration bring about a better tomorrow for Hong Kong?

Madam President, I would like to put forward three arguments in relation to the Government's amendments to clause 4.

Here is a document issued by the Government to Members on 26 May 2001. I quote as follows: "The Central People's Government's power to remove the Chief Executive from office is not unlimited but may be subject to various constraints such as constitutional, legal and conventional." I continue to quote from this government document as follows: "Constitutional consideration: Powers derived from or reliant on a status derived from the constitution must not be used in an arbitrary manner but must be exercised in accordance with the principle of constitutionality. When considering the constitutionality of any act, one must look at the underlying spirit of the constitution and any conventions which may have developed over time in relation to the exercise of powers and functions under the constitution. Although there is no specific provision in the People's Republic of China constitution which covers exercise of this particular power, other analogous provisions relating to powers of appointment and removal of other classes of official require that such powers must be exercised in accordance with the law, which is strongly indicative of the underlying constitutional spirit."

Madam President, it is clearly pointed out in this government document that there is no clear provision in the People's Republic of China constitution on the removal of the Chief Executive, whereas as I have mentioned earlier, there are two mechanisms in the Basic Law for removal of the Chief Executive from his office, namely Article 52 and Article 73(9). However, instead of adopting this mechanism, the Government has chosen to propose an amendment. Many Members have already pointed out, and I would also like to take this opportunity to strongly indicate that this amendment has already exceeded the scope of the two Articles and this amounts to surrendering Hong Kong people's high degree of autonomy.

As regards legal consideration, it is said in the document that: "The Basic Law is a national law adopted by the National People's Congress. As such, it

has legal effect in the whole of the People's Republic of China". It is very obvious that the Basic Law would have certain influence on both Hong Kong and the Mainland. However, if the Government really attaches weight to the Basic Law, then why has it sought to move its own amendments to the effect that the Central People's Government may remove the Chief Executive from office under any circumstances under the Basic Law when there are already specific provisions in the Basic Law providing that when the office of Chief Executive becomes vacant, the relevant situation should be dealt with in accordance with the provisions of Article 52 and Article 73(9) of the Basic Law?

Madam President, finally, as regards public sentiment, I hope to put the public's views on returning the Chief Executive by universal suffrage on clear record. The Democratic Party conducted a telephone interactive survey from 2 to 4 May and successfully interviewed 633 people. It was found that over 70% of the respondents supported that the Chief Executive should be elected by universal suffrage of "one person, one vote" as soon as possible. This is in line with the findings of other surveys conducted by the Democratic Party, and it reflects the persistent aspiration of the people for election of the Chief Executive by universal suffrage. Therefore, the Democratic Party strongly opposes the small-circle Chief Executive election. The Democratic Party will vote against the Bill at its Second and Third Readings. Thank you, Madam President.

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, the second Chief Executive Election can be considered a major event in the political life of the people of Hong Kong. Although I have not joined the Bills Committee scrutinizing the relevant Bill, I have all along been paying much attention to its scrutiny. Being a Member of this Council elected by the Election Committee (EC), I think it is necessary for me to listen to the views of voters before determining my voting position because the Bill involves many major issues of principle. In addition, the 800-member EC will be responsible for electing the second Chief Executive. It can be said that their views play a decisive role in the smooth implementation of the election of the second Chief Executive and must not be overlooked. For these reasons, I conducted a questionnaire survey from 7 to 23 June to solicit views on the Chief Executive Election Bill from more than 730 EC members (excluding Members of this Council for they have ample opportunities to express their views in the course of scrutinizing the Bill) and replies from 96 EC members were received in two weeks. The findings of the survey reveal:

1. The vast majority interviewees (over 84%) object to the proposal of returning the second Chief Executive by universal suffrage of "one person, one vote" in contravention of the Basic Law. Only 10% of the EC members support election of the second Chief Executive by universal suffrage;
2. Most interviewees (73%) support the Chief Executive Election Bill whereas only 7% do not support the Bill;
3. Most interviewees consider it necessary to set up a withdrawal mechanism, to impose a ceiling on election expenses, and to make the names of subscribers to candidates public. Moreover, they opine that holders of British National (Overseas) passports should not be allowed to be elected as the Chief Executive and that a successful candidate with political party affiliations should resign from his political party once elected as the Chief Executive. Nevertheless, 23% of the interviewees do not agree that the names of subscribers to candidates should be made public; and
4. As for the timing for election of the Chief Executive by universal suffrage, it can be said that the answers of the interviewees are uniquely fabulous. While some say "as soon as possible", some opt for "the third term", "after the fourth term", "the fifth term" and "the sixth term". Some even opt for "2047 or after" and some consider that "we should wait until the national perception of the entire population in Hong Kong has been generally raised". Nevertheless, a large proportion of interviewees consider that "the decision should be made after full public consensus has been reached following the political review in 2007".

The Democratic Alliance for Betterment of Hong Kong (DAB) subscribes to the mainstream views expressed by the interviewees with the exception of the "setting up of a withdrawal mechanism". Most interviewees support setting up this mechanism probably because they are unable to grasp and understand the situation. The origins of the problem can actually be traced back to the Legislative Council Election last year in which a candidate was not allowed to withdraw from the election after the close of the nomination period. Subsequently, there was a strong voice requesting the setting up of a withdrawal mechanism. The Government has apparently drawn a lesson from it and

proposed to set up a withdrawal mechanism in the Chief Executive Election Bill. Since the Chief Executive election is based on a single-vote, single-seat system, which is fundamentally different from the list system adopted by the Legislative Council Election, no unwarranted candidate will be elected just because he is on the top of the list. We can simply follow the usual electoral practice and it is not necessary for a withdrawal mechanism to be established for the Chief Executive Election. In other words, a candidate can withdraw before the close of the nomination period but cannot do so after the close of the period. As regards the Committee stage amendment (CSA) to be introduced by the Government for this purpose, the DAB will lend its support.

As regards the most controversial clause 4(c) in respect of the amendment concerning "vacancy in office", we will support the CSA to be moved by the Government to provide that "the Central People's Government removes the Chief Executive from office in accordance with the Basic Law". This is because the appointment of the Chief Executive by the Central People's Government is substantive and is by no means nominal or symbolic. The power of removing the Chief Executive is naturally included.

Insofar as the dispute over this issue is concerned, I remember members of the Basic Law Drafting Committee already held diverse views when the Basic Law was being drafted. One of the observations was: Should residual powers be held by the SAR or the Central People's Government? After several large-scale debates and discussions, a unanimous consensus was reached to the effect that residual powers should be vested in the Central People's Government since China practises a single political system rather than a federal system as practised in the United States or federal states elsewhere. If we ask this question: Who should be given the power to remove the Chief Executive if the relevant provisions in the Basic Law have failed to state that clearly? It is very obvious that, if we consider the power residual, it should be vested in the Central People's Government. For a country practising a single political system, if ambiguities arise between the local authorities and the Central People's Government, or residual power is found to be obscure, it should be deemed to be vested in the Central People's Government.

The fact that the powers of the SAR Government come from the Central People's Government is mirrored in a number of provisions in the Basic Law. In fact, Articles 2, 12 and 20 have made this very clear. This explains why I find it absolutely groundless and incorrect for someone to argue or to distort the

fact by saying that admitting that the Central People's Government has such removal power is tantamount to undermining the high degree of autonomy of the SAR.

Madam President, there are some people who frequently say that requesting the National People's Congress (NPC) to interpret the Basic Law is tantamount to defying the spirit of the rule of law. Actually, what the NPC has done can best conform with the requirements of the Basic Law and manifest the original intent and spirit of the Basic Law. It is precisely these people who swear support for the Basic Law on the one hand, and contravene the Basic Law, oppose the arrangement prescribed for the election of the second Chief Executive, and urge for election of the second Chief Executive by universal suffrage of "one person, one vote" on the other. Can we be convinced that this is what the rule of law means? Democracy is desirable, no one will oppose it. Moreover, it has been laid down in the Basic Law that 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. Nevertheless, we have to bear in mind that democracy should be pursued in a progressive manner for haste does not bring success. We should adhere strictly to the Basic Law since it has specifically provided for the method of returning the second Chief Executive. Otherwise, on what grounds can we say that we are still upholding the rule of law?

With these remarks, I support the Second Reading of the Bill and the CSAs introduced by the Government.

Thank you, Madam President.

MR LAU PING-CHEUNG (in Cantonese): Madam President, I would like to speak on the issue of double identity. According to clause 8 of the Bill, as currently proposed by the Government, any member of the Election Committee (EC) who later becomes a member of the Legislative Council should be deemed to have automatically surrendered his seat on the EC as a Legislative Council Member is also an ex-officio member of the Election Committee.

In principle, from the angle of jurisprudence, I think there is a problem with it. According to the 1999 ordinance on the Legislative Council Election, the term of office of EC members shall be five years, while the term of office of

Legislative Council Members is four years. The five-year term of office of the EC members commenced on the date on which it is constituted, which was July 2000, and the four-year term of office of Legislative Council Members started from 1 October 2000. Therefore, there is an overlapping period of four years for both memberships. However, the EC membership will last nine to 10 months longer than that of the Legislative Council. In respect of a member who wishes to give up his identity as a member of the EC, after the expiry of his term of office in the Legislative Council, or after he has resigned from his office of Legislative Council Member, or he cannot continue to perform his duties as a Legislative Council Member because of other reasons, if he has to give up his identity as a member of the EC, it may have a problem from the angle of jurisprudence. The Government considers that it does not contravene the Basic Law, but I have reservations about this.

Secondly, I would like to discuss clause 4(c) which is the most controversial. The Government intends to give the Central People's Government power to remove the Chief Executive from office by way of the Chief Executive Election Bill. But it appears the Basic Law contains no express provisions the circumstances under which the Chief Executive shall be removed from office.

Most Members who have spoken in opposition are worried that this proposal would surrender the high degree of autonomy of Hong Kong to the Central People's Government on a plate, and they are also concerned that the Central People's Government would have unlimited powers, rendering Hong Kong into a place ruled by man and not by law. I believe all these remarks have been made out of Members' affection for Hong Kong. I hold their passion in high respect. In fact, their main hope is that Hong Kong can maintain its style of living. However, if we should think about it carefully, we would realize that the SAR Government, being a government with a high degree of autonomy, exercises powers conferred in accordance with the principle of "one country, two systems", and the high degree of autonomy granted by the Central People's Government must be manifested on the premise of "one country". In other words, "two systems" cannot exist on their own, and must coexist with the principle of "one country".

As such, I think it is unnecessary for the SAR Government to propose to give the power of removal to the Central People's Government by means of legislation. Being a sovereign state, if it has the power to appoint the Chief Executive, it is against reason that it does not have the power to remove him

from office. From the angle of logic and jurisprudence, I believe the sovereign state should have this power. Some Members hold that as the Basic Law has not expressly provided for such power of the Central People's Government to remove the Chief Executive, therefore we should not offer it on a plate. However, the Basic Law and all the powers of the SAR Government come from the sovereign state, or in other words the Central People's Government. The case should not be put the other way round that the SAR Government legislates and gives the power to the Central People's Government. This is a point which I could not understand. As such, the power to appoint and remove the Chief Executive of the SAR in the future should be vested in the Central People's Government. Though the Basic Law does not have any provision stipulating that the Central People's Government has the power to remove the Chief Executive from office, other than stating the power of appointment, Members queried whether this should be regarded as a residual power. If this is a residual power, who should hold such power? Personally, I believe that it belongs to the sovereign state and it is beyond argument. As such, I think it is not necessary for the Government to make clause 4(c). However, if it is necessary to do so, it may not be a bad thing anyway.

In addition, with reference to the requirement that the Chief Executive-elect should resign from political parties, I think Hong Kong is basically an economic entity, not a political entity. Public opinions have expressed that Hong Kong has become too political in this respect. If the Chief Executive is not required to resign from his political party, I am concerned that he will put too much emphasis on the interests of the political party to the neglect of the interest of society. Therefore, I support the proposal which requires the Chief Executive-elect to resign from his political party.

With reference to the ceiling on election expenses, I agree that a ceiling should be imposed, to ensure that the election would be conducted in a relatively fair and impartial environment. Otherwise, the rich candidates may spend a lot of money and buy commercial time for electioneering, which is unfair to those who are less wealthy. Therefore, overall speaking, I support the motion moved by the Government. Thank you, Madam President.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, as reported by a foreign news agency, the little pig that starred in the film "Babe" has been slaughtered together with other pigs because the farm in which it was kept is

situated inside the infected area of mouth-and-foot disease. Some people once wondered, "This little pig star is so lovely. Can it be spared?"

This foreign news agency report reminds me of a novel, one which I suppose Members all know — *Animal Farm*, which touches upon the politics of privileges. We can notice from the animal world depicted in the novel that some animals are treated fairly, but others are not. And, some animals even enjoy various privileges and other kinds of rights. As we can see now, all this is found not only in fictions and the world of animals. In reality, in real human societies, this is also very common, especially in Hong Kong, a metropolis which often brags of its ability to "surpass Britain and catch up with the United States". The Chief Executive Election Bill under discussion today is a good example fully revealing the existence of politics of privileges in Hong Kong.

The Bill seeks to perpetuate a coterie election system exclusive to the privileged few, and in so doing, it deprives the 7 million people in Hong Kong of their right to "one-person-one-vote" elections. At the same time, the Bill also seeks to perpetuate an autocratic system marked by the absence of any public accountability and pave the way for the Central People's Government's intervention in Hong Kong. I think this definitely poses a threat to the high degree of autonomy enjoyed by Hong Kong.

When the Bill was first introduced by the Government, the greatest argument among us concerned whether or not a Chief Executive should be permitted to have any political affiliation. The "royalist" elements in society immediately hastened to defend the position of the Government, saying that a Chief Executive with no political affiliation would be in a better position to work for the interests of Hong Kong as a whole, but that one with political affiliation would be susceptible to partiality. Madam President, many of those who so argue are themselves with political affiliation. People thus cannot help wondering what these "royalists" are trying to cover up. Is it always, and necessarily, true that people with no political affiliation will work in the overall interest of Hong Kong as a whole?

In this connection, Madam President, Members can look at the policies and approaches of Mr TUNG Chee-hwa's administration over the past four years. Have they worked only for the interests of Hong Kong as a whole, without showing any partiality? This is definitely not the case in reality. Madam President, we can notice examples of all sorts, ranging from major ones like the

Cyberport project valued at billions of dollars to trivial vanities such as the conferral of the Great Bauhinia Medal honour. All these are examples of partiality, and the most probable cause of such partiality is the coterie election in question. Such partiality is probably meant as a reward to apologists, or as a token of appreciation for their support. This is precisely the biggest drawback of the coterie election which has come under our severest criticism.

In political science, this is referred to as "subordination". Madam President, in popular parlance, however, this is nothing but "politics of the sycophants". With this type of politics, it is difficult for a person to look after the overall interests, and he will just respond to his handful of apologists. This is no different from the political systems in many backward countries. With the Government emphasizing repeatedly these days that ours is an advanced society becoming increasingly civilized, how can we possibly connive at such politics of privileges corroding our society again and again? We hope not only that Members of the democratic camp here would refuse to tolerate the existence of politics of privileges; we also hope that other Members will also refuse to tolerate or allow the continuation of the same.

Madam President, I have recently read a book about the 1967 Riot in Hong Kong, which contains, among other things, an interview of an incumbent Legislative Council Member. The Member concerned lashes out at the various deeds of the privileged classes under the colonial regime in the 1960s, and he goes on to say that this led to the discontent of the leftists, thus resulting in the outbreak of riots in 1967. Madam President, this Member is precisely the Chairman of the Bills Committee on this Bill, Mr IP Kwok-him. Honestly, I very much hope that those people or Members who have suffered because of the political privileges of others could oppose this Bill, which seeks to smooth the way for the culture of politics of privileges. Unfortunately, I must say this is all but wishful thinking, for those people or Members who used to suffer such have done exactly the opposite by choosing to defend the continuation of politics of privileges. Since we could not stand political privileges under an alien administration in the past, how can we put up with the same under our own Chinese rule now?

Madam President, although we have still not voted on this Bill and thus do not yet know the outcome, I am sure that the final voting decisions taken by many Members today will once again disappoint many people. This is because the voting outcomes of this legislature usually run the wishes of the masses.

There can only be one simple reason for this: many Members are returned by coterie elections. These Members do not have to hold themselves accountable to the public, which is why they will not consider the wishes of the masses when they vote. Hence the voting will come out just as described.

Madam President, a survey conducted a couple of days ago to gauge the views of Election Committee (EC) members about the Chief Executive Election Bill, that is the survey mentioned by the Honourable YEUNG Yiu-chung earlier on, shows that 84% of the EC members who responded to the survey were against the idea of introducing universal suffrage for the Chief Executive election next year. The findings even indicate that some members of the EC opined that such a coterie election should continue to be held for 100 years more. When Mr YEUNG Yiu-chung mentioned the statistics in this connection, he simply said several terms. I am sure that the EC members who responded to the survey must have a very high awareness of democracy and civic responsibility. They all know that when they have the vote, they will have the right, and the Government must hold itself accountable to them. However, they do not wish to share this right with the general masses, they wish to keep it to themselves, so they have to safeguard this privilege.

Over the past few years, these selfish people have poisoned Hong Kong and betrayed its previous prosperity and social institutions. A Chief Executive returned by a coterie election will only hold himself accountable to his coterie of apologists, and he can always turn a deaf ear to the rest of the 7 million people in Hong Kong. Some may try to defend the incumbent Chief Executive, arguing that we should not blame his administration for the economic downturn. But what about the attempt to restrict people's freedom by amending the Public Order Ordinance? The suppression of Falun Gong and the deprivation of people's freedom of creed? The request to the NPC for interpretation of the Basic Law that has ruined the rule of law in Hong Kong? The repeal of labour legislation that thus deprives workers of their legitimate rights? The suppression of wages and increases in working hours resulting from outsourcing? Shoddy buildings that endanger the residents' safety? The curtailment of social welfare benefits that leads to social division? The intervention in opinion polls and academic freedom? Should not the Chief Executive and his administration be held responsible for all this? They, in particular the Chief Executive, know perfectly well that they do not have to hold themselves accountable to the masses. They all know that under a system marked by political privileges, they do not have to face the masses, and that as long as they can channel benefits to the

proper persons, the problems will be taken care of. Hence, we can say that without a democratic system, we will simply be unable to supervise the Government in its operation. Once a democratic system has been put in place in society, if any of the cases I have quoted occur, the Chief Executive will have to step down. Regrettably, under the existing system of political privileges, this will never happen.

Madam President, the politics of privileges will not only lead the Government to act against the wishes of the majority and accord priority to minority interests; more seriously, the Central People's Government may seek to interfere with Hong Kong's high degree of autonomy through its control over the coterie elections. Both the contents and scrutiny of this Bill can show us clearly that the Central People's Government does not wish to see the re-election of the incumbent Chief Executive to go wrong in any way. As I said just now, first there are the restrictions in respect of political affiliation and nationality, and then, there is the requirement on publicizing the names of subscribers. All these restrictions are meant to ensure that no one can challenge the person preordained by the Central People's Government. Just for the sake of ensuring the re-election of the incumbent Chief Executive, the Central People's Government has so blatantly interfered with the affairs of Hong Kong. And, the provision empowering the Central People's Government to revoke the appointment of the Chief Executive has even been introduced at the last minute to ensure total assurance, to give the Central People's Government a trump card. All these are blatant attempts to invite intervention from the Central People's Government, something which the people of Hong Kong cannot tolerate. Unfortunately, coterie elections and the politics of privileges have made all this possible.

Politics of privileges, autocratic rule and the intervention of the Central People's Government are all problems stemming from an undemocratic political system. I have very much hoped to change the situation, which was why I moved a motion on amending the Basic Law last week. Unfortunately, my motion was negated amidst such sophistry that it might upset social stability, and that it could not win the support of all people in Hong Kong. And, Mr Martin LEE's amendment on "one person, one vote" has also been ruled out of order by the President. This shows precisely that the Government will only allow "birdcage politics" in Hong Kong. And, it will only seek to perpetuate politics of privileges and increase the intervention from the Central People's Government through coterie elections such as the election of the Chief Executive.

All this is an insult to an elected legislature and political suppression on 7 million people.

Madam President, during the public consultation exercise on the Chief Executive Election Bill, two secondary school students voiced their strong discontent about the Bill. They said that such a coterie election was against the principle of equity and hoped that universal suffrage could be introduced as soon as possible. These young people may not know too much about the social realities, and they may not know how this legislature operates. But I can tell Members very clearly that the battle is not being fought in this Chamber today. I think if we are to change the politics of privileges, we must fight the battle outside this Chamber.

Madam President, I have decided to leave after this debate, and to show my protest, I will not vote during the Second Reading, Committee stage and Third Reading of the Bill.

Madam President, I so submit.

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

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy, the Chief Executive Election Bill is a Bill that violates the various international covenants on human rights. It is clearly stated in Article 25 of the International Covenant on Civil and Political Rights and Article 21 of the Hong Kong Bill of Rights Ordinance that one of the most fundamental political rights of all mankind is the right to vote and be elected in elections which shall be by universal and equal suffrage; that way, people can give expression to their own free will as citizens. But the Chief Executive election of Hong Kong in the 21st century runs counter to human civilization and progress, for a coterie election among just 800 electors will continue to be held in place of a direct election by universal and equal suffrage. The relevant international covenants are totally disregarded, thus crippling Hong Kong as a metropolis in terms of democratic development.

Initially, the polling date proposed in the Bill was a Thursday, not a Sunday. One of the reasons given was that the EC was composed mainly of big bosses who, on Sundays, had to go on overseas trips, do business or play golf.

This arrangement proposed by the Government is indicative of the true nature of the EC; the Chief Executive election is just like a "put-in-an-appearance party" or a political transaction. Understandably, the family days of the big bosses must thus be avoided as far as possible. As for the masses, they do not have the right to vote anyway, and they can only watch the live broadcast on television, seeing how the 800 members of the EC select a "competent" Chief Executive for us — one who will formulate one stupid policy after another for us, as what has been done over the past four years.

Some compare the Chief Executive election to "picking a durian", saying that since people do not know how to pick one, the job has to be done by the elite coterie of 800. If such logic holds, then all the 24 directly elected seats in the Legislative Council can in fact be deleted, because the electors concerned are the masses — they do not know which durian to pick; they are the second-class citizens of the 21st century; and, they are neither qualified to nor capable of voting. What is as "remarkable" as the "durian theory" is the questionnaire survey mentioned by Mr YEUNG Yiu-chung, the one conducted on the elite coterie of 800. There were in fact only 96 respondents, but as I heard from Mr YEUNG earlier at this meeting, some of these respondents even went so far as to say that conditions in Hong Kong would not be ripe for selecting the Chief Executive by direct election until 20, 50 or even 100 years later. Anything can indeed happen under the sun! One hundred years is already one century, and some are arguing that we can have a directly elected Chief Executive only a century later. This is really the most absurd argument of the century, a record that can be entered into a ludicrous version of the Guinness Book of Records. It is now the 21st century already, but there are still a privileged few who wish to deprive our people of their human rights for yet another 20 years, 50 years and even 100 years. "Were Nature sentient, she too would pass from youth to age; but man's world is a world of absurdity." How can these people be regarded as the cream of society? How can we possibly let them pick the durian, the Chief Executive, for us?

Besides, the Central People's Government has already picked the durian for the people of Hong Kong anyway. JIANG Zemin, ZHU Rongji and QIAN Qichen have one after another "backed" Mr TUNG in public, trying to rally support for him. The Legislative Council is still trying to draw up a fair piece of legislation for the Chief Executive election, examining the provisions word by word, as if the legislation really matters. But "Granddad" has already made its choice, and I am afraid that even the coterie election to be held will just be a

matter of formality. A farcical election is to be held to affirm the real choice of the Central People's Government. This is nothing but downright deceit. Worse still, even such a farcical election is exclusive to 800 people, because this will ensure the Central People's Government to get the desired outcome. The biggest problem with the Chief Executive election now is the lack of any also-rans who can make the election look less ludicrous. Preordained by the Central People's Government, TUNG Chee-hwa will certainly be "elected uncontested", thus doing away with the need to cast any votes. Thus, our big bosses can, as usual, play golf, ride their boats out to the sea and enjoy family life on Sunday.

The Chief Executive election is coterie in nature, and no doubt, due to the constraints imposed by the Basic Law, no changes can be introduced to bring in universal suffrage. The democrats and pro-democracy members of the community thus wish to amend the relevant provisions of the Basic Law, in the hope of realizing their dream of electing the Chief Executive by universal suffrage. Regrettably, the SAR Government has been employing a delaying tactic with respect to the amendment of the Basic Law. It is now four years into the reunification, but so far, no mechanisms or procedures have been worked out to enable the legislature of Hong Kong to initiate the process of amending the Basic Law. On the other hand, however, the Government did manage very swiftly to request the NPC to interpret the Basic Law, so as to prevent new immigrants from coming to Hong Kong. Since only the NPC is vested with the power to interpret the Basic Law, the process of interpreting the Basic Law could run very smoothly without any difficulty. In contrast, when it comes to amending the Basic Law, since this legislature may also have the power to do so, the whole thing is almost like an impossible dream. All this can illustrate the attitude of the Central People's Government and the SAR Government: With regard to the Basic Law provision on selecting the Chief Executive by 800 people, not even one single word can be altered, and there can be no concession at all — it is better to trust a coterie of elites than to trust the common people.

The people of Hong Kong have become increasingly aware of the fact that the TUNG Chee-hwa administration is coterie in nature and does not represent all the people in Hong Kong. If the selection of the Chief Executive under the Basic Law continues to be monopolized by the privileged few, we naturally cannot expect to elect the Chief Executives for the third and fourth terms by universal suffrage. We can then only let the privileged few pick the durian for us — for as long as 100 years. The Democratic Party will oppose the continuation of such a coterie election with all its resources, in the hope of

returning the people's power to them and restoring their power to vote. For this reason, we will oppose both the Second Reading and Third Reading of the Bill. And, during the Committee stage, we will also do our best to amend the Bill, so as to protect the high degree of autonomy of Hong Kong and the human rights of its people.

Mr Deputy, the Secretary for Constitutional Affairs, Mr Michael SUEN, confirmed yesterday to Mr Martin LEE, Chairman of the Democratic Party, that the SAR Government had exchanged views with the Central People's Government on the Chief Executive election legislation, including the length of the term of the Chief Executive. Under Article 17 of the Basic Law, the SAR shall be vested with legislative power, but the laws enacted must be reported to the Standing Committee of the NPC for record. If the Central People's Government, after consulting the Committee for the Basic Law, considers that any law thus enacted is not in conformity with the provisions of the Basic Law regarding the responsibilities of the Central People's Government and the relationship between the Central People's Government and the SAR, the Central People's Government may return the law in question but shall not amend it, and the law shall immediately be invalidated.

There is a very significant spirit underlying Article 17 of the Basic Law, and that is, that the SAR Government shall enjoy a high degree of autonomy in terms of enacting legislation, the purpose being to ensure the absence of any intervention from the Central People's Government during the legislative process. That is why even if a law enacted by the SAR Government is not in conformity with the relevant provisions of the Basic Law, the most that the Central People's Government can do is to return the law in question, instead of meddling with the legislative process of the SAR. That being the case, the Secretary, Mr Michael SUEN, must make it very clear in his reply whether or not the views exchanged between the SAR and Central People's Government have ever touched upon the "the revocation of the appointment of the Chief Executive by the Central People's Government under the Basic Law". If the answer is "no", then SAR Government must explain to this Council and the public why it has once again volunteered to forgo the high degree of autonomy of Hong Kong and invite the Central People's Government to meddle with the legislative process of the SAR, and why it has volunteered to undermine the power of the SAR to enact laws of its own and thus destroy its high degree of autonomy.

Mr Deputy, the Democratic Party understands fully well that the Central People's Government can, under Article 17, return a law enacted by the SAR,

and the law thus returned shall be immediately invalidated. But the Central People's Government is not supposed to take any part until after a law has been enacted; it may step in only after consulting the Committee for the Basic Law, in any case never in the middle of the legislative process, or else it breaks the commitment to a high degree of autonomy as stipulated in the Basic Law. The case as such, and since the SAR Government has again and again volunteered to forgo the high degree of autonomy of the SAR during the process of enacting the Chief Executive Election legislation, the Democratic Party is extremely angry and disappointed. We have along supposed that although Legislative Council Members of the SAR may hold divergent views on democracy and livelihood issues, they should still be holding firm, uniform, clear-cut and unambiguous views on upholding the high degree of autonomy of the SAR. Therefore, I now call upon Members of this Council to oppose all those provisions of the Chief Executive Election Bill which run counter to the principle of a high degree of autonomy, so as to allow the high degree of autonomy of Hong Kong to remain really unchanged for 50 years.

With these remarks, Mr Deputy, I oppose the Second Reading of the Bill.

MR FREDERICK FUNG (in Cantonese): Mr Deputy, last Wednesday, this Council debated a motion moved by Mr LEUNG Yiu-chung which sought to amend the Basic Law to bring in universal suffrage for the Chief Executive election. The thrust of discussions on that day was the reasons and value of direct elections, and I did present my views on them.

The Chief Executive Election Bill introduced by the Government basically deals with the existing arrangements for the election of the Chief Executive. My speech will focus mainly on this, and at the end of it, I will also explain how I am going to vote.

Mr Deputy, I suppose you are also aware that in Annex I to the Basic Law, it is stipulated that the Chief Executive shall be elected by an Election Committee (EC) comprising 800 members from four sectors, with 200 members from each. Specifically, the first sector covers the industrial, commercial and financial sub-sectors; the second the professionals; the third the labour, social services, religious and other sub-sectors; and the fourth Members of the Legislative Council, representatives of district-based organizations, Hong Kong Deputies to the National People's Congress (NPC Deputies), and Hong Kong delegates to the Chinese People's Political Consultative Conference (CPPCC).

Actually, this EC has already been formed, and I have compared its 800 members with the 400 members of the EC that elected the first Chief Executive. There are 200 representatives from each sector, and this looks quite fair, but a study of the background of these members will show that very few of them are "wage earners" and trade unionists from the labour sector, because the 200 members from the first sector also include representatives from the social services, religious and other sub-sectors. And, some of those from the social services sub-sector are board directors, chairmen and members — who have a commercial and industrial background. Some of those from the religious sub-sector are priests and fathers. Even if these priests and fathers do not have any connection with any functional sectors, some of them at least, I suppose, are engaged in businesses of various kinds.

As for the sector comprising Legislative Council Members, District Council members, NPC Deputies and CPPCC delegates, most of the representatives also come from the industrial and commercial sectors. Thus it can be seen that the specification of different sectors is actually of very little practical significance, because even so it is impossible to really elect 800 members evenly from the various sectors. This is the first problem. That being the case, the representatives elected will just vote in the Chief Executive election in accordance with their own interests or those of the sectors to which they are affiliated. If all these 800 members are inclined to electing a Chief Executive with an industrial, or commercial or professional background, then the election is unfair.

The second problem is: How were these 800 members elected in the first place? Most of them were elected under a system of corporate voting. I remember that back in 1992 or 1993, the Hong Kong Association for Democracy and People's Livelihood (ADPL) conducted a thorough study on functional constituency elections, and the relevant report was submitted to Governor Chris PATTEN and Director LU Ping. The study was conducted specifically with the Chief Executive election in mind, and its report has since been regarded as the clearest and best ever written on functional bodies. We proposed that the names of functional bodies be adopted, such as the names of trade unions, but we also proposed to give the vote to all members of a trade union; this differs in essence to giving a corporate vote to a trade union. Under our proposal, all electors over the age of 18 would be covered. In contrast, under the existing arrangement, only several hundred thousand people are covered. So how can the Government possibly claim that the 800 members can already represent all

the 6 million to 7 million people in Hong Kong? Hence, to begin with, the EC is by no means representative of the people in general. What is more, it is even not representative of all the functional sectors in the community. The reason is that although the functional sectors proposed by the Government must be endorsed by the Legislative Council, all of them are after all passively "nominated". That means those which are not "nominated" are excluded altogether. From this perspective, therefore, how can it be claimed that the Chief Executive thus elected can represent all the people in Hong Kong? This is the first point I wish to raise.

The second point I wish to raise concerns another major problem with the Chief Executive election held under such a system of functional sectors. The term of office of the Chief Executive lasts several years. Prospective candidates or the eventual elect may find it fairly easy to reach and grasp a hold on the 800 members of the EC, and there may thus be a cobweb of relations such as those relating to pecuniary interests, fame and social status and sectoral interest. That is why the 800 members may easily exert visible and invisible pressure on the Chief Executive or the candidates, and sometimes, explicit or tacit agreements on the handout of benefits may also be involved. However, if the Chief Executive is elected by all the 6 million to 7 million people, then certainly it may also be argued that candidates can reach the people every day. But if a candidate can bring benefits to 7 million people, then it is no longer partisan interests but the common good. From this perspective, therefore, I do not think it is easy to convince people that the system of an EC is in any way fair, open, reasonable and representative of the people of Hong Kong.

I have recently learnt of a survey conducted by the Democratic Alliance for Betterment of Hong Kong (DAB), and I wish to say a few words on it and offer some advice to the DAB. This survey was conducted among members of the EC, but only 90 or so of them responded. Of these respondents, over 80% said they opposed universal suffrage, and some were even worried that with universal suffrage, a person like Nicholas TSE might be elected. I do not know whether I have misinterpreted the press reports, but I hope that the DAB will not agree to such a viewpoint, because it is an insult to both the electors and Nicholas TSE. Is Nicholas TSE really that bad? Well, it is a matter of the background of electors are. Did the DAB obtain very poor results in the last Legislative Council Election? First, the DAB must not belittle itself, because I guess that, say, five to 10 years down the road, the DAB may very likely become the largest party of all political parties. Whether it can become the ruling party is still very

much unknown, for much has to depend on their willingness or otherwise to do so. But it will definitely become the largest political party. That being the case, why does it have to be worried about electors? Some others may understandably have such a concern, but the DAB should try to convince them that they do not actually have to worry, because in the last Legislative Council Election, despite all the troubles, the DAB still managed to get many votes, and it even managed to get the seats which it thought it would surely lose. For this reason, I think all political parties in the Legislative Council must themselves first get rid of their fear about direct elections, not least because many Members belonging to these political parties are directly elected.

Second, I must point out that only direct elections can achieve the ultimately and most natural outcome. Last Wednesday, we mentioned in our discussions that if only we could conduct an analysis on whether Hong Kong was a free market economy and whether there was a sizeable middle class — that is, a middle class constituting more than half of our population, and if only we could come up with conclusions on the basis of such an analysis, then, we would be able to predict the outcome of the election. I guess that even if Mr LAU Chin-shek runs in the election, he may not necessarily be elected so very easily, because the middle class may wish to elect somebody else who can defend their interests. If most people in the community are middle class, it is only natural that they elect a person of their kind as the Chief Executive. That is why I wish to advise Members that we must not jump so quickly to the conclusion that universal suffrage will not work. I also hope that the DAB can ignore the findings of its survey.

Mr Deputy, I still wish to raise two more points about the amendment today. I shall say more on them at the Committee stage later; for the time being, let me just discuss them very briefly. First, about the requirement that a candidate must resign from his political party once he has been elected the Chief Executive. I am sure that from the perspective of modern politics and free market politics, people would certainly find this requirement very strange. Can we find any countries or places which do not allow their elected chief executive officer to have political affiliation? I fail to understand the worry of the Government. If it is worried that the new Chief Executive may ignore the overall interests of society after his election, then, to it, I must say that, precisely, as some Members have pointed out, we are also worried that the Chief Executive elected by just 800 people may ignore our overall interests. In the case of a Chief Executive elected by 6 million people, even if he fails to please 6 million

people but just manages to do so for 3 000 001 of them, he can still be regarded to have pleased more than half of the people, meaning that he already manages to look after the majority interests. In contrast, in the case of just 800 electors, the Chief Executive needs only to please just 401 electors. Therefore, the overall interests of society should not be used as a reason for requiring a successful candidate to withdraw from his political party.

My second worry is about the relationship between the Central People's Government and the regions under it. Let me illustrate my point here with one example. The Communist Party is the ruling party, the Central People's Government, and suppose the ruling party at the region level is the ADPL — which is very much unlikely, I would say. But, anyway, can one then assert that there are bound to be frequent clashes between the ADPL and the Central People's Government? People who harbour such a worry must be ignorant of political history and politics. For can one find any country that is an exception to this type of political situation? This is the case in the United Kingdom. The ruling party there is now the Labour Party, but many counties are controlled by the Tories. In the United States, the Federal Government is in the hands of the Republicans, but then, the state governments may be in the hands of either the Republicans and Democrats. A similar situation is also found in Taiwan. Examples of this abound. That being the case, why is China so very worried when it comes to the election of the Chief Executive of Hong Kong? I really wish to ask for a reason. I simply find it altogether incredible that the Communist Party should be apprehensive of the ADPL or any other political parties, particularly the DAB.

My third point is about the worry relating to the emergence of party politics. People who harbour such a worry should ask for a total abolition of elections, because party politics is found in all elections — District Council elections, Legislative Council elections, and so on. Why is there such a great fear when it comes to the highest tier of government? The existence of party politics is already a fact that cannot be denied. Since there is such a fear, why not simply enact a criminal law to outlaw the organization of political parties? Political parties are permitted but at the same time feared. What kind of logic is this? And, what kind of political theory is this?

One last worry some have is the emergence of super-powerful political party. Once a person has become the Chief Executive, will the power and influence of his political party also expand? Those who harbour such a worry

must again be ignorant of political science and world politics. Can one find any political party which can stay in power forever in a place? Mrs Margaret THATCHER stayed in power as Prime Minister of the United Kingdom for the longest period of time in the history of the country. But she could not escape the fate of stepping down in the end. In the United States, the two major political parties have been ruling the country somewhat in turn. For China, I really do not know; the ruling party now is the Communist Party, but do Members really think that the Communist Party can remain in power forever? I dare not answer this question myself. Anyway, when someone is in power now, it does not necessarily mean he can stay in power forever. This is simply impossible. Mr Deputy, time is running short, so I shall say more on this later on.

Let me now say a few words on how I shall vote. I am utterly dissatisfied with this Bill, and I was not a member of the relevant Bills Committee either. In the upcoming Committee stage, I will just indicate my presence, but I will not take part in the deliberations, which means that I will not cast any vote. The reason is that I do not consider the Bill worthy of my deliberation at all. However, I will still speak on two amendments, because they are not directly relevant to the electoral law in question. One of the two amendments to which I referred is the one proposed by Miss Margaret NG on whether, and under what circumstances, the Central People's Government can revoke the appointment of the Chief Executive. I do not think that this amendment is directly relevant to the election, but the related concepts may still be introduced into the law. The other amendment is about political affiliation. I shall express my personal views on these amendments and will vote in favour of them. In other words, I will speak and vote on these two amendments which are not directly relevant to the election by 800 voters. Apart from this, I will not take part in the deliberations of the Bill.

MR LEE CHEUK-YAN (in Cantonese): Mr Deputy, about five years ago I said in the former Legislative Council that the first Chief Executive Election would be the "race-fixing" election of the century. Even though President JIANG Zemin had already indicated who should be the first Chief Executive with a handshake, the other candidates still made every effort to canvass votes, including paying visits to bedspace apartments and riding the Mass Transit Railway, with a view to making the fake election look like a real election. In accordance with the principle that the political development in Hong Kong should proceed in a

gradual and orderly manner, the second-term Chief Executive Election is to make one step even further, for the right person to be the second Chief Executive has already been finalized, there is even no chance to fix a race. Last October, when President JIANG Zemin scolded the "too simple, sometimes naive" Hong Kong reporters for asking questions the answers for which had already been given, he was in effect using a coded language to announce that Mr TUNG Chee-hwa would be re-elected as the Chief Executive. I have been given to understand that no bookmakers will now accept bets on the Chief Executive Election because the Central People's Government has already indicated who should be re-elected. In fact, the existing electoral system in Hong Kong, according to Mr CHEN Yun's theory of "birdcage economy", could in fact be referred to as a "birdcage" electoral system. The thrust of his theory of "birdcage economy" is that no matter how the market operates, the ultimate controlling power is still in the hands of the Central People's Government. Likewise, in a birdcage election, no matter how it is conducted, the Central People's Government will assume ultimate control of the entire election.

Mr Deputy, in order to better reflect the nature of the Bill, I hold that the Chief Executive Election Bill under consideration by the Legislative Council today should be renamed as the Small Coterie Chief Executive Election Bill.

In my view, our deliberation of the Bill today is like doing make-up for a dead body. As we all know, the soul of all electoral systems is election by universal and equal suffrage. Any person without a soul can be considered dead, so any electoral system without the universal and equal participation of the people is no different from a dead person without any soul.

I say that deliberating the Chief Executive Election Bill is like doing make-up for a dead body because we are putting make-up on a fake electoral system which visibly has no soul or public participation to make it look like a real election, just like putting make-up on a corpse to make it look like a living person. As such, I will vote against the Second and Third Readings of the Bill on behalf of the Hong Kong Confederation of Trade Unions. Since what we want is a genuine electoral system, we will negate all coterie elections and pulling wool over the eyes of the public by putting make-up on a dead body to make it look a living person. Although I said just now that deliberating the Bill is like putting make-up on the face of a dead body, I hope Honourable Members will not mistake my words for having no respect for the spirit of the 31 Members on the Bills Committee. When I was a small boy, I always heard my neighbour

Auntie Pun say that without any make-up on its face, a corpse would become a terrible ghost haunting the living. I did not believe in such superstitious things originally. But then, when the Chief Executive Election Bill was still under scrutiny, the corpse suddenly extended a ghost hand which would enable the Central People's Government to remove the Chief Executive from office under any circumstances. As a result, one of the Members on the Bills Committee rushed out of the Chamber like people running for their lives. My heart sank and was deeply distressed by the fact that Hong Kong was losing its "high degree of autonomy". Nevertheless, that Member was very brave and returned to the Chamber with a proposed amendment, with a view to chopping off that ghost hand. This Member really deserves the highest praise for such bravery. Regrettably, however, the corpse will still be a corpse even if the ghost hand is chopped off.

Mr Deputy, I should like to speak further on the ghost hand. Actually, under the provisions of the Basic Law, while there is very limited room for democracy to develop in the Hong Kong Special Administrative Region (SAR), the power of the Central People's Government is not subject to any restriction. One of the greatest controversies of the Bill is the one surrounding the issue of whether or not the Central People's Government has the power to remove the Chief Executive from office, which is the ghost hand I just referred to. According to the interpretation of government officials, the power of the Central People's Government to remove the Chief Executive from office is inferred from the necessary implication of a number of provisions of the Basic Law read together. In addition to Articles 52 and 73(9), these provisions also include Articles 2, 12, 15, 43 and 47 of the Basic Law. The Honourable Ms Audrey EU seriously pointed out that since the "high degree of autonomy" enjoyable by the SAR is provided for under Articles 2, 12, 15, 43 and 47 of the Basic Law, the view of the Government that the Central People's Government can remove the Chief Executive from office in accordance with these provisions is nothing but rubbish. I hope Ms Audrey EU can be pacified. The government officials are only practising the teachings of Albert EINSTEIN: Imagination is more important than knowledge.

So, is the appointment of the Chief Executive by the Central People's Government a kind of formality appointment or substantial appointment? How extensive is the power of the Central People's Government to remove the Chief Executive from office?

The Basic Law is a national law made in accordance with Article 31 of the Constitution of the People's Republic of China and the Sino-British Joint Declaration. Besides, it also stipulates the specific division of power between the Central People's Government and the highly autonomous SAR. Both the SAR and the Central People's Government have to abide by the provisions of the Basic Law. It is obvious that the spirit of both the Sino-British Joint Declaration and the Basic Law is to let the local people, which are the residents of the SAR, elect their own Chief Executive, and the appointment by the Central People's Government is but a gesture to demonstrate sovereignty over Hong Kong.

If the power of the Central People's Government to appoint the Chief Executive is substantive, the Central People's Government may choose to not appoint the Chief Executive elected by the SAR in accordance with the Basic Law. As such, the procedure for handling situations of this kind should have been clearly spelt out in the Basic Law, as this is obviously an important issue in the relationship between the Central People's Government and the SAR. Article 17 of the Basic Law stipulates, for example, that the laws enacted by the legislature of the SAR must be reported to the Standing Committee of the National People's Congress (NPC) for the record. It also specifies that if the NPC Standing Committee considers any law not in conformity with the provisions of the Basic Law on affairs outside the scope of autonomy, the Standing Committee may return the law in question but shall not amend it. So, if the power of the Central People's Government to appoint and not appoint the Chief Executive is substantive, the Basic Law should have laid down clearly the reasons for which the Central People's Government may refuse to appoint the Chief Executive and the procedure for handling the relevant situations. From this we can deduce that the power of the Central People's Government to appoint the Chief Executive as set out under the Basic Law is a kind of "formality power" symbolizing the sovereignty over Hong Kong.

Chapter II of the Basic Law, which is on the "Relationship between the Central People's Government and the Hong Kong Special Administrative Region", only stipulates that the Central People's Government shall appoint the Chief Executive in accordance with the provisions of Chapter IV of the Basic Law, it has made no mention of any comprehensive power of the Central People's Government to remove the Chief Executive from office. (Perhaps Members may wish to compare that with the Basic Law of Macao, which specifies clearly that the Central People's Government may appoint or revoke the

appointment of the Chief Executive in accordance with the Basic Law of Macao.) Obviously, Hong Kong does not have any comprehensive power to remove its Chief Executive from office. Certainly, Article 73 of the Basic Law has stipulated specifically that if the Legislative Council passed a motion to impeach the Chief Executive, it should report the motion passed to the Central People's Government for decision. This provision may be interpreted as giving the Central People's Government the power to passively remove the Chief Executive from office under certain circumstances (this power is also a kind of formality power only). Other than Article 73, there is no other provision in the Basic Law conferring on the Central People's Government any comprehensive or specific power to remove the Chief Executive from office. In other words, the Central People's Government may remove the Chief Executive from office only under one condition and the power vested in it is therefore very limited.

Article 63 of the Constitution of the People's Republic of China specifies clearly that the National People's Congress shall have the power to remove from office officials such as the President, Vice-President, Premier of State Council, and so on. By the same token, if the Central People's Government really has the power to remove the Chief Executive from office under any circumstances, such power should have been provided for under the Basic Law and other relevant laws of the People's Republic of China.

As a matter of fact, the degree of autonomy enjoyed by the various provincial and municipal governments in the Mainland, which are directly under the State Council, is a lot more limited than that enjoyed by the SAR. Nevertheless, unlike what Dr the Honourable Philip WONG said, the Central People's Government does not have any power to remove the provincial governors or mayors from office (such power is vested in the relevant Provincial People's Congresses and Municipal People's Congresses). That being the case, the Central People's Government could all the more have no power to arbitrarily remove the Chief Executive of the SAR from office.

Mr Deputy, I hereby stress again our stance: We oppose any small coterie elections and we will continue to strive for our right to elect our Chief Executive by "one person, one vote". Thank you, Mr Deputy.

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

MR JASPER TSANG (in Cantonese): Mr Deputy, it is no surprise to see Members engaging in heated arguments during deliberations on the Chief Executive Election Bill. This is because many Honourable Members, as they have made it clear in their speeches, oppose the relevant provisions of the Basic Law relating to the method for selecting the Chief Executive. Just like what Miss Margaret NG pointed out earlier, given that the Bill has to be drafted in accordance with these provisions, naturally many Members will be raising their objection.

Concerning the question of whether or not the so-called election by an 800-member Election Committee (EC) is a democratic election, actually I consider the debate over this issue not at all meaningful. An election by an 800-member EC is of course not a very democratic mode of election, otherwise the Basic Law would not have stipulated that the Chief Executive should be elected by universal suffrage ultimately. The Honourable Miss Emily LAU pointed out in her speech earlier that the undertakings made by the Chinese Government during the transitional period were not honoured. What undertakings did the Chinese Government make during the transitional period? According to Miss Emily LAU, the Basic Law has utterly failed to honour the relevant undertakings. However, it is written very clearly in the Basic Law that legal provisions should be made in accordance with the basic policies of the Chinese Government regarding Hong Kong, which are the policies to implement the "one country, two systems" principle.

The undertakings made by the Chinese Government to implement the principle of "one country, two systems" are not confined to only "a high degree of autonomy". Both the Basic Law and the Sino-British Joint Declaration have made it clear that the basic policies regarding Hong Kong must be set out clearly in writing, and those written policies are the undertakings made by the Chinese Government regarding the way it will implement the principle of "one country, two systems" after the reunification of Hong Kong. Is it written under those policies that the Chief Executive should be selected by democratic election? The answer is in the affirmative. However, there is no undertaking that the first and second Chief Executive Elections shall be conducted in this manner. It is set out clearly in the Basic Law that this ultimate aim should be achieved in sequence. In other words, the first and second Chief Executive Elections should be conducted in accordance with the principle of gradual and orderly progress. Miss Emily LAU and some other Members have referred to a certain provision under Article 25 of the International Covenant on Civil and Political

Rights (ICCPR), which is also covered in the Sino-British Joint Declaration. Actually, the undertaking in this respect has been laid down under Article 39 of the Basic Law, which stipulates that the provisions of international covenants and conventions as applied to Hong Kong shall remain in force. Unless the present Legislative Council election and Chief Executive election are visibly a retrogressive development compared to the elections held in Hong Kong before the reunification, or compare unfavourably with the provisions of the relevant international covenants then, we cannot say that the Basic Law has failed to honour the relevant international covenant, including the undertakings regarding the ICCPR. No doubt this is a rather serious accusation, and people making such accusation should therefore provide concrete evidence to substantiate their accusation, rather than making the accusation their slogan. In any case, those Members who have spoken against this Bill are those who oppose the relevant provisions of the Basic Law. As such, there cannot be any form of reconciliation in this connection. That is a certain outcome.

Mr Deputy, the Democratic Alliance for Betterment of Hong Kong (DAB) supports that the second Chief Executive Election should be conducted in accordance with the relevant requirements provided under the Basic Law. For this reason, I cannot share the views expressed by those Members who have raised their objections to the Bill. While the controversy over this issue should not come as a surprise, it really surprises me that the so-called power to remove the Chief Executive from office has become the thrust of heated debates when the Bill was still under scrutiny. I believe no Members expected that before looking into clause 4 of the Bill.

Mr Deputy, I support the Bill and all the Committee stage amendments proposed by the Government. However, that does not mean I agree with the arguments advanced by the Government in introducing the Bill or the various amendments. In considering the passage or otherwise of the Chief Executive Election Bill, the considerable controversy among Members over the issue of whether or not the Basic Law has conferred any power on the Central People's Government to remove the Chief Executive from office is, in my view, unnecessary and improper, because the Legislative Council is not the ultimate authority for interpretation of the Basic Law. Some Members, particularly those from the legal profession, hold that the making of clause 4(c) of the Bill is tantamount to conferring on the Central People's Government the power to arbitrarily remove the Chief Executive from office. I must say I am very much surprised by this view. Some people told me that professional lawyers were not

the only persons who could explain the meaning of legal provisions, the man in the street with common sense and a logical mind could also comprehend law. The relevant clause states when the office of the Chief Executive becomes vacant. The vacancy will occur under three situations: (a) on the expiry of the term of office of the Chief Executive; (b) if the Chief Executive dies; and (c) if the Central People's Government revokes the appointment of the Chief Executive in accordance with the Basic Law, subject to the relevant provisions as amended in future. I do not think the third part of the provision, which is clause 4(c), can in any way confer on the Central People's Government any power it is not vested with originally. Some Members hold that the power of the Central People's Government to appoint or revoke the appointment of the Chief Executive should be prescribed under the Basic Law, if such power is not provided for under the Basic Law, we should not pass the Bill because the relevant clause contained therein will confer such power on the Central People's Government. Earlier, Ms Audrey EU referred to this clause as seeking to devolve power to the higher level. But the Hong Kong Special Administrative Region (SAR) is just in no position to devolve any power to the higher level! It really baffles me. On the other hand, if such power already exists, it will not be subject to any limitation just because Hong Kong has passed any legal provisions, nor will it become ineffective or not applicable by the Central People's Government if it is not specified in the laws of Hong Kong. The point is very straightforward. This Bill or any other bills passed by the legislature of Hong Kong cannot add to, reduce or change the power of the Central People's Government under the Basic Law. This is indeed uncomplicated.

In my view, the debate over the issue became more and more confusing as it went on. At first, Members were debating whether the Central People's Government had the power to remove the Chief Executive from office. But the thrust of the debate was later on changed from "whether the Central People's Government has such power" to "under what circumstances can the Central People's Government remove the Chief Executive from office". Mr Martin LEE has proposed an amendment to this clause, and his proposed amendment has actually recognized the power of the Central People's Government to remove the Chief Executive from office. This is because part of the proposed amendment says, "..... the Central People's Government removes the Chief Executive from office under the following circumstances" Certainly, the power of the Central People's Government in this connection is not absolute. But if the Central People's Government is vested with such power, we can never come up with this conclusion: The Central People's Government shall not remove the

Chief Executive elected by Hong Kong under any circumstances. The fact is that the Central People's Government may exercise this power under certain circumstances.

I also wish to point out that revocation of appointment may not necessarily be a kind of punishment. It is clearly written in the Basic Law that the major government officials of the SAR shall be appointed or removed by the Central People's Government. To cite an example, Mr Donald TSANG was originally the Financial Secretary, but before he was promoted to the office of the Chief Secretary for Administration, it was necessary for the Central People's Government to remove him from the office of the Financial Secretary of the SAR on the recommendation of the Chief Executive. The posting transfer of any major government officials has to be handled in this manner, and the relevant appointments must be made by the Central People's Government. Coming back to the Chief Executive, so long as the Central People's Government does not revoke the appointment of the Chief Executive, can any mechanisms or authorities in Hong Kong claim that the appointment has been revoked or the office of Chief Executive has become vacant? I will expound on this issue in greater detail when the Council is in Committee discussing the Mr Martin LEE's proposed amendment and the amendment proposed jointly by Ms Audrey EU and Miss Margaret NG later on. Insofar as I understand it, the relevant clause has specified the circumstances under which the office of Chief Executive becomes vacant. It is stated that the office falls vacant when the Central People's Government revokes, under certain circumstances, the appointment of the Chief Executive in accordance with the relevant provisions of the Basic Law. Certainly, this does not mean that the Central People's Government may remove the Chief Executive from office under any circumstances. I just cannot understand why the relevant import or concept was shifted completely during the course of discussion. Some people always criticize me for substituting concepts stealthily. Actually, what happened during the discussion should be best described as a stealthy substitution of concepts. The Bill states under what circumstances the office of Chief Executive becomes vacant, and one of such circumstances is when the Central People's Government revokes the appointment of the Chief Executive in accordance with the relevant provisions of the Basic Law. What argument can there be about this point? Why could this be interpreted as the SAR conferring the Central People's Government the power to remove the Chief Executive from office under any circumstances? These are two totally unrelated issues. I therefore consider that Members should make clear the thrust of the clause. And I also hope that Members will adopt a more

logical and reasonable attitude to consider the contents of the clause at the Committee stage later on.

On the required resignation from political parties, Mr Deputy, as pointed out by our Members, the DAB supports the relevant requirement set out in the Bill. However, that does not mean we believe candidates with political affiliations will certainly practise favouritism and look after only the interests of a small coterie. If the Chief Executive should have any political affiliations, by that I mean if he did not resign from his political party, he would be bound by the discipline of the party. This is exactly where the crux of the matter lies. Some say that it is no use requiring the Chief Executive to resign from his party because he may remain as an invisible member of the party, supporting the stance of the political party on the one hand, and discharging the duties of the Chief Executive on the other. So, what is the problem? The problem lies in that if he remains a member of the relevant political party and at the same time assume the office of Chief Executive, he will be bound by the discipline of the political party if we recognize the operation of that political party. As a matter of fact, the President of Taiwan, CHEN Shui-bian, is currently on the horns of this kind of dilemma. How is the relevant party going to draft its political platform? Perhaps the Chief Executive may say it is fine, he will be exempted from the duty to help drafting the party's political platform upon assuming office. But then, as the Chief Executive of Hong Kong, he is no longer subject to the discipline of his party. In that case, is this not the same as having resigned from the party? The two situations are indeed the same. Mr James TIEN also mentioned about that in his speech earlier. Many Members have flattered the DAB and said that we would become the largest party in this Council sooner or later. For my part, I do not cherish any hope for that. At present, the largest party is the Democratic Party, which have 12 Members in this Council. With only 20% of the seats, can it really take everything into its hands? We believe the situation in the next few years will remain the same. Under the relevant system in force in the United States, the President can be a member of one political party, while the majority of the seats in the Congress are held by members of another political party. But certainly the party to which the President belongs will definitely hold more than 20% of the seats in the Congress. If the Chief Executive should continue to be a member of his political party, he would have to sacrifice the interests of his party under certain circumstances. On the other hand, since he is a member of a certain political party, he or his representatives may not be able to win the support of other parties when attending Legislative Council meetings. So, this just will not work. I hope

Members will think it over carefully: Under the existing political system, what role should political parties be playing? Without any further research into the issue or any consensus, the idea held by certain Members just will not work. It is on the basis of this point that the DAB supports the relevant requirement.

THE PRESIDENT resumed the Chair.

MR LEUNG FU-WAH (in Cantonese): Madam President, what I am going to say now is not covered by my original script. The remarks of a few "democrat" Members remind me of a book I read. As stated in the book, a Western philosopher remarked that "if you command a language, you are better than the beasts, but when you speak incoherently, the beasts are better than you".

Madam President, the following is the speech prepared by me.

The Bills Committee on Chief Executive Election Bill (Bills Committee) comprises 31 Members (including me). Undoubtedly, this Bills Committee saw participation by the largest number of Members in this Session, which shows that many colleagues and I attach great importance to the enactment of the Bill. In fact, since the commencement of deliberations in March, the Bills Committee has held 14 meetings and dealt with such issues as the polling date, addition of Election Committee members and whether the Chief Executive should be a political party member. After deliberations among Members and officials of the Constitutional Affairs Bureau, amendments were made to perfect the provisions of the Bill. Unfortunately, however, the overboard comments and actions of some Members in the course of deliberations gave outsiders a false impression that the Bills Committee had provided a venue for stating political stance and staging a "political show".

A provision of the Bill that specifies the circumstances under which the office of Chief Executive will fall vacant and the election mechanism has to be triggered has developed into the argument that the Central People's Government has the power to remove the Chief Executive from office under any circumstances in the Hong Kong Special Administrative Region (SAR). Some Members think that in specifying in the Bill that the Central People's Government has the power to remove the Chief Executive from office, the Administration is "surrendering the high degree of autonomy of the SAR on a

plate", and some have even said that "it is simply rubbish". After the media had extensively reported this remark, we found in the newspapers such headlines as "the SAR Government forfeits the high degree of autonomy". The streamer was also televised live and replayed for a few times. As the media kept repeating the remark for a few days afterwards, those who were not clear about the fact might really thought that the SAR Government had betrayed Hong Kong people and invited the Central People's Government to interfere with the affairs of the SAR. Fortunately, when this statement began to gain popularity, the freedom of speech in Hong Kong came into full play for quite a few legal experts and academics provided us with a solid legal base. (A) There is a basic principle in the constitutional law made by the NPC that "he who has the power to appoint has the power to remove". (B) Article 45 of the Basic Law provides that "the Chief Executive shall be selected by election or through consultations held locally and be appointed by the Central People's Government". A precedent in the United States was quoted to clarify that the power to remove carries with it the power to appoint and these integral powers are inseparable. (C) A simpler interpretation is that Article 12 of the Basic Law provides that "the Hong Kong Special Administrative Region shall be a local administrative region and shall come directly under the Central People's Government". Accordingly, the Central People's Government has the absolute power to remove the Chief Executive. Evidently, it is an objective fact that the Central People's Government has the absolute power to remove the Chief Executive. The Administration formulates a provision on the implied meanings of the Basic Law to provide an accurate and objective standard for the circumstances under which the office of Chief Executive will fall vacant and a by-election mechanism will be triggered. This is correct and the SAR Government has not "betrayed the high degree of autonomy" at all.

Truly, the Central People's Government has the absolute power to remove the Chief Executive but the power is absolutely not unrestricted. In the course of deliberations, the Bills Committee conducted extensive consultations and more than 50 groups and individuals had expressed their views on the Bill. As one of the organizations specially invited by the Government, the Law Society of Hong Kong recognized in its written reply that the Central People's Government has the power to appoint and remove officials according to the Constitution of People's Republic of China. It thinks that the exercise of the power of removal by the Central People's Government is bound by the constitution and such laws and practices as the Basic Law.

It is most unfortunate that some Members fail to cherish the determination of the Central People's Government to defend "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" and they conversely intend to make use of the occasion to legislate on the Chief Executive election to challenge the power of the Central People's Government. In proposing an amendment to clause 4, Mr Martin LEE ignores the power of the Central People's Government to remove the Chief Executive upon his resignation on its own initiative and he intends to restrict the Central People's Government exercise of its constitutional power.

According to the Basic Law, Hong Kong exercises "a high degree of autonomy" under the "one country, two systems" policy, practises "Hong Kong people ruling Hong Kong", enjoys executive, legislative and independent judicial powers as well as the power of final adjudication as well as other powers conferred by the National People's Congress (NPC), the Standing Committee of the NPC and the Central People's Government. This realizes the "one country" principle. The Legislative Council of the SAR as the local legislature does not have the power to enact laws to restrict, deprive or increase the constitutional powers to be exercised by the Central People's Government. This contravenes the Basic Law and ignores the legal basis and emphasizes "two systems" to the neglect of "one country". It also specifically shows distrust of the State and the unwillingness to abide by the Basic Law. Luckily, as the President has negated Mr LEE's amendment on the election of the Chief Executive by universal suffrage, we do not have to waste time on a topic that basically does not tally with the thrust of the Bill. Yet, something is puzzling. Mr Martin LEE who proposes the relevant amendment is a senior legal practitioner and has worked in the Council for a very long time. Given his professional knowledge and experience in the operation of the Council, he should not propose an amendment that is negated since the legal adviser also thinks that it does not tally with the thrust of the Bill. I believe Mr LEE has either overlooked some professional details or intended to stage a "political show". He said earlier that he accepted the ruling of President and stated very explicitly that the Bill was not "rubbish", only that it should be renamed as a bill on the re-election of Mr TUNG Chee-hwa as the Chief Executive. I wish to ask him if we need to deliberate upon a bill on the third Chief Executive Election after the expiry of the term of office of the second Chief Executive.

Madam President, Hong Kong is undergoing an economic transformation and the working masses worriedly frown upon unemployment and livelihood.

Those who have a sense of commitment towards Hong Kong spare no efforts in working for the economic prospects of Hong Kong and to give workers opportunities. The community should work in cohesion and make efforts together to build up the SAR and create a better environment so that the public would live and work in contentment. We definitely do not need politicians to continuously and repeatedly stir up arguments in the community and create unnecessary disputes.

Madam President, as there is still some time, I would like to discuss the remarks just made by Members, especially the remarks made by the democrat Members. Some remarked that it is politically incorrect for the Chief Executive to withdraw from a political party after he has been elected. They drew an analogy between themselves and the Chinese Communist Party, but the two are actually not related at all. Everybody knows very clearly the background of these Members, how can they simply compare themselves with a ruling party that has struggled for 80 years? A Member has said that our respect for the rule of law has nothing to do with whether we trust the Central People's Government, and he also said that the Government had failed to give any reasons for imposing such a restriction. He has also asked the Government which provision of the Basic Law specifies that the Central People's Government has the power to remove the Chief Executive from office.

I am surprised by his remarks. Though I have not received professional legal training, I know why we need to have Courts. Do a lot of laws carry implied powers and responsibilities? Why do we need to quote precedents to interpret certain laws? It is common sense under statute law or common law. How can such a senior legal practitioner raise such questions? In the final analysis, it is because they dislike the Basic Law. Sometimes, some Members would cite the provisions of international covenants or the Basic Law, but I have found after very careful observation that they have only read the provisions related to "two systems" to their liking and they have definitely not read the provisions on the definition of "one country, two systems" under the sovereignty of "one country". Therefore, their remarks are prejudiced, inexplicit and incomprehensive.

A colleague just referred to the "birdcage economy" mentioned by Mr CHEN Yuen years ago. As far as I understand it, "birdcage economy" is the principle of gradual and orderly progress and is the course of development of a

very big country and market from planned economy to market economy. I am not sure if it is appropriate to draw an analogy between this and Hong Kong, but I think that gradual and orderly progress is very important. In our society today, it is basically meaningless for us to go on arguing.

After the results of the last Legislative Council Election were announced, the elected members or otherwise belonging to the Democratic Party and the Frontier agitatedly hurled abuses at the voters and questioned why they voted that way. Why did they say that the voters were right and the election was democratic when they were happily elected, but why did they become unhappy when the outcome of the election through a democratic process was not what they wished? These arguments were meaningless. During our deliberations of the Bill, we wished to localize the Chief Executive Election on the basis of the Basic Law and explicitly specify the legal provisions on the election.

I so submit. Thank you, Madam President.

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

MR ALBERT HO (in Cantonese): Since I joined the Legislative Council in 1995, I have participated in a lot of debates over the democratic development of Hong Kong. Though I have not become more and more disheartened on each occasion, I must say that I have become more and more indignant. In this era and times, it is hardly believable that we still have to argue over the merits of democracy in Hong Kong. Democracy is important in that it upholds human rights and the rule of law and is the value that a civilized society should fight for. I believe this topic is covered by the most basic civic education syllabus of secondary schools in many countries.

However, a lot of colleagues in this Council are still telling others in various ways that democracy cannot be practised in Hong Kong. Some of them give economic reasons while others use the Basic Law as the pretext. They really brought Hong Kong to shame. Many eloquent colleagues have very rich political knowledge and a strong sense of history. Needless to say other countries, as a result of the lack of democracy in our Motherland, people are tortured and humiliated under tyrannical rule and the vitality of the country has been sapped to the suffering of a few generations. Yet, we in Hong Kong today

resists democracy for various reasons and is only willing to partially practise democracy in such a small place. I really do not know if these colleagues, especially those who have political knowledge and a sense of history, have a sense of right or wrong or a sense of shame. I cannot help asking these questions. Madam President, I am sincere, and I do not wish to reprimand anybody.

Miss Emily LAU has mentioned the undertaking made by the Chinese and British Governments to Hong Kong during the transitional period, but Mr Jasper TSANG questioned her. I was among the first group of people who supported the return of Hong Kong to China in the early 1980s. When I came forth to voice my support, some scolded me and asked why I knew the ways of the world. They asked if I had made a 180 degree change in my attitude towards communism and had deep faith in it, and whether I had become a leftist. I do not wish to talk about all this anymore. However, I have a deep impression that before the Sino-British Joint Declaration was made, the mainland leaders had explicitly promised for a few times that Hong Kong people would rule Hong Kong by themselves. Let me cite the explicit reply given by the then Premier ZHAO Ziyang to students. He said that democratic development was natural and a matter of course and the promulgation of the Sino-British Joint Declaration realized to a certain extent that the two governments really respected the wish. Certainly, there are a lot of unclear and ambiguous matters, for instance, whether the Chief Executive would be selected by election or through consultations. Mr Jasper TSANG may say that the return of the Chief Executive through consultations has been specified. When was an election been promised? When the Basic Law was drafted, the idea of consultation had clearly been given up, and the then Central People's Government had explicitly decided to hold an election. We are just arguing about whether it is a genuine election.

Hong Kong people often do something they have to be ashamed of. When we were asked in foreign countries whether the Legislative Council was returned by election, we had to explain in detail why only 20 seats were returned by democratic election — the number is 24 now. Our election is "very confused and complicated". In countries that really practise democracy, elections are elections, and it is not necessary to explain like what we did why only 24 seats were returned by popular democratic election. Is that an election? I am sorry, but I think that it can hardly be considered an election according to the standards of a civilized society and country, and even the standards of the world. If not,

Article 25 of the international covenants on human rights would not explicitly specify the meaning of participation. Participation means that everybody participates in the process in an equitable and universal manner. Therefore, once the Central People's Government has decided that an election be held, it should honour the promise for real. Is that an election if a person is elected today by a few hundred "friends" behind closed doors, or if the Central People's Government has preordained the elect long ago? Concerning the failure to respect the Basic Law, I think that such an election really fails to respect the Basic Law.

We are arguing today that the Central People's Government should honour its promise and return our Chief Executive by an election that is really recognized and accepted by a civilized society and the international community. I recall that when I collected signatures on the streets, some asked me if the United States also practised coterie elections and why we did not reprimand the United States. Members certainly know the logic. If every member of the 800-member Election Committee were elected through universal participation by the public and with equal votes, people would have different comments. When I asked the person who raised the question if he had such a request, he could not give me an answer and he only asked if the United States system was good and whether we should model on the Americans. So this is the world. Do we really wish to elect the Chief Executive and the legislature by universal and equitable one-person-one-vote election? This is the crucial point about whether the Sino-British Joint Declaration is put into practice and whether the promise made by the Chinese and British governments to Hong Kong people is honoured. Our conclusion today can only be that this Bill shows once again that the promise made by the Chinese Government during the transitional period has not been honoured.

Some colleagues have mentioned that Article 25 of the international covenants on human rights has not been respected. Mr Jasper TSANG will certainly say that we have retained something and he can give a lot of technical reasons to defend this. Yet, Article 39 of the Basic Law explicitly states that, as does the spirit of the Sino-British Joint Declaration, we should implement an electoral system. The Sino-British Joint Declaration was precisely promulgated against this background and gone through the transition to a "high degree of autonomy" under the principle of "one country, two systems" as expected. What have we seen if not a breaking of the promise by citing technical reasons to evade the very clear message given by the Central People's Government and the whole world to Hong Kong and their expectations?

Our arguments over this Bill revolves around the major issue of and we can see that Hong Kong has a crisis under "one country, two systems", that is, do our government, including some Members present, wish to defend Hong Kong or the "high degree of autonomy" that Hong Kong people really hope to accomplish? What does the "high degree of autonomy" include? It includes the institutional relationship between Hong Kong and the Central People's Government, an institutionalized relationship. Both parties can determine the working relationship through the formulation of very explicit rules and they do not need to rely on personal clout, friendship or trust. Our government likes to talk about trust and the Secretary said the other day that we did not trust him. Do we need to rely on trust? Does the operation of the Government really need to completely rely on trust? Why does it not rely on institutions? Why do we not rely on explicit rules on the mutual relationship? This is the crux of the problem. Some have said that it is superfluous to discuss the removal of the Chief Executive and it is only a storm in a teacup because the Central People's Government can announce the removal of the Chief Executive any time if it really wants to remove him. This is another matter. The problem now concerns what power of removal the Central People's Government has, and how we look at it.

I believe the Government wishes to evade these problems and this verifies why the Government is always evasive when we come up with problems in this Council. In general, the Government has been evasive about whether our laws should be binding on the State and the Central People's Government. Once the relationship with the Central People's Government is involved, the Government would rather discuss the matter slowly behind closed doors. If the discussion is not fruitful, it elects to remain ambiguous and allow the Central People's Government to its ultimate powers when problems emerge instead of explicitly stating its stance or boldly trying its best to defend the integrity of our institutions under the principle of "a high degree of autonomy". By integrity I mean our institutions should operate on their own and elect people for Hong Kong. This is most important.

Well, what is the result of ambiguity? The appointment by the Central People's Government, as mentioned by Mr LEUNG Fu-wah, would be realized. Mr LEUNG Fu-wah has used such words as "definite", "absolute" and "objective" and I would like to add the word "unlimited". As Mr LEUNG Fu-wah has said, the power to appoint carries with it the power to remove, therefore, the Chief Executive can actually be removed at any time. I would like to ask

the Secretary whether this is true. Does the Hong Kong Government think that the Central People's Government can remove the Chief Executive at any time without giving any reason? Does it mean that it is not at all important for it to be specified in the Bill and even if it is specified, it can be stated in a very simple way? I ask the Secretary to say so if he supports the view of Mr LEUNG Fu-wah.

I am sorry that Members, at least those who uphold the "high degree of autonomy", would not support such a stance. If so, why should so many things be written into the Basic Law? The whole design is meant to allow us to elect our Chief Executive under our own system and then the sovereignty of the Central People's Government would be realized through the appointment process. If the Central People's Government thinks that the return of the Chief Executive does not comply with this procedure and the law, it can definitely remove the Chief Executive. However, the power to remove is not unlimited, nor can it be exercised at any time without any explanation. If it is the case, I ask the Secretary to state this clearly because we will definitely not agree without thinking about it seriously, and we will certainly oppose it very strongly. Mr LEUNG Fu-wah has said that we politicians often provoke conflicts, therefore, workers do not have good prospects. I feel sad for workers precisely because the FTU is willing to exchange ballots for rice coupons. This is the saddest thing for workers. Thank you.

MISS CYD HO (in Cantonese): Madam President, many Members have expressed their views on the Bill, I really do not have much to say because my stance on it is rather simple. I appreciate the remarks made by the Secretary for Constitutional Affairs, Mr Michael SUEN, during the scrutiny of the Bill. He told Members to this effect, "You should not view the Bill with the one-person-one-vote standard. If the Chief Executive Election is an election by universal and equal suffrage, this Bill will have to be drafted again. It will not be like the one before you now." Hence, we will vote against the Second and Third Readings of the Bill.

As regards the amendments to the Bill, some of them, such as those in relation to clause 4(c) which is related to the important issue of whether or not the Central People's Government has the power to remove the Chief Executive from office, have actually exceeded the original framework of the Basic Law. We will discuss that when the clause is considered at the Committee stage.

With the exception of the amendments proposed by Miss Margaret NG and Ms Audrey EU, which I support, I will vote against or abstain from voting on the other amendments proposed to the Bill.

Madam President, Mr Jasper TSANG said earlier that there was not really any retrogressive development, and that since the Basic Law and the Sino-British Joint Declaration promised us "a high degree of autonomy" with "Hong Kong people ruling Hong Kong", it should be considered acceptable so long as the present situation was not worse off than before the transfer of sovereignty. Perhaps Mr Jasper TSANG may wish to seek a point of clarification later on. Actually, he may interrupt my speech at any time; I am ready for a dialogue. Nevertheless, Madam President, I have to point out that there is indeed a retrogression in our political system. As also mentioned by Mr Jasper TSANG earlier, there cannot be any ruling party or coalition of ruling parties in this Council. Given that the system of proportional representation has been adopted in place of the "single-seat single-vote" electoral system since the transfer of sovereignty, and that this so-called proportional representation system is a far-fetched one with only three to four seats in each constituency, how can there be a strong and powerful ruling party? So, this is one example of retrogression.

We are strongly opposed to seats returned by functional constituencies. But then, nine of the seats returned by functional constituencies in the past did have a large electoral base comprising a total of 2.7 million eligible electors. If the Legislative Council were composed of seats returned by those nine functional constituencies, directly elected seats won by certain parties and factions and seats returned by functional constituencies of a smaller electoral base, its Finance Committee might perhaps be strong enough to negative the Government's funding proposals. Besides, the Council might also act as an effective check-and-balance power at the same time. Regrettably, this remote chance has now been removed, for the present functional constituencies have less than 200 000 electors in total. So, this is another retrogression.

I wish to point out that Article 39 of the Basic Law promises that the people of Hong Kong shall enjoy the rights set out under the various international human rights covenants, including civil rights and political rights. The former Government was very clever in that it had introduced some saving provisions before applying the relevant covenants to Hong Kong. One of such saving provisions says: "The Government of the United Kingdom reserves the right not to apply sub-paragraph (b) of Article 25 in so far as it may require the

establishment of an elected Executive or Legislative Council in Hong Kong." This particular article is about elections by universal and equal suffrage. While these saving provisions were applicable to both the former Executive Council and the former Legislative Council in the past, so far no mention has been made of their applicability to the Chief Executive. The view of the Commission on Human Rights is that either no election is to be held and the Government frankly makes it clear that the Chief Executive will be named and appointed, or, if the Chief Executive is to be selected by election, the Chief Executive Election must be an election by universal and equal suffrage. Otherwise, the spirit of the human rights covenants will be violated. Is this not an example of retrogression, given that it is not mentioned in our saving provisions that these very same provisions are also applicable to the Chief Executive Election? So, this is the third retrogression.

In my view, "birdcage politics" exists just because there are people who prefer staying in the birdcage to learning to fly, forfeiting their rights and freedoms. To me, the attitude demonstrated by Mr Jasper TSANG earlier is typical of people who "do not know how to stand on their feet after kneeling for too long". During the colonial rule in the past, we could only knee down because we had no rights. Now that Hong Kong is reverted to Chinese sovereignty, the Central People's Government has promised us an end to the colonial rule; but then under the present system, we can only squat on our heels rather than standing upright on our feet. One day, when everyone has accepted squatting on their heels, we will all forget that as human beings we should be standing upright on our feet, and that we have both the right and responsibility to participate in policy formulation by way of elections by universal and equal suffrage, and thereby hold the Government accountable to the public.

It is true that the situation is overwhelming, and there are many historical factors behind the present situation in which we are but the meat on the chopping board, yet the most important issue remains the stance assumed by political parties and politicians. There are times when the situation is just too overpowering, but does it follow that we should help to rationalize the unreasonable situations?

Every time they appeal to voters for support during elections, Members from the Democratic Alliance for Betterment of Hong Kong will have a hard time explaining to the public that they support full direct elections. They used to avoid the issue of timing in the past, though they seemed to have mentioned

about a timetable during the last election. Perhaps they may clarify this later on. Nevertheless, more often than not their voting decisions just cannot reflect the promises they have made to their voters. I cannot help but feel very disappointed.

Earlier on, Mr LEUNG Fu-wah said that in talking about the Basic Law many Members had made mention of only "two systems" but not "one country". I am not sure whether Mr LEUNG was saying that we could talk about democracy at any time in Hong Kong among the 6.7 million local population, but not in the context of "one country". Opinions of this kind always distress me enormously.

The present ruling party in China has indeed made a very long journey and committed many mistakes along the way. But the fact remains that rather than being the masters of their own house, the 1.3 billion Chinese people are still living under the rule of one single party. As for the 6.7 million people of Hong Kong, we can at least discuss the issue of election in this Chamber. We are unable to directly push forward the democratic development of China, but does that mean we should try to rationalize the present situation and despise our fellow countrymen's rights to democracy? Is so doing a kind of patriotic action, or just an attempt to uphold the centre of power? Let us just examine our own conscience.

Concerning clause 4(c), Madam President, Ms Audrey EU is very right in saying that it does not need a professional lawyer to explain a simple point like that. Several 17-year-old Form Six students approached the Bills Committee to express their views when the Bill was still under scrutiny. One of them said that with this clause 4(c), the Chief Executive Election would still be a fraud even if it were an election by universal and equal suffrage, bearing in mind that if the Central People's Government should have unchecked power to remove the Chief Executive from office at will, Hong Kong would not have a high degree of autonomy in reality even if the Chief Executive was selected by direct election in future. With the presence of this clause 4(c), just how could we enjoy any degree of autonomy?

Madam President, I will expound on my views regarding other technical issues later on.

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

(No Member responded)

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I move the resumption of Second Reading debate on the Chief Executive Election Bill.

PRESIDENT (in Cantonese): Secretary, you are now supposed to give your reply. The Second Reading of the Bill was already moved some time ago.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): I am sorry, Madam President. The Administration owes the resumption of the Second Reading debate of the Chief Executive Election Bill today entirely to the support and co-operation of Members of this Council. A Bills Committee was immediately set up in the Legislative Council to consider the Bill after the Administration submitted it to the Legislative Council on 14 March. May I express my deepest gratitude for the 30-odd Members who have joined the Bills Committee, without whose efforts the examination of the Bill would not have been completed successfully.

A total of 15 Bills Committee meetings were held, of which 13 were held to examine the contents of the Bill, while two were held to collect public opinion. The Bills Committee has put forth a lot of valuable advice when examining the Bill. We have adopted most of the proposals in order to improve the Bill. As regards the collection of public opinion, a total of 80 organizations or individuals have put forth to the Bills Committee their views, most of which are in favour of the proposals in the Bill.

I would like to conclude and respond to several major topics which have been discussed by the Bills Committee.

(I) Election Committee (EC)

Annex I to the Basic Law provides that the Chief Executive shall be elected by a broadly representative EC. Annex II to the Basic Law clearly

provides that the EC, which is responsible for returning six Members of the Second Legislative Council, refers to the one provided for in Annex I of the Basic Law. The meaning of the Basic Law is clear and unambiguous. The Bill thus provides that the EC formed on 14 July 2000, which is responsible for returning six Members of the Second Legislative Council in September 2000, will also be responsible for electing the Chief Executive in 2002. Therefore, disregarding those members who have died, resigned or have been disqualified for registration as voters of Legislative Council Geographical Constituencies (GC), all serving members are members of the EC formed for the first time under the Bill.

According to the original proposal under the Bill, if a member of the EC first acquires his EC membership through election by the relevant subsector or nomination by the religious subsector, and subsequently becomes an ex-officio member by virtue of other relevant elections, he may choose to give up his elected or nominated EC membership by tendering a resignation to the Electoral Registration Officer (ERO) under clause 3 of the Schedule to the Bill. Pursuant to the arrangement under clause 5 of the Schedule, the Electoral Affairs Commission (EAC) will arrange for a subsector by-election or supplementary nomination to fill the vacancy. Under our proposed arrangement, the onus is put on the EC member himself, leaving it to him to decide whether or not to relinquish his elected or nominated membership.

However, we have decided to accept the suggestion of the Bills Committee after careful examination. Relevant EC members will be required to give up his elected or nominated membership and the vacancy arising therefrom will be filled by election or nomination.

I will therefore later move a Committee stage amendment (CSA) to propose that once an elected or nominated EC member becomes an ex-officio member, he will be deemed to have resigned from his membership in the relevant subsector.

(II) Polling Date

As originally proposed in the Bill, if the term of the serving Chief Executive expires, the Chief Executive shall appoint a date within six months

before the expiry of his term as the polling date. In the event that the office of the Chief Executive becomes vacant, the Acting Chief Executive shall appoint a date within six months after the vacancy arises as the polling date. If the Chief Executive election fails, the EAC shall be authorized to appoint another polling date. If the Chief Executive elect cannot assume office, the Chief Executive or the Acting Chief Executive shall appoint another polling date.

In scrutinizing the Bill, the Bills Committee was of the view that the appointment of the polling date for the Chief Executive Election should not involve any discretion. In addition, the polling date should preferably be a Sunday to facilitate voters. We consider that the views of the Bills Committee are acceptable. After much discussion, we have reached a consensus with the Bills Committee and agreed that a consistent method would be adopted to appoint the polling date for the Chief Executive Election under all circumstances. I will put forward amendments at the Committee stage later and fully explain the details of the amendment.

(III) Vacancy in the Office of the Chief Executive

Before expounding on this matter, I would like to take this opportunity to respond to one or two questions raised by the Honourable Martin LEE and the Honourable CHEUNG Man-kwong just now with respect to this matter. Yesterday, Mr Martin LEE sent me a letter. I have responded to the points raised in his letter and I do not intend to make any further remarks here as I believe I have made myself very clear in my response. As to the question raised by Mr Martin LEE and Mr CHEUNG Man-kwong on whether I have exchanged views with or consulted the Central People's Government with regard to the matter of a vacancy in office, my answer to that question is simple and clear — I have not.

The purpose of clause 4 of the Bill is to reflect all circumstances under which the office of the Chief Executive becomes vacant so that steps can be taken by the Acting Chief Executive to activate the mechanism stipulated in clause 5 of the Bill for the election of a new Chief Executive. It was originally provided in clause 4(c) of the Bill that the office of the Chief Executive becomes vacant if the Central People's Government revokes the appointment of the Chief Executive. While scrutinizing the Bill, the Bills Committee was of the view that the Administration should spell out under clause 4(c) the circumstances under which the Central People's Government could remove the Chief Executive from office

(by virtue of powers conferred on it under the Basic Law), thus rendering the office of the Chief Executive vacant. The Bills Committee has considered the issue in detail and openly consulted the opinion of the legal profession.

At the meetings of the Bills Committee, I have emphasized time and again that clause 4 of the Bill is not an enabling provision. It neither confers, nor is it empowered to confer, additional powers on the Central People's Government to remove the Chief Executive from office. The purpose of clause 4 of the Bill is ensuring that all circumstances under which the office of Chief Executive will become vacant are covered rather than setting out chapter and verse each of these circumstances. Therefore, the original clause 4(c) of the Bill made no attempt to set out all the circumstances.

Here I would like to reiterate that clause 4 of the Bill does not touch on the source and scope of the Central People's Government's power to remove the Chief Executive from office. However, as quite a number of Members mentioned this point when they spoke, I would like to take this opportunity to put the Administration's position on record.

As I have said repeatedly at the meetings of the Bills Committee, the Central People's Government's power to remove the Chief Executive from office flows from the Basic Law. Although no such expression as "the removal of the Chief Executive by the Central People's Government" appears in Articles 52 and 73(9) of the Basic Law, Article 73(9) of the Basic Law does mention "report it to the Central People's Government for decision". In this regard, the Bills Committee accepts the Administration's view. It agrees that under this provision, it can be reasonably deduced that the Central People's Government could remove the Chief Executive from office in accordance with certain provisions of the Basic Law.

Members may recall that when the Bill was scrutinized, the Administration was of the view that apart from Articles 52 and 73(9) of the Basic Law, the Central People's Government could remove the Chief Executive from office under other circumstances in accordance with the Basic Law. As regards this issue, the Bills Committee requested the Administration to set out in detail all the circumstances under which the Central People's Government could remove the Chief Executive from office in accordance with the Basic Law.

At that time, we cited the two examples of the Chief Executive becoming physically or mentally incapable of carrying out his duties but the very

impairment renders him/her incapable of resigning and the situation in which his/her whereabouts could not be ascertained to illustrate that the Central People's Government could remove the Chief Executive from office in circumstances other than those prescribed in Articles 52 and 73(9) of the Basic Law. We believed that under such circumstances, the Chief Executive would be incapable of resigning and that the Legislative Council would not have the basis to impeach the Chief Executive. The views of the Administration were accepted by the Bills Committee and the Committee also agreed with us that consideration should be given as to how clause 4(c) should be amended so as to cater for all possible circumstances.

Later, the Administration and certain Members of this Council held distinctly different views when further considering the issue. The main reason was that we believed there were other unforeseeable circumstances that might lead to a vacancy in office. Therefore, it was necessary to incorporate a catch-all provision in clause 4 of the Bill to ensure that the Bill will work under all circumstances and is able to cater for all possibilities. However, the proposal of the Administration was criticized by Members of this Council and aroused a host of questions relating to the Central People's Government's power to remove the Chief Executive from office. Some Members even linked the controversies with Hong Kong's high degree of autonomy.

Madam President, I have to stress that these worries concerning "a high degree of autonomy" are totally unfounded. "One country, two systems"; "a high degree of autonomy" are the basic policies of the People's Republic of China regarding Hong Kong. In the Sino-British Joint Declaration, the Central People's Government clearly states that the Hong Kong Special Administrative Region (SAR) enjoys a high degree of autonomy, and that the SAR will be vested with executive, legislative and independent judicial power, including that of final adjudication, except in foreign and defence affairs which are the responsibilities of the Central People's Government. The Basic Law also expressly provides that the SAR enjoys a high degree of autonomy. The Central People's Government clearly states in the Preamble of the Basic Law that it will implement the principle of "one country, two systems". Article 2 of the Basic Law provides that the SAR exercises a high degree of autonomy and enjoys executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. Article 12 of the Basic Law also provides that the SAR shall be a local administrative region, which shall enjoy a high degree of autonomy. Therefore, a high degree of

autonomy is expressly safeguarded by the Basic Law. It is impossible, allow me to repeat, impossible for any provisions of the Chief Executive Election Bill to have any impact on the high degree of autonomy of Hong Kong. Nor will any of these provisions affect the high degree of autonomy of Hong Kong in the slightest degree. In these four years after the reunification, the Central People's Government has steadfastly implemented "one country, two systems", which is a fact obvious to all. We need not and should not be affected by these disputes over unfounded matters.

We understand that the wording of the amendments we proposed in the Committee stage might, out of context, give Members a wrong impression that the Bill is attempting to deal with an issue that needs not be tackled at present.

We have therefore considered over and over again how different requirements of Members could be met satisfactorily. During this period, we have also repeatedly studied several amendment proposals put forth by Members and the various sectors.

Having carefully considered all the viewpoints, we agree with the views of the majority, that is, it is unnecessary for the Bill to deal with the issue of the circumstances under which the Central People's Government has the power to remove the Chief Executive from office. The dispute is unnecessary under the existing circumstances. As clause 4 of the Bill is only of a declaratory nature and not an enabling provision, it will not, in the slightest degree, affect the power of the Central People's Government to remove the Chief Executive from office under the Basic Law irrespective of its way of expression. Therefore, we conclude that it is not necessary to list out in the Bill the circumstances under which the Central People's Government removes the Chief Executive from office. As such, we have now decided to propose another amendment. I would put forward our amendment in the Committee stage later on and would expound in detail the significance of our amendment and the reasons why we disagree with the two amendments proposed by Members.

(IV) Eligibility criteria for running in the Chief Executive election

The Chief Executive Election Bill proposes to allow members of political parties to run in the Chief Executive election, but such candidates have to declare that they stand in their individual capacities. Only when a member of a political

party is elected will he be required to make a statutory declaration in public within seven working days after he is elected that he will no longer be a member of any political party, and undertake in writing that he will not become a member of any political party or be bound by the discipline of any political party during his term of office. As I expounded in moving the Second Reading of the Bill on 14 March 2001, this is to ensure that the Chief Executive must be impartial and always act in the overall interests of Hong Kong. It is necessary and appropriate to require the Chief Executive to resign from his political party in the light of the current stage of our political development. The legal advice which we have obtained confirms that the proposal is in compliance with the freedom of association guaranteed by Article 27 of the Basic Law and Article 22 of the International Covenant on Civil and Political Rights.

We will also move an amendment at the Committee stage to specify that a person is disqualified from being nominated as a candidate forever, instead of for a period of five years as proposed in the Bill, if he is or has been convicted of treason or sentenced to death.

(V) Nomination

As proposed in the Bill, within seven days after the close of nominations, the Returning Officer shall declare by notice in the Gazette the names of the validly nominated candidates and, for each of these candidates, the names of the EC members subscribing to his nomination form. Some Members were worried that making public the names of subscribers might exert pressure on some EC members and thus proposed that the Government should reconsider the arrangement concerned. Although we appreciate the Members' worries, it has been a well-established feature of our local elections that the names of the subscribers to candidates are made available for public inspection and this has been widely accepted by the public. Taking the organizations and individuals putting forward their views to the Bills Committee as examples, most of them support making public the names of subscribers. In view of the need to maintain transparency and the importance of the Chief Executive Election, it is proposed that, in addition to public inspection, the Returning Officer should also publish the subscribers' names in the Gazette.

(VI) Withdrawal of Candidature

As originally proposed in the Bill, a candidate is allowed to withdraw his candidature on or before the last working day before the polling date. The Bills

Committee considered that the proposal was unnecessary and might lead to problems. As such, the Committee suggested that Chief Executive election candidates shall be forbidden to withdraw after the close of the nominations, that is, a candidature can only be withdrawn before the close of the nominations. We are agreeable to the suggestion made by the Bills Committee and will submit the CSAs later.

(VII) Death or disqualification of candidate

It is originally proposed in the Bill that even if a candidate has died or is disqualified after the nomination period, the election shall proceed with the remaining candidates. If there is only one remaining candidate, he/she shall be elected *ipso facto*. The Bills Committee opined that such an arrangement might be unfair under certain circumstances. Having taken into account the views of the Committee and after detailed studies, we are going to move a Committee stage amendment later to propose that, if any candidate has died or is disqualified after the close of nominations but before the declaration of election result, the Chief Executive election will be terminated. The Administration will re-open nomination immediately and a new round of voting will be conducted on the first Sunday 42 days thereafter.

(VIII) Maximum Scale of Election Expenses

Although the Bill does not provide for the maximum amount of election expenses, the Bills Committee considers that the issue of election expenses is an important part of the Chief Executive Election and has therefore held a discussion on it.

At present, the Elections (Corrupt and Illegal Conduct) Ordinance authorizes that regulations on the various levels of elections in Hong Kong, including the Chief Executive Election, can be made by the Chief Executive in Council to specify the maximum amount of election expenses. These regulations have to be introduced to the Legislative Council for deliberation by the negative vetting procedure. In consultation with and with the approval of the Bills Committee, we propose that the same approach be adopted so that, pending the approval of the Bill, the relevant regulations will be introduced to the Legislative Council for deliberation as soon as possible in order to set a maximum amount of election expenses for the Chief Executive election.

Finally, I would like to reiterate that the purpose of the Bill is to provide, through local legislation, for the Chief Executive election and for matters relating to or consequential upon such election. In drafting the Bill, we have relied on the provisions and principles of the Basic Law and made reference to the rules governing the first Chief Executive Election as well as the well-established practices in the Legislative Council and District Councils elections. In addition, on completion of the scrutiny of the Bill by the Bills Committee, we will propose CSAs to further modify the provisions. As such, we firmly believe that the Bill will be consistent with the provisions of the Basic Law and in line with Hong Kong's actual circumstances, thus laying a firm foundation, insofar as local legislation is concerned, for the Chief Executive election.

Madam President, I appeal to Members to support the Second Reading of the Chief Executive Election Bill. Thank you.

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

(Members raised their hands)

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

(Members raised their hands)

Miss Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Miss Emily LAU has claimed a division. The division bell will ring for three minutes.

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

PRESIDENT (in Cantonese): Mr Frederick FUNG, please cast your vote.

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

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

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

Miss Margaret NG and Ms Audrey EU abstained.

THE PRESIDENT, Mrs Rita FAN, and Mr Frederick FUNG did not cast any vote.

THE PRESIDENT announced that there were 56 Members present, 36 were in favour of the motion, 16 against it and two abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Chief Executive Election Bill.

Council went into Committee.

Committee Stage

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

CHIEF EXECUTIVE ELECTION BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Chief Executive Election Bill.

CLERK (in Cantonese): Headings before clauses 1, 8, 10, 20, 33, 42, 49, 50, 51, 53, 55, 63, 76 and 78; and clauses 1, 7, 8, 9, 15, 17, 18, 21, 23, 24, 29, 31, 33, 36, 37, 38, 40 to 43, 45 to 59, 61 to 67, 69 to 75 and 77 to 82.

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 3, 14, 19, 20, 30, 34, 35, 39, 44 and 68.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move that the clauses read out just now be amended, as set out in the paper circularized to Members.

Clause 19 is related to the provision on the withdrawal of candidature. After discussions with members of the Bills Committee and with the endorsement

of the Committee, we proposed to move an amendment requiring a candidate to withdraw his/her candidature only before the close of nominations instead of withdrawing from the election on or before the working day immediately before the polling date as was originally proposed in the Bill. With this amendment, the arrangement in respect of withdrawal of candidature in the Chief Executive Election will be the same as that applicable to the Legislative Council Election. The amendment to clause 14 seeks to prescribe that any person who has been convicted of treason or sentenced to death is forever disqualified from being nominated as a candidate. Furthermore, we also propose an amendment to clause 14(g) for the purpose of stating clearly that any person who is mentally disordered at the time of the Chief Executive Election will be disqualified from being nominated as a candidate. As for a person who has recovered from a mental illness will not be caught by this clause.

The amendments proposed to clauses 3, 20, 30, 34, 35, 39, 44 and 68 are technical amendments seeking to further clarify the meaning of the relevant provisions.

Proposed amendments

Clause 3 (see Annex III)

Clause 14 (see Annex III)

Clause 19 (see Annex III)

Clause 20 (see Annex III)

Clause 30 (see Annex III)

Clause 34 (see Annex III)

Clause 35 (see Annex III)

Clause 39 (see Annex III)

Clause 44 (see Annex III)

Clause 68 (see Annex III)

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

MISS MARGARET NG (in Cantonese): Madam Chairman, during the Second Reading earlier, I mentioned in my speech that I did not agree to the amendment introduced by the Government to clause 14 on the disqualification of candidates. However, Madam Chairman, I will not request that a separate vote be called in respect of clause 14, for I know most of the members of the Bills Committee would vote in favour of the amendment. So my vote will not influence the outcome. I will not vote on these provisions later. Thank you, Madam Chairman.

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

(No Member responded)

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

Secretary for Constitutional Affairs, would you like to speak again?

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 14, 19, 20, 30, 34, 35, 39, 44 and 68 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): Clauses 22, 26, 27 and 28.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) thereof be suspended in order that this Committee may consider new clause 21A, ahead of other clauses as it is related to the amendments to clauses 22, 26, 27 and 28 of the Bill.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Constitutional Affairs, you have my consent.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 21A ahead of other clauses of the Bill.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 21A ahead of other clauses.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 21A Termination of election proceedings.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move that new clause 21A be read the Second time, as set out in the paper circularized to Members.

New clause 21A seeks to specify that if any candidate dies or is disqualified from being elected after the close of nominations but before the declaration of the result of the election, the Returning Officer should immediately terminate the proceedings in respect of the election. This arrangement has been proposed after discussions were held and a consensus was reached with the Bills Committee.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 21A 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 21A.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to clauses 22 and 26 of, the deletion of clauses 27 and 28 from, and the addition of new clause 21A to the Bill, as set out in the paper circularized to Members.

The amendments to clauses 22, 26, 27 and 28 were proposed in relation to new clause 21A, and the amendment to clause 22 provides that if at the close of nominations only one candidate is validly nominated, the Returning Officer shall declare the candidate elected *ipso facto*. Clauses 27 and 28 originally provided for the arrangements in respect of polling and counting of votes in the event that any candidate dies or is disqualified either before or after the close of polling but before the declaration of the result of the election. Since it is provided in the proposed new clause 21A that the proceedings for the election shall be terminated under such circumstances, it has become unnecessary to retain clauses 27 and 28. Therefore, it is proposed that these two clauses be deleted.

As regards the amendments to clause 26, it is to delete all references to clauses 27 and 28 therein.

Proposed amendments and additions

Clause 22 (see Annex III)

Clause 26 (see Annex III)

Clause 27 (see Annex III)

Clause 28 (see Annex III)

New Clause 21A (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to clauses 27 and 28, which deal with deletion have been passed, clauses 27 and 28 are deleted from the Bill.

CLERK (in Cantonese): Clauses 22 and 26 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): Heading of Part 2 before clause 3, clauses 4, 5, 6 and 13.

CHAIRMAN (in Cantonese): Mr Martin LEE, Miss Margaret NG who is joined by Ms Audrey EU, and the Secretary for Constitutional Affairs have separately given notice to move amendments relating to the circumstances under which the office of Chief Executive becomes vacant.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. In accordance with the Rules of Procedure, I will first call upon Mr Martin LEE to move his amendments.

MR MARTIN LEE (in Cantonese): Madam Chairman, I move that the heading of Part 2 before clause 3 and clauses 4, 5, 6 and 13 be amended, as set out in the paper circularized to Members.

Madam Chairman, I would like to go through the history of the amendment to clause 4(c). The clause as set out in the Blue Bill is that "the office of the Chief Executive becomes vacant under the following circumstances: (a) on the expiry of the term of office of the Chief Executive, (b) if the Chief Executive dies; or (c) if the Central People's Government revokes the appointment of the Chief Executive." We later held a lot of discussions in the Bills Committee and we asked the Government why the Central People's Government was given the power to revoke the appointment of the Chief Executive. The Government gave many reasons as mentioned by the Secretary, for example, the whereabouts of the Chief Executive could not be ascertained or the Chief Executive went into a vegetative state. We found these circumstances acceptable but the Government gave many other reasons when we asked if there were other reasons. One version before the finalized amendment stated that "(c) if the Central People's Government removes the Chief Executive from office — (i) upon his resignation under Article 52 of the Basic Law; (ii) upon his resignation under other circumstances rather than under Article 52 of the Basic Law; (iii) when the Chief Executive must resign under Article 52 of the Basic Law but he is incapable of resigning; (iv) upon the reporting to it for decision of a motion of impeachment passed against him under Article 73(9) of the Basic Law;". We found all these circumstances acceptable but it was also stated that "or (v) under any other circumstances" and we could not accept this point. If "under any other circumstances" was specified, the Central People's Government could remove the Chief Executive without giving any reason, and that was unacceptable. The Government finally made the last amendment and the existing clause 4(c) only specifies that the Central People's Government shall remove the Chief Executive under the Basic Law. In particular, I wish to ask Mr Jasper TSANG to tell us the difference between this sentence and the provision in the version preceding the final version. As the latter provision is longer, I do not wish to repeat it but I would like to point out that the provision begins and ends this way: "(c) the Central People's Government — (i)

(ii); (iii); (iv); or (v) remove the Chief Executive under the Basic Law under any other circumstances." The final version has deleted items (i) to (iv) and item (v), that is, "under any other circumstances.", and what remains is that the Central People's Government shall remove the Chief Executive under the Basic Law", that is, the finalized version before us now.

During our discussions, the Government cited to us a lot of provisions of the Basic Law to explain the basis on which the Central People's Government is given such a significant power. Ms Audrey EU has said earlier that in addition to the provision under Article 52 on the circumstances under which the Chief Executive should resign, or the provision of Article 73(9) relating to impeachment, there are also Articles 2, 12, 15, 43 and 46. Members may think that I am talking about Mark Six numbers. It is actually meaningless to mention such numbers. If we look at them carefully, we would find that these provisions have not given the Central People's Government such power. The Government has explained that the significant power of the Central People's Government originates from the necessary implications of many articles read together. Having deleted items (i) to (iv), I can only say that an explanation is unnecessary. To avoid further arguments, the Government has given up everything but this does not mean that the Government thinks that the arguments made before are inadequate. Though the Government no longer mentions the circumstances under items (i) to (iv), it has similarly adhered to the arguments before and it has now included all the reasons in one sentence in a sweeping manner. Hence, the Central People's Government can remove the Chief Executive under any circumstances without giving any reason. That is the case and Members may accept it if they like. However, we think that it is unacceptable.

The amendment proposed by me on behalf of the Democratic Party actually includes all the circumstances given by the Government such as when the Chief Executive was in a vegetative state (perhaps we should add "Bless him" to the provision), a mental patient, a patient, a dying patient or when the Chief Executive migrated, his whereabouts could not be ascertained or was dead ("Bless him"). But one point is not included, that is, "when the Chief Executive did not heed what the Central People's Government said" but I really cannot add this provision. We should not add this provision if we wish to uphold the high degree of autonomy of the Hong Kong Special Administrative Region (SAR). Madam Chairman, we made great efforts to propose this amendment and we think that it is quite miserable to do this. We only wish to give the Chief

Executive some dignity. Even though the Chief Executive was returned by an undemocratic small circle election, that he had not yet gone against the will of the Central People's Government and he took side with the Central People's Government on everything, totally neglecting the interests of Hong Kong, and even though the Chief Executive has done so and the Central People's Government is more than willing to appoint him, our wishful thinking is that the Chief Executive will do what this Council supports in compliance with the popular will and for the blessing of the public one day. What would happen if the Central People's Government does not like it? We do not wish that a circumstance would arise under which the Central People's Government would remove the Chief Executive. Therefore, we have proposed our amendment.

Madam Chairman, I did express our views in the course of discussion. If the Central People's Government is dissatisfied with the Chief Executive for something he has done, for instance, the Central People's Government wants to remove the Chief Executive from office because he has not immediately make legislation on evil sects. In fact, the Central People's Government does not have to remove him from office, for it only has to ask him to resign on the grounds of poor health. If the Chief Executive is not willing to resign (I have said that there is little chance for such a circumstance to arise because when a ruler wants a subordinate to fall sick, he cannot decline to become seriously sick and he may even have to resign on the grounds of sickness). What can be done if he still refuses to resign? We are only afraid that the Central People's Government would have the power of removal under this circumstance and it will then be very miserable. If we accept the existing amendment by the Government and the arguments that it has never withdrawn, we would have turned our Chief Executive into a puppet of Beijing.

Yesterday, I attended upon invitation the reception to commemorate the ninth anniversary of the Democratic Alliance for Betterment of Hong Kong (DAB). I appreciated Chairman TSANG's humourous remarks. He said that the Government regarded the DAB as a royalist party but it often thought that the DAB members were not absolute royalists and it would become unhappy when the DAB failed to act like royalists. Conversely, the Democratic Party often opposed the Government but the Government would become very happy if it occasionally supported the Government. I hope Mr TSANG would understand that our amendment seeks to ensure that the Chief Executive would not be removed from office if he occasionally did something that made the Beijing Government unhappy. I hope Chairman TSANG will understand the meaning

behind our amendment. In fact, we only wish to give the Chief Executive a little dignity so that he does not have to tell the world that he is a puppet. Though the Chief Executive has proposed this Bill, the situation should not be too embarrassing. Yet, I was very surprised that the Chief Executive had not thanked us and was even unwilling to accept our offer. Does he really wish to be a puppet? Is he perfectly willing to be the puppet of the Beijing Government and does he also want heirs to become puppets? Must we include this provision? Madam Chairman, how can we accept this arrangement?

In fact, other provisions of the Basic Law have not conferred this power upon the Central People's Government. Having carefully examined the Bill, Ms Audrey EU said during the Second Reading of the Bill that the Articles of the Basic Law would be specified when the Basic Law was mentioned in all the laws of Hong Kong, but this has not been done this time for the Government could not and was unwilling to specify the provisions. Why? Though only six provisions were involved, far less than the Mark Six numbers, the Government could not specify the provisions because other people would know at a glance that something was wrong.

As Ms Audrey EU and other Members have said, the provisions of the Basic Law have clearly specified the appointment and removal of other government officials, but why was the removal of such an important person as the Chief Executive from office not mentioned? Madam Chairman, the reasons are very simple. I was among those who drafted the Basic Law and we were eagerly concerned about the confidence of Hong Kong people in the Basic Law and the future of Hong Kong as well as the confidence of the international community in the feasibility of "one country, two systems". If there were such provisions and arguments, I believe the wave of migration would have been more serious and foreign governments would have shown less support for "one country, two systems". Evidently, Chinese leaders were not stupid and they perfectly understood the situation then, therefore, they had never mentioned these provisions. In other words, the Central People's Government asked the SAR Government not to worry and the setting up of the SAR by the Central People's Government was to allow Hong Kong to really enjoy a high degree of autonomy in the executive, legislative and judicial aspects. Therefore, after the Chief Executive is selected through consultations or by election, though the Central People's Government has the power not to appoint him, but once the appointment is made, the Basic Law has not mentioned that the Central People's Government can remove the Chief Executive from office without any reason.

Now that the Basic Law has clearly granted the SAR a high degree of autonomy, why do we have to kneel down and return the high degree of autonomy to Beijing on a silver plate? Ms Audrey EU said that this was rubbish, and what else was it if it was not rubbish?

Madam Chairman, there are many other provisions but I do not wish to talk about them any longer. The Democratic Party is angry at the Government's stance and it cannot help asking other Members who support the Government to be considerate for the younger generation. Though they willingly and gladly accept the Chief Executive as a puppet, I hope that the Chief Executive of their children and grandchildren would not be a puppet any more. Madam Chairman, I would also like to ask democrat Members not to worry because history will prove everything because our remarks today will be clearly recorded in the Official Record of Proceedings of the Legislative Council and our voting will be clearly recorded. When democratic development finally begins in China and when 1.3 billion Chinese people enjoy democracy, freedom, the rule of law and human rights, Hong Kong cannot but follow. Our children and grandchildren will look back at the record of our debate today and history would bear testimony to how we voted and what we said.

Thank you, Madam Chairman.

Proposed amendments

Heading of Part 2 before clause 3 (see Annex III)

Clause 4 (see Annex III)

Clause 5 (see Annex III)

Clause 6 (see Annex III)

Clause 13 (see Annex III)

CHAIRMAN (in Cantonese): I will call upon Miss Margaret NG and then the Secretary for Constitutional Affairs to speak on Mr Martin LEE's amendments as well as their own amendments. However, they may not move their respective amendments at this stage. Whether Miss Margaret NG and the

Secretary for Constitutional Affairs may later move their amendments will depend on the Committee's decision on Mr Martin LEE's amendments.

MISS MARGARET NG: Madam Chairman, the purpose of clause 4 in the Bill is perfectly simple. At least it should be perfectly simple. It is to provide that an election must be held when the Chief Executive's office becomes vacant. For the purpose of the Bill, it does not matter how the office has come to be vacant, or what circumstances have brought about the vacancy, except in one aspect, and that is, whether the vacancy arises in the normal and expected circumstance of the expiry of the term of the Chief Executive, or in unexpected circumstances, before the term has expired. This is because in the latter event, more time is needed for preparations for an election to be held.

The amendment proposed by the Honourable Ms Audrey EU, SC and myself does exactly that, and leave the controversy of the power of the Central People's Government to remove the Chief Executive from his office to be resolved some other time. Indeed, the need may never arise. Our amendment has the virtue of prudence, neutrality and simplicity which is consistent with the best principles of legislative drafting.

As Ms Audrey EU will explain, this amendment is supported by Prof Albert CHEN, Dean of the Law Faculty of the University of Hong Kong, who is also a member of the Basic Law Committee.

Madam Chairman, it is necessary to amend clause 4 because clause 4(c) of the Bill suggests that the Central People's Government has an unrestricted power to remove the Chief Executive from his office which is inconsistent with the Basic Law and undermines the high degrees of autonomy conferred upon the Hong Kong Special Administrative Region (SAR) by the Basic Law. I have stressed the seriousness of this error in my speech earlier today.

The error has been pointed out in the submission of the Hong Kong Bar Association (the Bar) to the Bills Committee. Let me just quote from the concluding paragraphs of the submission.

"The power to appoint the Chief Executive under the Basic Law is subject to restrictions. It is odd to argue for an unrestricted power of removal from a limited power of appointment. It is invariably the other way

round as regards most statutory appointments. It is relatively easy to appoint someone to a public office but more difficult to remove. Indeed, the restrictions in the Basic Law point to the existence of a very limited power of removal that can be exercised probably only in the two specific circumstances identified in the proposed amended section 4(c) (that is, under Articles 52 and 73(9) of the Basic Law).

We have already pointed out that the concern that the Chief Executive may disappear or lapse into a coma of indeterminate length is addressed by Article 52(1) of the Basic Law. It has also been suggested that Article 52 does not apply when the Chief Executive refuses to resign (apart from the situation under Article 73(9) when the conditions for impeachment are satisfied). This is a very specific situation and is covered by our proposed amendment to section 4(c)(i). They are not good reasons for inventing a plenary power of removal which would enable the CPG to remove 'at pleasure' a Chief Executive who has been duly selected (or elected) and duly appointed under Article 45 para 1 of the Basic Law."

In the submission of the Law Society of Hong Kong (Law Society) dated 5 July 2001, the restricted nature of the Central People's Government's power of removal is acknowledged. Paragraph three of the submission says:

"The Law Society submits that the CPG's decision to remove the Chief Executive must first be initiated by the SAR".

Both the Bar and the Law Society disagree with a form of drafting that suggests that there are wider, unspecified circumstances other than Articles 52 and 73(9) of the Basic Law for the Central People's Government to exercise its power of removal.

Madam Chairman, in the light of the above arguments, and against the background of the intense debate in the Bills Committee, the Administration's final amendment to clause 4(c) cannot be acceptable. It is merely cosmetic. More than that, it is cosmetics painted over an ugly and unconstitutional denial of autonomy. It does the people of Hong Kong a great disservice, and insults the good faith with which the National People's Congress conferred that autonomy on the SAR by promulgating the Basic Law.

As for the amendment proposed by the Honourable Martin LEE, SC, I have no doubt at all, personally, that this reflects the true intent and construction

of the Basic Law. For those who share this view, his is the best alternative, and I will vote in favour of his amendment. If his amendment fails, then the Audrey EU - Margaret NG amendment is the bottomline. But it is a decent bottomline, Madam Chairman, offered not in defiance but in a spirit of problem-solving, backed by sound law and sound drafting.

Thank you, Madam Chairman.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, having heard the views of the two Honourable Members, I would first like to make a brief reply in response to their comments.

First of all, I would like to respond to two points in Miss Margaret NG's speech. Firstly, she has made it very clear and I also agree that there is no need to deal with this issue now, but it does not mean that the problem does not exist. She added as a footnote that the need might never arise. In other words, she also admits that there is a problem, only that we do not have to deal with it for the time being. I very much agree with her on this point. And, on the basis of this viewpoint and conclusion, she made a proposal, in the hope that it will achieve an expected result. I expressed similar views when I spoke earlier at the resumption of the Second Reading debate. I indicated that some issues do not have to be dealt with immediately but I have not actually spelt this out. Now, I am given the opportunity to point out that my views are similar. Though, there is no need to deal with this problem now, we should still find a solution because after all the problem does exist and will not go away. This is the first point and I hope Members can understand it clearly.

Secondly, Miss Margaret NG is worried that this may not be consistent with the Basic Law. Originally, the Bill did not explicitly provide that it is under or in accordance with the Basic Law, but the meaning is actually very clear. After discussions, the Bills Committee considered that, and as I have said earlier, if we take this phrase out of context, it will surely give people a wrong impression. So, in order not to cause a wrong impression, we have added the phrase "according to or in accordance with the Basic Law" in the amendment, so that people will understand that the amendments are not introduced in an arbitrary manner, and that everything will be done according to the provisions of the Basic Law. Miss Margaret NG has been very tactful in her choice of words, for she used the word "probably" when she referred to Articles 52 and 73(9).

That means she is not entirely sure of it. I remember that the Hong Kong Bar Association had used the same expression in its submission. A person with a discerning eye can tell that Articles 52 and 73(9) are very explicit, whereas nobody can be so sure about the other Articles and we can just say that there is "probably" none. However, these are exactly the difficulties we have in dealing with this issue.

As regards Mr Martin LEE's arguments, I have already talked about the psychological struggles I had gone through in the course of scrutinizing the Bill. Originally, we thought that we do not have to deal with these issues, but Members indicated that "none" was unacceptable and all circumstances should be explicitly listed in the legislation. So, we went through a very detailed discussion. We all thought that Articles 52 and 73(9) were very explicit. Later on, we continued our discussions. Mr Martin LEE said earlier that Article 52 is about voluntarily resignation. There may be the case where the Chief Executive must resign under Article 52 but has not done so. This is a new issue that we have never considered. So we included this situation in the clause. Moreover, there is also the case where the Chief Executive must resign under Article 52 but is unable to do so, so we also included this in the clause. We can see that each Article may have a different implication and it may also cover different circumstances. However, does this mean that there are no other circumstances? The divergence of views started to emerge when we considered how the Bill should be drafted. There was no divergence of views when we discussed the above issues, and the discrepancies only emerged when we went on to deal with the remaining issues.

In fact, Members have also reminded us that everything must be clearly spelt out in the legislation. If a certain situation has not been covered in the Bill, then how can we deal with such a situation when it arises in the future? This will certainly create very big problems. At that time, we requested that all circumstances relating to the whole issue must be set out, but there may still be circumstances that have not been covered, therefore I said earlier that there should be a catch-all provision. Like what we have done before, we can set out all the clauses, stating circumstances that can be foreseen and those cannot be foreseen. Therefore, I have to explain to those Members who have not participated in the work of the Bills Committee why the phrase "under any other circumstances" is included. This is because we would like to cater for all the circumstances, and also because nobody can tell us in definite terms that there would not be other circumstances under the Basic Law. Moreover, some

Members pointed out earlier in their speeches that I would quote only comments to my liking but not otherwise. Many people have given us different legal opinions and regardless of whether those opinions were submitted to the Bills Committee or given to us on other occasions, we had taken all of them into consideration and discussed them. I said earlier that we had carefully considered all the suggestions, and I have every intention to take on board Members' suggestions. All suggestions would be acceptable as long as they can meet our objective. However, unfortunately, owing to various reasons, we still think that something is lacking. We can deal with this matter in two ways. Firstly, as proposed by Miss Margaret NG and Ms Audrey EU, we can try to cater for all the circumstances by using a certain approach but we do not have to list out all those circumstances. In fact, we are moving in the same direction, only that we have taken different routes. We do not think that there is any substantive problem with the two Members' proposal. Our only concern is whether the relevant proposal can meet our objective and accomplish what we are trying to achieve. Since we find that there are some problems in this respect, we cannot accept the amendment proposal of the two Members.

I would like to give a detailed explanation on why we cannot accept the two amendments. This is because some problems cannot be resolved by those two amendments. First of all, let me focus my discussion on the amendments proposed by the two Members. We object to Mr Martin LEE's amendments because they give rise to three problems that can hardly be properly resolved. Firstly, as clause 4 provides the first step for triggering off the Chief Executive Election, it must cater for all circumstances under which the office of the Chief Executive becomes vacant, so that when the office of the Chief Executive becomes vacant under any circumstances, the SAR Government can elect a new Chief Executive as soon as possible according to the Bill. From this perspective, it can be seen that the amendments proposed by Mr Martin LEE have only set out certain circumstances under which the Central People's Government can remove the Chief Executive from office. This has obviously failed to cover all the possible circumstances under which the office of the Chief Executive may become vacant. Technically speaking, Mr Martin LEE's amendments are still imperfect. The amendments to clause 4 as proposed by Mr Martin LEE may not be able to cope with the situation where the office of the Chief Executive becomes vacant for reasons other than those described under Article 52 or 73 (9) of the Basic Law. We would once again fall into the quandary faced by the Bills Committee and this would once again lead to disputes on whether the Central People's Government can remove the Chief Executive from office under any circumstances.

Secondly, all elections are subject to a very tight schedule, but the schedule of the Chief Executive Election is especially tight. Article 53 of the Basic Law provides that if the office of the Chief Executive becomes vacant, a new Chief Executive should be returned within six months. If there is a loophole in clause 4 resulting in the office of the Chief Executive office becoming vacant under circumstances not covered by the clause, then the Acting Chief Executive is unable to declare that the office of the Chief Executive has become vacant according to the Bill, and is therefore unable to trigger off the mechanism for election of the Chief Executive. Under such circumstances, the Government may not be able to comply with the requirements of Article 52 on returning a new Chief Executive within six months.

Thirdly, clause 4 must provide an objective standard to stipulate explicitly and expressly the circumstances under which and when the office of the Chief Executive becomes vacant, so that the Acting Chief Executive can make an accurate and precise declaration on when the office of the Chief Executive has become vacant by way of notice in the Gazette, and go on to hold an election for returning a new Chief Executive. However, the clause 4(c)(i) of Mr Martin LEE's amendment provides that if the Chief Executive resigns under Article 52 of the Basic Law, and such resignation does not have to be accepted by the Central People's Government, the Chief Executive office will become vacant. We do not agree with this. Legal advice to the Government clearly stated that the office of the Chief Executive will become vacant only if the Central People's Government has removed the Chief Executive from office because he has resigned under Article 52. If we accept Mr LEE's way of expression, various problems will be created, for example, there will be the question of whether the office of the Chief Executive becomes vacant after the Chief Executive has submitted his resignation but before it is accepted by the Central People's Government? If that happens, the Acting Chief Executive will be faced with insurmountable difficulties in making decisions on important issues such as whether or not the office of the Chief Executive has become vacant and when it has become vacant. In view of the above reasons, we cannot accept Mr Martin LEE's amendments.

As regards the amendments jointly proposed by Miss Margaret NG and Ms Audrey EU, I have said earlier that we agree with the direction taken and have also tried to do the same thing. However, the proposed clause is too ambiguous and it does not give expression to the purpose of clause 4. I have pointed out earlier that the main purpose of clause 4 is to state when the office of

the Chief Executive becomes vacant, therefore the circumstances set out in clause 4 should be explicit and there should also be an objective standard to enable the Acting Chief Executive to make an accurate judgment as to whether and when the office of the Chief Executive has become vacant. Otherwise, this major responsibility and insurmountable problem will fall on the shoulders of the Acting Chief Executive. Speaking of an objective standard, the wordings proposed by Miss Margaret NG and Ms Audrey EU, that is "when the office of the Chief Executive becomes vacant otherwise than on expiry of his term" seems too vague. They said the fact that the office of the Chief Executive becomes vacant is an objective fact, but this is actually not the case for we must determine whether and when the office of the Chief Executive has become vacant on the basis of certain objective standards.

This standard has been clearly set out in our amendments. We think that the amendments proposed by the two Members are too vague, and there is no objective standard to help the Acting Chief Executive make an accurate and precise determination on whether and when the office of the Chief Executive has become vacant. Therefore, we object to Miss Margaret NG and Ms Audrey EU's amendments.

I would now like to talk about the amendments proposed by us. Madam Chairman, I explained earlier that a Member had already read out the wordings used by us, and that is, "if the Central People's Government removes the Chief Executive from office in accordance with the Basic Law". According to what Mr Martin LEE said earlier, at that time, there will be circumstances that are provided for in the Basic Law but there will not be any circumstances that are not provided for in the Basic Law. If we write this down clearly, then all circumstances will be provided for and there will not be any unexpected circumstances. We propose to add the phrase "in accordance with the Basic Law" to make the Bill complete. As Members have raised objections to our original wordings on revocation of the appointment of the Chief Executive, so we have proposed to amend "revokes the appointment of Chief Executive" to read "removes the Chief Executive from office". I think this kind of expression can address the worries of some Members on one hand, and provides explicit legal provisions on the other. In the event that the office of the Chief Executive becomes vacant, the Acting Chief Executive can make an announcement by virtue of this clause, and thus trigger off the important mechanism for conducting a Chief Executive election.

Madam Chairman, I earnestly hope that Members, having heard my analysis, can ponder over whether this is the actual situation. I hope that Members can agree with us, support the proposal of the Government and object to the amendments proposed by Mr Martin LEE, Miss Margaret NG and Miss Audrey EU.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendments moved by Mr Martin LEE as well as the respective amendments by Miss Margaret NG and the Secretary for Constitutional Affairs.

DR DAVID LI: Madam Chairman, I would like to comment on the Committee stage amendment to the Chief Executive Election Bill jointly proposed by the Honourable Miss Margaret NG and the Honourable Ms Audrey EU.

A great deal of time has been spent in debating the provisions of clause 4 of this Bill, covering vacancy in office. The true import of this clause is to distinguish between a vacancy that arises naturally at the end of the Chief Executive's normal term of office, and one that arises for any other reason. It is necessary to make a distinction as the procedure to follow in arranging an election would be different in each case.

The original draft of this clause went further than was necessary, and spelt out how a vacancy may arise. During deliberations, the Administration attempted to respond to concerns raised by Members by expanding on the ways in which the post may become vacant.

This, in my view, was unnecessary. In so doing, we have politicized the issue and lost sight of the purpose of this clause of the Bill.

I commend the Honourable Members who have proposed the simple and straightforward Committee stage amendment now before us. The amendment wastes no words, and it makes no judgments. It simply allows for proper arrangements to be made for the conduct of an election. It is in my opinion that this amendment is worthy of consideration by the Administration and by all Members of this Council.

Thank you, Madam Chairman.

MR FREDERICK FUNG (in Cantonese): Madam Chairman, we are now discussing clause 4 of the Bill. First of all, what I would like to say is that, as I said earlier in the Second Reading, I do not wish to scrutinize this Bill because clause 4(c) and the subsequent provisions about political parties are not directly related to the election of the Chief Executive. These clauses are about how the Central People's Government and the SAR will deal with issues like the office of the Chief Executive becoming vacant and the removal of the Chief Executive from office. I would therefore put forward my views and vote on them, but I will not vote on other provisions in the Bill.

Let us look at the Basic Law. Just as the Secretary has said, in the entire Basic Law, only Articles 52 and 73(9) expressly talk about vacancy of the office of the Chief Executive and his removal. Up to this very moment, at least the Secretary cannot say that there is a third article in the Basic Law which clearly sets out such circumstances. However, the proposal made by the Government is to let the Central People's Government to decide and when the Central People's Government has to do so, it will have to rely on the Basic Law. Then here comes the conflict. The Government will need to deal with the conflict and it says that although a third article in the Basic Law which says so cannot be found now, the Central People's Government may find it in future. So it says that we may as well leave the problem to the Central People's Government. In fact, I think this approach is to a certain extent irresponsible. To put it more seriously, it contravenes the "Hong Kong people ruling Hong Kong" spirit in the "one country, two systems" principle, just as was said by Ms Audrey EU (a point which I also subscribe to).

Later on, I will explain why this is so, but I do not agree that we have to leave the issue to the Central People's Government now. That is not a good approach, nor is it a correct one. Unless the Secretary tells me, the Central People's Government probably knows it. Certainly, if the Secretary thinks that the Central People's Government is aware of that, it should think of a way, or when after passing other ordinances, it can ask the Central People's Government through the executive authorities or any other means for an assertion. Or it may ask the Basic Law Committee of the National People's Congress how this should be done, or whether there is another provision in the Basic Law which mentions a situation as this. If they can tell us that there are more than two provisions, with three, four or five provisions on the circumstances under which the office of the Chief Executive becomes vacant or on the removal of the Chief Executive from office, then the issue can be returned to Hong Kong and legislative work

can thus begin. If we pass the problem now to the Central People's Government for solution, that is I think a shirking of responsibility. That is the first thing I am not happy about.

Second, I would like to tell the Secretary and Honourable Members why I think this may contravene the spirit of "one country, two systems". As a matter of fact, since it had become known that there might be amendments to the Bill, I did not join the Bills Committee. I only learned of the problem when I read the article written by Ms Audrey EU in the newspaper. Of all the many provisions in the Basic Law, the most important are these two provisions. The most important spirit behind them does not lie in the vacancy in the office of or the removal of the Chief Executive, but that a mechanism whereby the Hong Kong people can deal with and handle their problems. That is precisely what underlines the "one country, two systems" principle where the Central People's Government devolves powers to the Hong Kong Special Administrative Region (SAR). I consider this very important. The Central People's Government has never said that things will be decided at the central level and to be carried out by the SAR Government. Rather the SAR Government should decide first and things will be handled at the central level. The issue of whether the Central People's Government has the power to remove the Chief Executive will be discussed later. At least, the power is in our hands, that is the second of the two systems we are talking about. It is also in line with the spirit of "Hong Kong people ruling Hong Kong". But the amendment proposed by the Secretary does not suggest that, it suggests that things should be decided by the Central People's Government. This is a distortion of the spirit of "Hong Kong people ruling Hong Kong", changing what is passive to active. This suggestion made by the Secretary may run counter to the intent of the Central People's Government when it formulated the Basic Law.

If the vast number of experts, Policy Secretaries, legal advisers of the Policy Secretaries, the legal advisers of the Legislative Council, the Hong Kong Bar Association and the Law Society of Hong Kong all fail to tell us that there is a third provision in the Basic Law which clearly refers to such circumstances, and that this provision is an implied provision which is not visible to the eye, then what can we do? We are talking about the rule of law, as for the question of power, I will discuss with Mr Jasper TSANG later. He is not in the Chamber now. He talked about this issue earlier. I agree completely that the Central People's Government has the power. It can be said to be supreme when it comes to politics in China. But I am talking about the rule of law now.

When we come to this Chamber to make laws, we talk about the rule of law. On this question of the rule of law, there must be problems if there are any ambiguities. Does the Basic Law have any loopholes? It may have. If this is the case, we may have to tell the Central People's Government. If there are problems and loopholes, should the Basic Law Committee and the National People's Congress Basic Law Committee discuss them? Should the loopholes be plugged properly? This would be much better than what we are now saying in such a haste that the Central People's Government should decide everything, that it should determine whether apart from these two provisions there are other provisions in the Basic Law providing for this.

Madam Chairman, I am going to cite a rather silly example. Please look at Article 40 of the Basic Law; people in the New Territories are all very concerned about the enforcement of this provision. The unexpected move made by the Government to launch the dual-representative system would mean to the indigenous residents of the New Territories, and Mr LAU Wong-fat is representing them, that the Government may have contravened Article 40 of the Basic Law. If we pass the amendment proposed by the Secretary, then can the Central People's Government say that the Chief Executive, having introduced the dual-representative system, has violated Article 40 of the Basic Law and he should be removed from office? I said this is a silly example and I do not think the Central People's Government will act in such a silly way, but no one can be so sure about everything. Can the Central People's Government remove the Chief Executive? According to a provision in the Basic Law, the Central People's Government has the power to remove the Chief Executive. If the Chief Executive has contravened Article 40 of the Basic Law, can he be removed from office? The answer is yes. Of course, there are also other options. But there may be people like me who are sometimes so silly as to do something like this. So I wish to tell the SAR Government and the Secretary that if the Bill is amended this way, it would mean that apart from the two provisions, if the Central People's Government can find any other provision like these, it may request the SAR Government to do as requested. The Basic Law provides that the SAR Government should not have any financial deficits, there must be a balance. If that cannot be done, there is a possibility that the Chief Executive will be removed. Can this be done? I do not know if this is possible or not. It may be not. But if there is such a provision, then there is such a risk. Therefore, I think if one such provision can be found in all of the 160 articles in the Basic Law, then this is possible. This is worrying. For if this is so, it would be a contravention of the two provisions which mentions "Hong Kong

people ruling Hong Kong". These two provisions state that we can make a decision ourselves. It is the most important point in the concept of "Hong Kong people ruling Hong Kong".

The Secretary said earlier that if there is such provision in the Basic Law, then it is certainly there. If there is no such thing in the Basic Law, then it is certainly not there. Those that are in the Basic Law will not disappear and those that cannot be found in the Basic Law will not appear. The question is who knows that there is this thing in the Basic Law. If we know that such a provision is found in the Basic Law, then it is there. Is it true that everybody does not know that it is in the Basic Law? That is where the question lies, it does not matter if it is found in the Basic Law or not. If there is this person who knows that it is there, then we must find him out. If no one knows it is there, then perhaps we should not make legislation for the time being, should we? I think that is the problem.

I have said earlier that we need to discuss a point mentioned by Mr Jasper TSANG. He said that the power of appointment carries with it the power of removal. It is not logical if there is the power of appointment but not the power of removal. Since the SAR Government is established by the Central People's Government, one cannot argue that the Central People's Government cannot handle any problems of the SAR Government. I think this argument is acceptable from the perspective of politics, and it is also acceptable from the perspective of power. But can this be acceptable from the perspective of the rule of law? Though it is acceptable, it has to be clearly provided by legislation beforehand and it cannot be said all of a sudden that it is acceptable. The feeling I have now is that it is said all of a sudden that it is acceptable.

The second point I wish to share with Mr Jasper TSANG is his reference to Article 48(5) in the Basic Law that the Central People's Government has the power to appoint and remove the officials named in the article. It is perfectly fine for the power of appointment to carry with it the power of removal. It is written clearly in Article 48(5) of the Basic Law. The strange thing is, why is there mention of the appointment of the Chief Executive appointed, but not removal? One may say "appointment" and "removal" are cognate, but if they are cognate, why are they not written at the same time? I am no expert in law, if the two things are different, there may be some difference in meaning in law. I am a layman and that is why I am thinking in this way. I think the only difference is that the power in this respect should be vested with the people of

Hong Kong. Actually, this may well be the purpose behind the devolution of power by the Central People's Government. I do not think we should give up the power and return it to the Central People's Government at so early a stage. I do not think we should do that.

I recall that when I served as a member of the Basic Law Consultative Committee and the Preparatory Committee, I found that the Central People's Government was very careful in its choice of words. Every word used was chosen after careful deliberations. Let me quote one example. We came across three sentences. When translated into English, they are: "A Member thought that there should be direct elections", "Some Members thought that there should be direct elections", and "A few Members thought that there should be direct elections". For an ordinary person like me, I did not see the difference between the three sentences. However, there is a difference between the Chinese words used by the Central Government which meant "a", "some" and "a few". The word "a" means one, and "a few" is meant to refer to a number which is somewhat more than "some". So there are distinctions between these words. If someone tells me that in important documents such as the Basic Law the word "removal" is not found there, then I do not think that it is an omission. I would think that this is intentional and it is meant to leave the relevant power to the people of Hong Kong and to put the idea of "Hong Kong people ruling Hong Kong" into practice. Therefore, the amendment proposed by the Secretary currently is tantamount to returning the power to the Central People's Government without having undergone any discussions. That is why I said earlier, that apart from being irresponsible, there is something seriously wrong with the Government.

The Secretary was unable to give a reply to Mr Martin LEE and Miss Margaret NG on this question. The Secretary said their amendments could not address these issues, and similarly the Secretary could not address them too. So the Secretary suggested to refer the issue to the Central People's Government. For if not, the Secretary should be able to tell us how the Central People's Government will handle this. The question now is not only a question of who is going to handle this, but how it is to be handled. And on this point, the amendment proposed by the Secretary is unable to make it clear.

Madam Chairman, I would vote on this amendment, for I think this is not only a question of election, but also a question on the relationship with the Central People's Government. I would support the amendments proposed

respectively by Miss Margaret NG and Mr Martin LEE. However, if their amendments are not carried, I would continue not to scrutinize this Bill. Thank you, Madam Chairman.

THE CHAIRMAN'S DEPUTY, MRS SELINA CHOW, took the Chair.

MS AUDREY EU (in Cantonese): First of all, Madam Deputy, I would like to clarify Mr Martin LEE's reference to my remark that whenever reference is made to the Basic Law in Hong Kong laws, the specific provisions of the Basic Law would certainly be cited. As a matter of fact, I have also said that at times when the Hong Kong laws refer to the Basic Law, no specific reference is made to any specific provisions. This is because it is referring to the entire Basic Law. For example, Chapter 11 of the Laws of Hong Kong mentions the swearing of an oath to uphold the Basic Law by the Chief Executive and here it is meant to refer to the entire Basic Law. This is the point I wish to clarify.

Clause 4(c) of the Bill has at least the following problems:

First, the Basic Law does not mention the Central People's Government removal of the Chief Executive from his office. But that is mentioned in the Bill. Given the Government has said that the laws of the Hong Kong Special Administrative Region (SAR) cannot add to or reduce any power of the Central People's Government, then why does clause 4(c) mention the removal of the Chief Executive which is deliberately not mentioned in the Basic Law? Since the provision is, as the Government says, not empowering the Central People's Government, then it should not mention the power of removal which is not mentioned in the Basic Law.

Second, clause 4(c) only mentions the Basic Law, but not any specific provision of it. That is too broad and vague. The Government cannot hope to give comfort to us by saying that this power of removal is not absolute but subject to constraints, but at the same time fails to tell us the scope of restriction. The Government originally quoted the views of the Law Society of Hong Kong (Law Society) to support its position. Mr LEUNG Fu-wah is not in the Chamber now, he also quoted the views of the Law Society for the same reason. However, the Law Society wrote to the Legislative Council on 5 July and stated that it would not support the drafting of clause 4(c) by the Government, and

suggested a clearer version. The main reason is that both the Law Society and the Hong Kong Bar Association think that the procedure of removing the Chief Executive should be initiated by the SAR, instead of by the Central People's Government under unknown circumstances as found in clause 4(c).

Third, as I said in the resumption of the Second Reading, the Government explained that when read together, Articles 2, 12, 15, 43, 45 and 47 will have the implied meaning that the Central People's Government has the power to remove the Chief Executive. I wish to quote the reaction of Mr WONG Yuk-man, a news commentator, to this. He said, "How can this be possible?" If the Legislative Council can accept that in issues of importance as these, the power could be embedded in the Basic Law without being expressly stipulated, then the protection given by the Basic Law exists in name only.

Fourth, the Government explained that the drafting of clause 4(c) embodies the implied powers of the Central People's Government under the Basic Law explicit. Even if the Government thinks that this is not or cannot be deemed as amending the Basic Law or intending to amend it, this is at least an attempt to interpret the provisions of the Basic Law, and to point out that the Basic Law has such implied powers. That is not something which the Government or the Legislative Council should do. In this regard, I would like to quote the views of Prof Albert CHEN. Prof CHEN is of the view that clause 4(c) as proposed by the Government is unconstitutional. Prof CHEN is a member of the Basic Law Committee and he is an expert in constitutional law, his views should be taken seriously. Madam Deputy, please allow me to cite Prof CHEN's views in English, because the original is in English:

"I understand that clause 4 (vacancy in office) of the Chief Executive Election Bill has become a subject of controversy, and has raised the difficult constitutional issue of whether, and, if so, under what circumstances the Central Government can dismiss the Chief Executive of the Hong Kong Special Administrative Region (SAR).

The constitutional issue mentioned above is a question of interpretation of the Basic Law. Under the Basic Law, neither the Legislative Council nor the SAR Government has the power to interpret the Basic Law. Such power can only be exercised by the Hong Kong courts under Article 158 of the Basic Law, or by the NPC Standing Committee itself.

In these circumstances, I believe that it is in the public interest that we should avoid, if at all possible, dealing with the question of the dismissal of the Chief Executive by the Central Government in the Chief Executive Election Bill. After studying the matter, I do believe that it is indeed possible to do so."

Prof CHEN suggested that the amendment proposed by Miss Margaret NG on my motion be adopted and he was of the view that the constitutional issue could so be resolved. His views are now quoted in original:

"I think that the proposed amendment makes much sense and sincerely hope that you will advise the Government not to oppose it. I recommend this approach to you not only because it can avoid unnecessary constitutional controversies, but also because I believe this approach is sound one from the point of view of constitutional principles. As mentioned above, it is not the business of the SAR Government or the Legislative Council to interpret the Basic Law. To provide in the Chief Executive Election Bill that the Central Government has a power to remove the Chief Executive in an undefined set of circumstances is itself an act of interpretation of the Basic Law. I respectfully submit that the SAR Government and the Legislative Council should refrain from making such an interpretation (and hence trespassing on the province of the courts and the NPC Standing Committee) as far as possible. And as discussed above, it is indeed possible in this particular case, if the kind of amendment proposed by Audrey receives your support."

These comments made by Prof CHEN are found in a letter he wrote to the Secretary for Justice on 30 June 2001. He hoped that the Secretary for Justice could suggest to the Government to accept the amendment proposed by Miss Margaret NG and me together so as to avoid constitutional controversies. Our amendment is written with reference to Article 53 para 2 of the Basic Law which provides that in the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be elected. This is a neutral suggestion that embraces all sorts of circumstances, including the removal of the Chief Executive by the Central People's Government.

The Government says that our amendment is not clear enough, for it is not clear when such a vacancy will arise. But that is nothing but an excuse. Clause 5 of the Chief Executive Election Bill, that is, immediately following clause 4, provides that when a vacancy arises in the office of the Chief Executive,

the Acting Chief Executive may announce and specify the date which the office has become vacant. In the opinion of the Government, apart from the cases of the expiry of the term of office of the Chief Executive or his sudden demise, all other circumstances under which the vacancy in office arises are due to the removal of the Chief Executive by the Central People's Government. If this is the truth, then the date of vacancy should be very clear and the Acting Chief Executive should have no difficulty in ascertaining that.

Secretary Michael SUEN advanced all sorts of difficult problems in his speech. To me these are not only ludicrous, but tragic. I believe of all governments over the world, only that of the SAR is so impotent as not being capable of ascertaining when the office of the Chief Executive falls vacant. As Mr SUEN put it, the matter should be left to the Central People's Government in order that an objective standard can be maintained. If the matter of removal is not handled by the Central People's Government, then an objective standard is wanting. Now the people of Hong Kong can see that the Government is exhausting every means, even to the extent of finding some provisions in the Basic Law which are not convincing at all and say that they have some implied powers. Moreover, the Government is so adamantly insisting on just one way of drafting the legislation. These are unacceptable to the Hong Kong Bar Association, the Law Society and even Prof CHEN. The reasons behind this are clear, and the people of Hong Kong as well as history itself will pass judgment on this.

With respect to the removal provision in clause 4(c), I had met Mr SUEN and asked whether it was the wish of the Central People's Government or that the SAR Government. At that time, Mr SUEN said that this was the legal advice given by the Secretary for Justice. According to recent media reports, Mr SUEN admitted that the SAR Government had exchanged views with the Central People's Government with regard to this Bill. However, he explained that it only involved the appointment provision in clause 3(1)(b) and it did not include the removal provision in clause 4(c). So Mr SUEN said.

THE CHAIRMAN resumed the Chair.

CHAIRMAN (in Cantonese): Ms Audrey EU, please sit down first. Secretary for Constitutional Affairs, do you have a point of order or do you wish to seek a clarification?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): When Ms Audrey EU was quoting what I had said, she was only quoting half of it instead of the whole of it.

CHAIRMAN (in Cantonese): Secretary, as you are not raising a point of order but are trying to make a clarification, I would let you clarify the part of your speech which has been misunderstood later.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Ms Audrey EU, please go on.

MS AUDREY EU (in Cantonese): Madam Chairman, I can only say that if the present drafting of clause 4(c) is really the intention of the Central People's Government, that would clearly lead to another controversy in relation to the interpretation of the Basic Law. It is because the Central People's Government is making an interpretation of the implied power of removal which is absolute, comprehensive or with an undefined scope. The only difference with the previous incident of interpreting the Basic Law is that the previous incident was done in public and now the interpretation is being made secretly. Having said that, it remains the view of Secretary Michael SUEN that clause 4(c) was drafted on the advice of the Secretary for Justice, not that of the Central People's Government.

Today, my objection will come to no avail and I can only see the SAR Government betray the "high degree of autonomy" of Hong Kong and the spirit of the rule of law. May I call upon the people of Hong Kong to witness this spectacle of the Legislative Council joining hands with the Government in breaking the limbs of the rule of law. Thank you.

CHAIRMAN (in Cantonese): Secretary for Constitutional Affairs, you may now clarify the part of your speech which has been misunderstood.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, Ms Audrey EU mentioned just now the letter I wrote to Mr Martin LEE in reply to his questions. In the letter I was talking about another issue. When I was giving Mr LEE a reply earlier, I was not sure if Ms EU was in the Chamber, so I do not know if Ms EU heard my speech in full.

I made myself clear earlier on the questions Mr Martin LEE and Mr CHEUNG Man-kwong asked me this morning as to whether the Administration had exchanged views with the Central People's Government in respect of clause 4 or whether we had received any instructions from the Central People's Government. I have made myself clear on these earlier and I would like to reiterate again now that the answer is no.

Thank you, Madam Chairman.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, Mr Michael SUEN has told us how he understands the repeated amendments to the original provisions of clause 4(c) of the Chief Executive Election Bill relating to the revocation of the appointment of the Chief Executive by the Central People's Government. I wish to give my version of the story of my participation in the relevant meetings.

At the very beginning, all arguments started from the vacancy of the office of the Chief Executive. When Members deliberated over the provisions concerning the vacancy of the office of the Chief Executive, they discovered that clause 4(c) specified that the office of the Chief Executive would fall vacant if the Central People's Government revoked the appointment of the Chief Executive. The question as to why the Central People's Government would revoke the appointment of the Chief Executive and whether the revocation had legal basis under the Basic Law then arouse and the Government started to argue that there was a legal basis. Let us consider Article 15 of the Basic Law. Article 15 states that the Central People's Government shall appoint the Chief Executive of the Hong Kong Special Administrative Region (SAR) in accordance with the provisions of Chapter IV of the Basic Law. Members further asked why Article 15 only mentioned appointment but not appointment and removal, and a lot of provisions in the Basic Law placed appointment and removal on a par, including the appointment and removal of Judges and public officers. Why mention was made only of the power to appoint the Chief Executive when

mention was made of the power to appoint and remove other officials, Judges and public officers?

We advanced the argument that the Central People's Government only had the power to appoint but not remove the Chief Executive because the Central People's Government actually wanted Hong Kong to deal with the Chief Executive issue according to the spirit of a high degree of autonomy and the appointment of the Chief Executive in compliance with a high degree of autonomy. Some Members asked which provisions of the Basic Law really dealt with the appointment and removal of the Chief Executive. We pointed out two provisions of the Basic Law. Firstly, Article 52 relates to the resignation of the Chief Executive for various reasons. Once the Chief Executive resigns, the office will certainly fall vacant. Secondly, Article 73(9) of the Basic Law relates to the Chief Executive's serious contravention of law or dereliction of duty and refusal to resign. If it is substantiated after investigation that the Chief Executive has really breached the law, the Legislative Council may pass a motion of impeachment by a two-thirds majority of all Members and report it to the Central People's Government for decision. Given that the Council has passed a motion of impeachment, then one of the decisions that the Central People's Government may make is to remove the Chief Executive from office.

Members pointed out at that time that these two provisions of the Basic Law, including the resignation of the Chief Executive or the passage of a motion of impeachment by the Council and the ultimate removal of the Chief Executive from office by the Central People's Government, had a very important feature under a high degree of autonomy. It was a triggering mechanism to be initiated in Hong Kong, not by the Central People's Government. This was the most important point. Why should it be triggered in Hong Kong? It was a very important principle when the Central People's Government conferred upon Hong Kong a high degree of autonomy when it drafted the Basic Law. In other words, the Central People's Government had the power to appoint the Chief Executive selected in Hong Kong. The removal of the Chief Executive from office after his appointment would be triggered by Hong Kong people or by the mechanism of the legislature in Hong Kong. In the case of resignation, the resignation ought to be triggered by the Chief Executive of his own accord before the office would fall vacant; thus, it should be triggered in Hong Kong. Impeachment would also be triggered in Hong Kong because the passage of a motion of impeachment by the Legislative Council is required before impeachment could come into effect. Furthermore, the Council should first pass a motion of

impeachment before the Central People's Government would make a decision of removal on the basis of the impeachment.

The Government subsequently made several amendments. I have gone through the record of these amendments and found that the Government said in proposing the first amendment that as Members disliked the revocation of the appointment of the Chief Executive by the Central People's Government, the relevant provision was amended to read, the Central People's Government could remove the Chief Executive from office under any other circumstances. Members then asked if the situation would become even more serious, for we could not tell under what circumstances the Central People's Government would trigger the mechanism for the removal of the Chief Executive from office (perhaps under any circumstances). This was unfeasible because the mechanism would be completely controlled by the Central People's Government, not subject to the restraints of Articles 52 and 73(9). Later, the Government proposed another amendment so that the Central People's Government could remove the Chief Executive from office under any other circumstances under the Basic Law. Members asked another question, that is, as the departure of the Chief Executive was restricted only by two provisions in the Basic Law, how could all the provisions be involved. If the Chief Executive was removed from office under the amended provisions, the relevant mechanism would certainly not be triggered by the Legislative Council, the Chief Executive would not resign on his own and the removal would not be triggered in Hong Kong. This would also violate the principle of a high degree of autonomy, thus, the provision would not work.

The Government proposed yet the third amendment that the Central People's Government might remove the Chief Executive from office under the Basic Law under any other circumstances. In other words, the Central People's Government might remove the Chief Executive from office under any other circumstances and any provisions of the Basic Law. It also extended the scope of Articles 52 and 73(9) according to which the removal of the Chief Executive from office should be triggered in Hong Kong to the entire the Basic Law. As Members opposed it, the provision was then negated. Finally, the Government proposed the fourth amendment, that is, today's proposal for the removal of the Chief Executive from office under the Basic Law.

What is wrong with this amendment? Firstly, the provision allows the Central People's Government to remove the Chief Executive from office on the

basis of all the provisions, from the first to the last articles, of the Basic Law by virtue of its right of interpretation because that is how the provision is written. Secondly, when we asked the government counsel to Mr Michael SUEN which provisions of the Basic Law could cause the removal of the Chief Executive from office, he mentioned Articles 2, 12, 15 and 47, just like listing Mark Six winning numbers. However, when we examine the contents of these provisions, we will find that these provisions are not related to the removal of the Chief Executive from office at all. The problem then becomes more serious if the Chief Executive can be removed from office on the basis of such irrelevant provisions. Then, the Chief Executive can be removed from office not just under four Articles but also all the 160 Articles of the Basic Law. On the basis of the way this provision is drafted, we can interpret it in any way and we can choose any Article to interpret by drawing a fortune stick from the container just like what we did at the Wong Tai Sin Temple. It is impossible, so we disagree to the amendment.

We do not agree because we have to observe the spirit of a high degree of autonomy under the Basic Law and the provisions of the Basic Law. It is stated very clearly in the Preamble of the Basic Law that "the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China and the Special Administrative Region will practise the policies of the People's Republic of China on Hong Kong in accordance with the Basic Law". Therefore, we can only act according to the Basic Law and only two provisions of the Basic Law are related to the departure of the Chief Executive, namely Article 52 on the resignation of the Chief Executive and Article 73(9) on the impeachment of the Chief Executive, not any other provision. According to these two provisions, of the trigger for the mechanism to remove the Chief Executive lies in Hong Kong, not in the Central People's Government. Any amendment proposed in contravention of such an important spirit of a high degree of autonomy, including the amendment proposed by Mr Michael SUEN today or the four amendments he proposed in the past, come under the scope our criticism, that is, the Central People's Government has the power to trigger the mechanism and the contravention of the principle of a high degree of autonomy. Thus, we oppose this amendment. This is my understanding of all the arguments about clause 4(c) and subsequently about the high degree of autonomy mentioned in the Basic Law.

Mr Michael SUEN has told his story, and I have also told mine. Mine is a sum up of the experience I gained from all the meetings of the Bills Committee I had attended. Other Members who have taken part in the work of the Bills Committee can certainly discuss whether the situation and views are true. Under the circumstances, we oppose the forfeiture of the high degree of autonomy of Hong Kong by the SAR Government by way of the Chief Executive Election Bill. It was muddleheaded in doing so and it had foolishly ingratiated itself in the political aspect. The final proposed amendment and the four amendments before it to the Chief Executive Election Bill were quite similar, that is, they added a catch-all provision so that the Central People's Government could remove the Chief Executive from office even not in accordance with the two provisions of the Basic Law and the specified legislation. As we criticized, the SAR Government has destroyed the impregnable bulwark of the Basic Law on its own and forfeited the high degree of autonomy of Hong Kong as well as racked "one country, two systems", thus, it has become an idle destroyer.

I would like to tell colleagues in this Council that my views on this amendment are based not only on my interpretation of clause 4(c) and the four amendments induced by clause 4(c), but also on my firmest stance to uphold the high degree of autonomy of Hong Kong. The high degree of autonomy is the foundation for the existence of Hong Kong and a castle that Hong Kong depends for its existence, while the Basic Law is a very important law and protective screen for the realization of the high degree of autonomy. We have no reasons to demolish this castle and destroy the impregnable bulwark ourselves. If we pass the Government's amendment today, we would destroy the protective screen and the impregnable bulwark on our own. We would feel ashamed in front of Hong Kong people and when we think about the spirit and good intention of making the Basic Law. Hence, we oppose the amendment of the Government.

Thank you, Madam Chairman.

MR TAM YIU-CHUNG (in Cantonese): Madam Chairman, I have participated in the drafting of the Basic Law and the scrutiny of the Chief Executive Election Bill. In the course of the deliberation on the Bill, nothing was more controversial than clause 4(c), which has caused much discordance.

In fact, clause 4 of the Bill seeks to list out all the circumstances under which the office of the Chief Executive becomes vacant and to set down objective

criteria for the election of the new Chief Executive. It is absolutely not an enabling provision. I have just heard comments of many Honourable Members about how we are forfeiting or surrendering the power to the Central People's Government, so as to allow it to take charge of the matter. I wish to point out that since the Basic Law is superior to all laws, there is no question of us making any law to increase or reduce the power of the Central People's Government. For that reason, the constitutional status of the Basic Law is indisputable. Basically, local legislation is unable to override or infringe the ambit of the Basic Law, and these ABC's of politics are clear to all. As a result, the express stipulation of the Bill concerning the power of the Central People's Government to revoke the appointment of Chief Executive under the Basic Law actually confers no more power or no less power on the Central People's Government. Just as the saying goes, "there is no stand of a mirror bright, where can the dust alight?" However, some people consider the proposed amendment of the Government a forfeiture of the "high degree of autonomy" of Hong Kong.

I have heard a lot of similar remarks made by Members earlier, including "forfeiture", "Hong Kong people ruling Hong Kong", "rubbish", "ignorance", "flatter" or even "kneeling down", "surrendering it to Beijing on a silver platter", and so on. All these remarks are in fact too emotional. As a result, after making a big fanfare of these provisions of a simple intent, an objective basis of discussion on the issue has thus been lost.

Hong Kong is an inseparable part of the People's Republic of China, so the Central People's Government certainly has the power to appoint the Chief Executive, which is substantive. Certainly, the Basic Law has provided for the appointment to be made by the Central People's Government, and set down the relevant procedures and circumstances under which the appointment shall be made. Similarly, the Central People's Government shall of course have the power not to appoint, to remove or revoke the appointment; it is a manifestation of the State sovereignty. At the same time when the Central People's Government implements the sovereignty, it also undertakes to guarantee the "high degree of autonomy" and "Hong Kong people ruling Hong Kong". "High degree of autonomy" is not absolute; the scope of autonomy is prescribed by provisions in the Basic Law. The Basic Law is binding, so if we follow the Basic Law, nothing will be out of hand, and nothing will be groundless. As a result, in the Basic Law, most of the Articles are expressly stipulated "according to the provisions of this Law".

With regard to the power to appoint or remove the Chief Executive from office, Articles 15 and 45 para 1 have prescribed the power of appointment of the Central People's Government, and this power is not a formality; it is substantive. Under Articles 52 and 73(9) of the Basic Law, the Central People's Government has the power to revoke the appointment of the Chief Executive. Articles 15 and 45 para 1 confer on the Central People's Government the power to appoint the Chief Executive, and Articles 52 and 73(9) also confer on the Central People's Government the power to remove the Chief Executive from office under the specified circumstances and the Central People's Government is also empowered to remove the Chief Executive from office under other circumstances in order to uphold the Basic Law. Therefore, the Bill is not drawn up for a certain individual or a specific candidate.

We can never include all the possible circumstances in the Bill. As a result, the amendments proposed by the Secretary for Constitutional Affairs aptly demonstrate that things are being done in accordance with the Basic Law, so I consider that a reasonable representation. Certain Honourable Members even said that the amendments are proposed with a view to giving the Chief Executive dignity, and not to make him a puppet. Do they really mean that the Chief Executive should not act according to the Basic Law, and do they really hope that China will become the puppet of some foreign countries and the Chief Executive puppet of foreign countries? In the past or in today's discussion, certain Honourable Members always raise alarmist talk. Nevertheless, we have actually heard of such remarks many times, in particular before the reunification, but such alarmist talk is in fact meaningless. So far the Central People's Government has implemented "one country, two systems" and "Hong Kong people ruling Hong Kong" in Hong Kong with a high degree of autonomy, and the people of Hong Kong have implemented the provisions of the Basic Law according to the provisions of the Law.

Thank you, Madam Chairman.

MISS EMILY LAU (in Cantonese): Madam Chairman, I rise to oppose the amendments proposed by the Secretary for Constitutional Affairs.

In the course of scrutinizing the Bill, Mr CHEUNG Man-kwong also said that many people were shocked by clause 4(c), as the Central People's Government might revoke the appointment of the Chief Executive, which would

make the office of the Chief Executive fall vacant. Everybody was astounded and could not help asking what on earth was happening? The Secretary mentioned earlier that up to now, the issue of under what circumstances the Central People's Government may remove the Chief Executive from office would not be dealt with. I understand that it cannot be dealt with here in this Chamber, but it is something that must be dealt with. I had also raised this question when we scrutinized the Bill, because the public should be aware of the whole issue. Although the Government will not deal with it today, I hope it will take care of it as soon as possible.

Some people said that the power of the Central People's Government to remove the Chief Executive from office derives from the Constitution of China, or elsewhere. However, the power must come from a certain source, and we should not say it can be exercised as long as the Central People's Government is vested with such power. This is totally impossible. Since China is beginning to talk about the rule of law, I believe this issue should be dealt with sooner or later, the faster the better.

Madam Chairman, if the Central People's Government really has this power, then the Bill is of course not conferring such power on the Central People's Government, nor it is taking away such power from the Central People's Government. Can the Secretary explain later, as I am not a lawyer, why the Government has to add clause 4(c)(v) to the Bill? Since the Central People's Government already has such power, why the Government has to draw up this clause? Clause 4(c)(v) expressly provides that the Chief Executive can be removed from office under any other circumstances under the Basic Law. I agree with Ms Audrey EU that there is basically no such provision in the Basic Law, but the remarks of the Government were totally uncalled-for, what exactly was the cause behind that? If the Central People's Government possesses such power under whatever circumstances, then should we expressly provide in the Bill that the Central People's Government has such power? Can the Secretary explain why the Government still made that provision which was so poorly drafted? In fact, the Central People's Government perhaps may not have this power under the Basic Law

CHAIRMAN (in Cantonese): Secretary for Constitutional Affairs, do you have a point of order or wish to seek elucidation?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, Miss Emily LAU mentioned clause 4(c)(v)

CHAIRMAN (in Cantonese): Secretary, are you asking Miss Emily LAU to clarify her remarks?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Yes, Madam Chairman. The amendments under discussion currently do not cover clause 4(c)(v), therefore I do not understand what Miss Emily LAU is referring to.

CHAIRMAN (in Cantonese): Secretary, please sit down first. Miss LAU, would you like to offer some clarification?

MISS EMILY LAU (in Cantonese): Madam Chairman, perhaps I have read an older paper. In a word, I would like the Secretary explain that. I am referring to the phrase "under any other circumstances under the Basic Law". That is, the Central People's Government may exercise the power to remove the Chief Executive from office under any other circumstances under the Basic Law.

CHAIRMAN (in Cantonese): Miss LAU, that is not the exact wording of the clause.

MISS EMILY LAU (in Cantonese): Madam Chairman, please elucidate that.

CHAIRMAN (in Cantonese): The current subject of discussion is clause 4(c) of the Bill, it reads "if the Central People's Government removes the Chief Executive from office in accordance with the Basic Law". Miss LAU, please go on with your speech.

MISS EMILY LAU (in Cantonese): Thank you, Madam Chairman. I beg your pardon, Madam Chairman. Madam Chairman, the Government said it was

under the Basic Law. However, I have mentioned earlier that none of the provisions in the Basic Law expressly stipulated that the Central People's Government might remove the Chief Executive from office. Many of the provisions under the Basic Law were mentioned earlier, I can even say that all the 160 Articles have been mentioned.

Madam Chairman, someday in future, it may come very soon, can you imagine how Hong Kong would react if the Central People's Government removes the Chief Executive from office under the Basic Law? The drafting of this clause by the Government is totally unacceptable to the public. Just as the Hong Kong Bar Association, the Law Society of Hong Kong (Law Society) and Prof Albert CHEN have said, the power to remove the Chief Executive from office should come from Hong Kong.

Madam Chairman, I have to apologize to the Law Society, because in my earlier speech, I said that they were in support of the Government. Later on, I found that they had submitted new opinions to the Legislative Council Secretariat on 5 July by way of an e-mail. However, since the staff of the Secretariat was on leave, nobody had ever opened that e-mail, thus nobody had conveyed the relevant message to us. A moment ago, after listening to my speech, Ms EU asked me if I had learnt that the Law Society had changed its mind. I said I did not know and I checked that with the Secretariat. Only until then did the staff of the Secretariat open the mailbox and gave me the message of the new opinion from the Law Society. As a result, I have to apologize to the Law Society.

The Law Society proposed that any removal power should from Hong Kong, notwithstanding it might be the executive authorities, the legislature or the Judiciary. The Law Society had also made a suggestion on the wordings of the provision, that is, the way in which the provision should be drafted. A certain part of the suggestion also mentioned the way to dismiss the Chief Executive or remove the Chief Executive from office, that is, when the Central People's Government receives the report that the Legislative Council has already passed a motion of impeachment under Article 73(9) of the Basic Law. I hope the Secretary has received these opinions as we have just received them now. The opinions of the Law Society quoted by the Honourable LEUNG Fu-wah and some other Members earlier were actually null and void by now.

I cannot help asking if the Central People's Government have such power under whatever circumstances, I believe the Secretary will soon clarify this, then

why did the Government still draft the clause, and drafted it so poorly? It was said that the provision was in accordance with the Basic Law, but not a trace could be found after a thorough search of the entire Basic Law. However, the Government simply included that in the provision. If the Basic Law really has a provision prescribing that, then it is still acceptable and the Government should quote that provision direct. In reality, there is no such provision. Actually, the most important thing is how that power be will exercised in future, and in what way the Central People's Government will exercise it. If all of a sudden, the Central People's Government says that it dismisses the Chief Executive in accordance with the Basic Law and the legislation passed in Hong Kong, Madam Chairman, how can the Government explain it to the people of Hong Kong?

I think the Secretary should explain to the people of Hong Kong what would happen if the amendments proposed by the Government were passed. How will the people of Hong Kong comprehend that? At first, the Secretary said that government counsel had said this and that, therefore the Government would not deal with the matter and therefore set it aside. Madam Chairman, it is unconvincingly acceptable to me. But now the Government is adding the Basic Law aspect to the provision unwarrantedly. Madam Chairman, that power is actually unlimited and I do not know what it will turn out to be in future. Now that the Government has added the Basic Law aspect into the provision, by then, the Central People's Government may say that it dismisses the Chief Executive under the Basic Law. If anyone asks how could it be, it may well say that it does not know, because it can be by virtue of Article 2,3,4,5 or 7 of the Basic Law. I believe that is totally unacceptable to all people.

If the Secretary implores Honourable Members to vote for the Bill, I hope he should think it over at first. Some Members said earlier about "foreign puppet" or whatsoever puppet, I say we would soon become "SAR puppets". Madam Chairman, I am definitely not going to be a puppet myself. I oppose the amendments of the Secretary for Constitutional Affairs.

MR IP KWOK-HIM (in Cantonese) Madam Chairman, it is undeniable that maintaining the high degree of autonomy of the Hong Kong Special Administrative Region (SAR) is so critical to the success of "one country, two systems" that both the SAR Government and members of legislature should be duty-bound to uphold it. It took a total of 40 hours for the 15 rounds of meetings on the deliberation of the Chief Executive Election Bill, in which the

Bills Committee spent one fifth of the time, that is, a total of eight hours, on discussions on the issue of the Central People's Government's removal of the Chief Executive from office, which were then extended to whether the "high degree of autonomy" would be "forfeited", just as some Members have just alleged, because of the passing of the Bill. To be more precise, I consider it more appropriate to request an interpretation and a debate by the National People's Congress (NPC) of the provisions of the Basic Law, since the Bill mainly deals with the conduct of the election of the Chief Executive.

Madam Chairman, the Basic Law as the constitution of the SAR is a national law formulated by the NPC. Of all the constitutional laws enacted by the NPC, there is an underlying principle, that is, "whoever has the power to appoint shall have the power to remove". Such power is embodied in Articles 62 and 63 of the Constitution of the People's Republic of China (the Constitution). According to the Constitution, the power of appointing an individual to a certain office carries with it the power of removing that individual from office. Therefore, it is very difficult to imagine that the NPC deliberately departed from the established legal principle to dispossess its power of removing the Chief Executive from office when the Basic Law was formulated then. However, I cannot agree to the view of the Hong Kong Bar Association that under common law, the power of appointment does not include the power of removal. In view of the fact that the appointment of the Chief Executive by the Central People's Government is substantive, and considering it from the perspective of upholding the stability of the political situation, it is more appropriate to construe that the resignation of the Chief Executive should become effective upon the acceptance of the Central People's Government.

Madam Chairman, a member of the Basic Law Drafting Committee and an expert in Basic Law, Prof XIAO Weiyun, pointed out in his work to this effect "in accordance with the spirit of the Sino-British Joint Declaration, the power of appointment of the Central People's Government should be substantive, it may appoint, it may not appoint, of course it may also remove the Chief Executive from office Although the SAR enjoys a high degree of autonomy, as the Chief Executive was returned by local election or consultations, the power of appointment and removal rests with the Central People's Government. This is an important aspect of the relationship between the Central People's Government and the SAR". I am sure his view cannot win the concurrence of every Member in this Council, however, I consider it a correct interpretation, which I believe the majority of Members present would accept.

When we look at the provisions of the Basic Law concerning the appointment and removal of the Chief Executive, which include Articles 45, 52 and 73(9), we can find that the initiative to set the appointment and removal in motion rests with the SAR, not with the Central People's Government. As a result, there is no reason for us to believe, nor it is necessary to assume, that the Central People's Government has the absolute power of appointing or removing the Chief Executive. We should not worry that the Central People's Government may effect an "unreasonable dismissal" of the Chief Executive and remove him from office. Nor would it end up just like some members of the Bills Committee said, the Chief Executive would be removed from office simply by a sneeze in the course of scrutiny. I cannot see any possibility of this arising. However, analysing it from another perspective, unless the Central People's Government has an implied power of appointment and removal of the Chief Executive, otherwise, the circumstances stipulated by Articles 52 and 73(9) will basically be impossible to enforce because even if the Chief Executive is impeached, that is, the relevant motion is passed by two thirds of the Members of the Legislative Council, it still has to be reported to the Central People's Government for decision. Mr CHEUNG Man-kwong mentioned earlier that the decision should imply the power of removal, therefore, a power of removal is very obvious in this respect.

Madam Chairman, the building up of confidence is mutual and interactive. Although the power of removing the Chief Executive from office is the ultimate power of the Central People's Government, when it exercises such power, it should do so in adherence to the principle of ruling the country according to law as prescribed by Article 5 of the Constitution, to the Constitution, to the Basic Law and to other relevant laws. As to the removal of the Chief Executive, the Central People's Government should adhere to stipulations on the implementation of high degree of autonomy and stipulations on the accountability of the Chief Executive to the Central People's Government and the SAR in accordance with law. In a word, the power of the Central People's Government should be limited to the power of making the final decision. Considering the stipulations in respect of the appointment and removal of the Chief Executive from the legal system perspective of "one country, two systems", the Central People's Government shall exercise the power only when absolutely necessary and only in compliance with the Basic Law. After all, the ultimate goal of exercising such power is simply to ensure the prosperity and stability of Hong Kong.

More importantly, during the course of deliberations in the Bills Committee, some colleagues seemed to have neglected the point that the Legislative Council of the SAR, being a regional legislature, has no power to enact legislation that may restrict the Central People's Government's exercise of its constitutional powers. The Democratic Alliance for Betterment of Hong Kong (DAB) holds that any provision in the Bill can absolutely not increase or reduce the power the Central People's Government exercisable in the SAR. In fact, the amendments proposed by the Government have gone through a process of from looseness to tightness and then from tightness back to looseness. Everybody was extremely sensitive, during the whole process, to the expression "under any circumstances". Eventually, the Government accepted the suggestion of Members by deleting the relevant wording; in this connection, the DAB supports it.

Madam Chairman, in the course of discussions, we became aware of certain circumstances, and acquired a deeper comprehension and understanding of the connotations of some expressions like "never fails to come up with comments to impress", "mislead the public", and "elevating the issue to the higher plane of principle". I have able to see and hear too many live examples in the process. Just as Mr TAM Yiu-chung described earlier, in the meetings of the Bills Committee or in today's meeting in this Council, a lot of Members have used terms like "forfeiting Hong Kong", which have really come as an eye-opener.

With these remarks, Madam Chairman, I speak on behalf of the DAB in support of the final amendments proposed by the Secretary for Constitutional Affairs to clause 4(c). Thank you, Madam Chairman.

MR SZETO WAH (in Cantonese): Madam Chairman, Mr IP Kwok-him mentioned earlier that the Central People's Government has the substantive power of appointing the Chief Executive of the Hong Kong, as it may appoint or not to appoint. However, the substantive power of appointment is not equivalent to the power of removal. Why did he infer with logic like that? He quoted the Constitution of China and claimed that whoever possesses the power of appointment possesses the power of removal. However, Annex III to the Basic Law stipulates that only six national laws shall be applied in the SAR. If other laws including the Constitution are to be applied in the SAR, then Article 18 of the Basic Law should be invoked to declare the SAR is in a state of emergency before other national laws can be applied in the SAR.

Mr TAM Yiu-chung said earlier that clause 4(c) is not an enabling provision, I am concerned that perhaps this is the sally point. If it is not an enabling provision, why has the Government not stated it clearly? Moreover, Mr TAM also cited the *gatha* of Buddha: "There is no Bodhi-tree, nor stand of a mirror bright". Having heard this argument, I can only feel that "There is no Basic Law, nor high degree of autonomy".

In the meetings of the Bills Committee, after Members had questioned ferociously and repeatedly whether there were provisions relevant to the removal of the Chief Executive other than Articles 52 and 73(9), the legal adviser of the Government listed out several Articles, including Articles 2, 12, 15, 43 and 47. He pointed out that all of these Articles included the power of the Central People's Government to remove the Chief Executive from office. Let us take a look at these five Articles of the Basic Law.

Article 2: "The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law."

I would like to ask Mr Michael SUEN now: Suppose the Court of Final Appeal has made a verdict, but the Chief Executive requests the Standing Committee of the National People's Congress for an interpretation of the Basic Law in order to quash the verdict of the Court of Final Appeal, has he violated the provision, and should he be removed from office? Is it because he is so favoured that he is not removed from office, but were it another person, would he have been removed from office? Is it the present circumstance?

Article 12: "The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government."

I would like to ask Mr Michael SUEN: Suppose the Chief Executive confers on the Central People's Government the power of removing the Chief Executive from office other than the power prescribed by Articles 52 and 73(9) of the Basic Law, should he be removed as he has violated the high degree of autonomy and the provision? Is it because he is so favoured that he is not removed from office? Were it another person, would he have been removed from office?

Article 15: "The Central People's Government shall appoint the Chief Executive and the principal officials of the executive authorities of the Hong Kong Special Administrative Region in accordance with the provisions of Chapter IV of this Law."

Many people have said that with the power of appointment, there must be the power of removal. May I ask: In this connection, does it mean that the Central People's Government need not follow the procedure prescribed by the Basic Law and therefore may bypass the Chief Executive to remove principal officials of the executive authorities of the SAR without the recommendation of the Chief Executive? According to the Basic Law, the Central People's Government can only remove and appoint these officials on the recommendation and the report of the Chief Executive. If their appointment or removal is effected through the Central People's Government, then the Chief Executive shall no longer have such power in future, his report shall not be needed as the Central People's Government may appoint any principal official as it pleases. Similarly, his recommendation shall not be required as the Central People's Government may remove any principal official from office at any time. Is that be the case? Besides, even if they have the power, some procedures should still be drawn up for compliance.

Article 43: "The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region."

I would like to ask Mr Michael SUEN again: Suppose the Chief Executive has his own personal views; he has not brought them up at home, instead, he brought them up in the Question and Answer Session in the Legislative Council, in that way, he was representing himself, not the SAR. Then should he be removed from office? Should the Central People's Government remove him from office for that? Is it because he is so favoured that he is not removed from office now? Were it another person, would he have been removed from office?

Article 47: "The Chief Executive of the Hong Kong Special Administrative Region must be a person of integrity, dedicated to his or her duties. The Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region. This declaration shall be put on record."

This Council is studying how the ambit of the Prevention of Bribery Ordinance be expanded to cover the Chief Executive. In that case, does it mean that if the Central People's Government considers the Chief Executive not a person of integrity, then the Central People's Government may use that as a reason to remove him from office without going through the investigation procedure of the Independent Commission Against Corruption, the indictment of the laws of Hong Kong and the verdict of the Courts of Hong Kong?

Now, the Government seeks to amend clause 4(c) of the Bill as: "the Central People's Government removes the Chief Executive from office in accordance with the Basic Law", in addition to the interpretation of the Basic Law by the Standing Committee of the National People's Congress, these two things are really the peerless combination of evils, then they can use any excuse to remove the Chief Executive from office. In today's debate, I feel extremely desolate. I was prepared to speak at an earlier time, but later I thought I might not speak at all, for all my desolation. I find that many people have buried their conscience, and yet they have put up a full face of righteousness.

MR ANDREW WONG (in Cantonese): Madam Chairman, first of all, I must say that I agree entirely with the remarks made by Ms Audrey EU earlier.

Miss Emily LAU also pointed out earlier that the Law Society of Hong Kong (Law Society) submitted to us their new opinion on 5 July. As the staff of the Secretariat responsible for this Bill are also responsible for the Panel on Constitutional Affairs, and perhaps as a Chief Assistant Secretary was on leave recently and the other had accompanied us on a visit to Europe, they were too busy to check their e-mails. So, I wish to apologize to Members here.

Having read their new submission, I think the views of the Law Society merit our consideration. Regrettably, it is now too late, for their proposal cannot be submitted before the deadline for proposing amendments. Otherwise, I would certainly put it forward. Basically, I think there are inadequacies in the amendments proposed respectively by the Government, Mr Martin LEE and Ms Audrey EU. While I largely support Ms Audrey EU's amendment, I still consider it inadequate and I think the amendment proposed by the Law Society may be the best. So, I wonder if the Government is willing to consider this proposal. If the Government considers this proposal better than its own amendment, can the Government adopt this proposal? Or if it is technically

possible, can we ask certain Members to seek leave from the Chairman for a new amendment to be proposed without giving notice, so that Members can be given one more option?

So, before I express my views on clause 4 of the Bill, I would like to hear the views of the Government on the new opinion of the Law Society. Although this submission was sent to us by e-mail on 5 July, Members received a copy of it only today. I believe the Government also has a copy at hand, because just now when I had discussion with a Deputy Secretary in the Ante-Chamber, I saw that he had a copy with him. Can the Government respond to this proposal? I think it is a very reasonable proposal. If Members think likewise, why can we not find a way to work things out? We do not have to act as if we are set for a showdown, indefinitely escalating everything to a higher plane of principle. That would be totally meaningless. The Committee stage is precisely a time when Members still have the chance to scrutinize the clauses of the Bill and refine their contents and wording in a calm manner.

I wonder if you, Madam Chairman, will agree to suspend the meeting for 15 minutes if the Secretary also thinks that consideration can be given to this proposal, so that the Secretary can have time to think about it. Madam Chairman, I believe I have the right to speak for a second time. I still have not come to the substance of my speech yet. I hope that you, Madam Chairman, can ask the Secretary for his view and suspend the meeting if he is willing to consider it. Afterwards, the Secretary can be invited to give a response and I will speak only then.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Andrew WONG, the Secretary will have the chance to speak later, and he can respond to your speech then. We are now in the course of a joint debate. After you have listened to the response from the Secretary, you will have the chance to put forth your substantive views when you speak for a second time.

MR ANDREW WONG (in Cantonese): Madam Chairman, I am making a request. I wish to ask the Secretary through you if he is willing to consider it for a while at this stage and then give a response. As we are now in Committee,

we can engage in discussions and the Secretary can also speak for a number of times. I would like to ask the Secretary through you if he is willing to do so.

CHAIRMAN (in Cantonese): Mr Andrew WONG, do you mean you are not requesting for a suspension of meeting yourself, but you would like to ask the Secretary to consider requesting a suspension of the meeting?

MR ANDREW WONG (in Cantonese): Yes.

CHAIRMAN (in Cantonese): Mr WONG, in this Chamber, any Member or government official taking part in the meeting has the right to speak or request for a suspension of meeting. However, since the Secretary has not made such a request, I will not particularly call upon him to respond to your request.

DR YEUNG SUM (in Cantonese): Madam Chairman, just now Mr TAM Yiu-chung

MR ANDREW WONG (in Cantonese): A point of order. The Secretary is not going to respond now, but he will have to give a final reply later. I would like to know whether or not I can speak again after his speech.

CHAIRMAN (in Cantonese): Mr Andrew WONG, please sit down first. I believe you are well-versed in the Rules of Procedure too. In the Committee, Members are allowed to speak more than once. For the past few years, the Committee on Rules of Procedure has discussed this issue time and again.

DR YEUNG SUM (in Cantonese): Madam Chairman, the Honourable TAM Yiu-chung has spoken earlier in his capacity of a member of the Basic Law Drafting Committee and said that the appointment of the Chief Executive by the Central People's Government is substantive. Since this is a substantive appointment, the Central People's Government can remove him from office at any time. This is a better way to put it. However, the question is: Since the

Central People's Government has a substantive power to remove the Chief Executive from office, why is it not spelt out clearly in the Basic Law? I think Mr Jasper TSANG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr TAM Yiu-chung of the Democratic Alliance for Betterment of Hong Kong should all consider this point. If the power is substantive in appointment and removal, why is it not spelt out clearly in the Basic Law? I think it should be spelt out as with the removal of government officials, but I do not know which Article it is in the Basic Law. In accordance with that particular Article, it can state that the Central People's Government removes Chief Executive from office under the Basic Law. If it is clearly put down in this way, there will not be any dispute because it is done in accordance with the Basic Law and this is what has been clearly spelt out in the Basic Law. Why, in particular, is this not spelt out in this way? Therefore, I think the several Members mentioned above should consider this point. The Honourable SZETO Wah and the Honourable Martin LEE served on the Basic Law Drafting Committee for a certain period of time, but some Members present here served as members of the Basic Law Drafting Committee until the drafting of the Basic Law was completed, so how do they explain this? Why has the removal of senior government officials been spelt out clearly whereas that of the Chief Executive, in particular, has not been spelt out similarly?

We think that such a design is meant to facilitate the exercise of a high degree of autonomy. No matter the Chief Executive of the Government of the Hong Kong Special Administrative Region (SAR) is selected through consultations or by election, if the Chief Executive fails to discharge his/her duties under Article 53 of the Basic Law or is subject to impeachment under Article 73(9), he/she will be removed from office or dismissed in accordance with these two Articles. Owing to the existence of this mechanism, it can show that Hong Kong has a high degree of autonomy.

The Democratic Party knows our amendment today is bound to be negated, but why do so many Members still strive to fight the battle? In fact, the Democratic Party has acted on its conscience. The clause appears to be very simple, but its significance is enormous.

The Secretary said earlier he had not consulted the Central People's Government on the issue of vacancy in office. I hope the Secretary can state clearly in his reply later if any other staff of his Policy Bureau did so even though he had not consulted the Central People's Government personally? Or did the

Chief Executive do so? No lie is allowed in the Chamber of the Legislative Council. I hope the Secretary can explain this clearly. The Secretary said very sincerely he had not sought instructions, but he blushed when he said so. However, I would like to ask the Secretary if the Chief Executive or staff of his Policy Bureau had sought instructions? Besides, I wonder who approached the Central People's Government and whether the power of removal was mentioned by the Central People's Government? Was the issue of power of removal brought up by the Central People's Government, so the Government must brazen it out and go by it in an irrational and unwise manner?

Honourable Members, a basic institution in Hong Kong will definitely be destroyed and a high degree of autonomy abandoned if this clause is passed. I am not kidding, and this is true indeed. We are now holding a bomb which will soon be detonated by itself. Why should we do such a silly thing? Therefore, Members will see that we are making an effort to raise objection even though our amendment will be negated. And I hope it will be recorded clearly in the Official Record of Proceedings of the Legislative Council.

Madam Chairman, I hope the Secretary will tell us clearly in his reply later whether other government officials including the Chief Executive had held discussions with the Central People's Government on the issue of vacancy in office and whether the power of removal was mentioned by the Central People's Government.

MR NG LEUNG-SING (in Cantonese): Madam Chairman, the dispute in respect of the original clause 4 of the Bill centres around whether its wording, that is, "the revocation of the appointment of the Chief Executive by the Central People's Government" implies that the SAR is giving up "a high degree of autonomy". It was the subject of debate for many colleagues just now. I agree that the original meaning of this clause is descriptive rather than enabling, that is, it is a description of one of the circumstances under which the office of the Chief Executive may become vacant, thereby the mechanism can be triggered to hold an election for the Chief Executive under this circumstance. As to whether the Central People's Government has the power and to what extent it has the power to revoke the appointment of the Chief Executive or remove the Chief Executive from office, it is subject to the stipulations of the constitutional document, the Basic Law. If this power is actually provided in the Basic Law, it will neither be increased nor reduced because of a local legislation like the Chief Executive

Election Bill or other laws enacted in Hong Kong, just as the Legislative Council in Hong Kong cannot make up any power which does not exist in the Basic Law, nor can it ignore the original powers provided for in Basic Law.

Of course, the original wordings of the Bill appear to be overly succinct, so it has caused concern. All along I have been holding to the position that to work according to the Basic Law is the most fundamental and proper principle. After repeated consideration, the wording in the Committee stage amendment proposed by the Government has ultimately been changed to "if the Central People's Government removes the Chief Executive from office in accordance with the Basic Law." I think this will give the expression of the original legislative greater clarity. Considering it either from the angle of jurisprudence or that of politics, I see nothing questionable in the expression. Of course, if we always look at everything with suspicions or resign it to the conspiracy theory, and thus conclude that the autonomy is lost, then whatever way of drafting can never prevent the incidence of this kind of political allergy.

At the early stage of scrutinizing this clause, Members who opposed this even queried whether the Central People's Government had the power to remove the Chief Executive from office under the Basic Law. In their opinion, it was mentioned in the Basic Law that the Central People's Government had only the power of appointment when there was no mention of the power of removal. However, obviously, with respect to Article 73(9) which provides for the procedures for impeachment of the Chief Executive, the Central People's Government has the ultimate power to make the decision, which of course includes the removal power. The reference made is not in an express form but a necessary implication which is very clear in Article 73(9). To date, we have reached a consensus on this point and there is no dispute about it. Honourable Members have also accepted this point even in the amendments proposed by them. The remaining question is: Apart from Article 52 or Article 73(9), are there any other circumstances under which the Central People's Government can remove the Chief Executive from office?

The Hong Kong Bar Association expressed the view that under no circumstances can the Central People's Government remove the Chief Executive from office other than those prescribed in Article 52 or Article 73(9). If I have not misinterpreted it, the underlying argument of its view is that since the power of the Central People's Government to appoint the Chief Executive is subject to certain constraints under the Basic Law, it is only natural that the consequential

power of removal should be subject to constraints as well. This argument seems very appealing. However, in relevant constitutional precedents in other democratic countries, conclusions to the contrary were made. Colleagues of this Council have mentioned it and I have heard more than once commentators mention a famous American case, *Myers v. United States* in which the Constitution of the United States Article II(2) paragraph 2 is involved. The Article concerns with the power of the United States President in appointing officers. It provides that the President shall have the power to appoint officers with the consent of the Congress, but it makes no mention of the President's power to remove officers. The Court rules that in the course of appointing officers, the President shall obtain the consent of the Congress. However, it does not mean approval shall also be sought from the Congress if officers are to be removed from office. If it is stipulated in general legislation that consent must be obtained from the Congress for the President's decision in removing officers from office, that will contravene the Constitution. The Court opines that the power of removal is incidental to the power of appointment, not to the power of consenting to appointment. I understand that the constitutions in every place are different and legal principles cannot be applied mechanically. However, this American case at least makes one point, that is, even though there are constraints in the power of appointment, it does not mean the removal power will definitely be subject to constraints or to the same constraints. Some colleagues of this Council have cited the argument underlying the view of the Hong Kong Bar Association, but obviously it is open to discussion.

Article 43 of the Basic Law provides that "the Chief Executive shall be accountable to the Central People's Government". In English, it is "accountable". If A is said to be accountable to B, can A achieve genuine accountability? If B does not have the consequential checking power, then the so-called accountability is nothing more than an empty obligation. Besides, there is no reason for us to believe that some provisions in the Basic Law do not have substantive meanings. Some people also think that Article 13 of the Basic Law provides that "The Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region". However, if the Chief Executive fails to comply with the national diplomatic policy or interest when exercising leadership and tackling relevant foreign affairs, thereby bringing about very extreme situations, it is of course questionable as to whether he can be accountable to the Central People's Government under such circumstances.

Moreover, the Legal Adviser serving this Council has also expressed his professional opinion. Certainly, some colleagues of this Council did not fully subscribe to his opinion. But I need to stress the view of the Legal Adviser employed by this Council. He opined that some circumstances not taken care of under the provisions of Articles 52 and 73(9) of the Basic Law might exist, for example, the Chief Executive had committed a serious offence in law outside Hong Kong or committed misconduct which gave rise to a public outcry. Under such circumstances, the Central People's Government might have the power to take actions against him. Some people considered that the situation where a crime was committed by the Chief Executive outside Hong Kong could be dealt with by Article 73(9). However, I have doubts about it because it is inconceivable that simply by invoking Article 73(9) can such a significant constitutional sanction be implemented by introducing and applying an alien law. Furthermore, some considered that the case of misconduct causing public outcry could be dealt with by invoking Article 52(1). However, this seems to be too farfetched because Article 52(1) emphasizes the physical or physiological conditions of a person which render him incapable of carrying out his duties, while difficulties arisen in discharging his duties owing to political resistance, and so on are not included.

Madam Chairman, all discussions or arguments we have to date are not rulings in the law. We can continue to study the theories even until tonight. However, as a legislator. I personally think that by comparing the three options in the amendments proposed today, the drafting of "if the Central People's Government removes the Chief Executive from office in accordance with the Basic Law" is still the most desirable. It is because irrespective of whether the Central People's Government has the power to remove the Chief Executive from office under circumstances other than those prescribed in Article 52 and Article 73(9) of the Basic Law, the expression of this clause is still correct and there is not any discernible specific mistake. It can basically achieve the comprehensive, simple and specific purpose of the clause in providing for vacancy in office.

Madam Chairman, I so submit.

MRS MIRIAM LAU (in Cantonese): Madam Chairman, first of all, there is one point we have to clarify, that is, the Chief Executive Election Bill being scrutinized by this Council today seeks to provide a legal basis locally for the election of the Chief Executive, and the power of the Central People's

Government to remove the Chief Executive from office does not derive from this Bill nor from any of the ordinances of the Hong Kong Special Administrative Region (SAR). We trust that if the Central People's Government has this power, it will only come from the Basic Law. Therefore, we should not confuse the Chief Executive Election Bill with whether the Central People's Government has the power to remove the Chief Executive from office or the removal of Chief Executive from office.

Therefore, clause 4(c) of the Bill just sets out the circumstances under which the office of the Chief Executive becomes vacant, it does not give any new power to the Central People's Government to remove the Chief Executive from office. As some Members have pointed out, the power of the Central People's Government can neither be increased nor decreased by this clause of the Bill, so why do we have to write it into the Bill? The Liberal Party has discussed this Bill and the controversial clause in detail. If there is any other way to specify the circumstances under which the office of Chief Executive will fall vacant, we probably do not need this clause in the Bill. However, we found after discussions that there is no other way to tackle this problem. As we think this Bill deals with the Chief Executive Election, so the circumstances under which the office of the Chief Executive will become vacant must be specified very clearly. Whether and when there is a vacancy must be set out clearly in the Bill before the election mechanism can be triggered, or there is no way to trigger it. We have also reviewed all the Articles in the Basic Law very carefully and we agree that not a single clause or relevant wording in the Basic Law indeed mentions the removal of the Chief Executive from office by the Central People's Government. In fact, however, when certain circumstances as set out in Article 52 of the Basic Law arise, the Chief Executive must resign. However, the Chief Executive refuses to resign under those circumstances, or the Legislative Council reports to the Central People's Government for decision of a motion of impeachment passed under Article 73(9) of the Basic Law, we believe it is necessary for the Central People's Government to possess the power to remove the Chief Executive from office under such circumstances.

The amendment proposed by Mr Martin LEE indicates that he does not deny the Central People's Government has this power. However, he has advanced a further interpretation of the power of the Central People's Government in the Basic Law. He said that it was probable for the office of Chief Executive to fall vacant under only two circumstances as set out in Article 52 and Article 73(9). However, let us really consider whether these two

circumstances have necessarily included all the possibilities giving rise to vacancy in office. Can we be hundred percent sure they have already been included? We trust these two circumstances have possibly covered most of the circumstances, perhaps 99% or more. However, can we be absolutely sure that all circumstances are covered and not otherwise? We cannot. Mr Martin LEE said just now, for example, the circumstance of the whereabouts of the Chief Executive being unknown might have been taken care of by Article 52 of the Basic Law. In fact, we did hold discussions about this and we had also discussed how we should tackle the problem in case the Chief Executive was kidnapped. Could this be adequately dealt with under Article 52? Subsequently, our conclusion was that we could not possibly be hundred percent sure, nor could we decide beyond doubt that Article 52 would definitely cover all the relevant circumstances. Nevertheless, we consider the direction of Mr Martin LEE's amendment is correct because at least his proposal is compliant with the Basic Law, albeit with some of its Articles only. Thus, we opine that the scope of his amendment is too narrow and not comprehensive enough.

Regarding the amendment proposed by Ms Audrey EU and Miss Margaret NG, we actually need much more time for discussions. It is because the various circumstances under which the office of the Chief Executive may fall vacant are covered, which is quite wide, but they are not put down in express terms. In fact, this amendment is so appealing that we have almost adopted it. Why? It is because we can avoid issues such as whether the Central People's Government has the power to remove the Chief Executive from office, and when and under what circumstances it can do so. All these problems can be avoided. However, as our discussions continued, we found that even though we managed to avoid these problems, we needed to face another problem at the same time. The amendment proposed by Ms EU and Miss NG is very simple, so simple that will easily make it difficult for clause 4(c) to dovetail with clause 5. It is because we must first ascertain the office of the Chief Executive has become vacant under a specific circumstance prescribed in clause 4(c) before the Acting Chief Executive can trigger the mechanism for election of a new Chief Executive under clause 5. If the office of Chief Executive cannot be ascertained as vacant under a specific situation, how can an election of the Chief Executive be arranged? Ms EU has been very meticulous in scrutinizing the relevant clauses and even submitted many documents to the Liberal Party. And among them, there was even mention of the Acting Chief Executive announcing the occurrence of a vacancy and designating a date on which the vacancy had occurred. However, I believe the real situation would not be that simple. Some

circumstances may fall into the grey areas. Can we actually allow the Acting Chief Executive to decide on his/her own the vacancy has occurred and let him/her designate the date of its occurrence that is acceptable to us? If the circumstances have fallen into the grey areas, a lot more controversies are bound to arise. If many disputes arise but no Chief Executive is in office, then the election will be put off indefinitely. How should this actually be tackled and is this a satisfactory situation? We should also consider the above circumstances with great prudence and care. After consideration, the Liberal Party still thinks the amendment proposed by Ms EU and Miss NG is in the right direction because it has not specified under what circumstances will there be a vacancy in office. However, since the scope of their amendment is too wide, we are very worried that disputes will arise.

After thorough discussions, the Liberal Party considers the amendment proposed by the Government is more appropriate because it complies with the provisions of the Basic Law, that is, proceeding in accordance with the principles of "one country, two systems" and "high degree of autonomy". It should be most acceptable to us. If we lack confidence in the Basic Law, I believe we should not stay in Hong Kong. If we have confidence in the Basic Law and trust that it has given Hong Kong "one country, two systems" and "a high degree of autonomy", we should have faith in it. Now, the Government proposes an amendment that removal of the Chief Executive by the Central People's Government shall be done according to the Basic Law. We trust it should act in accordance with all the provisions in the Basic Law including the principles of "one country, two systems", "a high degree of autonomy" and other Articles, and the Central People's Government cannot casually remove the Chief Executive from office. Besides, judging from the wording of the amendment proposed by the Government, it does not constitute a new interpretation of the Basic Law. Since the SAR is not empowered to interpret the Basic Law, therefore any such problem can be avoided. Furthermore, the wording that removal of the Chief Executive should be effected according to the Basic Law provides an objective standard governing whether and when the office of the Chief Executive becomes vacant. This is very clear. Insofar as the Chief Executive Election Bill is concerned, this is a very important point, and it can be satisfied aptly by the amendment of the Government.

I think our demand is to set out clearly and expressly the circumstances under which the office of the Chief Executive becomes vacant for the purpose of reducing all uncertainties since this is of paramount importance to the stability of the community and the confidence of the business sector.

Therefore, the Liberal Party considers that the amendment proposed by the Government can fully cover all circumstances, and that they are the most desirable, appropriate and meritorious.

Thank you, Madam Chairman.

MR JASPER TSANG (in Cantonese): Madam Chairman, many colleagues have engaged in the discussion actively with many emotional utterances just now. Originally, I also intended to participate in the same mood. However, the Honourable Andrew WONG has made some very calm remarks that came across as somehow refreshing. They made me realize suddenly that an emotional speech was in fact empty and meaningless, and emotional wordings, if used, in reply would even be a waste of time. Therefore, I would try to express my views on the relevant clause in clearer terms again. In particular, I would like to make some comments on the amendment proposed by Miss Margaret NG and Ms Audrey EU because I have also considered their thoughts, and my suggestions may perhaps serve as references to them. At the same time, I also hope Mr Andrew WONG and Dr the Honourable David LI who are prepared to support the amendment proposed by Miss Margaret NG and Ms Audrey EU can reconsider it.

However, Madam Chairman, I would also like to make one point. I sincerely hope that colleagues in this Council can put aside their emotions temporarily and listen to my views. If we continue to harbour these emotions, we will turn a deaf ear to what other people say or force unspoken words into another person's mouth. For example, Mr TAM Yiu-chung said earlier he thought the Central People's Government shall have a substantive power of appointment. However, he had never said the Central People's Government could remove the Chief Executive from office at any time. If this is not what he meant, he can stand up and make clarification later. However, Dr the Honourable YEUNG Sum added one sentence when quoting the speech of Mr TAM, and I wonder why. Dr YEUNG said Mr TAM Yiu-chung had said the Central People's Government should have a substantive power of appointment, so the Chief Executive could be removed from office at any time. I find it meaningless to do this. I hope Members can receive the message of my speech accurately. If there is any disagreement, I am pleased to exchange views with all of them. However, if someone should distort the fact and criticize it, I consider it meaningless.

To begin with, I would like to express my views clearly. According to my understanding of the Basic Law, despite the fact that I am not an authority in this respect but everyone can understand the provisions therein, I do not think the Central People's Government has an unlimited power in removing the Chief Executive from office in the Hong Kong Special Administrative Region (SAR). There is none. In this connection, I basically agree with some of the views of the Law Society of Hong Kong, that is, the first part of its opinion after its change of mind, but I disagree with the conclusion it drawn in the last paragraph of its submission. I will explain it later, and I intend to take this opportunity to answer the question raised by Mr Andrew WONG. As regards the first-part opinion, colleagues who have participated in the scrutiny of the Bill may recall that I have also said something similar before. I think that in the Basic Law, the initiative to trigger the mechanism for appointment and removal of the Chief Executive rests with the SAR. The logic is that he who makes the appointment shall have the power to remove. According to what we can see from the provisions concerning appointment, this power is neither absolute nor arbitrary.

The Chief Executive is elected through the mechanism provided for in the Basic Law. The Central People's Government may "refuse to appoint him/her". The power of appointment is substantive. The Central People's Government, however, cannot say that it dislikes the Honourable Miss CHOY So-yuk, for example, so she will not be appointed, and then appoints Mr Jasper TSANG instead. It cannot be done this way because there is no such mechanism. Given this, even according to the standard proposed by us, that is, he who appoints shall remove, I think the Central People's Government still does not have the power to remove the Chief Executive at any time.

At the same time, the contents of Article 73(9) of the Basic Law relating to the provision on the power of the Central People's Government to remove the Chief Executive from office have also been cited in the amendment proposed by Mr Martin LEE. We can also see that the trigger is in the SAR. Many Members have pointed out that we must go through a very strict process and procedure. The Chief Executive cannot be removed from office at any time dictated by the Central People's Government.

The Honourable NG Leung-sing has just cited an American case. On the face of it, there is a very big difference. It is because in the case cited by Mr NG Leung-sing, the United States President must obtain the consent of the Congress in the appointment of principal officers, and the trigger rests with the

President personally. According to Mr NG Leung-sing, the Supreme Court has ruled that consent needs not be sought from the Congress when the President removes a principal officer from office, and this is totally different from the case under our discussion. Now someone says when the Central People's Government appoints someone as the Chief Executive, consent of some certain mechanism in Hong Kong must be obtained. It should not be like this. Instead, the Chief Executive should first be elected in Hong Kong and then it is reported to the Central People's Government for appointment. I made this point in the course of scrutiny of this Bill and also mentioned it in some articles. I have not changed my view so far.

However, I insist that the existing provisions have not conferred on the Central People's Government power to remove the Chief Executive from office at will and at any time. Many colleagues have already talked about this, and running the risk of being repetitive, I shall say it once more. Everything in connection with the power of "appointment" or "removal" of the Chief Executive or any principal officials of the SAR, and whether, how much and when the Central People's Government has this power has all been prescribed in the Basic Law. It is not possible for us to change this power, whether to increase or reduce it, by way of passing some legislation in Hong Kong.

I believe Mr CHEUNG Man-kwong and Mr SZETO Wah in fact understand this point too. Therefore, they added the reference to "interpretation of the Basic Law by the National People's Congress" in their speeches. They understand this point. For example, Mr Martin LEE said he could point out several circumstances under which the Chief Executive could be removed from office in accordance with the Basic Law. He, however, could not add a provision that the Central People's Government could remove the Chief Executive from office if it disliked him. Which provision in the Basic Law would allow the Central People's Government to remove the Chief Executive from office if it disliked him? There is none. Everything must be done according to the Basic Law. The Chief Executive cannot be removed from office simply because the Central People's Government dislikes him. No, it cannot do so. In fact, Members of the Democratic Party have also realized this point, so they added that reference. But regrettably, I do not believe such a thing will happen. What will happen if the Central People's Government interprets the Basic Law arbitrarily? Therefore, what they did was to add "interpretation of the Basic Law by the National People's Congress" to the provision, making it possible for the Central People's Government to remove the

Chief Executive from office for no reason. My question is: Were it really the case, would this provision be of use? If the Central People's Government really forces its way through the National People's Congress with the interpretation of the Basic Law, the whole set of Basic Law, as has been said by Mr CHEUNG Man-kwong in his speech, the Chief Executive could be removed from office just by invoking one of the 160 Articles in the Basic Law. If the National People's Congress could really interpret the 160 Articles of the Basic Law in this way, the Chief Executive could actually be removed from office at any time under any Article. Then, would it be necessary to add this clause? Or would it be necessary to deliver this to the Central People's Government on a silver plate, as alleged by Mr Martin LEE?

Therefore, I insist that I can see nothing in the Basic Law which gives the Central People's Government power to remove Chief Executive from office at any time, or like what they have said, the addition of this clause would be tantamount to giving this power to the Central People's Government. However, I repeat, this is only the statements of a school, and this is my opinion only. Thus, insofar as this issue is concerned, I fully agree with what was said in the letter of reply to Ms Audrey EU by Prof Albert CHEN who thought that the enactment of the Chief Executive Election Bill should not be changed into an exercise of interpreting the Basic Law. Interpretation of the Basic Law should not be done through the passage of legislation by the Legislative Council of the SAR. Nor should we inform the people in Hong Kong under what circumstances the Central People's Government may remove the Chief Executive from office by way of passing legislation locally. This is exactly the reason why I cannot support the amendment proposed by Mr Martin LEE. Mr LEE intends to set out all the circumstances under which the Chief Executive can be removed from office. He does not deny that the Central People's Government has the power to remove the Chief Executive from office because his proposed amendment carries wording on such power. However, he tried to set out through these clauses the circumstances, in his opinion, under which the Central People's Government can remove the Chief Executive from office. Why do we have to do this?

When Miss Margaret NG delivered her speech, she mentioned that this issue should not be addressed here, and she hoped that we would not have to address it in the future either. I agree with this view. Going back to the amendment proposed by Miss Margaret NG and Ms Audrey EU, can it tackle the clause before us? I would like to raise a simple question only for the

consideration of the two Members as well as other Members who are prepared to support their amendment. The Chief Executive was elected in Hong Kong through proper procedures and was appointed by the Central People's Government through proper procedures. Now his term has not expired and there is still one year to go before it expires. He is still living and alive, not yet dead. My question is: Before the Central People's Government removes him from office, who can say the office of Chief Executive has become vacant? I would like to invite Members to ponder it over again carefully. His present term has not yet expired and he was appointed as Chief Executive by the Central People's Government on the power conferred by the Basic Law. There is still a long way to go before his term expires, and he is now living and alive, so there is no problem with him. Before the Central People's Government removes him from office, what and which mechanism in authority can declare that this person is no longer in office? Or declaring that this person is no longer the Chief Executive? Or declaring that the office of Chief Executive has become vacant? The point I would like to make is: none and cannot. This is also the reason why I consider the suggestions made by the Law Society of Hong Kong not feasible.

It appears that the last part of the amendment proposed by the Law Society of Hong Kong has not been translated into Chinese by the Legislative Council Secretariat. It seems that the contents of the clauses have not been translated. Roughly, paragraph (e) mentioned, *inter alia*, one of the more thorny problems we now need to tackle and that is, when the Chief Executive has lost his abilities in discharging his duties as a result of a serious illness or other reasons, causing him to lose his abilities not just for a short period of time but for a long term (for example, some incidents occur and he lapses into a coma or his whereabouts cannot be ascertained). Let us not forget we should refrain from asking if the Central People's Government has the removal power. It is because some colleagues will find it difficult to accept if the Central People's Government is said to have the removal power. But does the Central People's Government have the power of not removing the Chief Executive? Does it have the power of not removing the Chief Executive from office? It seems that the Central People's Government has the responsibility to remove the Chief Executive from office under certain circumstances. In the Basic Law, there are provisions prescribing that the Central People's Government has the responsibility to effect removal, for example, requiring the Chief Executive to resign. As it has been set out in the Basic Law, the Central People's Government would find it difficult not to accept. Does it belong to a removal from office? Do we need to announce his removal from office?

However, in Article 73(9) of the Basic Law, there is provision on "report it to the Central People's Government for decision".

CHAIRMAN (in Cantonese): Mr Jasper TSANG, please stop for a moment. Mr Andrew WONG, would you like to raise a point of order?

MR ANDREW WONG (in Cantonese): No.

CHAIRMAN (in Cantonese): Mr Jasper TSANG, please continue.

MR JASPER TSANG (in Cantonese): Article 73(9) of the Basic Law provides that "report it to the Central People's Government for decision". Even such a major issue concerning impeachment is involved, it is not binding in the Basic Law that the Central People's Government must remove the Chief Executive from office. In other words, if Members say that not a single provision in the Basic Law seems to have empowered the Central People's Government to remove the Chief Executive from office, we cannot tell by the same token that there is any provision which obliges the Central People's Government to remove the Chief Executive from office under certain circumstances. If the circumstances mentioned by the Law Society of Hong Kong in paragraph (e) arise, but the Central People's Government has not removed the Chief Executive from office, then I have this question to ask: Can we revoke the Central People's Government appointment of the Chief Executive through enactment of legislation in Hong Kong? The Chief Executive was appointed by the Central People's Government. If the Central People's Government has neither revoked his appointment nor removed him from office, but we say with the passage of clause 4(e) of the Chief Executive Election Bill in Hong Kong that the Chief Executive has already been removed from office and there is a vacancy in office, would this be workable? At least, on the surface of it, I think the Basic Law has been overstepped.

Therefore, let us come back to the amendment proposed by the Government. If we set aside all the emotive views, the clause is just this simple: the word "can" does not exist in the clause. I wonder why colleagues of the Democratic Party would always add the word "can" when reading the clause

whereas Miss Emily LAU would always add the meaning of "any circumstances". The truth is not like this. The amendment specifies three circumstances under which the office of Chief Executive will become vacant and ultimately the Chief Executive will be removed from office by the Central People's Government according to the Basic Law instead of the Central People's Government can remove the Chief Executive from office under any circumstances in accordance with the Basic Law.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr CHEUNG Man-Kwong, would you like to clarify the part of your speech which has been misunderstood?

MR CHEUNG MAN-KWONG (in Cantonese): No.

MR ANDREW WONG (in Cantonese): Madam Chairman, although I have wished to wait until the Secretary has finished his speech before I put forward my views, I feel obliged to speak earlier since Mr Jasper TSANG has presented such arguments.

My views are simple. The question is, we may need a provision in the Chief Executive Election Bill to specify the circumstances under which the office of the Chief Executive so that the mechanism can be triggered to announce the office is vacant and to set the election in motion. However, even if there is no such a provision, the amendment may still be passed. If there is any major dispute about this, would Members please refer to paragraph 46 of the last report of the Legislative Council Bills Committee where it says that in the opinion of the Legal Adviser of the Legislative Council, since other provisions in the Basic Law have stated the circumstances under which the office of the Chief Executive falls vacant, so it would be fine even if clause 4 does not exist. And so such disputes will not occur. It would be a simple matter if the so-called vacancy of office is not regarded as an issue involving removal, but merely a fact. For example, the expiry of a term of office is a fact and if that day happens to be 30 June, then the simple fact is that after that day, that is when it comes to 1 July, even if the person who used to hold the office does not vacate the office, the office is deemed vacant already. It is as simple as that, and there is no need for the

Central People's Government to intervene or remove the person, for his term of office has expired. This is the first point about facts.

The second point about facts is that if it is the case where the Chief Executive has passed away, that is also a fact. After the death certificate is issued, the person cannot put on some cosmetics and sit in his office and pretend that he is not dead. Even if there is a challenge to what he is doing, it should be left to the decision of the Courts of Hong Kong, rather than obliging a removal by the Central People's Government. That is clear enough. The SAR Government will not propose that office holder should be removed, having considered the two points mentioned above. Those Members who support the original motion or the amendments, as well as those Members who have proposed the amendments will not challenge this.

Problems may arise under the third kind of circumstances, and that is, the resignation of the Chief Executive. The resignation of the Chief Executive should be a very simple matter, but it is also a matter of fact. If the Chief Executive resigns, the Government may say that the resignation has to be approved by the Central People's Government. However, the resignation is a fact, we may regulate this by legislation and state what circumstances will be deemed as resignation. The effective date of resignation will be a day in the future or the same day when the resignation is tendered, it cannot be any day before that. A resignation before such day is inconsistent with the fact, for the person was still discharging his duties. How can we say that he has resigned? So, that is also a question of facts.

Article 52 of the Basic Law provides that the Chief Executive must resign when as a result of serious illness or other reasons, he or she loses the ability to discharge his or her duties. But is the person having a serious illness? Has he or she lost the ability to discharge his or her duties over a long period of time, or just a short period of time? All these are facts. In addition, there are other circumstances under which the Chief Executive must resign. Let me read out some provisions and that may help us grasp the matter better. The Chief Executive must resign: "(2) When, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and (3) When, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in

dispute". Under these circumstances, he must also resign. Have such things happened before? Has a new Legislative Council passed by a two-thirds majority of all the Members the original bill in dispute? Or has the Legislative Council refused to pass a budget? All these are facts and they can be resolved by the Courts.

The Government misinterpreted the question of resignation from the outset. As there are disputes now, why do we not just forget the differences? I tend to adopt a simpler approach and that is to adopt the amendment moved by Miss Margaret NG and Ms Audrey EU. Now Members have seen the amendment recommended by the Law Society of Hong Kong (Law Society). Unfortunately, we could not table it before this Council, for we missed the time limit for proposing amendments.

The only point regarding the power of removal which is still under dispute is obviously the so-called impeachment action. But when we talk about "impeachment", there is a small difference in wording between the Chinese and English versions of the Basic Law. I hope Members can read these carefully. Article 73(9) of the Basic Law states in Chinese: "立法會以全體議員三分之二多數通過，可提出彈劾案，報請中央人民政府決定；". How should this be understood? What about the English translation? Are there any differences in meaning between the two? Are they identical? An extract of the English version of Article 73(9) goes like this: "the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision;". I think there is a small difference between the two versions. For the former, that is the Chinese version, can be taken to mean the impeachment must be passed by a two-thirds majority of the Members of the Legislative Council, together with the consent of the Central People's Government, before the impeachment can become a fact. But that cannot be deemed as a removal. Removal has to be done simultaneously on both sides. But the English version is different. The word "motion" is used in the English version. A decision is made through the passing of a motion. If Members can understand it in this way, they will find that the vacancy of office is a question of fact and all questions of fact can be decided in Hong Kong.

Coming back to the issue of impeachment, the Chinese version of Article 73(9) says that the motion passed by a two-thirds majority of the Members of the Legislative Council is only a motion of impeachment, and it is not yet an accomplished fact, and it is subject to the decision of the Central People's

Government which can veto it. If the Central People's Government refuses to sign it, then the motion will not become a final decision, and the motion will not have any effect and so the fact of impeachment will not exist. After the Central People's Government has signed, the act will become an act of State, as described in other provisions in the Basic Law. Then it has become also a fact of the State.

Article 19 of the Basic Law states that "Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government". The obtaining of a certifying document is the establishment of the fact. Likewise, if an impeachment motion is reported to the Central People's Government and if anyone wishes to challenge it after the Central People's Government has given its approval, then a request can be made to the Central People's Government for a certifying document to certify that the fact has been passed, or in other words, the impeachment motion is substantiated.

Therefore, I feel that among the many amendments before us, the one suggested by the Law Society appears to be more desirable, for the recommendation is broadly in line with my original idea. But since this amendment cannot be proposed now, of the three amendments before the Committee, it seems that the one proposed by Miss Margaret NG and Ms Audrey EU is more desirable. In such circumstances, I would rather prefer the provisions be set out in a clearer manner and I find the drafting of the amendment suggested by the Law Society better. I hope all of us can consider it calmly, and I urge the Government to do the same. If Members also consider the proposal made by the Law Society more acceptable, could the Chairman give leave to one of our members to move this belated amendment without notice? I hope a consensus can be reached and if this can really be done, then the matter can be resolved satisfactorily.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr CHEUNG Man-kwong, speaking for the second time.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, I would like to comment on the views expressed by Mr Jasper TSANG. There is a

fundamental question, which has also been posed by Members in the debate, and that is: Do we trust the Basic Law? Of course, we do. For from the first minute this debate started up to this moment, we trust the Basic Law, and precisely because of this that we are arguing on the basis of the Basic Law, instead of on other bases. Therefore, the extent to which we trust the Basic Law is that we intend to act in strict adherence to the Basic Law, unless we wish to amend the Basic Law and the amendment proposed by us is successful.

Since we intend to act in strict adherence to the Basic Law, I am sorry to say, and as has been mentioned by many Members, there are only two provisions in the Basic Law that deal with the retirement from office of the Chief Executive, and the circumstances under which the Central People's Government shall remove the Chief Executive from office. Strictly speaking, this purpose cannot be achieved if other provisions in the Basic Law are invoked. What we are criticizing the Government in respect of the four amendments proposed by it respectively, such as in the last two amendments, is the effect of facilitating the invocation of other provisions than Articles 52 and 73(9) to remove the Chief Executive through interpretation of the Basic Law by the National People's Congress. Our worries are not unfounded, because we have asked the Government in the meetings of the Bills Committee what the provisions there are in the Basic Law which may lead to the removal of the Chief Executive? The Government's answer was that Articles 2, 12, 15, 43 and 47 might have that effect. This is the answer given by the legal adviser of the Government.

When we had read through all of the five articles mentioned by the government legal adviser so casually, we failed to see why they could lead to the removal of the Chief Executive by the Central People's Government. If these Articles could lead to such a result, then other Articles in the Basic Law are likely to do the same as well. The only problem is which provisions are to be invoked in interpretation and how the interpretation is to be made. We do not want it this way. Our approach is that if we make laws for this in Hong Kong, in particular laws on vacancy in office of the Chief Executive and in relation to the Basic Law, then we can only do so according to the two abovementioned provisions in the Basic Law. It is because we trust the Basic Law and the provisions in it. So this is not a question of whether or not we have a general lack of confidence in the Basic Law. Our confidence in the Basic Law is based on how it is written and we act on it as it is so written, and that is the spirit of law.

The law is unlike a religious belief, questions cannot be answered by faith. There is a story in the Bible about the resurrection of Jesus three days after his crucifixion. Many people saw the resurrected Jesus while some did not. There was a disciple of Jesus by the name of Thomas and he did not believe that Jesus had resurrected. He said, "Unless I can see the living Jesus right before me and put my hands on his wounds, I will not believe it." And when he really met Jesus later, Jesus said to him, "Why do you have no faith in me? Blessed are those who have not seen and yet have believed." Jesus was saying that Thomas had too much doubts about his resurrection and he should have faith in the truthfulness of his resurrection. If we look at the story from the perspective of faith, Jesus was right, for one should have faith. However, if the story is seen from the perspective of law, then Thomas was right, because he would only believe in what he could see. That also applies to legal provisions. The law should be applied in the way it is written. This is the spirit of law, not the spirit of faith.

In the circumstances, we are worried exactly because the Government contends that the Central People's Government may remove the Chief Executive according to the Basic Law. Our worries are caused by the writing of the clause. If Mr Jasper TSANG can think about it calmly, he would find that such things can indeed happen. Moreover, according to the explanation given by the Government, this has already happened. Our worries are not unfounded. In particular, the older version of the clause stipulates that the Chief Executive can be removed under any circumstances according to the Basic Law. In consideration of this, our worries are justified. Even though the Democratic Party differs in its views on many issues from the Central People's Government, there is at least one thing we will not do, and that is, to make an arbitrary interpretation of the Basic Law. It is precisely because of these worries of ours that we oppose the latest amendment introduced by the Government and come up with the amendment proposed by Mr Martin LEE.

Mr Jasper TSANG presented the argument earlier that the vacancy in the office of Chief Executive can only be deemed as such when confirmed by the Central People's Government. For example, when the Chief Executive resigns but the resignation is not confirmed by the Central People's Government, then how can there be any vacancy and how can there be any election activities consequentially? However, I think there are some cases which do not require any confirmation. In the amendment proposed by the Government and in the amendment proposed by Mr Martin LEE, there is a provision which does not

require any confirmation by the Central People's Government, and that is, clause 4(b), on the death of the Chief Executive. This provision is proposed as an individual provision and not in connection with others. It states when the Chief Executive dies, a vacancy arises in the office and there is no need for any confirmation by the Central People's Government. The procedures for election can then commence. Do we need to enact another provision, stating that the death of the Chief Executive should be reported to the Central People's Government for confirmation, and only after that can the election commence? This is not necessary, for the death of the Chief Executive is a fact known to all, and unless he can resurrect, but that is only a matter of faith, not law.

There is another issue related to resignation. Mr Martin LEE has mentioned two scenarios concerning the resignation of the Chief Executive. The first is when the Chief Executive has resigned pursuant to Article 52. The objective fact is that he has resigned, is there not a vacancy then? The Central People's Government may or may not approve of his resignation. However, objectively, the person has submitted a letter of resignation and he does not want to stay in office. A vacancy has thus arisen, which is indisputable. The second scenario is when the Chief Executive resigns on grounds other than those specified in Article 52, including a reason mentioned by Mrs Anson CHAN when she resigned, that is, she did not want to stay in office any more. This reason is different from the three circumstances stipulated in Article 52. The office-bearer simply says he does not want to do the job any more. As the letter of resignation has stated clearly, and in Mrs CHAN's case, she announced her resignation in public and then went home. Then what does the Central People's Government need to confirm, does it want to confirm that she wants to retire or that the letter written by her is authentic? There is simply no need for these. The case is the same as a case of death, there is no need to confirm anything, for the fact is crystal clear.

However, there is a case when the Central People's Government will have to exercise its power of removal ultimately. The case is mentioned in the amendment proposed by Mr Martin LEE, that is, when the office-bearer went into a vegetative state and cannot resign, or when the person acts against reason and refuses to resign despite all the conditions obliging his resignation are met, and certainly that must be consistent with Article 52. In the absence of any other ways, ultimately the Central People's Government has to remove the person from office according to Article 52, that is, the part mentioned in our amendment. Of course, the second kind of removal from office is by

impeachment, including impeachment proposed under all sorts of circumstances. So there is no need for confirmation by the Central People's Government whenever a vacancy arises. A confirmation from the Central People's Government will not be necessary when the term of office expires, or when the Chief Executive dies. For in the latter case, the person has indeed died and he will not resurrect and so there is no need for any confirmation to be made.

We have proposed this amendment precisely because of this reason, for the facts are there. The incumbent has died and that is not a question of procedure. So I would think that in circumstances as these, the amendment proposed by Mr Martin LEE does merit support. I would also like to respond to some views put forward by Members. A vacancy in office does not necessarily need to be recognized through any process of confirmation, for under many circumstances vacancy arise as a matter of fact. We would also like to point out that as we intend to adhere strictly to the two Basic Law provisions on the resignation of the Chief Executive, we would not accept the four amendments suggested by the Government respectively.

I would also like to make use of this opportunity to respond to the view put forward by the Honourable Mrs Miriam LAU. At the beginning of the debate, she talked about many shortcomings of the two amendments and then she said that she would support the amendment proposed by the Government, the most controversial clause in particular. She said that if we did not have any confidence in the Basic Law, then we should not stay in Hong Kong. Just as I have said earlier, this is not a question of faith, but we should look at the provisions *per se*. There are only two provisions in the Basic Law on the resignation of the Chief Executive. So we should never look at the Basic Law from the perspective of faith, but we should draft our laws including the provisions in the Chief Executive Election Bill according to the Basic Law. These are my views. Thank you, Madam Chairman.

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

MR JASPER TSANG (in Cantonese): Madam Chairman, I only wish to speak briefly. I am very disappointed because obviously Mr CHEUNG Man-kwong is reluctant to listen to my previous appeal. I did not mentioned the word "confirm" in the entire speech I made earlier. It was neither the question of

confirming the death of the Chief Executive, nor the question of confirming the expiry of his term of office by the Central People's Government. Above all, I have not used the word "confirm". However, Mr CHEUNG Man-kwong insisted that I said a confirmation by the Central People's Government was required. Since other Members may wish to discuss the same issue later, in case they are misled by the remarks of Mr CHEUNG Man-kwong, I have to make any point briefly once again. What I have said is that under normal circumstances, the office of the Chief Executive becomes vacant on the expiry of his term of office, nobody should dispute that. If the Chief Executive dies, the office of the Chief Executive will then become vacant before the expiry of his term of office, nobody should dispute that, too. My question is, other than the two aforementioned circumstances, suppose the term of office of the Chief Executive has not yet expired, given that the Chief Executive was appointed by the Central People's Government through a legitimate process; and if he is still alive, whilst the Central People's Government has not removed him from his office, then, on what basis could we say that the office of Chief Executive is vacant?

CHAIRMAN (in Cantonese): Mr CHEUNG Man-kwong, speaking for the third time.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, if my using of the word "confirm" just now is a misinterpretation of the point Mr Jasper TSANG tried to make, I will revise slightly the way I put my argument. Under certain circumstances, it is not necessary for the Central People's Government to remove the Chief Executive from office since a resignation is a *fait accompli*. The Central People's Government cannot say that it will simply remove the Chief Executive from office, irrespective of the reasons for which the resignation is tendered. Unless the Chief Executive does not resign voluntarily, refuses to resign, or is incapable of doing so, there is no question of removing the Chief Executive by the Central People's Government. This is the legal opinion offered to the Democratic Party and also the spirit of our amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Jasper TSANG, I will let you speak again later on. Mr Frederick FUNG, you may now speak.

MR FREDERICK FUNG (in Cantonese): Madam Chairman, I too wish to respond to the last sentence of Mr Jasper TSANG's speech. If the Chief Executive is alive or does not resign during his term of office, why should a removal be effected? Why can there be any vacancy? In that case, no vacancy will arise at all.

If the point Mr TSANG tries to make is that while an incumbent Chief Executive is still alive, his appointment can be revoked only if he commits any error, or if some specific circumstances arise, then, Mr TSANG must specify what those circumstances are. If he does not do so, a situation similar to that discussed between the Secretary and me at the beginning of the debate may arise — that is, as the Secretary mentioned earlier on, if the Basic Law does not specify what those circumstances are, or if the Government cannot think of any of such circumstances for the time being, then the matter has to be referred to the Central People's Government for consideration, judgement and decision.

I may not have understood clearly the point made by Mr TSANG just now. Can he specify clearly which were the circumstances he was referring to?

CHAIRMAN (in Cantonese): Mr Jasper TSANG, speaking for the third time.

MR JASPER TSANG (in Cantonese): Madam Chairman, that is the problem of walking out of this Chamber during the debate and interrupting without listening to the debate.

First of all, I wish to respond to Mr CHEUNG Man-kwong's remarks and I would like to point out that his arguments are wrong. Taking the resignation of Mrs Anson CHAN, the former Chief Secretary for Administration, as an example, the Central People's Government announced her removal from office and then the Government of the Hong Kong Special Administrative Region (SAR) appoint Mr Donald TSANG to fill the vacant post of Chief Secretary for Administration. I said at the beginning of my speech that removal was not a punishment and dismissal. Why was a decision made to remove somebody from office? Even the procedures for the departure of an employer of a private company will be specified in his contract. Talking about procedures, can we imagine that the resignation of the Chief Executive will take effect simply because he has said that he does not wish to do the job anymore? Will the

resignation take effect after the Chief Executive has written to notify the Central People's Government or called a press conference to announce his resignation? We are now discussing legislation. Given that the appointment is made by the Central People's Government, it is a perfectly normal procedure for the Central People's Government to terminate the appointment and specify when the Chief Executive will be removed from office. We are not discussing why the Central People's Government has to remove the Chief Executive after he has resigned.

Mr Frederick FUNG did not listen to our debate about whether the amendment proposed by Miss Margaret NG and Ms Audrey EU can solve the problem of the office of the Chief Executive falling vacant in the middle of his term of office. In my view, if the Chief Executive is alive, he can continue to discharge his duties before the expiry of his term and an election will be held after the expiry of his term. However, we are discussing how we can, through certain provisions, solve the problem of the office of the Chief Executive falling vacant in the middle of his term when he is still alive. Members have made a lot of presumptions and discussed such circumstances as when the whereabouts of the Chief Executive could not be ascertained or the Chief Executive was in a coma.

Mr Andrew WONG recommends the way of expression suggested by the Law Society of Hong Kong or Miss Margaret NG and Ms Audrey EU. I wish to say that it seems this way of expression cannot solve the problem either because the mechanism is there after all. In other words, even if the Chief Executive remains in a coma for three months, as long as the Central People's Government has not removed him from office, how can we allow the Acting Chief Executive to publicly announce that the person is no longer the Chief Executive? Before the Central People's Government removes him from office, can we pass a law to empower another person in Hong Kong to be Acting Chief Executive and revoke the appointment of the Chief Executive by the Central People's Government? The appointment of the Chief Executive will then be revoked. After the Acting Chief Executive has publicly announced that the office of the Chief Executive has fallen vacant and an election is required, the Acting Chief Executive would have announced in effect that the person in a coma is no longer the Chief Executive. Does he have the power to do so?

CHAIRMAN (in Cantonese): Members, though some Members have spoken for several times, still they have continued to raise their hands to indicate their wish

to speak again. After Members have expressed their views, I hope they will not repeat the arguments already made because the debate would never come to an end if they continue to do so.

MR ANDREW WONG (in Cantonese): Madam Chairman, I have just said what I wish to say but it seems that Mr Jasper TSANG is not willing to respond to my remarks though I have not retorted him. However, he has mentioned the case of Mrs Anson CHAN. Article 48(5) of the Basic Law has provided for the appointment of principal officials clearly: "to nominate and to report to the Central People's Government for appointment of the following principal officials:; to recommend to the Central People's Government the removal of the above-mentioned officials." The provision includes not only resignation but also the dismissal of some principal officials who are considered incompetent. In that case, as the principal officials were appointed by the Central People's Government, they should be removed from office only by the latter. To put it in a more humble way, the resignation has to be reported to the Central People's Government, but an appointment is made by the Central People's Government the office exists, so long as the appointment has not been revoked. We should interpret it this way. The case of Mrs Anson CHAN cited by Mr Jasper TSANG as an example is very different.

I simply think that the Chief Executive must resign under some factual circumstances, for instance, the expiry of the term of office, death, serious illness as stated under Article 52(1) of the Basic Law and the two circumstances specified in Article 52(2) and Article 52(3) of the Basic Law. Must the Central People's Government intervene if he is not willing to resign — he is still alive but he is not willing to resign?

CHAIRMAN (in Cantonese): Mr WONG, please face the Chairman when you speak instead of turning here and there. (*Laughter*)

MR ANDREW WONG (in Cantonese): I am sorry, Madam Chairman.

Madam Chairman, we can only argue over the issue of impeachment. The Chinese version of Article 73(9) is a bit different from the English version. I prefer to interpret it as the legislature may pass a motion of impeachment and

report it to the Central People's Government for decision and consent. The Central People's Government may disagree and if it disagrees, the motion of impeachment will not stand. Whether such a motion is recognized is also a question of fact. Regardless of whether Mr Jasper TSANG agrees with me, I wish he could give a more positive response.

MR FREDERICK FUNG (in Cantonese): Madam Chairman, I thought Mr Jasper TSANG would give some wonderful reasons or precedents but the case of a person in a vegetative state has already been mentioned in the debate and I have heard the case. Though I did leave the Chamber, I watched the television and heard what Members said. Even the Chairman would also leave the Chamber once in a while, but it does not mean that she will not know what is happening in the Chamber when she is outside. The example given by Mr Jasper TSANG can be dealt with under Articles 52 and 53 of the Basic Law.

Madam Chairman, I wish to read out Articles 52 and 53 of the Basic Law. Article 53 of the Basic Law specifies that "If the Chief Executive is not able to discharge his or her duties for a short period, such duties shall temporarily be assumed by the Administrative Secretary, Financial Secretary or Secretary of Justice". That means this arrangement will be made if the Chief Executive is not able to discharge his duties for a short period. How will the case be handled if the period is not short? "As a result of serious illness" is specified under Article 52(1) of the Basic Law — I do not know if it is considered a serious illness for a person to be in a vegetative state but we can ask a medical expert to make a judgement. If necessary, the Court may also make a judgement — and "when he loses the ability to discharge his duties as a result of other reasons" is also specified. Yet, the Basic Law has not mentioned the death of the Chief Executive. He may be alive or he may be in a coma and has been in a vegetative state for three months, as Mr TSANG has just said. I believe the case mentioned by Mr TSANG can be handled under Article 52(1) of the Basic Law.

During our debate, I told the Secretary that I would be really surprised if he fails to give any example and if we cannot find a third Article other than the two Articles of the Basic Law through legal experts or when deliberations are made in the Council but we expect the Central People's Government to tell us other circumstances under which the third Article can be applied. There is no reason why the SAR Government should fail to find the relevant provision in

implementing the Basic Law when the Central People's Government can find it. There must be some problems. If the Central People's Government has really found such a provision, should we think of ways to ask the Central People's Government? It is not appropriate to adopt such an attitude if the Central People's Government has not found such a provision but it is specified in the Bill that the Central People's Government would make a decision and shift the responsibility onto the Central People's Government.

As I have said, I wish to convince Mr Jasper TSANG that Articles 52 and 53 of the Basic Law can handle the case mentioned by him.

MS AUDREY EU (in Cantonese): Madam Chairman, I would first clarify several points. Firstly, Mr Jasper TSANG mentioned the letter written to me by Prof Albert CHEN. Perhaps I have not said clearly that the letter was not written to me or sent to me as a reply by Prof CHEN. It was a letter written by Prof Albert CHEN to the Secretary for Justice, suggesting that the Secretary for Justice should ask the Government to support the amendment proposed by Miss Margaret NG and me. I only have a copy of that letter. Mr Jasper TSANG has said that he agrees with Prof CHEN that the Council or the Government should not interpret the Basic Law. As Mr TSANG agrees with this, I think he should support the amendment proposed by Miss Margaret NG and me. Our amendment has not interpreted whether there is such an implied power in the Basic Law but the Government's amendment, as Prof CHEN has said, has interpreted or annotated the Basic Law and pointed out that certain provisions of the Basic Law imply a power of removal. For the above reasons, even if Mr TSANG does not show respect for me, he should show respect for Prof CHEN and support the amendment proposed by Miss Margaret NG and me.

Secondly, Madam Chairman, some Members have mentioned the Constitution of the People's Republic of China and they have said that as the Hong Kong Special Administrative Region (SAR) is established by the People's Republic of China, the latter has substantive power to appoint the Chief Executive of the SAR and the absolute right of removal. Mr SZETO Wah has said that for the Constitution of China to be applied in Hong Kong, the national laws should be implemented through Annex III in accordance with Article 18 of the Basic Law. Article 62 of the Constitution specifies the right to appoint a lot of principal officials of the Central People's Government while Article 63 specifies the power to remove the officials stated in Article 62. This obviously

shows that even under the Constitution, the power to appoint does not carry the power to remove and there is not any concealed power to remove or other implied powers.

I would also like to respond to the remark made by Mr Jasper TSANG, that the amendment proposed by Miss Margaret NG and me cannot solve the relevant problems. Madam Chairman, the amendment proposed by Miss Margaret NG and me can precisely solve the problems. It is because, according to the Government, it is not known when the office of the Chief Executive will fall vacant, there should be an objective standard to determine when the office of the Chief Executive will fall vacant. It is very simple. If the Central People's Government removes the Chief Executive on 1 January, then under the Bill, the Acting Chief Executive can announce that the office of the Chief Executive has fallen vacant on 2 January and specify the date on which it has fallen vacant. According to clause 5 proposed by the Government, when the office of the Chief Executive suddenly falls vacant, the Acting Chief Executive has the power to announce that the office of the Chief Executive has fallen vacant and specify the date on which it has fallen vacant. If, as the Government has said earlier, it is not known that the Central People's Government has the power to remove, the Acting Chief Executive can also announce that the office of the Chief Executive has fallen vacant on the day following the removal of the Chief Executive by the Central People's Government. What are the problems? Why should there be problems?

Mr Frederick FUNG hit the nail on the head just now, pointing out clearly where the problems lie and where we have passed the "ball". If we practise a "high degree of autonomy", the mechanism would be triggered in Hong Kong and the consequential election, impeachment or resignation of the Chief Executive or even the Chief Executive falling into a vegetative state would happen in Hong Kong and these facts can be verified, confirmed and recognized in Hong Kong. As specified in clause 5 following clause 4, the Acting Chief Executive would be clear about the situation. As I have just said, it is not only ridiculous but also miserable for some Members to query that this may not be enough and remark that there should be an objective standard. It indicates that the SAR Government does not know when the office of the Chief Executive falls vacant and it has to depend on an "objective standard". These are the views of the Liberal Party.

Madam Chairman, I would like to tell the Democratic Alliance for Betterment of Hong Kong (DAB), Mr Jasper TSANG in particular, that I have always paid attention to what Mr TSANG says because his remarks have connotative meanings and are interesting, besides, I respect Mr TSANG who is one of the Members returned by direct election. As reported, the DAB did not support the last amendment by the Government because Mr TSANG thought that it was incorrect for the provision to specify that the Central People's Government could remove the Chief Executive from office under any circumstances under the Basic Law. He wished to propose another amendment to merge clauses 4 and 5 into a new clause and the problem could be avoided. As the Government later deleted the words "any circumstances", the DAB supported the Government's amendment. Having thought about this deeply, Madam Chairman, I would like to ask what is the difference between the clause before the amendment and that after the amendment? Which words have been deleted and how different is the result? In fact, the expression has become less explicit and not as ugly, but the result remains the same. The Government has not told Members which provisions of the Basic Law are involved, but the Government has told us during our deliberations on the Bill that they are Articles 2, 12, 15, 43 and 47.

Madam Chairman, I can now recite such Articles that seem like Mark Six numbers. I hope the Secretary would later explain why we could see the concealed power of removal from these Articles. In particular, I would like to know the purpose of Article 47. According to Article 47, the Chief Executive must be a person of integrity, dedicated to his duties. If Article 47 has specified such power, does it mean that so long as the Central People's Government thinks that the Chief Executive has breached Article 47, that is, he is not a person of integrity and not dedicated to his duties, it can remove him from office even not by impeachment under Article 73(9) of the Basic Law or by means of any procedure or investigation? Otherwise, why has some said that Article 47 has an implied power? If Article 47 can be invoked and the Chief Executive still has to abide by many other provisions of the Basic Law, does it mean that the Chief Executive can be removed from office under the Basic Law if he has not abided by those provisions? If this can be done under Article 47, why can this not be done under other provisions relating to the Chief Executive? I hope that the Secretary would respond to these questions later.

CHAIRMAN (in Cantonese): Mr Martin LEE, I know that you wish to speak again and I would allow you to speak, but I would like to remind you that you would have another chance to speak later.

MR MARTIN LEE (in Cantonese): Madam Chairman, as I have an impression that many Members may not be clear about the content of my amendment, I would like to make an explanation first. Although I have mentioned earlier that my amendment has been set out in the paper circularized to Members, I am not sure if all Members have read the paper.

Madam Chairman, please allow me to make a brief explanation. There is a heading "Term of Office and Election of Chief Executive" in Part 2 of the Blue Bill which is the premise. I have added "vacancy" to it and it becomes "Term of Office, Vacancy and Election". With regard to clause 3, I have not made any amendment. As for clause 4, the original subheading is "Vacancy in Office", now I have added "occurrence" and it becomes "Occurrence of Vacancy in Office" and I have made amendments to the wording that follows. In fact, the meaning of my amendment is more or less the same as the previous amended version submitted by the Government. The amendment proposed by me is "The office of the Chief Executive only becomes vacant", why would I use the word "only"? I hope that after we have written down all the circumstances we have discussed and also those mentioned by the Government, there will not be any other circumstances, just those. The Government subsequently added "under any other circumstances" which I consider unacceptable, therefore, the amendment proposed by the Government is different from mine in this respect.

As to clause 4 of the amendment, I have proposed part (a): "on the expiry of the term of office of the Chief Executive" which is the same as the previous version put forward by the Government; part (b): "if the Chief Executive dies"; part (c): "(i) resign under Article 52 of the Basic Law; or (ii) resigns for a reason other than those specified in Article 52 of the Basic Law and such resignation is accepted by the Central People's Government". Therefore, if the Chief Executive resigns of his own accord under Article 52 of the Basic Law, that is a fact and we should not argue on this any further. I believe Members present must have seen a resignation letter before, and just as Mr Andrew WONG has said, the resignation will not take effect immediately and will either be effective immediately or in a few weeks or a few months after the person has received his salary. It depends entirely on how the letter is written by the applicant. On the day when his resignation becomes effective, he can officially leave the office.

As such, if the Chief Executive resigns under Article 52 of the Basic Law, perhaps I should read out Article 52, so that Members will clearly understand the relevant provision, or at least Members who object to my amendment would also

know what I am talking about. Article 52 of the Basic Law stipulates that "the Chief Executive of the Hong Kong Special Administrative Region must resign under any of the following circumstances: (1) when he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;", I stress it is "loses the ability to discharge his or her duties as a result of serious illness or other reasons"; I stress it is "loses the ability to discharge his or her duties as a result of serious illness or other reasons"; "(2) when, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and (3) when, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute." In other words, the provision has already given the Chief Executive ample opportunities, if the new Legislative Council still maintains the original decision, the Chief Executive should resign. The relevant provision is very clear, therefore, as I have stated in the amendment, it is fine if the Chief Executive resigns under Article 52 of the Basic Law, but if he resigns under any circumstances other than those specified in Article 52 of the Basic Law, we have to state clearly that such resignation should first be accepted by the Central people's Government, which is fair and reasonable from all perspectives.

Next, I will explain clause 4(d): "if the Central People's Government removes the Chief Executive from office under the following circumstances". I also believe that the Central People's Government should have the power to remove the Chief Executive from office under certain circumstances. It is stated in the same clause that "(i) under any circumstances under which he must resign under Article 52 of the Basic Law but is unable or refuses to do so;", but the Government did not include the word "refuses" in the previous amendment. I think that was wrong. The older version proposed by the Government is "if the Central People's Government removes the Chief Executive from office under any circumstances under which he must resign under Article 52 but is unable to do so;". The Government had not taken into consideration that the Chief Executive might refuse to resign, a scenario that had not been given careful consideration at that time. I then raised my point of view, with the hope of giving the Government a hand. However, after examining the version submitted by me, the Government deleted almost all of the provisions except one sentence. I have the feeling of being compelled to suffer in silence, sometimes it is difficult to be good, especially when we are dealing with the Government. Next is clause 4(d)(ii): "upon the reporting to it for

decision of a motion of impeachment passed against him under Article 73(9) of the Basic Law;", in fact, the amendment proposed by me tallies with that of the Government. The wording may not be the same, and I think my wording is better (I always think so), so the only difference is the Government stated that, in accordance with the Basic Law, the Central People's Government can remove the Chief Executive from office under any other circumstances. This is unacceptable to me. Perhaps some Members have not yet read the official amendment put forward by me, or have intentionally pretended not to understand it. It seems that they do not quite understand the content of my amendment.

With regard to the shortcoming of my amendment, I have already stated on the outset, and admitted that I have not included the situation in which the Chief Executive has made some decisions which are in line with the wishes and interests of people in the SAR but not approved of by the Central People's Government. With regard to this point, I have already admitted that it is not included in the amendment. However, the amendment of the Government has included this point, as the Government has simply stated clause 4(c) as "the Central People's Government removes the Chief Executive from office under the Basic Law". Please note that whether this can be done under the Basic Law? For example, Article 107 of the Basic Law requires the SAR Government to keep expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance. If the SAR Government failed to achieve this for several years, would the Central People's Government make belated criticisms? I certainly hope that the Central People's Government will not apportion blame, but the crux of the problem is that the amendment proposed by the Government is definitely incapable of stopping the Central People's Government from doing so. Some Members criticized that my amendment is not good, then what are the merits of the amendment proposed by the Government? With reference to the example cited by me just now, a few years have passed, but the Government still could not achieve a fiscal balance. What should we do? If it complies with the wishes of the public and is supported by Members, what is wrong with it?

However, if we adopt the amendment proposed by the Government, the Central People's Government may have a reason to interfere. It has been stated in the Basic Law but the SAR Government did not follow. If the Central People's Government removes the Chief Executive from office because of this reason, we cannot do anything to stop it. Even worse, such a provision was moved by the Government and passed by the Legislative Council. The Central People's Government may make an announcement, or we will see President

JIANG Zemin saying on the television that "The Central People's Government now removes the Chief Executive of the Hong Kong Special Administrative Region from office in accordance with the Basic Law and Article 4(c) of the Chief Executive Election Ordinance." By that time, those of us who have supported the amendment proposed by the Government can hardly laugh. As Members said, we have to work in accordance with the Basic Law, now the Central People's Government removes the Chief Executive from office in accordance with the Basic Law and Article 4(c) of the Chief Executive Election Ordinance, on what ground could Members argue?

Madam Chairman, when I discussed the above issue with the Government, I raised one point: Could the Government, by its own means, eliminate the possibility that the Central People's Government might do so? For example, the Central People's Government could order the Chinese People's Liberation Army stationed in Hong Kong to put the Chief Executive under house arrest, just like the case of AUNG SAN Suu Kyi, and then remove him from office. I would like to ask the Government, in that case, could the Chief Executive lodge an appeal against the decision? The Government answered that he may do so, and I would be very excited when an appeal could be lodged. I have also asked the Government what could be done in the case when the Chief Executive refused to resign and was placed under house arrest but he wished to lodge an appeal and the SAR Government spoke for the Central People's Government in Court that this was an act of state? Unfortunately, the legal adviser of the Government did not understand what I was saying, and did not understand what acts of state meant. Mr TAM Yiu-chung gave him a hand by asking him to provide a written reply later.

A few days later, the written reply came, but the legal adviser still could not understand what I was asking, and misinterpreted my question. He wrongly put my question as "Q1: As Article 19 of the Basic Law states that the courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state, how could redress be sought in Hong Kong courts in respect of a decision of the Central People's Government to remove an incumbent Chief Executive, if the Central People's Government refuses to issue a certifying document to the Chief Executive?" This is exactly the opposite of the meaning of my question. What I was referring to was that, according to Article 19 of the Basic Law, in the case when there is a lawsuit against the SAR Government or the Central People's Government, the Central People's Government may say that: "Let us put other matters aside. The lawsuit involves an act of state, and the courts of

the SAR shall have no jurisdiction over acts of state. In other words, a lawsuit cannot be brought." This was what I meant. I thought the legal adviser would understand that, as it has been clearly stated in Article 19 of the Basic Law that "The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication. The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained." However, it is followed by "The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the jurisdiction of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government." It means if the Chief Executive is placed under house arrest at the time and he has lodged a court petition, at the same time, the Government has been ordered by the Central People's Government to claim in Court that it is an act of state, then the Court would not have jurisdiction over the case, as such, how should the Court handle this?

In accordance with the procedures, the Court should consult the Chief Executive. However, as the Chief Executive is placed under house arrest, the Court will have to alternatively consult the Acting Chief Executive who will then issue a certificate. The Acting Chief Executive has to consult the Central People's Government before issuing the certificate, and if the Central People's Government says that it involves an act of state, he will also say that it involves an act of state. Finally, the Court will come to the decision that the Court does not have jurisdiction over the case as it involves an act of state. That is the case, but the legal adviser of the Government did not understand what I was referring to, and misinterpreted the question. I am really puzzled and I will not waste time reading out his reply. Madam Chairman, why do I have to read out the provisions? I hope that the Government can answer my question again after listening to it carefully. To me, it is only a very simple question.

My amendment has clearly stated that only under the circumstances mentioned by me would the office of the Chief Executive becomes vacant. With regard to the vacancy in office I mentioned, the Central People's Government may have to do something, and sometimes a decision will only be

made by the person concerned. As Mr Andrew WONG has said, we cannot be unaware of certain *fait accompli*. However, the problem is that some Members do not like my amendment and would rather support the Government's amendment. I really hope that they can think about it again. Mr Jasper TSANG has repeated several times that he feels that the provisions of the Basic Law have not conferred on the Central People's Government an unlimited power of removal. I share his view in this respect. He also agrees that the power to trigger the mechanism should rest in the SAR.

I have asked Mr TSANG, according to the amendment proposed by the Government, on what ground should we believe that the power to trigger the mechanism must necessarily be vested in the SAR? Why should not, according to the Government's amendment, the power to trigger the mechanism be vested in the Central People's Government? On what ground should we believe that the Central People's Government would not remove the Chief Executive from office for the reason that the SAR Government could not achieve a fiscal balance? Mr Jasper TSANG explained to this effect, "if the Central People's Government does not have to provide any reason, we do not need to make the clause stand part of the Bill." The crux of the problem is that after we have passed the amendment proposed by the Government, how could we know that the Central People's Government would not remove our Chief Executive from office for that reason? Just as I have mentioned, we could hardly laugh by that time, as the Chief Executive may well be Mr Jasper TSANG. The Chief Executive will definitely not be me, as the Central People's Government would not appoint me to the office. Assuming that Mr Jasper TSANG has become the Chief Executive and done a good deed, the Democratic Alliance for Betterment of Hong Kong would be very pleased, the Democratic Party and all Hong Kong people would support it. However, the Central People's Government expresses its dissatisfaction and removes Mr Jasper TSANG from office in accordance with the ordinance we are formulating and the Basic Law, what should we do at that time? How can we be answerable to Mr Jasper TSANG, his descendants and other Chief Executives? This is the crux of the problem.

Thank you, Madam Chairman.

THE CHAIRMAN'S DEPUTY, MRS SELINA CHOW, took the Chair.

DEPUTY CHAIRMAN (in Cantonese): Miss Margaret NG, do you wish to speak again?

MISS MARGARET NG (in Cantonese): Madam Deputy, perhaps we should temporarily put other issues aside. Firstly, from the legal point of view, we should consider what are the legal effects if we pass the amendment proposed by the Government. If we study clause 4 of the Bill carefully, we will understand that there will be a vacancy in the office of the Chief Executive under three circumstances. If we exclude the circumstance of the expiry of the term of office of the Chief Executive, the office will become vacant when the Chief Executive dies, or is removed from office by the Central People's Government. Even when the Chief Executive is in a vegetative state, and can hardly move in bed, or he goes into a vegetative state when he first assumes office and cannot move at all for three to four years, so long as the Central People's Government does not remove him from office, we should consider that there is not a vacancy of office. These are the legal effects. In fact, what is the real difference between the amendment of Ms Audrey EU and that of the Government? The real difference is the Government does not wish to make a decision, but we think that the vacancy in office is a fact. The Acting Chief Executive can decide whether there is such a fact. If so, there is a vacancy in office and an election should be held. According to the amendment of the Government, the decision has to be made by the Central People's Government. Mr Frederick FUNG has clearly stated this point. As such, it would give rise to the problem that the power conferred on the Hong Kong people by the Central People's Government under the Basic Law to trigger the mechanism would be fully reversed, this is the most significant difference.

Madam Deputy, claims that we have to solve the problem within six months, and that we need a wider coverage are only excuses. If the amendment of Mr Martin LEE or the one proposed by Ms Audrey EU and me cannot immediately solve the problem, would the one proposed by the Government be able to solve the problem immediately? Eventually they still have to consult the Central People's Government. When we discuss whether the power of removal of the Central People's Government is consistent with the Basic Law, two circumstances may arise. Firstly, everybody will agree without any dispute, secondly, there will be disputes, and we may eventually have to request the National People's Congress to interpret the Basic Law. Madam Deputy, these are only excuses. The Government does not even dare to or wish to determine if the condition of the Chief Executive would prevent him from discharging his duties for a short period. The Government would instead ask the Central People's Government to decide whether there is a vacancy in office. I believe this either indicates that the Government is incompetent, or that the Government

is trying to shirk its responsibilities. This has really frightened us and failed the Basic Law.

Madam Deputy, many Members have expressed different views during the process. Some Members support that the Central People's Government should have the power of removal. Some Members have said that this embodies sovereignty, as China exercises unitary power, we are not referring to the separation of powers but devolution of power and that the Central People's Government is still in possession of such powers. Some Members have said that reference should be made to the Constitution, thus, he who has the power of appointment should have the power of removal. Some Members have said that the Central People's Government does not have the substantive power of appointment, but this does not necessarily mean that the Central People's Government does not have the power of removal. Some other Members have said that since the Central People's Government has the substantive power of appointment, it therefore has the power of removal. Mr Jasper TSANG should know that different Members have different interpretations. I would like to know which is true, and what is meant by the unitary power of the Central People's Government.

Madam Deputy, I suggest that Members should read a speech by Mr QIAO Xiaoyang, the Deputy Chairman of the Law Committee of the Standing Committee of the National People's Congress. It was given on 1 April 2000 on the 10th anniversary of the promulgation of the Basic Law. Mr QIAO firstly discussed how issues in respect of the Central People's Government and the SAR should be handled under the principle of "one country, two systems" from the viewpoint of a constitutional law worker. Mr QIAO opined that, as China is a country which exercise unitary power, under the principle of "one country, two systems", the relationship between the Central People's Government and SAR is not exactly the same as the relationship between the Central People's Government and individual regions under the system of unitary power. It is a special relationship which, in accordance with the Basic Law, confers on the SAR a high degree of autonomy. He stated that, the Central People's Government administers the SAR in two aspects, firstly, the Chief Executive and principal officials are appointed by the Central People's Government with the Chief Executive being responsible to the Central People's Government. Secondly, the National People's Congress possesses the power to amend the Basic Law, and the Standing Committee of the National People's Congress the power to interpret the Basic Law. Under such circumstances, the Central

People's Government has to exercise self-discipline on certain powers. This is what Mr QIAO said about the situation under the principle of "one country, two systems". Members can read the speech on the website of *Ta Kung Pao*. He also talked about the issue of the interpretation of the Basic Law. He said that the Basic Law has authorized the Courts of SAR to interpret the Basic Law and the Central People's Government has confidence that as "authorized by the Central People's Government, the courts of Hong Kong would interpret the Basic Law strictly in accordance with its legislative intent." It means that as the Basic Law has given the Courts of the SAR the authority, the Central People's Government is confident in the Courts of the SAR. Since Mr Jasper TSANG agrees that the mechanism should be triggered by Hong Kong in accordance with the Basic Law, why would we believe that the Central People's Government is still retaining the right of interpretation?

Madam Deputy, Mr Jasper TSANG stated that he shared many of our views. Ms Audrey EU also said that she agreed with the views of Prof Albert CHEN. However he has also raised the question, that is, if the Chief Executive is still alive, who can announce that there is a vacancy in office? In fact, if it is said that it is necessary to remove the Chief Executive from office before there is a vacancy in office, it is also an interpretation of the Basic Law. If Mr Jasper TSANG agrees with the views of Prof Albert CHEN, that the Legislative Council should not interpret the Basic Law if it is not necessary, he is contradicting himself on this issue.

Mr Andrew WONG has raised the point that the vacancy in office is a fact with which I very much agree. However, Mr Michael SUEN has turned it into a legal issue. The Secretary said that the Chief Executive has to be removed by the Central People's Government according to the Basic Law, in other words, the Central People's Government can only remove the Chief Executive from office in accordance with the Basic Law. The Government has turned a factual issue into a legal issue, it has not clear up any ambiguity, but given rise to further disputes.

Madam Deputy, Mr Michael SUEN raised that he has to make an objective judgement on the basis of facts. A vacancy in office is a fact, there are objective standards for determining whether or not there is such a fact. The removal of the Chief Executive in accordance with the Basic Law is an exercise of power. Therefore, Mr Michael SUEN is not trying to replace an ambiguous approach with a more specific approach, but he is eliminating the objective facts

and replacing them with removal on the basis of power. This is not something we should accept.

Madam Deputy, Mr Michael SUEN has misunderstood my speech. For instance, he mentioned that I agreed that there were problems, but we should not make the decision now. In fact, the word I used was not "problem", but "controversy". What I am referring to is that we are discussing the interpretation of the Basic Law, and different Members have different views. The controversy is mainly caused by the Government, for if the vacancy in office is a fact, and we discuss what may happen before there is such a fact, it is really difficult to resolve the controversy. When there is such a fact, it would not arouse controversy most of the time. What I am referring to is "controversy" but not "problem", and it cannot be resolved before there is such a fact.

Madam Deputy, Ms Audrey EU and I very much hope that Members will understand that, when we proposed the amendment, we tried to ignore our personal interpretation of the Basic Law and a high degree of autonomy. We aim at proposing a very neutral amendment which is based on facts, without determining whether or not there is a vacancy in office before there is such a fact.

With reference to the speech made by Mr Jasper TSANG, there are a number of points which I totally agree with him. In the course of our deliberation over the Bill, I have heard Mr Jasper TSANG honestly say without hesitation that, in accordance with the Basic Law, the mechanism for the removal of the Chief Executive should be triggered in Hong Kong. If the Government decided to reverse the procedure, he would not agree with it.

Madam Deputy, Mr Jasper TSANG shares some similar views with us and the last problem has also be solved. A vacancy in office is a fact while removal from office is a power, and a vacancy in office can be seen by anyone with wisdom. As the problem has been solved, I hope that the Democratic Alliance for Betterment of Hong Kong and other Members will support the amendment proposed by Ms Audrey EU and me, and avoid arousing controversy or taking certain measures before the problem arises. We should not discuss the conferral of certain powers in advance. In the face of certain facts, why can we not deal with them in a practical and realistic way? We should not talk about conferring certain powers on the Central People's Government, which would give rise to certain legal effects. If the amendment of the Government is passed

today, the Central People's Government must first remove the Chief Executive from office before there will be the fact of a vacancy in office. This would give us a great deal of unnecessary restrictions. Why is it that unless the Chief Executive dies or his term of office expires, the Central People's Government must remove the Chief Executive from office before there will be a vacancy in office?

From whatever point of view, if the amendment of the Government is passed, the consequences would be worrying. We do not need to raise things to the higher plane of principle, we do not even have to talk about a high degree of autonomy. Whatever we have in mind, the provision has serious flaws insofar as objective legal effects are concerned. Therefore, I urge Members to support the amendment proposed by Ms Audrey EU and me but not the amendment proposed by the Government. Thank you.

THE CHAIRMAN resumed the Chair.

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I have listened carefully to the views put forward by Honourable Members. They have raised quite a lot of questions, but I am sorry to say that I cannot answer them all, for I am afraid I will not be able to finish answering all the questions even by tomorrow morning. I would answer the questions related to this Bill, but I will not answer those questions which are not related to the Bill or even go beyond its scope. I beg Members' indulgence. If Members feel that it is necessary to discuss with me the questions they have raised, I would be happy to discuss with them at another time and place after the meeting ends tonight or tomorrow morning.

Mr Martin LEE reminded us that we should know the question of discussion today. He has also read out clearly the contents of his amendment. The amendment proposed by Miss Margaret NG and Ms Audrey EU is simpler. I believe Members know this very well. The amendments proposed by the Government are quite simple and Members know them very well too.

Therefore, I do not wish to spend time here to talk about the differences between each of the amendments. What I would like to point out is whether Members can accept the results reached after lengthy discussions with the Administration. The Bills Committee has held a great number of discussions on this and not just a few times.

The same arguments are put forward today for discussion. I understand that this is a process, and we would like to take this opportunity to explain to the public in this Chamber the kind of criteria we use and the considerations we make in the hope that they can understand them. So I am very glad to join the debate today so that I can present the position of the Government on this. I think many Members would accept that the Central People's Government has the power to remove the Chief Executive from office when he resigns according to Article 52 of the Basic Law and when he is impeached under Article 73(9) of the Basic Law. This in fact shows that Members accept the implied powers which the Central People's Government enjoys under the Basic Law to remove the Chief Executive. Article 52 of the Basic Law only sets out the circumstances under which the Chief Executive must resign, but it does not stipulate that the Central People's Government may remove him from office when he resigns. Article 73 of the Basic Law specifies unequivocally the powers which the Legislative Council of the Hong Kong Special Administrative Region (SAR) shall exercise. In other words, Article 73 confers powers on the Legislative Council, not the Central People's Government. What the Central People's Government will do is to remove the Chief Executive as a result of the motion of impeachment against him. This is also an implied power which is acceptable to Honourable Members. This is a vital point to note.

I have mentioned in the resumption of the Second Reading debate earlier that if I am asked to find out the words "remove the Chief Executive from office" in the Basic Law, I do not think I will be able to do that. We explained this point clearly in the meetings of the Bills Committee and Members noted this point. However, from what Mr Martin LEE has said earlier, he accepts the idea that though there are no express provisions, there is some implied meaning that the Chief Executive can be removed by the Central People's Government under certain circumstances. In this connection, I would like to apologize for sidetracking a little bit, for only just now did I learn of the latest position of the Law Society of Hong Kong (Law Society). I was not aware of the new position of the Law Society before that and I would like to make a special point on that because it is related to the view put forward by Mr Martin LEE and the new

amendment which he has proposed. The Law Society raised a point, which has been mentioned by some Honourable Members earlier, and that is, the removal action by the Central People's Government must be triggered by the SAR. Admittedly, the action should be triggered by the SAR Government under many circumstances, but does it necessarily have to be so in all circumstances? Some Honourable Members have pointed out that there are some cases in which the trigger is not pulled by the SAR, such as when the Chief Executive resigns of his own accord. That is due to personal reasons and it is not triggered by the SAR. To put the matter in a broader perspective, it should be triggered by events that happen in the SAR. In other words, this does not mean that it can only be triggered by the SAR, but it can also be triggered by some individual actions. For example, when the Chief Executive is sick, that is something which happens within the SAR, and so the requirement can be expanded to include events that happen within the SAR. However, can it be said that this encompasses all circumstances? This is a difficult issue faced by members of the Bills Committee. Miss Margaret NG said earlier that that I was not right and she thought that that was not a problem, but a controversy. But why is it a controversy? That is precisely because the problem remains unsolved and people have different opinions. Therefore this is the problem we have to deal with.

I have explained during the resumption of the Second Reading debate that there is still some consensus up to the present moment, but when the debate goes on, differences in opinion may appear. Then how are we going to solve the remaining problems? For example, the amendment proposed by Mr Martin LEE on paragraph (d), that the Central People's Government removes the Chief Executive from office when (i) under any circumstances under which he must resign under Article 52 of the Basic Law but he is unable or refuses to do so. Is the trigger to be pulled by the SAR in this circumstance? Of course not. For it says here that the Chief Executive should resign and if he is unable or refuses to do so, then who will trigger the action? It will have to be the Central People's Government and not the SAR. I am not hairsplitting over words or pulling anybody's legs, I am really trying to work out a solution to the problem.

As I have said earlier, we have considered the various scenarios mentioned by Honourable Members. We do hope to accept the views put forward by Members and to find a way to express these different situations. I hope Members will believe that I am trying my best in that. However, after considering these different situations, we find that there are some situations that

we do not think can be solved. For example, the problems and situations mentioned by Mr Martin LEE. I think Mr LEE has personally undergone some internal struggle for a long time and come to the conclusion that these cannot be effectively resolved, and that is why he has written the amendment in this way. That shows there are some problems which we must address and things which happen under different circumstances must be addressed in different ways. Therefore, Madam Chairman and Honourable Members, after considering all the issues carefully, we think that since we accept that these provisions have some implied powers, I cannot see why some Members still hold such strong opinions on the implied powers of the Central People's Government. Although such powers can only be seen clearly in the wording of Articles 52 and 73(9), we also find other provisions have the implied meaning of these powers, despite the fact that they may not be expressly stated.

Some Members have asked me to explain the "Mark Six" numbers mentioned by the legal adviser. I will not make a detailed explanation here, for Articles 2, 12 and 47 or any other provision are not written this way, but we need to read these provisions together as a whole. We need to bear in mind that under the principle of "a high degree of autonomy", we do have our own powers which we can exercise. We must look at the matter from an overall perspective before we can find a solution. We must look at this implied power from this perspective. We do not think we can categorically deny the existence of such a power. I mentioned this morning that although I had asked a lot of people, no one could say categorically that no such power existed. If that power does not exist, would this be a sound approach to take if we use the approach of Mr Martin LEE and only list out certain circumstances while denying all others? We have great doubts about that. Moreover, we have discussed this point already. This is a point where we have different opinions and it is also the dilemma I have referred to earlier. We must solve these problems and we cannot pretend that they do not exist, nor can we avoid running into disputes. If these situations really do happen, then how are we going to deal with them? I think that is a very important point.

As to whether the action is triggered by the SAR, Mr Andrew WONG has asked me whether I would consider the opinions of the Law Society. I am sorry to say that I do not have the time to consider these views carefully. I have exchanged my views with some colleagues briefly and we still think that the problems remain unresolved and that those opinions have failed to look after some situations. So I do not think I should waste Members' time on this.

As to the questions raised by Miss Margaret NG and Ms Audrey EU, which were also mentioned by other Members, but I am afraid I do not have much to add. I would like to ask Ms Audrey EU a question and this is not just a question asked by me, but also by other Members. If we do not use this standard, then what standard should we use? We must have a standard and we cannot place this important responsibility on the Acting Chief Executive. As to the question of whether the removal of the Chief Executive is the entire responsibility of the Central People's Government, I think Mr Jasper TSANG's view is right, for our consideration is not only the question of power, but the question of procedure. The Chief Executive is appointed by the Central People's Government, then what standard can we use to say that he is not the Chief Executive? As Mr Jasper TSANG has said, I hope Honourable Members can think twice about this.

Problems have to be solved. This is how they are solved. I would like to clarify a few problems. First, according to the information given to me by Miss Elsie LEUNG, the Secretary for Justice, she thinks that what Prof Albert CHEN has referred to is the amendment prior to the final version and not the current amendment. That was not what I meant and we have that feeling and I do not know if that is right. Second, I would like to bring out another point and that is, Dr YEUNG Sum has cast doubts on my integrity earlier. I think that is most unfortunate. It seems that he is saying that although I did not seek the advice of the Central People's Government personally, I should have known that other people have done so. And my answer is negative. I think that is really most unfortunate. Almost all of my colleagues who have worked with me on this Bill are now in the Chamber. We held meetings here every day and we brought the problems back to our office to tackle them. Members knew the progress of our work and we would deal with problems as soon as we could and give an immediate reply to the questions received. I know very well the work of each of my colleagues and the things we considered. Therefore, I have not made a clever answer by saying that I did not ask the Central People's Government for advice whereas I know that other people had done so. That is a very unfair comment to make. As to Dr YEUNG's question of whether the Chief Executive has done so, though I cannot answer on behalf of the Chief Executive, I can say that we would not ask the Chief Executive for his advice every time we come across details like these. We would deal with the matter by ourselves first and submit the final proposal to the Chief Executive for decision. So despite the fact that I cannot speak on behalf of the Chief Executive, I believe

he has not exchanged views with the Chinese leaders in the Central People's Government in this regard.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Martin LEE, do you wish to speak again?

MR MARTIN LEE (in Cantonese): Madam Chairman, I would like to respond to a few points made by Secretary Michael SUEN. Given the chance, I would sit down and let the Secretary speak. Firstly, Dr YEUNG Sum has raised a very important point which was not answered by the Secretary, that is, has the Central People's Government expressed to the SAR Government that the Central People's Government wanted to have the power of removal? This is a very important issue. If the Central People's Government has expressed through anybody under any circumstances that it wants to have the power of removal, as stated in the amendment of the Government, such that the amendments proposed by me, as well as the one proposed by Ms Audrey EU and Miss Margaret NG cannot be adopted, I think the Government should tell us about it. If the Central People's Government has not expressed that it wants to have the power of removal, there is no reason why the amendment proposed by me or the one proposed by Ms Audrey EU and Miss Margaret NG should not be supported. Has the Central People's Government made such a request? This is very important. If the Central People's Government has stated that the SAR Government can handle it on its own, I do not understand why the Government still insists on its amendment.

In addition, with reference to the letter from Prof Albert CHEN mentioned by Ms Audrey EU, Mr Michael SUEN said that Miss Elsie LEUNG had told him that Prof Albert CHEN was responding to the proposal made by the Government before the final version. In fact, I have already explained the difference between the proposal before the final version and the current proposal. The difference is that a large body of text has been deleted, but the most important wording is still there and the argument of the Government is also there. The Government has not indicated that it would take it back, and insisted that those "Mark Six numbers" have conferred the power on the Central People's Government. Madam Chairman, the most important point of all is that the

Government has not told me throughout the entire process why my amendment is inadequate. Why is it still inadequate? I drafted the amendment in accordance with the version preceding the final version of the Government, and I have only deleted its "tail", as the Government cannot explain the function of such a "tail". If the Government can give us an explanation, I am willing to incorporate it into my amendment. I have already included such scenarios as the Chief Executive was in a vegetative state and other circumstances in the amendment. If the Government said there is also a circumstance under which the Chief Executive was in another planet, I can also include this in my amendment. The problem is the Government has so far not clearly stated all the circumstances yet. The Government keeps on saying that my amendment has not covered all circumstances, but the Government should specify what should or should not be included. I have already stated that there is one point which I have not included in the amendment, that is, the circumstance under which the Central People's Government does not like a particular decision made by the SAR or the Chief Executive, whereas the decision is supported by the general public of the SAR. I have also cited an example which is the failure to achieve a fiscal balance in accordance with Article 107 of the Basic Law. The Government dares not say that this particular point is omitted, but it is just prevaricating, and it fails to state the other circumstances. But it keeps on claiming that there are other circumstances. I am really baffled.

My amendment has already included all the circumstances actually, except the point I have just made which I have intentionally not included in the amendment. I have been trying to discuss the issue in a gentleman manner, and I have shown the Government all the cards I am holding. I have been asking the Government what is missing, but the Government simply refuses to tell me. Madam Chairman, there is nothing I can do. Therefore, I cannot help believe that there must be some behind-the-scenes reason. The Government has admitted that it has exchanged views with the Central People's Government. Then what are the views exchanged? I have explicitly asked what views have been exchanged in my letter, but the Government refuses to answer my question. If these views do not exist, I really do not understand why, as my amendment has already included all the points in the version preceding the final version of the Government, except that useless "tail". Why would I describe that as a useless "tail"? It is because the Government cannot tell me the functions of the "tail".

Madam Chairman, I think this is the most important issue. The Government has never explained why my amendment is inadequate.

Mr Jasper TSANG has mentioned "alive", if the Chief Executive is "alive", then why should he be removed from office apart from the circumstances I have stated? If he is "alive", there will not be any problem, and none of the circumstances I have stated exists, why should a living Chief Executive be removed from office? He cannot give any reason. If he cannot explain why, I will assume that he does not have a reason. Other Members are listening and I keep giving him an opportunity to speak. Once he rises to speak, I will sit down immediately. He can stand up and tell us what are the other reasons, and what is inadequate, and under what other circumstances should we give the Central People's Government such power. Madam Chairman, I can sit down at any moment and let him give his speech. If he does not rise to speak, it proves that he cannot give any reason. If there is not any other reason, there is no reason why my amendment or the one proposed by Miss Margaret NG or Ms Audrey EU should not be supported. I have given him a chance to speak, and I ask him to rise to speak, but he has not done so. How can we talk about a "high degree of autonomy"? Do we still have a "high degree of autonomy"?

What is even more ridiculous is that, Madam Chairman, Mr Michael SUEN gave the history of the amendment to the clause. As such, he was basically shifting the responsibility on to Members. Regardless of how he shifted the responsibility, he clearly listed the provisions at that time. The version proposed by the Government before the final version was clear and explicit. We exactly drafted our amendment on the basis of this version preceding the final version, and we have even made some amendments for the Government. As I have just mentioned, the Government has omitted the case in which the Chief Executive refuses to resign, and I have also added this point in my amendment. This is the actual situation. Therefore, the Government does not have any ground, the conclusion is as simple as that.

Madam Chairman, I do not wish to waste the precious time of Members, as Dr David LI very much hopes that we can proceed to the vote faster so that he may leave. (*Laughter*) Madam Chairman, I beg Members through you to retain a little dignity for the Chief Executive, and do not force him to become a puppet of the Central People's Government. I beg Members to do so.

Thank you, Madam Chairman.

MS AUDREY EU (in Cantonese): Madam Chairman, may I respond to Secretary Michael SUEN in respect of the letter to the Secretary for Justice? Mr Michael SUEN said that the Secretary for Justice thought that the letter written by Prof Albert CHEN mentioned the amendment preceding the final version, but not the amendment proposed today. I am not sure whether Mr Michael SUEN has read the letter which has been very clearly written. In fact, the thrust of the letter is on the amendment proposed by Miss Margaret NG and me. Prof Albert CHEN wrote the letter to the Secretary for Justice and suggested that she should accept the amendment proposed by Miss Margaret NG and me, as it is consistent with the principle of constitutional law. When Prof Albert CHEN referred to the amendment of the Government, he suggested that it should avoid touching upon the removal of the Chief Executive from office by the Central People's Government as far as possible. Therefore, he targeted not only at the amendment before the final version or the amendment we are discussing.

He has clearly explained the issue. As the Basic Law does not contain any provisions about the removal of the Chief Executive from office. If we now include the relevant provision in the Chief Executive Election Bill, we are interpreting the Basic Law which is not something the Government and the Legislative Council should do. As such, he suggested that the issue of removal should be avoided and he said that it is possible to avoid mentioning the issue of removal from office in the drafting of the Bill. Prof Albert CHEN said that after reading the amendment proposed by Miss Margaret NG and me, he found that the amendment truly meets the requirement of the Constitution, therefore, he is not only making reference to the amendment before the final version.

Madam Chairman, I hope this is also the last time (just as what Mr Martin LEE has done) that I sincerely beg all Members: the amendment proposed by Miss Margaret NG and I is neutral. Mrs Miriam LAU of the Liberal Party said that the scope of our amendment is too wide; while the Government said that the amendment proposed by the Democratic Party is too narrow and may have left out certain circumstances. As such, as our scope is wider, we should have covered all possible circumstances under which there may be a vacancy in office. Therefore, I would like to propose a neutral amendment which includes in the Bill the handling of the circumstances under which the Chief Executive is removed from office. I hope that all Members would consider this neutral proposal. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Before I would put to you the question on the amendments moved by Mr Martin LEE, I would like to bring to the Committee's attention that if Mr Martin LEE's amendments are passed, Miss Margaret NG may not move her amendments to clauses 4, 5, 6 and 13, and the Secretary for Constitutional Affairs may not move his amendment to clause 4.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Martin LEE rose to claim a division.

CHAIRMAN (in Cantonese): Mr Martin LEE has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Dr David LI abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr David CHU, Mr NG Leung-sing, Prof Ng Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 29 were present, five were in favour of the motion, 23 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 14 were in favour of the motion and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

MRS SELINA CHOW (in Cantonese): In accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed by a Member in respect of others provisions or amendments to the Chief

Executive Election Bill, the Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed at this meeting in respect of other provisions or amendments to the Chief Executive Election Bill, the Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That heading of Part 2 before clause 3 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments moved by Mr Martin LEE have been negatived, I now call upon Miss Margaret NG to move her amendments to clauses 4, 5, 6 and 13.

MISS MARGARET NG (in Cantonese): Madam Chairman, I move the amendments to clauses 4, 5, 6 and 13, as set out in the paper circularized to Members.

Proposed amendments

Clause 4 (see Annex III)

Clause 5 (see Annex III)

Clause 6 (see Annex III)

Clause 13 (see Annex III)

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

(Members raised their hands)

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

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Dr David LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr SIN Chung-kai, Mr LAW Chi-kwong, Miss LI Fung-ying and Mr Michael MAK voted for the motion.

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

Mr Abraham SHEK abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss Choy So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr

David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the motion.

Prof NG Ching-fai abstained.

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

The CHAIRMAN announced that among the Members returned by functional constituencies, 29 were present, eight were in favour of the motion, 20 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 15 were in favour of the motion, 11 against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 5, 6 and 13 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(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): I now call upon the Secretary for Constitutional Affairs to speak and move his amendment to clause 4.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move that clause 4 be amended as set out in the paper circularized to Members.

Proposed amendment

Clause 4 (see Annex III)

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

(Members raised their hands)

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

(Members raised their hands)

Mr Martin LEE rose to claim a division.

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

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

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

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip

WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, and Mr Frederick FUNG did not cast any vote.

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

CLERK (in Cantonese): Clause 4 as amended.

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

(Members raised their hands)

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

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

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

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

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, and Mr Frederick FUNG did not cast any vote.

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

CLERK (in Cantonese): Clauses 2, 10, 11, 12 and 60.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move that the provisions which have just been read out be amended as set out in the paper circularized to Members.

Clause 10 of the Bill sets out how the polling date for the election of the Chief Executive is to be fixed. After discussions with the Bills Committee and gaining its approval, we propose to amend clause 10 and adopt the following ways to fix the polling date:

- (1) where a normal five-year term of office expires:

where the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise: (a) is a Sunday, be that Sunday; or (b) is not a Sunday, be the Sunday immediately preceding the commencement of that period; or

- (2) where the office of the Chief Executive becomes vacant:

where the 120th day after the date on which the office becomes vacant: (a) is a Sunday, be that Sunday; or (b) is not a Sunday, be the Sunday immediately following that day.

Clause 11 of the Bill is about fixing a new polling date under certain circumstances. With reference to the principle in clause 10 and with the consent of the Bills Committee, we propose to amend clause 11 as follows: If the election for the Chief Executive is held where:

- (1) no candidate is validly nominated at the close of nomination; or
- (2) first, at the close of nomination but before the announcement of the end of election, the Returning Officer terminates the proceedings for the election due to the death or disqualification of a candidate, then a new round of nomination shall commence and a new poll should be held on the first Sunday 42 days after the election fails; or second, if the candidate returned at an election cannot assume office on the day the term of the office of the incumbent Chief Executive expires or

within six months after the vacancy arises, then nomination has to start again and the new polling date should be fixed on the first Sunday 120 days after the vacancy arises.

The amendments to clauses 2, 14 and 60 are technical and introduced mainly in consequence to the amendments to clauses 10 and 11.

Proposed amendments

Clause 2 (see Annex III)

Clause 10 (see Annex III)

Clause 11 (see Annex III)

Clause 12 (see Annex III)

Clause 60 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 10, 11, 12 and 60 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 16, 25, 32 and 76.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to clauses 16(5), 25 and 76(b), as set out in the paper circularized to Members.

Proposed amendments

Clause 16 (see Annex III)

Clause 25 (see Annex III)

Clause 76 (see Annex III)

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 amendment moved by the Secretary for Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 25 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.

MR MARTIN LEE (in Cantonese): Madam Chairman, I move the amendment to clause 16(7), the further amendment to clause 76(b) and the deletion of clause 32, as set out in the paper circularized to Members.

Madam Chairman, I do not think there is any need for me to read out the contents of the paper in detail. The reasons are very simple. Firstly,

regarding the requirement that candidates must declare that they run in the election in their personal capacity, which means that anyone who wishes to be the Chief Executive must run in the election in their personal capacity. I consider this requirement unnecessary, since I believe that it would not pose any problem even if the candidates should have political affiliations. Secondly, according to the existing provisions, the candidate winning the election must resign from his political party and declare that he is no longer a member of that relevant political party. I hold that there should not be such a restriction. Thirdly, upon winning the election, the relevant candidate must make an undertaking that he will not be a member of any political parties or be bound by the discipline of any political party during his term of office. Simply put, I hold that any person interested in becoming the Chief Executive should not be required to resign from his political party after being elected as the Chief Executive by electors.

Madam Chairman, let me first talk about the major principle. If the Chief Executive is impartial and really wants to do a good job of discharging the duties of the Chief Executive for the close to 7 million people in Hong Kong and striking a balance between the interests of the different strata of society, will he be hindered by his political affiliation? In my view, the argument of the Government is not only ridiculous but also illogical and groundless. On the other hand, if the Chief Executive is not impartial but is biased in favour of certain people, there is still no guarantee that he will act impartially even if he does not have any political affiliations. On the contrary, not being constrained by any political parties, he can act even more relentlessly. So, this is my principal argument.

Madam Chairman, the speech made by Secretary Michael SUEN in moving the Second Reading of the Bill really beats me. He has stressed many times that if the Chief Executive should have any political affiliations, he would be acting in the interests of the relevant political party rather than looking after the overall interests of the people of Hong Kong. Actually, all political parties, including the Chinese Communist Party and the Kuomintang, as well as political parties in various countries overseas, will all the same claim that they are acting in the overall interests of the people. Certainly, voters may not necessarily agree. If they are sure that a certain candidate just will not do a good job, they have every right to not vote for him. Hence, Mr Jasper TSANG also said earlier on that he could not accept the argument that the Chief Executive would be unable to cater for the overall interests of the Hong Kong community if he

should have any political affiliations. Nevertheless, he also said he supported this proposal put forward by the Government.

I therefore urge Honourable Members to take a look at the Government's argument. In the 18th paragraph, the Secretary said, "Article 47 of the Basic Law provides that the Chief Executive must be a person of integrity, dedicated to his or her duties. The Chief Executive must be impartial and always acts in the overall interests of Hong Kong. When the Chief Executive makes policy decisions and implements them, he should look after the interests of all strata of the community, protecting the rights and freedom of over 6 millions citizens in Hong Kong." I fully agree with the Secretary on this point. But then, he went on to say, "The candidates of the Chief Executive election are required to declare that they stand in their personal capacity. If elected, a person must resign from his political party and undertake that he will not become a member of any political party or be bound by the discipline of any political party during his term of office. This is to ensure that the Chief Executive, when discharging his duties, will take into account the overall interests of the Special Administrative Region (SAR) instead of the interests of the political party to which he belongs. This is a legitimate aim and accords with the community's expectation of the Chief Executive and tallies with the actual situation of the political system of the SAR." I have no idea what actual situation the Secretary was referring to. Members have to understand — and I hope they really do understand — that candidates can run in the election with the support of his political party. If candidates have to declare that they stand in the election in their personal capacity, how come they are allowed to contest in the election with the help of their respective political parties? I really want to ask the Secretary whether he really meant what he said. Candidates may refuse the help of any political parties, but if they choose to enlist the help of their respective parties, why should the Government allow them to tell voters the barefaced lie that they are running in the election in their individual capacity? As a matter of fact, if the winning candidate is backed by his political party, everybody knows about that and that he most probably would not get elected if he were not backed by his party. However, upon winning the election, this candidate has to "divorce" his political party. This kind of divorce is not uncommon, immigration-related divorce is one example. In order to migrate to a certain country, some people will try to marry a resident there, and then apply for divorce upon entering that country. Are we playing that divorce game? Could we be more honest to ourselves? Why can candidates with political affiliations not look after the overall interests of the SAR?

The incumbent Chief Executive has been governing Hong Kong for four years, how many members of the public and Members of the Council consider the Chief Executive has taken into account the overall interests of the SAR rather than being biased in favour of certain people or families? This is just plain for everybody to judge for himself.

It would in fact be better if he should be a member of a political party. This is because his party will keep a close watch on him, to make sure that he will not do anything that causes the party to lose face during his term of office; otherwise, members of his party will have a hard time deciding whether they should explain for him, support him, desert him, leave him or even attack him when he stands in the next election. Political parties will all keep a close watch on their members winning the various elections, regardless of whether they are elected as Members of this Council, District Council members, or the Chief Executive. So, party rules are useful; they are not a burden.

Earlier on, Mr Jasper TSANG mentioned that the Chief Executive should not be bound by the discipline of any political party. Unless the discipline of a certain political party is bad, such as forcing its members to do evil things, I cannot see any point why the Chief Executive should not be bound by the discipline of any political party if such discipline is fully in the interests of society and the public, such as requiring all members of the party to take into account the overall interests of society?

Mr Jasper TSANG also pointed out it would not work if the Chief Executive is always subject to the pressure of his political party. Why? He referred to the election of Democratic Progressive Party's CHEN Shui-bian as Taiwan President and said that if CHEN should fail to toe the Party's political line during his term of office, he would definitely lose in the next presidential elections. For this reason, what he says and does will certainly be of great concern to the Democratic Progressive Party, which keeps a close watch on him every day. For his part, CHEN also has to discuss his work with the Party. As Members can see, although a new political power has risen into office in Taiwan, this new power is in fact constantly revising its political line. This is both a need and a fact. What will happen if the Chief Executive disagrees or is even in dispute with his party over a certain matter, say, he refuses to do what his party forces him to on the grounds that so doing is against the overall interests of society? I believe the public support for him would increase tremendously if his party should kick him away, whereas the relevant party would lose all its

supporters. On the other hand, if he could convince his party that so doing is not in the interests of society and persuade the party to stop insisting on that political line, a win-win situation would be resulted. Is it not a good thing if the Chief Executive could convince his political party to change its political lines to better serve the public? To me, if any Member of this Council who is a member of any political party gives no support to this amendment, the Member is in fact telling us that he lacks confidence in his party, and that he believes he will be considerably constrained by the party, so much so that his good deeds will be hindered by the party after he has been elected as the Chief Executive. If so, there is nothing I can say.

I know I will never be elected as the Chief Executive, yet I have very strong confidence in my political party. If many years later any member of the Democratic Party can have the chance to run in and win the Chief Executive election, I am sure the Democratic Party will be monitoring the Chief Executive in the interests of society. If not, the Democratic Party, including the then Chief Executive will suffer a great failure in the following election. Though without any argument as support, the Government is still speaking such nonsense in the hope that people will believe in what it says after hearing its nonsense for several times. But then, things just do not turn out as they should. How weird!

Mr Jasper TSANG is right in saying that the Democratic Party is a large party because it has won 12 seats. If all Members of the Legislative Council should be returned by direct election and the democratic camp (not just the Democratic Party) could still have the support of the public, the democratic camp would be returned to this Council as the ruling party irrespective of the electoral system adopted (be it proportional representation, "one person, one vote" direct election or the "single seat, single vote" system). It would not be a problem even if the present proportional representation electoral system should be adopted and no party could win enough seats to become the ruling party, for we could form a coalition government. This is actually the practice of many countries. As a result of the proportional representation electoral system, the political parties of many countries, such as Israel and New Zealand, are unable to win a majority of the seats. It is not necessary that we have a large party functioning as the ruling party, for a coalition government can also do a good job. Hence, under the existing political atmosphere, I can see no reason why the Chief Executive cannot continue to be a member of his political party. In particular, if his political party has helped him to win the election, we can see

that the public or at least the electors support the political platform of that relevant party. Certainly, the present Chief Executive Election is a coterie election; but then, even for a coterie election, it still does not matter whether Mr TUNG Chee-hwa is a member of any political party. What is the problem if Mr Jasper TSANG should run in and win the Chief Executive Election? I just do not understand why Mr Jasper TSANG is so scared and so in lack of confidence in himself and his party. The Democratic Alliance for Betterment of Hong Kong (DAB) has time and again claimed that it is not yet fully prepared to be the ruling party. I really can have nothing to say, for even the DAB members consider their party not mature enough to be the ruling party.

Madam Chairman, I most dissatisfied with one point, and that is, Secretary Michael SUEN has twice put forward the argument that the requirement is conducive to hindering rather than the development of political parties. Perhaps the political party he has in mind is the DAB, as the DAB is not yet prepared to be the ruling party, and so things must proceed in slowly, or the DAB will not make it. If that is not what the Secretary has in mind, I just cannot see why he considers the requirement conducive to the development of political parties. Actually, Secretary SUEN is in effect telling the whole world, or at least the people of Hong Kong, that political parties are bad, that people with political affiliations will only look after the interests of their respective parties rather than serving the public impartially. He is in fact slandering all the political parties.

As I pointed out in my speech earlier on, all rulers in the world, with the exception of Mr TUNG Chee-hwa, have political affiliations. I really cannot think of any rulers in the world who do not have any political affiliations, who are not members of any political parties or who have not won the relevant elections because of the support from their parties. We do not have to look far for examples. There is nowhere in the Southeast Asia is like the case in Hong Kong. As I said before, both the Chinese Communist Party and the Kuomintang became the ruling party after their members had won the relevant elections. Will any political party give up such a chance to become the ruling party and require its member to resign? This is just ridiculous!

Madam Chairman, I hold that since the Government can never justify this requirement, there is no reason for us to support the relevant clause. Thus, I hope Members will support my amendment. If any Members could come up with better reasons and prove that I am wrong, I would be most willing to accept their views. Thank you.

Proposed amendments

Clause 16 (see Annex III)

Clause 32 (see Annex III)

Clause 76 (see Annex III)

MR IP KWOK-HIM (in Cantonese): Madam Chairman, first of all, I am grateful to Mr Martin LEE for speaking highly of the DAB. He has certainly made quite a great deal of criticisms though. Madam Chairman, the history of development of political parties in Hong Kong is rather short after all. As much as the growth of a person goes through a process, the development of society must also proceed in a gradual and order manner. For certain matters or phenomena, if they are to become extensively accepted by society, the public must be allowed enough time to understand them in depth. Judging from the social awareness of the people, the public only have very limited understanding of the various political parties in Hong Kong, as they have yet to recognize the respective ideas on which the political parties are established and the different ideals they pursue. Through the many surveys conducted by us, we have noted a concern or unnecessary misunderstanding among the public in general: They are concerned that a Chief Executive with political affiliation will be biased towards the interests of the relevant political party in discharging his or her duties. In the face of such a misunderstanding, there is nothing the DAB can do except sigh with regret.

Are the interests of political parties and public interests necessarily a dichotomy? Will political parties necessarily act in the interests of only a small coterie of people? This I cannot agree, nor does the DAB. If any political party is to develop into a party with prospects, social commitment and public support, it cannot confine its services to just a single stratum of society. Otherwise, it will never win the support of the people of Hong Kong. With regard to the question of whether or not the Chief Executive elect should resign from his or her political party, the crux of the matter lies not in whether or not the elect is a member of any political party but in whether or not he or she will act partially in the interests of a certain political party. Even if the Chief Executive is a member of a certain political party, it does not necessarily mean that he or she will certainly "act in the interests of a certain political party". On

the political front, however, such a Chief Executive will inevitably be restrained by the political party to which he or she belongs in that he or she cannot make any major political decisions that are incompatible with the stance of the political party. Situations of this kind are generally accepted in places where the development of party politics is mature and the acceptability of political parties in this respect is comparatively higher. But then, Hong Kong has yet to reach such stage.

With regard to the future development, the DAB does not oppose persons who are members of political parties assuming office as Chief Executive. As the saying goes, "Fruits will fall off when ripe". When members of the public know more about the various political parties and their respective political ideas, they will find a Chief Executive with political party background acceptable. So, everything will come easy at the right time. Hence, the DAB supports the requirement that if any candidate standing for the Second Chief Executive Election, which is the coming election, is a member of any political party, that candidate must resign from the political party to which he or she belongs after winning the election. However, that does not mean the DAB considers that our future Chief Executives should never be members of political parties.

With these remarks, Madam Chairman, I oppose the amendments by Mr Martin LEE.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, the Government requires that candidates standing for the Chief Executive Election must declare that they stand in their individual capacity, and that the elected candidate must resign from his political party and undertake that he will not be a member of any political party or be bound by the discipline of any political party during his term of office. In my view, this requirement is meaningless, useless and stupid.

Why do I consider this requirement by the Government is meaningless? To begin with, for any candidate who is a member of a political party, even if he declares that he is standing for the Chief Executive Election in his individual capacity and promises to resign from his party later on, his history as a member of a political party will remain a commonly know fact that can never be erased. As his political party still exists, there is no way that he can deny the fact. Besides, he may adopt the political platform of his party as his platform when

running in the election and the electors may also support such a political platform. For the sake of credibility, he must implement that platform after winning the election. Given that the candidates standing for election will most probably be members of political parties, it is simply meaningless for the Government to require the candidates to declare that they stand for election in their individual capacities or to undertake to resign from the relevant political party upon winning the election.

Why do I say this is useless? As agreed by many people, the elected candidate can continue to be a member of his political party in many different ways — he may become an underground member or he may resign from the party but still remain as a "close friend". As the saying goes, "Though trapped in the Cao camp, the heart is still in the Han camp". We just cannot cut off their connection. Even if his name is not on the membership list of that political party, there is still no way to cut off his network or background connection, not to say affecting what his mind thinks. If his heart is in it, there is no way to stop him. It is simply useless to force something to stop if nothing can really stop it from happening.

Third, such a requirement is stupid. As pointed by many Members just now, many of the governments across the world are formed by political parties. In the event that no parties have won enough seats to be the ruling party, the government will be formed by a coalition of political parties. This is indeed common among countries in the world. Moreover, China, our own country, is also ruled by the Communist Party; it is written in not only the Constitution but also in the four cardinal principles that China be ruled by the Communist Party. Why then should the Hong Kong Special Administrative Region (SAR) under the rule of the Chinese Communist Party forbid political parties to send their members to stand for election or require the winning candidate to resign from his party? Some has queried that political parties might be biased in favour of a certain sector, and that the Chief Executive, being subject to the discipline of his party, might not look after the interests of the public. Actually, if any member of a political party that pays no regard to the interests of the public should by fluke be elected as the Chief Executive, he would very soon be voted out of office in the next election. What is more, he may also be impeached. So, it is indeed stupid to try to prevent political party members from standing for election.

We just cannot figure out why we have to support a clause which is meaningless, useless and stupid. We have heard many voices saying that

democratic development should proceed in a gradual and orderly manner in the past, but it has never occurred to us that members of political parties should stand for election also in such a manner and wait until the so-called right time "when fruits will fall when ripe" as mentioned by Mr IP Kwok-him. When is the right time? Does that mean political parties have to wait until they fall like pineapples falling off the trees to send their members to stand for election? Will everything come easy at the right time? The so-called objective standards just do not exist. Actually, it all depends on what the Government thinks: The so-called right time is when the Government considers it has the upper hand or that the candidate whose platform is in line with the Government will surely win the election, or when it has found a political party member who is willing to shake hands with the Central Authorities. By then, the Government will amend the law and proceed in a gradual and orderly manner. This is ridiculous indeed.

Even though we hold that members of political parties should be allowed to stand for the Chief Executive Election, it does not mean that any member of the political parties today is capable of winning the election by the Election Committee comprising 800 members. As Members all know, the incumbent Chief Executive, Mr TUNG Chee-hwa, is not a member of any political party; at least he does not seem to be so on the surface. Of course, it would be another story if he is a case of "though trapped in the Cao camp, the heart is still in the Han camp". So, what we are discussing now is in fact a question of principle. Let me use the case of Mr TUNG Chee-hwa as an example. Since he does not have any political affiliation, he can at least say that he is not a member of any political party and is standing for election in his personal capacity. In reality, however, he is supported by the mighty Chinese Communist Party. Moreover, many members of the Election Committee who are affiliated to different political parties have also voted in support of him in the election. It can be said that Mr TUNG Chee-hwa is an invisible party leader without any political party; yet from another angle, Mr TUNG is also the invisible leader of many political parties. But then, in the end, he still has to pull together the forces of several political parties to help him win the election. Inevitably, he has to stay close to those political parties that have supported him and helped him win the election. When he appoints members to certain important agencies, he will give consideration to members of such political parties. Moreover, members of these political parties will also be considered for the award of Grand Bauhinia Medal, as well as the Gold, Silver and Bronze Bauhinia Stars. Frankly, cases like this have become commonplace. Under the circumstances, it is entirely meaningless to introduce such a clause. And that is why I say the requirement is meaningless, useless and stupid.

For these reasons, I support Mr Martin LEE's proposal to delete the relevant clauses concerned. Thank you, Madam Chairman.

MR FREDERICK FUNG (in Cantonese): Madam Chairman, I have to explain again why I rise to speak, for I indicated earlier on that I would not participate in considering this Bill. The Bill contains two provisions that have nothing to do with the Chief Executive Election. Clause 4(c), for example, is related to the methods to deal with the circumstances under which the office of the Chief Executive becomes vacant, which is related to the issue of a high degree of autonomy. The other provision is concerned with the status and position of political parties in politics.

Madam Chairman, I am not sure whether the Equal Opportunities Commission will also take on work in this field. If so, I will waste no time in instituting legal proceedings against the Government for this Bill discriminates against political parties. The Bill stipulates clearly that candidates can run in the election only in their individual capacities, but not in their capacities as members of political parties. I have no idea how the Government comes up with such a conclusion. I study politics and have taken a master's degree course in politics, albeit I have yet to graduate. It is not because I failed to do a good job with my studies in the history of political parties or the policies of political parties. Rather, the electoral reforms package introduced by Chris PATTEN has made it impossible to complete my dissertation. I have spent five whole years on the study of political parties. Today, I hope very much to invite my teacher, Mr Andrew WONG, to give Honourable Members a lecture on the theory of party politics.

Political parties exist in not only countries with direct elections but also countries without any direct elections. However, the case of Hong Kong can only be described as "half a bucket of water". While the Chief Executive is not selected through direct election, most probably only half of the seats of this Council will be directly elected in the next Legislative Council Election. Actually, this "half a bucket of water" kind of idea is not proper. I wonder whether Members prefer political parties to develop into maturity or to disappear altogether. I do not know the Government's thinking. We cannot prevent political parties from emerging; besides, political parties have already emerged in Hong Kong. We cannot stop political parties from maturing either, because they will mature in time. We can only delay this process of maturity. But is

so doing in the interests or against the interests of the public? We hope the Government will look into this issue. To students of politics, political party is an area of expertise, and delaying the maturing of political parties is tantamount to telling a doctor not to make diagnoses or discharge the duties of a doctor anymore but to work as an assistant of others. Who knows better about the politics and the operation of the government and representative council of a place than political party members, particularly those who are full-time party politicians? In the absence of any mature political parties, a certain person who has never participated in political parties, politics or political representative councils is appointed as the Chief Executive for no reasons other than the fact that the Government considers that person mature and capable enough to be the Chief Executive. What kind of logic is this? If a person with no political affiliations can be elected as the Chief Executive, why can candidates with political affiliations not be elected? At least the public can tell from the experience, qualifications and histories of such candidates what they have done before.

My teacher is not in this Chamber at the moment, I may as well "show off" what I have learnt. Actually, candidates with political affiliations compare favourably with candidates without any political affiliations in many aspects. Firstly, political parties generally have their own platforms. As such, the public may be able to predict what is in the mind of a certain political party when it becomes the ruling party or when its member is elected as the Chief Executive. Indeed, from this electors may envisage how the candidates would discharge their duties and lead Hong Kong upon election. On the other hand, if any person with no political affiliations should stand for the Chief Executive Election all of a sudden, he may lead Hong Kong to the left, to the right, to heaven or to hell. The most important point is that political parties will let the people know in which direction society will be heading. Most importantly, Madam Chairman, democratic election enables voters to make an informed choice.

Secondly, I always believe that "two heads are better than one". While the Hong Kong Association for Democracy and People's Livelihood has more than just three members with political affiliation, the Democratic Party and the Democratic Alliance for Betterment of Hong Kong have even more such members. Given the many different talents in political parties, if any political party member should be elected as the Chief Executive, other members of the party could certainly help him to do a good job of governing Hong Kong. Naturally, the Secretary would love to have no political parties, because he will

certainly be appointed as a bureau secretary then. As for other people, since they do not have any political affiliations, nor good friends or colleagues engaging in politics, they just will not be appointed as ministers. Is that what we really want?

Thirdly, every political party has its own discipline. This has both merits and demerits. One merit is that a good political party will monitor its members to prevent them from breaking the law, involving in corruption, or doing things that the party does not agree. Besides, the public will also know about the discipline of political parties. Some may ask this question: Will the Chief Executive be controlled by his respective political party? This worry is indeed unnecessary. The case of CHEN Shui-bian has been cited as an example to demonstrate that political affiliations cannot be of much help. The case of CHEN Shui-bian is actually a very good example. It tells us that in order to mobilize the whole country and to appeal to the majority voters for support (CHEN only won with a mere 40% of the votes), an elect with political affiliations has to make certain adjustments, so as to convince the people of Taiwan that he is their representative. In future, if any candidate with political affiliations should be elected as the Chief Executive, he would still have to win the support of the majority of the voters when formulating policies, making major decisions or pushing ahead the development of society. If any political party should care only about its own interests, it could never win in elections. I believe the Secretary is also aware that candidates are allowed to make public which political parties they belong, albeit they are required to resign from such parties upon winning the election.

So, electors will still support a certain candidate to be the Chief Executive even though they are aware of his political affiliation. If the Secretary agrees that democracy should be upheld, it would be better if there are no election at all. As I can recall, on one occasion several years ago, I asked the Secretary a question relating to the direct election of district boards. I asked him if it did not matter whether the candidate lived in the district concerned, say, Kowloon West, so long as the voters decided to vote in support of him. If a certain political party is no good, looking after only its own interest, or a certain candidate is no good, should we still trust him just because he has won the election by 800 or 6 million voters? Perhaps I should put it this way. If the candidate is not a fool, the 800 or 6 million voters must be fools. So, the proposed amendment under debate today is totally illogical. Excuse me, Madam Chairman, I am afraid I have somehow lost my head.

Just now many Members said they would be concerned if candidates had any political affiliations. I have also heard or read in newspapers that certain government officials or political parties had expressed similar concern. Actually, I have already made a number of points on this during the Second Reading debate. I am not going to repeat those four points here, including the question of whether or not candidates with political affiliations would cater for the overall interests of society upon winning the election. I believe I have already covered those points in my speech earlier. Will any conflict arise between the central government and the regional government over this? I have already quoted many examples demonstrating that even though the ruling parties of the regional governments of many places in the world are not the same as the ruling parties in their respective central governments, no conflicts have arisen. So, we do not have to worry about conflicts between two political parties. On the contrary, we should beware of the extreme kind of conflict. By that I mean we beware of candidates who will, upon winning the election, turn Hong Kong into a base for subversive activity against China. In that case, it is not a question of political affiliations. Hence, it worries me more if the candidates do not have any political affiliations. For candidates with political affiliations, we can know more about them from their political parties in terms of their respective political platform, party discipline and performance in recent years. However, for those candidates who come out of the blue to stand for election, we just have no knowledge of their background. Though the police may have some information, the general public will never have such information. I trust that no one in Hong Kong would believe Hong Kong alone will be able to subvert the Central Authorities. I therefore hold that there is no cause for concern in respect of this.

Should party politics be of concern to us? Just now Mr IP Kwok-him said that they would support party politics "when the time is right". I hope the Secretary will tell us whether he is concerned about party politics in his speech later on. But I have the feeling that the Secretary is not at all concerned. Besides, he always talks with us and lobbies us from time to time; it just does not seem to me that he is afraid of us. At least, I have visited the Secretary at his office. It is indeed unnecessary for us to be afraid of political parties. Political parties will certainly and naturally develop. If the Secretary says he is wary of party politics, I am afraid what he does sometimes is not consistent with what he says. Madam Chairman, I therefore can see no reason why the Government must discriminate against political parties, ban their participation in the Chief Executive Election, or bar their members or given heads from standing for election.

Last but not least, I hold that the Government should adopt a positive rather than negative attitude towards both the Chief Executive Election and the development of political parties. As at present, even if they are not complimenting each other, political parties will at most be criticizing each other at the meetings of representative councils. What is more, political parties only adopt peaceful and non-violent approaches to express their views. In recent years, the number of participants in the largest demonstration or petition activities amounted to only a few thousand but definitely less than ten thousand. So, I think the Government really should not worry too much. On the other hand, tens of thousands of people may take to the streets to demonstrate against certain social issues, particularly the livelihood-related ones, with a view to pressing the Government to revise the relevant policies.

Thanks to their organization power, in many a case political parties are in a better position to group together and co-ordinate the relevant persons of a certain district or people influenced by political parties to listen to their views and demands. Through discussions with different parties before formulating policies, the Government might be able to identify the right policy directive or solution to problems. I believe that any candidate with political affiliations will not and cannot look after only the interests of his respective political party. On the contrary, if any candidate with political affiliations should resign from his political party after winning the election, I suspect he would be more likely to look after only the interests of his party. Since all his ideas and value standards are adopted from the party, the policies of the government under him will follow the political line of his party. Moreover, since most of the friends he has known for years are his fellow party members, he may most probably appoint many of his former party comrades as members of the various advisory committees. Certainly, he can claim that he is no longer a member of that party. But why must the Government force him to lie? Perhaps it is out of the Government's concern for the interests of small political parties that candidates with political affiliations are barred from standing for election or required to resign from their political parties, but such a requirement just cannot help to address the concern mentioned by me just now. That being the case, why does the Government not face squarely up to the participation of political parties, which is an inevitable element of elections? Why does the Government not consider co-operating with political parties to pave the way for the future development of a democratic political system in Hong Kong?

Thank you, Madam Chairman.

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

(No Member responded)

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, the amendment moved by Mr Martin LEE mainly seeks to delete those clauses on requiring a candidate with political affiliation to run in the Chief Executive election in his individual capacity, to resign from his party once elected, and to declare that he will not join any political party or allow himself to be bound by any party discipline during his term of office. We oppose this amendment.

Members must understand clearly why we hold such a view. In moving the Second Reading of the Bill in March, I already offered a clear account of our reasons. But, perhaps, some of the reasons may have eluded the memory of Members by now, so I think it is necessary to recapitulate some of the more significant ones here. I remember saying that the views we now advance are not unchangeable. We will take account of the prevailing circumstances when seeking to implement the requirements on electing the Chief Executive as provided for under the Basic Law. We will adhere to the principle of gradual and orderly progress and take appropriate measures in response to the realistic conditions and circumstances of the time. In other words, we will not resist changes, and I hope Members can realize this point.

We have explained how we should look at the overall political framework in the context of the Basic Law and what significant responsibilities the Chief Executive bears in respect of the Basic Law. It is stipulated in Article 43 of the Basic Law that the Chief Executive shall be the head of the Hong Kong Special Administrative Region (SAR). He shall represent the SAR and be accountable to both the SAR and the Central People's Government. Under Article 45, the Chief Executive shall be selected by election and be appointed by the Central People's Government. On many other occasions, I have repeatedly referred to the esteemed status and significant responsibilities of the Chief Executive. In this connection, the powers and responsibilities of the Chief Executive as stated in Article 48 of the Basic Law are extremely extensive: to lead the SAR Government, sign bills, promulgate laws, sign budgets, issue executive orders, appoint and remove judges, nominate and report to the Central People's Government the appointment of principal officials, recommend to the Central

People's Government the removal of principal officials, pardon persons convicted of criminal offences or commute their sentences and conduct on behalf of the SAR Government external affairs and other affairs as authorized by the Central People's Government.

Why have I listed in such great detail the responsibilities of the Chief Executive under the Basic Law? The reason is that under the administrative framework of Hong Kong, the Chief Executive alone has to discharge all these responsibilities. In that sense, he is different from all the others, and this is the requirement of the Basic Law. That is why we must require the Chief Executive to be impartial and attentive to the overall interests of Hong Kong in the implementation of policies. We are here not to discuss what problems may arise if the Chief Executive has political affiliations. As I explained so clearly during the Second Reading of the Bill, we do know where the problems lie, and we have also considered the development of political parties now. The various political parties have participated very actively in the elections of the Legislative Council and the District Councils, and they occupy a considerable number of seats in these two tiers of representative assemblies, participating fully in a wide range of local affairs. As mentioned by some Members, in the process of administration, the Government listens widely to the views of these political parties, in the hope of strengthening its co-operation with them and securing their support. However, given the prevailing circumstances, if a member of any one of these political parties becomes the Chief Executive, then, just as some Members have just pointed out, he will be bound by party discipline because of the membership. Some Members are of the view that this is in fact a merit as much as an advantage, for his party will be able to act on behalf of the people to check the acts of the Chief Executive, thus ensuring that nothing will go wrong with his acts. However, in our view, at a time when party politics in Hong Kong is still maturing gradually, if the Chief Executive is selected from among members of political parties, people will inevitably think that the Chief Executive will listen more to his own party than to other parties. That way, other political parties may well be rendered unable to develop with an equal edge or on an equal basis.

As to the question of creating a pluralistic political environment, where all political parties can develop together, we have some different views. The parallel and balanced development of all political parties is doubtless conducive to the shaping of a pluralistic society — for a pluralistic society by definition must provide many different channels for people with different political

affiliation to make their voices heard. The case mentioned by me just now may well lead to bias in favour a particular political party. This is undesirable, and will also impede the development of political parties. For all these reasons, we require persons with political affiliations to run in the election in their individual capacity. We also hope that a candidate, once elected, can resign from his political party within seven working days from the date of his election; he should also undertake not to join any political party and allow himself to be bound by any party discipline. This is actually meant to ensure that in the discharge of his duties, the Chief Executive can always uphold impartiality, look after the interests of Hong Kong as a whole, formulate and implement his policies in a fair and impartial manner, pay heed to the needs and protect the interests of the various social strata in the SAR, and safeguard the rights and freedoms of the 6 million or so residents of Hong Kong, instead of simply looking after the minority interests of his political party. We think such requirements are only reasonable; we also think that they are in line with the social expectations of the Chief Executive and the actual situation of the political system of the SAR presently.

Madam Chairman, when it comes to the existing political system of the SAR, as I said a moment ago, we hope that the various political parties can be given equal opportunities of gradual and orderly development, so that a pluralistic political environment can be created. This is not only an essential condition of a democratic society, but also a positive factor conducive to the sound development of our political system as a whole. At this stage in the development of our political system, we are of the view that such requirements will foster, not impede, the development of political parties. We think that the restrictions proposed in the Bill can already strike a suitable balance between the overall interests of society and the personal rights of the Chief Executive. These requirements are reasonable and commensurate with the goals. We have sought legal advice on this, and it is confirmed that our proposal is in line with the protection of freedom of association stipulated in Article 27 of the Basic Law and Article 22 of the International Covenant on Civil and Political Rights. It is stipulated in Article 45 of the Basic Law that the method for the selection of the Chief Executive shall be specified in Annex I to the Basic Law; 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. I hope Members will not forget that this is also our goal.

We are now undergoing a stage of transition. In the future, we will need to review the political system of the SAR in accordance with the mechanism laid

down in Annex I, so as to keep abreast of the prevailing circumstances of the SAR and achieve gradual and orderly progress. In the long run, when we review the electoral system for the Chief Executive, we will at the same time review the various eligibility requirements for candidates of the Chief Executive Election, so as to ensure their consistency with the method for the selection of the Chief Executive at the time. This shows precisely that what we propose today will not remain unchanged forever. We will take account of the prevailing circumstances and take actions when necessary and when conditions are ripe.

I sincerely call upon Members to oppose this amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Frederick FUNG, speaking for the second time.

MR FREDERICK FUNG (in Cantonese): Madam Chairman, I am even more unconvinced after listening to the speech made by the Secretary. According to the Secretary, a Chief Executive with no political affiliation could better balance the power among different political parties and enable all political parties to have balanced development and enjoy equal opportunities of development. In that case, would the Secretary consider it necessary to devise a system under which all political parties are required to be identical in every aspect, such as having the same number of members, the same sources of financial support and the same number of seats? I hope the Secretary will enlighten us on how we can achieve the state of maturity mentioned by me just now. If he cannot quantify it, what he has said is but an empty slogan that can never be realized.

As regards the development of political parties, I think we cannot say that the development of political parties is well balanced only after the quantifiable aspects of different parties have been developed to a very similar level. To me, the most important consideration is whether political parties have been given sufficient opportunities of development, providing that such opportunities are fair, reasonable, open and equal. Let me inform the Secretary of a fact in history. While the first President of the United States, George WASHINGTON, did not have any political affiliation, the candidates standing for the next presidential election did have political affiliations. Why could the Americans

do that in four years' time? There was no election before the election of George WASHINGTON, and the elections thereafter were functional constituency elections; however, the Americans were not afraid to let candidates with political affiliations to stand for election.

The second example is more familiar to me, since I have studied in Britain for three years. The Liberal Party and the Conservative Party were the only early stage political parties in Britain, and they were all formed by members of the industrial and commercial sectors and professionals. The Labour Party emerged only in the early 20th century. But today, it is the ruling party. Until how many political parties have matured can we have direct elections? Would British be prevented from holding direct elections just because the Labour Party emerged in the early 20th century? Would any candidate with political affiliation be banned from assuming office as Prime Minister? Will the Secretary say that since the Association for Democracy and People's Livelihood (ADPL) is still so weak, Hong Kong should not have any direct elections until after the ADPL have grown stronger? Is that the message the Secretary tries to put across? Well, the ADPL does not need anybody to wait for us; we only need to have fair opportunities, direct elections and a fair system.

Hence, I feel that what the Secretary has said today, such as the talk of cultivating a level playing field for political parties to develop, is nothing but a sham. The arguments advanced by the Secretary just cannot be found in any political theory, political situation or societies having or not having democratic elections. I wonder how he can convince others that the Government is sincerely developing a democracy that will allow political parties a part to play. But democracy is an indispensable factor in the development of political parties.

MR MARTIN LEE (in Cantonese): Madam Chairman, I am disappointed by the speech of the Secretary for Constitutional Affairs this time, nevertheless, it is another kind of disappointment. I think he would respond to all the questions *seriatim* after listening to so many arguments. Who knows he just took the draft of speech of a previous occasion and read it out once again? Madam Chairman, perhaps you are not aware of the fact that he was reading out something fairly identical, otherwise you might have stopped him. Even the Secretary himself was unable to progress in a gradual and orderly manner as he was still harping on the same old tune.

He said that under Article 27 of the Basic Law, Hong Kong residents enjoy the freedom of association. However, it is so bizarre to require a winning candidate belonging to a political party to resign from the political party. I just do not know what kind of freedom is that.

The Secretary has also said that political parties in Hong Kong are not mature enough yet. I cannot help asking whether his boss, Mr TUNG Chee-hwa, is mature enough? Was he mature enough the first time he became the winning candidate in the Chief Executive election? What experience did he have? How much had he said in the Executive Council? How much had he said when he was in front of the press? Perhaps he was a mature businessman. Why he could assume the office of Chief Executive while candidates belonging to political parties could not? The Secretary has not answered the questions raised by Mr Frederick FUNG, Mr CHEUNG Man-kwong and me. It seems that the Secretary was just reciting from a book as he was reading the draft of his speech for a previous occasion. In fact, not that the Secretary lacks competence, since he is basically a smart person, it was just because he had no information at hand, therefore he had no alternative other than saying those things. He just read out the draft of his speech for a previous occasion, for he had run out of arguments.

I wish to respond to the views of the Democratic Alliance for Betterment of Hong Kong (DAB). In fact, Mr IP Kwok-him also considered he could not agree to the misconception that political parties could not win the trust of the public. His view in this respect was consistent with mine. However, he said that he agreed with the view of the Government that they had to wait until the conditions are ripe, success will come. To be precise, he was telling everybody that the DAB was not mature enough and had to wait for a while. Therefore, Mr Frederick FUNG also made a mistake, as he said the Hong Kong Association for Democracy and People's Livelihood (ADPL) did not need the Government to wait for them. In fact, it is unnecessary for the Government to wait for the ADPL, but there is such a need for the DAB. It is just as simple as that. Madam Chairman, the DAB has been founded for nine years, they even held a cocktail party to celebrate it last night. Are nine years not mature enough? Tell me nothing about to wait until conditions are ripe and success will come, now the Government is just blocking the road to success, how can success be achieved? They cannot even realize this. Yesterday they said that they were royalists, but sometimes, they do not even know why they have become royalists.

Madam Chairman, the Government said that political parties were developing and maturing. Sometime ago, the Government had "scrapped" the two Municipal Councils, but eventually, nobody knows what political parties had been benefited from the "scrapping" of the two Municipal Councils. Among those who voted for the "scrapping", at least one of them now expresses regrets; I consider it pointless to mention the name of the Member. *(Laughter)* Madam Chairman, the one who gives the loudest laugh is that particular Member. *(Laughter)* Madam Chairman, at that time, the Government said that after the "scrapping" of the two Municipal Councils, their powers would be devolved to the District Councils. But where have all the powers gone now? The Secretary repeatedly says that we should trust him. But this trust will not come easy. Last time he said in this Chamber that after the "scrapping" of the two Municipal Councils, Members should not fear because the powers would be devolved to the District Councils. Yet, when have the powers been devolved? What powers have been devolved?

The Secretary also mentioned that if the Chief Executive were a member of a certain political party, people would feel that he would, more or less, listen to his political party more than to other political parties. However, suppose he wins the election with the help of his political party, even if he has resigned from that political party, people will still have the same feeling. Moreover, now that even Mr TUNG Chee-hwa does not have a background in relation to any political party, but a lot of political parties, including the Democratic Party and the ADPL, feel that Mr TUNG Chee-hwa tends to listen to the views of the DAB more. Although he does not belong to that political party, but does it make a difference? Yesterday, the Chairman of DAB, Mr Jasper TSANG, said that they were the Government's party, but the Government was still not at all satisfied, because they were not on the side of the Government on every occasion. Therefore, there are problems all the same. In the final analysis, I feel that if the election is fair, no matter candidates have or have no political affiliations, the election will still be fair; but if the election is not fair, it will still be an unfair one even candidates have no political affiliations. I feel that this is the rationality.

However, why have we ended up this way? I feel that there is only one reason, as I cannot think of any other, that is, because Mr TUNG Chee-hwa has to tell everybody that he has no political affiliation so he is a good man, and therefore he is impartial. However, he is actually partial and one-sided. So, he has no political party background at all, but does it make a difference?

I hope colleagues in this Council will realize that the Government is unable to provide any arguments after listening to my speech. Nevertheless, as Honourable Members voted for the previous amendment proposed by the Government, I therefore have nothing more to say this time around.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendments moved by Mr Martin LEE be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Martin LEE rose to claim a division.

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

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

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong, Miss LI Fung-ying and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung,

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 28 were present, six were in favour of the motion and 22 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 12 were in favour of the motion and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 32 stand part of the Bill.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Martin LEE rose to claim a division.

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

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

CHAIRMAN (in Cantonese): Mr Frederick FUNG, are you not going to cast a vote?

MR FREDERICK FUNG (in Cantonese): Yes.

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

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, and Mr Frederick FUNG, did not cast any vote.

THE CHAIRMAN announced that there were 54 Members present, 35 were in favour of the motion and 17 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendments to clauses 16 and 76 moved by the Secretary for Constitutional Affairs, I now put the question to you and that is: That clauses 16 and 76 as amended by the Secretary for Constitutional Affairs stand part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to sections 3, 4, and 4(a)(ii) of the Schedule, as set out in the paper circularized to Members. The Government has taken on board the views of the Bills Committee and agreed to propose an amendment to section 3 of the Schedule. The amendment seeks to stipulate that once an elected or nominated member of the Election Committee becomes an *ex officio* member, he will be deemed to have resigned from his membership in the elected or nominated subsector. The vacancy will be filled by way of the Election Committee subsector by-election or supplementary nomination, where necessary, under provisions contained in Schedule 5 of the Bill.

The amendments to section 4 and section 4(a)(ii) of the Schedule are consequential amendments to amendments to Schedule 3.

Proposed amendments

Schedule 3 (see Annex III)

Schedule 4 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to sections 1, 2, 5, 7, 9, 11, 12, 14, 18, 21, 23, 25, 26, 27, 29, 30, 40, 42 and 49 and the further amendments to section 4 of the Schedule as set out in the paper circularized to Members.

Proposed amendments

Section 1 of Schedule (see Annex III)

Section 2 of Schedule (see Annex III)

Section 4 of Schedule (see Annex III)

Section 5 of Schedule (see Annex III)

Section 7 of Schedule (see Annex III)

Section 9 of Schedule (see Annex III)

Section 11 of Schedule (see Annex III)

Section 12 of Schedule (see Annex III)

Section 14 of Schedule (see Annex III)

Section 18 of Schedule (see Annex III)

Section 21 of Schedule (see Annex III)

Section 23 of Schedule (see Annex III)

Section 25 of Schedule (see Annex III)

Section 26 of Schedule (see Annex III)

Section 27 of Schedule (see Annex III)

Section 29 of Schedule (see Annex III)

Section 30 of Schedule (see Annex III)

Section 40 of Schedule (see Annex III)

Section 42 of Schedule (see Annex III)

Section 49 of Schedule (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

CHIEF EXECUTIVE ELECTION BILL

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

Chief Executive Election Bill

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

MR MARTIN LEE (in Cantonese): Madam President, I only wish to express the strong dissatisfaction the Democratic Party with the Chief Executive Election Bill. We believe the Government has once again deprived the SAR of a "high degree of autonomy" to a certain extent, and made a puppet of the Chief Executive. As such, the Democratic Party will leave this Chamber in protest after we have pressed the button to vote against Third Reading.

We hope the President will not mistake this as disrespect of the Democratic Party for the Chair. We will come back for the discussion of other items on the Agenda.

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

(No Member responded)

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Chief Executive Election 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.

(Members raised their hands)

Mr Martin LEE rose to claim a division.

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

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

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

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

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-Kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted against the motion.

THE PRESIDENT, Mrs Rita FAN and Mr Frederick FUNG did not cast any vote.

(Members of the Democratic Party and individual Members left the Chamber)

PRESIDENT (in Cantonese): Honourable Members, please keep quiet, the meeting is still in progress, please do not get too excited.

THE PRESIDENT announced that there were 56 Members present, 36 were in favour of the motion and 18 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Chief Executive Election Bill.

PRESIDENT (in Cantonese): Honourable Members, it is now 9.17 pm, I will suspend the meeting at around 10 pm. The meeting will now continue.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Revenue (No. 3) Bill 2001.

REVENUE (NO. 3) BILL 2001**Resumption of debate on Second Reading which was moved on 25 April 2001**

PRESIDENT (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the above Bill, will address this Council on the report of the Bills Committee.

MISS MARGARET NG: Madam President, as Chairman of the Bills Committee on Revenue (No. 3) Bill 2001, I wish to briefly report on the deliberations of the Bills Committee.

The Revenue (No. 3) Bill 2001 seeks to amend the Stamp Duty Ordinance and the Securities and Futures Commission (Levy) (Securities) Order to give effect to a number of revenue proposals in the 2001-02 Budget. Members support the proposals to reduce the stamp duty on stock transactions by 11% from the existing 0.225% to 0.2% per round transaction in 2001-02. Members agree that it is a positive move to promote the further development of Hong Kong's financial market. As regards levy on stock transactions, members have no objection to the proposal to remove that portion of the levy going to the Stock Exchange of Hong Kong and replace it by a trading fee set at the same rate as levy reduction.

The proposal to increase the existing levy on securities transactions is related to the establishment of a new compensation scheme envisaged in the Securities and Futures Bill which is currently examined by the Bills Committee. The Administration plans to set up an investor compensation fund after the enactment of the Securities and Futures Bill. Prior to this, the Administration considers it prudent to start building up the balance under the existing Unified Exchange Compensation Fund (UECF) so that the bigger balance may be transferred to the new fund when established. For this reason, the Administration proposes to increase the existing levy on securities transactions by 0.002% until the new fund has accumulated to \$1 billion.

Since the Bills Committee concerned has not yet completed its scrutiny of the Securities and Futures Bill, members considered it inappropriate to agree to the proposed levy increase under this Bill. Members have, therefore, asked the Administration to defer the proposal until the new fund has been approved. In response, the Administration has pointed out that the existing UECF needs topping up and has provided supplementary information to the Bills Committee to justify the need to increase the levy for the purpose. Members note that taking into account the compensation payments for the claims of the four default cases during the Asian financial crisis, the UECF has a balance of approximately \$658 million and there is no recurrent source of levy income to maintain the Fund. Members also note that under the model developed by the consultant engaged by the Securities and Futures Commission (SFC), and using the existing compensation arrangements, the UECF should maintain assets at about \$780 million in order to reach a prudent level. With the proposed increase of 0.002% in the securities transaction levy and based on recent market turnover value, the Administration estimates that the UECF would receive about \$100 million levy income each year.

Taking into consideration of the above information, the Bills Committee has agreed to the proposed increase in the securities transaction levy subject to two undertakings to be made by the Administration, that is, following the enactment of the Bill, (a) the SFC will, pursuant to section 99(2) of the Securities Ordinance, pay to the UECF all the monies received from the 0.002 percentage point increase of the rate of levy payable on securities transactions; and (b), after the assets of the UECF have reached the level of \$800 million following the levy increase, a review of the funding needs of the UECF will be conducted to consider whether the 0.002 percentage point increase of the rate of levy should continue and whether legislative amendments should be introduced to give effect to the outcome of the review.

The Administration has confirmed in writing that it will include the above undertakings in the speech to be delivered by the Secretary for the Treasury when the Second Reading debate on the Bill is resumed.

Thank you, Madam President.

SUSPENSION OF MEETING

PRESIDENT(in Cantonese): Honourable Members, despite the fact that some Members would like to speak on this Bill, as the Secretary for the Treasury has not arrived in the Chamber, I do not think it is appropriate to hold the Second Reading debate now. I therefore declare that the meeting will be suspended and to be resumed at nine o'clock sharp tomorrow morning.

Suspended accordingly at twenty-three minutes past Nine o'clock.

WRITTEN ANSWER**Written answer by the Secretary for the Environment and Food to Mr Howard YOUNG's supplementary question to Question 5**

I refer to the Honourable Member's question regarding whether *Mikania micrantha* was the same species referred in his previous question concerning "green cancer".

The previous question was raised on 31 May 2000 (Question 13). The climbing plant referred in that particular question was Climbing Bauhinia (*Bauhinia glauca*). *Mikania micrantha* and *Bauhinia glauca* are different species of climbing plants, creating similar effect to the environment.

Annex II

WRITTEN ANSWER

Written answer by the Secretary for Security to Mr WONG Yung-kan's supplementary question to Question 6

The breakdown of firearms by places where they were seized in the past three years (that is 1998, 1999 and 2000) is not readily available. The breakdown for the first half of this year is set out below:

<i>Places of interception</i>	<i>Number of firearms seized</i>	<i>Number of operations involved</i>
Residential premises	6	5
Public places	1	1
Gun club	4	1

As regards the information on the places of manufacture of the seized firearms, it is as follows—

	<i>Year</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>First half of 2001</i>
<i>Places of Manufacture</i>					
The Mainland		15	6	8	7
Europe		13	9	5	1
United States		9	3	3	1
North Korea		1	2	2	0
Unknown		16	2	3	2
Total		54	22	21	11

CHIEF EXECUTIVE ELECTION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1) -</p> <p>(i) in the definition of "polling date", by deleting "appointed under" and substituting "fixed in accordance with";</p> <p>(ii) in the definition of "prescribed public officer", in paragraph (e), by adding "Hong Kong" before "Monetary";</p> <p>(iii) in the definition of "subsector election", by deleting "1(1)" and substituting "1".</p> <p>(b) By deleting subclause (2).</p>
3	<p>(a) In subclause (2), by deleting "屆" and substituting "次".</p> <p>(b) By adding -</p> <p>"(3) The date on which the term of office of the Chief Executive commences shall be published by notice in the Gazette."</p>
4	<p>By deleting paragraph (c) and substituting -</p> <p>"(c) if the Central People's Government removes the Chief Executive from office in accordance with the Basic Law."</p>

ClauseAmendment Proposed

- 10 (a) In subclause (1), by deleting "be appointed by the Chief Executive." and substituting -
- ", where the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise -
- (a) is a Sunday, be that Sunday; or
- (b) is not a Sunday, be the Sunday immediately preceding the commencement of that period."
- (b) By deleting subclause (2).
- (c) In subclause (3), by deleting "be appointed by the Acting Chief Executive." and substituting -
- ", where the 120th day after the date on which the office becomes vacant as specified under section 5(2)(b) -
- (a) is a Sunday, be that Sunday; or
- (b) is not a Sunday, be the Sunday immediately following that day."
- (d) By deleting subclause (4).
- 11 (a) By deleting everything before subclause (2) and substituting -
- "11. Fixing new polling date under certain circumstances**
- (1) Where -

ClauseAmendment Proposed

- (a) a polling date is fixed in accordance with this section or section 10; and
- (b) no candidate is validly nominated under section 17 at the close of nominations,

the new polling date shall, where the 42nd day after the close of nominations -

- (c) is a Sunday, be that Sunday; or
- (d) is not a Sunday, be the Sunday immediately following that day."

- (b) By adding -

"(1A) Where -

- (a) a polling date is fixed in accordance with this section or section 10; and
- (b) the proceedings for the election are terminated under section 21A(1),

the new polling date shall, where the 42nd day after the termination of the proceedings for the election -

- (c) is a Sunday, be that Sunday; or
- (d) is not a Sunday, be the Sunday immediately following that day."

ClauseAmendment Proposed

- (c) By deleting subclause (2) and substituting -

"(2) If the candidate returned at an election for appointment to fill the vacancy in the office of the Chief Executive -

- (a) that will arise under section 4(a) cannot assume the office of the Chief Executive on the day on which the vacancy arises, the new polling date shall, where the 120th day after the expiry of the term of office of the serving Chief Executive -

(i) is a Sunday, be that Sunday; or

(ii) is not a Sunday, be the Sunday immediately following that day;

- (b) that has arisen under section 4(b) or (c) cannot assume the office of the Chief Executive before the expiry of 6 months commencing on the date on which the vacancy arose, the new polling date shall, where the 120th day after the expiry of those 6 months -

ClauseAmendment Proposed

- (i) is a Sunday, be that Sunday; or
- (ii) is not a Sunday, be the Sunday immediately following that day."
- (d) By adding -
- "(3) Where a new polling date is fixed in accordance with this section, the Chief Electoral Officer shall fix the nomination period accordingly."
- 12 By deleting everything after "date" and substituting "fixed in accordance with section 10 or 11 shall be published by notice in the Gazette."
- 14 (a) By adding -
- "(ea) he has, in Hong Kong or any other place, been sentenced to death and has not either -
- (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
- (ii) received a free pardon;
- (eb) he has been convicted of treason;"
- (b) In paragraph (f)(i), by deleting "or to death".
- (c) In paragraph (g), by deleting "by the Court under section 10(1) of" and substituting "for the time being under".

<u>Clause</u>	<u>Amendment Proposed</u>
16(5)	<p>(a) In paragraph (a), by deleting "3" and substituting "3(1)".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(aa) is serving a sentence of imprisonment for the time being;"</p> <p>(c) In paragraph (b), by deleting "(d),".</p>
19	<p>(a) In subclause (1), by deleting "5:00 p.m. on the last working day before the polling date" and substituting "the close of nominations".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(3) A person who is nominated as a candidate shall cease to be regarded as such upon the withdrawal of his candidature."</p>
20(1)	<p>(a) By deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction".</p> <p>(b) In paragraph (b), by deleting "of section 14; or" and substituting "(except paragraph (f)) of section 14;".</p> <p>(c) By adding -</p> <p style="padding-left: 40px;">"(ba) a candidate is or has been convicted, within the 5 years before the polling date, in the manner prescribed by subparagraph (i), (ii), (iii) or (iv) of section 14(f); or".</p>

ClauseAmendment Proposed

New

By adding -

"21A. Termination of election proceedings

(1) Where -

- (a) at the close of nominations 2 or more candidates are validly nominated; and
- (b) proof is given to the satisfaction of the Returning Officer that any candidate dies or is disqualified under section 20(1) from being elected at any time after the close of nominations but before the declaration of the result of the election,

the Returning Officer shall, by a public declaration, terminate the proceedings for the election.

(2) If a candidate is eliminated at any round of voting under section 26(3)(c) or (4)(c), he shall cease to be regarded as a candidate for the purposes of subsection (1)(b)."

22

By deleting the clause and substituting -

"22. The only candidate shall be returned

If at the close of nominations only one candidate is validly nominated, the Returning Officer shall publicly declare the candidate to be returned at the election."

<u>Clause</u>	<u>Amendment Proposed</u>
25	(a) In paragraph (a), by deleting "3" and substituting "3(1)". (b) By adding - "(aa) is serving a sentence of imprisonment on the polling date of an election;" . (c) In paragraph (b), by deleting "(d),".
26(2)(b)	By deleting "or section 27(2)(b) or 28(3)(c)".
27	By deleting the clause.
28	By deleting the clause.
30	By deleting "under section 38" and substituting "or the Court of Final Appeal pursuant to the determination of an election petition or otherwise".
34	(a) In subclause (1)(b)(iii), by deleting "was validly nominated but". (b) In subclause (4), by deleting "disqualified under section 16(5) from making nomination at an election, he shall" and substituting - "disqualified - (a) under section 16(5) from making nomination at an election; or

ClauseAmendment Proposed

- (b) under section 25 from voting at the poll at an election,
he shall".
- 35(2) By deleting "公布" and substituting "發下".
- 39(b) By adding "Court or the" after "the".
- 44(2) By deleting "they are" and substituting "it is".
- 60(b) In the proposed section 7(1A), by deleting paragraph (a).
- 68 In the proposed section 53(2)(aa), by deleting "3" and substituting "3(1)".
- 76(b) In the proposed item 65, by deleting "and (3)".
- Schedule,
section 1 (a) In subsection (1), by adding -
"corporate member" (團體成員), in relation to a
body included in a subsector, means a body
that is a member of the body so included;"
- (b) In subsection (3)(b)(ii), by deleting "body that is a" and
substituting "corporate".
- Schedule,
section 2 In column 3 of item 2 of Table 5, by deleting paragraph (1).

ClauseAmendment Proposed

Schedule,
section 3

(a) By deleting the heading and substituting
"Resignation of member of Election Committee".

(b) By adding before subsection (1) -

"(1A) If -

(a) on 14 July 2000, a person was a member of the Election Committee constituted on that date under the Legislative Council Ordinance (Cap. 542) (other than an ex-officio member of the Committee within the meaning of that Ordinance in force on that date); and

(b) after that date, the Electoral Registration Officer, by adding the person's name to the final register of members of the Election Committee, registered the person as an ex-officio member of the Committee under section 1(10) of Schedule 2 to that Ordinance in force immediately before the commencement of section 74 of this Ordinance,

the person is deemed to have resigned, on the commencement of this section, from the membership referred to in paragraph (a).

ClauseAmendment Proposed

- (1B) If -
- (a) a person is a member of the Election Committee (other than an ex-officio member); and
 - (b) the Electoral Registration Officer, by adding the person's name to the final register of members of the Election Committee, registers the person as an ex-officio member of the Committee under section 41(3),

the person is deemed to have resigned, on the date of the publication under section 41(4) of a notice to the effect that the person's name has been so added, from the membership referred to in paragraph (a).".

- Schedule,
section 4
- (a) In subsection (1)(b), by adding "thereafter," before "within".
 - (b) In subsection (4)(a) -
 - (i) by deleting "not later than" and substituting "on";
 - (ii) in subparagraph (ii), by adding ", or being deemed to have resigned," after "resigned";
 - (iii) in subparagraph (iii), by deleting ", or eligible to be registered," and substituting "or eligible to be registered, or having been disqualified from being registered,".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule, section 5	<p>(a) In subsection (1) -</p> <p>(i) in paragraph (a), by deleting "determine" and substituting "ascertain";</p> <p>(ii) in paragraph (b), by deleting "determined" and substituting "ascertained".</p> <p>(b) In subsection (2), by deleting "a determination" and substituting "an ascertainment".</p>
Schedule, section 7(7)	By deleting "designated" where it secondly appears.
Schedule, section 9	<p>(a) In paragraph (c)(i), by adding "conduct" after "corrupt".</p> <p>(b) By deleting paragraph (d) and substituting -</p> <p>"(d) is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or".</p>
Schedule, section 11(1)	<p>(a) In the definition of "subsector final register", by deleting "of persons entitled to vote at a subsector election," and substituting "to be".</p> <p>(b) In the definition of "subsector provisional register", by deleting "of persons entitled to vote at a subsector election," and substituting "to be".</p> <p>(c) In the definition of "voter", by deleting ", and is not disqualified from being," and substituting "so registered and is not disqualified from being".</p>

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule, section 12	(a) In subsection (3)(b), by deleting "the education" where it secondly appears and substituting "that".
	(b) In subsection (4)(b), by deleting "the education" where it secondly appears and substituting "that".
	(c) In subsection (5)(b), by deleting "the social welfare" where it secondly appears and substituting "that".
	(d) In subsection (6) -
	(i) in paragraph (a), by deleting "(a),";
	(ii) in paragraph (b) -
	(A) by deleting "the tourism" where it secondly appears and substituting "that";
(B) by deleting "(a),".	
	(e) In subsection (7)(b), by deleting "the tourism" where it secondly appears and substituting "that".
	(f) In subsection (16), by deleting "(a),".
Schedule, section 14(1)	(a) In paragraph (a), by deleting "subsector provisional register of voters" and substituting "provisional register of voters for subsectors".
	(b) In paragraph (b), by deleting "subsector final register of voters" and substituting "final register of voters for subsectors".
Schedule, section 18	(a) In paragraph (e)(i), by adding "conduct" after "corrupt".

ClauseAmendment Proposed

- (b) By deleting paragraph (f) and substituting -
- "(f) is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or".
- Schedule,
section 21
- (a) In subsection (1), by deleting "5 p.m. on the working day before the date of the subsector election, but not otherwise" and substituting "the close of nominations".
- (b) In subsection (2), by deleting "a subsector" and substituting "such a".
- Schedule,
section 23
- (a) In the heading, by deleting "**, disqualification or withdrawal**" and substituting "**or disqualification**".
- (b) In subsection (1) -
- (i) by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction";
- (ii) by deleting "or has withdrawn his candidature under section 21";
- (iii) by deleting "or the withdrawal".
- (c) In subsection (2)(a), by deleting "or has withdrawn his candidature".
- (d) In subsection (4), by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule, section 25(3)	By deleting "數目的" and substituting "數目".
Schedule, section 26	(a) In subsection (1), by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction". (b) In subsection (2)(d), by deleting "members" where it first appears and substituting "member".
Schedule, section 27(3)	(a) By deleting "and" and substituting a comma. (b) By adding "and the EAC Regulations" after "(Cap. 541)".
Schedule, section 29	(a) In subsection (5) - (i) by deleting ", the candidate to be elected for the subsector"; (ii) in paragraph (a), by adding "the candidate to be elected for the subsector" before "is"; (iii) in paragraph (b), by adding "the candidates to be elected for the subsector" before "are". (b) In subsection (8), by deleting "it comes to the knowledge" and substituting "proof is given to the satisfaction".
Schedule, section 30(1)	(a) In paragraph (d)(i), by adding "conduct" after "corrupt". (b) By deleting paragraph (e) and substituting -

ClauseAmendment Proposed

"(e) is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or".

Schedule, section 40(4) (a) In paragraphs (b) and (c), by deleting "determined" and substituting "ascertained".

(b) By deleting "determination" and substituting "ascertainment".

Schedule, section 42(2) By adding "or 48" after "39".

Schedule, section 49 (a) In subsection (1)(a), by deleting "the" where it secondly appears.

(b) In subsection (2)(d)(i), by deleting "(a),".

CHIEF EXECUTIVE ELECTION BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Martin LEE Chu-ming

<u>Clause</u>	<u>Amendment Proposed</u>
Part 2, heading	By deleting "TERM OF OFFICE AND ELECTION" and substituting "TERM OF OFFICE, VACANCY AND ELECTION".
4	By deleting the clause and substituting - <p style="margin-left: 40px;">"4. Occurrence of vacancy in office</p> <p style="margin-left: 80px;">The office of the Chief Executive only becomes vacant -</p> <ul style="list-style-type: none"> (a) on the expiry of the term of office of the Chief Executive; (b) if the Chief Executive dies; (c) if the Chief Executive - <ul style="list-style-type: none"> (i) resigns under Article 52 of the Basic Law; or (ii) resigns for a reason other than those specified in Article 52 of the Basic Law and such resignation is accepted by the Central People's Government; or (d) if the Central People's Government removes the Chief Executive from office <p style="margin-left: 120px;">-</p>

<u>Clause</u>	<u>Amendment Proposed</u>
	(i) under any circumstances under which he must resign under Article 52 of the Basic Law but is unable or refuses to do so; or
	(ii) upon the reporting to it for decision of a motion of impeachment passed against him under Article 73(9) of the Basic Law."
5(1)	By deleting "4(b) or (c)" and substituting "4(b), (c) or (d)".
6(e)	By deleting "4(b) or (c)" and substituting "4(b), (c) or (d)".
13(d)(ii)	By deleting "4(b) or (c)" and substituting "4(b), (c) or (d)".
16(7)	By deleting paragraph (a) and substituting - "(a) a declaration to the effect that he will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region; and".
32	By deleting the clause.
76(b)	In the proposed item 65, by deleting "32(1),".

CHIEF EXECUTIVE ELECTION BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Margaret NG and
the Honourable Audrey EU Yuet-mee

<u>Clause</u>	<u>Amendment Proposed</u>
4	By deleting the clause and substituting - "4. Vacancy in office An election shall be held - (a) when the office of the Chief Executive becomes vacant on the expiry of his term; or (b) when the office of the Chief Executive becomes vacant otherwise than on the expiry of his term."
5(1)	By deleting "or (c)".
6(e)	By deleting "or (c)".
13(d)(ii)	By deleting "or (c)".