# OFFICIAL RECORD OF PROCEEDINGS

## Wednesday, 21 May 2003

## The Council met at half-past Two o'clock

## MEMBERS PRESENT:

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

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

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

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU KONG-WAH

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

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

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

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

THE HONOURABLE MA FUNG-KWOK, J.P.

## MEMBERS ABSENT:

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

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

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

## PUBLIC OFFICERS ATTENDING:

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

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

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

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

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

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

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

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

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

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

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

## 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 | *L.N. No.* |
|---|---|
| Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003 | 119/2003 |
| District Councils (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003 | 120/2003 |
| Declaration of Constituencies (District Councils) Order 2003 | 121/2003 |
| Aerial Ropeways (Operation and Maintenance) (Amendment) Regulation 2003 | 122/2003 |
| Air Pollution Control (Emission Reduction Devices for Vehicles) Regulation | 123/2003 |
| Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment) Regulation 2003 | 124/2003 |
| Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 | 125/2003 |
| Registration of Persons (Application for New Identity Cards) Order | 126/2003 |
| Registration of Persons (Application for New Identity Cards) (Repeal) Order 2003 | 127/2003 |
| Import and Export (General) Regulations (Amendment of Seventh Schedule) (No. 5) Notice 2003 | 128/2003 |
| Statutes of the University of Hong Kong (Amendment) Statute 2003 | 129/2003 |

Other Papers

No. 83 — Audited Statement of Accounts of the Language Fund, together with the Director of Audit's Report, for the year ended 31 August 2002

No. 84 — Audited Statement of Accounts of the Director of Social Welfare Incorporated together with the Director of Audit's Report for the year ended 31 March 2002

No. 85 — Report on the Recommended Constituency Boundaries for the 2003 District Councils Election

Report of the Bills Committee on Interest on Arrears of Maintenance Bill 2001

## ORAL ANSWERS TO QUESTIONS

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

### Sewage Treatment Level of Stonecutters Island Sewage Treatment Works

1. **MR FREDERICK FUNG** (in Cantonese): *Madam President, it is learnt that sewage discharged from the Princess Margaret Hospital (PMH) is currently delivered to Stonecutters Island Sewage Treatment Works (SCISTW) for chemically-enhanced primary treatment, that is, the removal of pollutants by a sedimentation process which is speeded up by adding chemical additives to the sewage. In this connection, will the Government inform this Council:*

*(a) of the reasons for providing only chemically-enhanced primary sewage treatment at SCISTW, and whether it will upgrade the sewage treatment level at SCISTW to the secondary level, that is, to provide biological treatment to sewage in which organic matters are converted to stable substances by bacterial activities; if it will, of the implementation details and timetable; if not, the reasons for that;*

*(b) whether the authorities have drawn up specific sewage treatment procedures for the removal of possible viruses and chemical wastes in the sewage discharged from the PMH; if they have, of the details and effectiveness of such procedures; if not, the reasons for that; and whether these viruses and chemical wastes have affected the health of the residents near SCISTW by way of water and wind; and*

*(c) of the impact of the treated sewage discharged from SCISTW on the water quality and marine ecology of Hong Kong?*

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

(a) The SCISTW is part of the Harbour Area Treatment Scheme (HATS) Stage 1 constructed to provide early relief to the water pollution problem in the Victoria Harbour. The chemically enhanced primary treatment (CEPT) process at Stonecutters Island removes substantial quantities of pollutants from the incoming sewage, notably about 80% of suspended solids, 70% of biochemical oxygen demand, 30% of total nitrogen, 40% of phosphorus, 60% of heavy metals and 50% of sewage indicator bacteria. Under the original plan, with the help of a deep oceanic outfall which would form part of the remaining stages of HATS, the treated sewage will be discharged into the deep fast-flowing water south of Hong Kong Island where it would be safely diluted and dispersed. In the light of the diverse views over the original HATS, the Government appointed an International Review Panel (IRP) to conduct a review of the remaining stages of HATS in 2000. Following the IRP's recommendations, we are now examining the feasibility of raising the level of treatment to include a biological process with a view to discharging the treated effluent inshore permanently. The report on the environmental and engineering feasibility of the different options proposed by the IRP should be available by the end of this year. It will then be subject to wide consultation. The way forward on the remaining stages of HATS will be decided after taking into account the views received, especially in the light of whether the community is willing to share out the costs to improve our environment.

(b) As the wastewater from the PMH and from other individual discharges within the HATS Stage 1 catchment is collected and treated by the HATS Stage 1 system alike, it is impossible to differentiate the wastewater from the PMH for special treatment at SCISTW. Nevertheless, disinfectant has been added to the toilet flushing water supply system at the PMH to ensure that the sewage generated in the hospital would be disinfected. At present, the treated effluent from SCISTW is being discharged into the western anchorage area from where it is dispersed and diluted by the water currents, well away from residents. According to a recent analysis of the sewage and marine water samples collected from the SCISTW, a fish culture zone in Ma Wan, and the bathing beach at Tung Wan of Ma Wan, no atypical pneumonia virus was found.

(c) The HATS Stage 1 system is preventing some 600 tonnes of sludge from entering our harbour every day. The sludge produced is sent for disposal at our modern landfills. This has resulted in substantial improvements in water quality throughout the harbour with widespread reductions in nutrients and increases in dissolved oxygen. As for sewage bacteria, its levels have been substantially reduced in most parts of the harbour except for the western harbour near the outfall. As a whole, the HATS Stage 1 system has effectively improved the water quality of our harbour and brought positive impacts to marine ecology.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, the Secretary mentioned in part (b) of her main reply that the Government has conducted sample testing at a fish culture zone in Ma Wan and the bathing beach at Tung Wan of Ma Wan, but I am worried that apart from hospitals, some contaminated residential buildings, or the connecting of sewage drains to water pipes as mentioned in new reports, may cause sewage to flow into areas in the vicinity of the harbour, and the bathing beaches will become the most risky spots. As the virus does not only come from the PMH, but will also make its way to the various bathing beaches through the other channels which I have mentioned earlier, and as many people will go to the beaches in this hot season, may I ask the Secretary,*

*apart from conducting tests at the bathing beach at Tung Wan of Ma Wan, will the Government consider conducting similar sample testing at all the bathing beaches?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, it is precisely because of the virus of atypical pneumonia that we have to be very careful. We have to know for sure after getting into the sewage system, first, for how long the virus will survive; second, after collecting the sewage, whether there will be a buildup of virus, thereby affecting our beaches and the harbour, and after the sewage has flowed into the rainwater pipes, whether the virus will continue to survive. Since the SCISTW centrally treats about 54% of the total sewage in Hong Kong, we will test for the existence of the virus at the water inlet in that sewage treatment works first. If no virus is found, the possibility will be very low, because it collects most of the sewage from different parts of the territory. After conducting the test, no virus has been found. In addition, we have also made sampling tests in other areas like Hong Kong Island, as well as other waters where there may be a buildup of virus, but no atypical pneumonia virus has been found. Therefore, please be rest assured particularly because no living virus has been found. We can almost say that there is no such possibility.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. First, as it has been discovered that sewage drains are connected to rainwater pipes, it is possible that sewage may have already flowed into the waters in general; second, apart from the beach at Tung Wan of Ma Wan, will the Government conduct the same kind of sampling test in the other bathing beaches, especially places where the general public likes to go for swimming, so as to ensure that there is no such virus?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, first, regarding connection with open drains, we know that there are illegal connections in some housing estates and have informed the Housing Department to rectify the situation so as to prevent such illegal connections from taking place again.

As for the sewage treatment works at Sha Tin and Tai Po, upon testing, the treated effluent samples discharged from the two sewage treatment works into the upper stretch of the Kai Tak open drain have been found to carry no atypical pneumonia virus. Marine water samples collected from the waters south of Tsing Yi Island, Tung Wan of Ma Wan and the Gold Coast beach in Tuen Mun also show no sign of atypical pneumonia virus. Mr FUNG may think that I have not answered his supplementary question, so I would like to explain further. Of all our ongoing monitoring of the water quality of our beaches, we find that these beaches are the most affected. After the construction of the sewage treatment works on the Stonecutters Island, all sewage will be collected in several places as a result of the water currents, and the impact of sewage discharge on these beaches is more serious. Therefore, we have chosen these most seriously affected beaches for tests. If these beaches are found to be virus-free, then we expect there should not be any in the other places. This test is undertaken by the Department of Health. As the present workload of the Department is heavy, we have just chosen to carry out tests at the key places instead of each and every beach. Taking the water currents into consideration, we believe the other beaches should not have been contaminated.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, may I ask the Secretary if the sewage treated by the sewage treatment works will be recycled? If so, will it undergo special treatment so that public health will not be affected? This is because the water may contain viruses other than the atypical pneumonia virus.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, as to date, we have not recycled water treated by the sewage treatment works. As Mr LAU has said, water treated by the sewage treatment works may contain other bacteria or virus. If this water is to be recycled, it has to be disinfected. We cannot easily use any wastewater treated by a sewage treatment works.

**MR ALBERT CHAN** (in Cantonese): *Madam President, the Secretary has pointed out in her main reply that the treated effluent from SCISTW is being*

*discharged into the western anchorage area from where it is dispersed and diluted by the water currents, well away from the residents. However, as I am aware, this may not necessarily be the case, for this will have to depend on season and water currents. Sometimes when the water flows northwards, the sewage will go pass Tsuen Wan, Kwai Tsing or even Tuen Mun, and there are quite a lot of residential buildings in these areas. Besides, as the Secretary has said, some of the beaches in these areas have been formally closed due to pollution. May I ask the Secretary if there is information on the level of bacteria contained in the treated sewage flowing through these areas and its chemical composition? How can the Government ensure that sewage treated by the SCISTW will not have any adverse effect on environmental hygiene after flowing into areas of Tsuen Wan, Kwai Tsing and Tuen Mun?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, upon discharge, sewage treated by the SCISTW may really affect the beaches mentioned by Mr CHAN. We have issued warning in this regard and closed some beaches in the Tsuen Wan area for use. This is because there is a great increase in the volume of sewage treated centrally on the Stonecutters Island. Under certain effects of water currents, sewage may be gathered at a few points.

As to the quality of water near the Stonecutters Island, it has nothing to do with the atypical pneumonia virus. Rather, it is a matter of other treatment for water. In this regard, I have mentioned in my main reply earlier that heavy metals and other pollutants have been reduced. As to substantive data, I can only for the time being provide you with the percentages concerned. For example, suspended solids have reduced by 80%, biochemical oxygen demand by 70%, total nitrogen by 30%, heavy metals by 60% and bacteria by 50%. However, these pollutants cannot be removed entirely. Therefore, as the pollutants build up, they will have an effect on the beaches in the northwestern side. The situation will improve in the future, for the report of the IRP suggests including a biochemical treatment. If this method is employed, the problem should be gone. The overall water quality of the Victoria Harbour at present has definitely improved because sewage is now centrally treated on the Stonecutters Island. For the time being, the effect is greater on areas to the north of the Stonecutters Island.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Secretary has mentioned in part (b) of the main reply that the PMH has added disinfectant to its toilet flushing water supply system to disinfect wastewater, and the Government also recommends the public to add bleach at a ratio of 1 part of bleach to 99 parts of water to their flushing toilet water. May I ask the Secretary if these chemicals will create any impact on marine ecology and the nearby fish farming activities?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, at present, we are using chlorine to disinfect wastewater from the PMH and the other hospitals admitting atypical pneumonia patients. Chlorine contained in the wastewater will bring about a chemical reaction with ammonia, that is, ammoniacal-nitrogeneous compound. The chemical reaction so caused can stabilize chlorine and reduce the content of toxic chlorinated organic compound generated. Major cities around the world are all using this disinfecting approach. As a matter of fact, the amount we use is very low, and upon dilution, the discharge will also undergo a process. In the sewage treatment process, this kind of chlorinated organic compound will be depleted, and there will be no adverse effect on the ecology.

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

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, the Secretary has mentioned in part (c) of the main reply that there will be a slight increase in the bacterial level for the waters of the western harbour near the outfall. Such sea water containing bacteria will flow to the vicinity of the fish culture zone as a result of wind direction or water currents, thereby affecting the ecology in the surrounding. May I ask the Secretary whether any analysis has been made to find out the kind of bacteria seeing "a slight increase"?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, the main kind of bacteria found when treating sewage is E-coli, and there are also many other different kinds of virus causing gastro-enteric diseases. Although such bacteria may not necessarily be

transmitted through this channel, we will of course be very careful in handling sewage discharge. Upon discharge, sewage will be diluted by the ocean and disinfected by the sun and sea water. Hence, the ability of the viruses to transmit will be greatly reduced. After conducting the tests, we have found that this will not affect the fish culture zones. At the most, it will only affect the swimmers. Therefore, we will issue safety guidelines to swimmers.

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

**Publication of Periodicals by Government Departments**

2. **MR MICHAEL MAK** (in Cantonese): *Madam President, regarding government departments' publication of periodicals, such as annual, quarterly and monthly reports, will the Government inform this Council:*

*(a) of the total number of copies of periodicals published and the total expenditure incurred by each government department in each of the past three years;*

*(b) whether it has issued guidelines to government departments on avoiding wastage of public monies in the production of periodicals; if so, of the details of the guidelines; if not, the reasons for that; and*

*(c) of the respective numbers of periodicals printed by the Printing Department and outside printers last year and the respective costs incurred; and whether it has compared the cost-effectiveness of the two approaches?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the question of Mr Michael MAK comprises three parts and I shall reply accordingly.

Part (a) of the question asked for the number of regular periodic publications produced by government departments in the past three years and the expenditure involved.

In order to meet departmental operational needs and to provide necessary information to the public, government departments produce a variety of publications each year. Some of these are regular periodic publications, such as the Hong Kong Annual Report, the Government Gazette, policy address, Government Estimates, government accounts and value-for-money audit reports, departmental annual reports and Hong Kong statistical reports. Other publications are produced from time to time, and they include policy consultation papers, guides to departmental services, various reports and publications, as well as those printed in response to special ad-hoc needs, such as the public guidelines and publicity leaflets published in recent months for combating atypical pneumonia. Apart from these, government departments also produce different kinds of forms, paper stationery, and so on, to meet their operational needs. The types of government publications are numerous. Given the objectives, the quantities printed are driven by the actual operational needs of the departments concerned and the public demand for the information published.

In the past three years, the Printing Department handled an average of 25 000 printing jobs annually and the total expenditures incurred were as follows:

| | |
|---|---|
| 2000-01: | $278 million |
| 2001-02: | $236 million |
| 2002-03: | $241 million |

At present, around 90%, in value, of government publications are handled by the Printing Department. Since the Department does not keep separate statistics on the production of periodical and non-periodical publications, I am unable to provide Mr Michael MAK with the detailed breakdown in this manner.

Part (b) of the question asked whether the Government has issued guidelines to prevent wastage of public monies on the production of periodicals.

As pointed out in my response to part (a) of the question, the printing of government publications is determined by departmental operational needs and public demand for the relevant information. These considerations are quintessential to the Government's commitments for providing quality services to the public and ensuring transparency of its operations. Moreover, in deciding whether particular publications should be produced, the Heads of Department

concerned are in duty bound to critically evaluate the cost-effectiveness of the publications. There should not be any questions of wasting public monies.

On the other hand, in support of the Government's internal economy drive and to help further promote environmental protection, the Director of Administration has, in March 2003, issued a circular to all bureaux and departments appealing for further stringent measures to step up economy, including the level of paper consumption and the volume of printed publications. In particular, bureaux and departments were asked to re-examine their printing requirements, with a view to keeping the numbers and variety of publications to the absolute minimum and to replace them, as appropriate, by electronic publications. At the same time, the Government has also stopped printing the Government Telephone Directory and the Civil and Miscellaneous Lists. The information has been uploaded to the Government website and is available for free access by departments and the general public.

Part (c) of the question concerned the numbers and costs of periodic publications printed respectively by the Printing Department and outsourced printing contractors last year, and whether a comparison of the cost-effectiveness of the two approaches had been made.

Last year, the Printing Department handled 25 114 printing items, valued at $241 million in total expenditure. Of this, $35 million was contracted out. In addition, departments have authority to directly contract out their printing requirements, subject to a ceiling of $20,000 for each assignment. We do not have on hand a further breakdown of the figures between periodic and non-periodic publications because the statistics in the Printing Department are not kept in this manner.

Broadly speaking, each of the alternatives of government publications being printed by the Printing Department or by private contractors has its own merits. Since the private contractors normally have larger plants and labour force, they command a higher production capacity and have greater flexibility in scheduling work. Sometimes, their prices are also relatively lower. In the light of this, the Government has in recent years actively encouraged the outsourcing of printing work and progressively downsized the Printing Department in line with the rate of staff wastage in the department. On the other hand, since the Printing Department is a government department and is subject to government discipline and control, it is able to ensure a high degree of

protection to classified documents and offers better responsiveness to urgent printing requirements while at the same maintaining a high quality of publication.

**MR MICHAEL MAK** (in Cantonese): *Madam President, I would like to follow up the issue of cost-effectiveness. On average, the Government spends more than $200 million on printing, and as legislators, we often receive reports. For example, although the printing of this Policy Recommendation Report presented by the Culture and Heritage Commission is excellent, it is unfortunate that the Report is not printed on recycled paper. I would like to ask the Government, especially from the point of view of a reader, how does it assess cost-effectiveness?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, as I have explained in the main reply just now, for classified documents, no matter how low the price outsourced printing contractors could offer, the printing work should not be contracted out. Classified documents must be printed by the Government's in-house printer. However, if the documents do not belong to classified documents, and if the department or the Printing Department considers outsourcing is more economical and time also allows it, we will then contract out the job. It is difficult for me to explain each and every case. However, I can tell Mr Michael MAK that the Printing Department has adopted various measures to enhance our productivity and lower our cost. These measures include the streamlining of department structure as we have suggested. As you all know, from 1 July, three departments, namely the Printing Department, the Government Supplies Department and the Government Land Transport Agency will merge into one, and the administrative cost will be reduced accordingly. Moreover, the Printing Department has also joined the voluntary retirement scheme. We will also upgrade the machinery of our plant, streamline the procurement process, actively control the stock level of paper, reduce the size of our warehouse, and so on. All these measures are conducive to reducing our cost. We hope that when comparing with the private contractors, these measures can enhance our competitiveness. However, in respect of printing, just as I have said earlier, some jobs must be done by the Printing Department.

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. My supplementary question was about assessing cost-effectiveness from the point of view of readers, not from the point of view of the Printing Department. For instance, will the reader read this report? What does the Government want to communicate to the public, or what does the Government want to tell the public? I am referring to cost-effectiveness in this regard.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I think the scope Mr Michael MAK has referred to just now is beyond that of the Printing Department, as it involves other departments. I am sorry to say that I am not authorized to reply on behalf of the other departments.

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

## Co-ordination of Port Development in Hong Kong and Pearl River Delta

3. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, with regard to the co-ordination and co-operation between Hong Kong and the ports along the Pearl River Delta (PRD), will the Government inform this Council whether:*

*(a) it has assessed the competition posed to the port of Hong Kong by the Nansha Port developed by the Guangzhou Municipal Government; if it has, of the details of the assessment; and whether it has explored with the Guangzhou Municipal Government how to co-operate in this respect;*

*(b) it has examined the competition posed to the port of Hong Kong by the development of the Yantian Port in Shenzhen, and whether any co-ordination efforts have been made regarding the co-operation between the ports of the two cities; and*

*(c) it has conducted a comprehensive study of how Hong Kong and the ports along the PRD develop and co-operate with one other; if it has, of the details of the study; if not, the reasons for that and how it*

*deals with matters relating to the development of and co-operation among the ports concerned?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, the Expert Group on Port and Logistics Development under the HKSAR/Mainland Conference on Co-ordination of Major Infrastructure Projects (Co-ordination Conference) has exchanged views on the co-ordination of development and planning strategies for ports and logistics facilities in Hong Kong and the PRD Region. It has also explored ways to enhance co-operation in the investment, construction and operation of port and logistics facilities, as well as co-ordination of policies and measures to expedite port and logistics development in the region. The objectives are to promote complementary strengths and mutual benefits so as to enhance the future development of both PRD and Hong Kong.

My response to the various parts of the question raised by Miss CHOY So-yuk is as follows:

(a) The Nansha Port is an important development area of Guangzhou. In the country's 10th Five-Year Plan, four berths for vessels of 50 000 tons will be built in the Nansha new port area, thereby increasing the handling capacity by 1.4 million TEUs. The construction of the first berth is scheduled for completion in the second half of next year. Although the handling capacity of Nansha Port is substantially lower than that of Hong Kong, it is located at a strategic point in the PRD Region. In mid-2001, we and the Guangdong People's Municipal Government agreed on a number of co-operation items at the 4th Meeting of the Hong Kong/Guangdong Co-operation Joint Conference (Joint Conference), including the signing of a Letter of Intent for economic development in Nansha. It was agreed that an Expert Group on Nansha Development should be set up to discuss the overall strategy and specific proposals for enhancing co-operation in the development of Nansha. Possible areas of co-operation included the development of high-tech industries, transportation and logistics as well as exchange of and training for professional personnel. The Logistics and Transportation Working Group of the Expert Group held its first meeting in late 2001 and agreed on the need to enhance

communication and co-operation in logistics planning and development. Since the establishment of the Expert Group on Port and Logistics Development under the Co-ordination Conference in April 2002, it has become the forum for pursuing co-operation in this area.

(b) With a handling capacity closer to that of Hong Kong, the Shenzhen port progressed from the world's 17th busiest port five years ago to the 6th in 2002. The Yantian Port is the major facility in the Shenzhen port which has developed rapidly in recent years. Last year, of the 7.6 million TEUs handled by the Shenzhen port, Yantian accounted for 56% (that is, 4.28 million TEUs). This year, Shenzhen port's throughput is set to reach 9 million TEUs. The third phase of Yantian Port Development consists of four container berths, which will come into operation in phases from the end of this year until 2005. They will increase Yantian's total handling capacity by 2 million TEUs to 6 million TEUs.

On whether Yantian poses any competition to the Hong Kong port, I would like to point out that since China's accession to the World Trade Organization, South China's exports remain strong. Last year, Hong Kong and Guangdong Province together handled 32.4 million TEUs. The growth in cargo volume benefited both Hong Kong and PRD ports. Although Hong Kong continues to lead in terms of overall strength, state of development and customs efficiency, we must work hard to further enhance the competitiveness of our port. To this end, the Port and Maritime Board and the Logistics Development Council are actively discussing ways to eliminate bottlenecks in the supply chain in an effective and timely manner. Much has also been done to enhance the efficiency of boundary crossings and reduce transportation cost. At the end of last year, the three land boundary crossing points handled nearly 27 000 vehicular passages every day, representing a 6% growth compared with the previous year. With a 33% efficiency enhancement, the handling capacity per lane per hour increased from 90 vehicular passages to 120. Following the extension of operating hours at Lok Ma Chau/Huanggang and the provision of more 24-hour lanes, goods vehicle passages across the

boundary between 10.00 pm and 7.00 am has grown by 169%, from some 800 in November 2001 to nearly 2 300 now.

(c) Last year, about 78% of the containers we handled were imports to and exports from the Guangdong Province. Cross-boundary co-operation on port and logistics development is therefore of paramount importance. We are committed to enhancing co-ordination with the Mainland and promoting complementary development and prosperity in accordance with the "one country, two systems" principle, and the principle of "complementing strengths, mutual co-operation and reciprocal benefits". In so doing, we will also maintain Hong Kong's status as an international shipping centre and logistic hub and continue to respect market forces.

In Hong Kong, the construction of Container Terminal 9 (CT9) is underway, with the first berth due for completion and commissioning in the coming month or so. Upon full commissioning in 2005, the six-berth CT9 will increase our planned handling capacity by 2.6 million TEUs.

In the meantime, we have embarked on a study entitled "Hong Kong Port – Master Plan 2020" on the long-term development strategy for the port of Hong Kong. Apart from examining the trend and the major factors affecting cargo growth, cargo sources and cargo routes of our hinterland, the study will also evaluate any diversion effect caused by the development of ports in Guangdong. The study will update the port cargo forecast published by the Government in 2001. It will also propose a competitive and sustainable strategy as well as a master plan for Hong Kong's port development, including the feasibility of constructing Container Terminal 10 (CT10), over a 20-year planning period. The study will be completed by the end of this year.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, does the Secretary think that the development of ports in the PRD region will bring vicious*

*competition to the port of Hong Kong? If so, will the construction of CT10 be affected? Furthermore, has the Government discussed with the Guangdong Provincial Government on co-ordinations so as to prevent vicious competition?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I would like to thank Miss CHOY So-yuk for her supplementary question. We have always maintained contacts with the relevant parties such as Guangdong Province and the Yantian Port. In making port cargo forecasts, we have always held discussions with the relevant port authorities to look into our future developments. I have said in my main reply that our current study will take into account the growth in cargo sources of the hinterland of the part of Hong Kong, just as what Miss CHOY So-yuk has asked. This includes the trend in cargo sources, cargo routes, and so on, and we will also consider the development of other ports in the PRD. There will of course be competitions among the port of Hong Kong and the various ports on the Mainland. I believe our approach is co-operating while competing and competing while co-operating. In planning whether it is necessary to build CT10, the Government will also take into consideration situations like other development plans and cargo growth of our port. Members please do not forget that as I have said earlier, our cargo sources have been growing. In other words, if the pie is getting bigger, everyone can in fact have a bigger share. Therefore, even though throughput of the Yantian Port has increased, throughput of our port has also increased. As a result, Hong Kong is still able to maintain its position as the world No. 1 container port.

**MR KENNETH TING** (in Cantonese): *Madam President, the Secretary has said in part (b) of his main reply that the Government would continue to enhance the competitiveness of Hong Kong. In this connection, may I ask the Secretary that in planning the construction of CT10, will he put aside the factor of property prices and put the emphasis on the principle of encouraging the logistics industry instead when calling for tenders?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I would like to thank Mr Kenneth TING for his supplementary question. I thought Mr Kenneth TING would ask about terminal

handling charges. I think Mr Kenneth TING has thought ahead for us. What we need to consider first is the feasibility of and need for the construction of CT10, to be followed by the choice of site, and then the issue brought up by Mr Kenneth TING. That is, if we decide to build CT10, we have to consider how tenders are to be called, for example, whether property prices should be used as the determining factor. I believe these are some important items to be considered. However, at the present stage, I think the most important consideration is feasibility. Later, we will also consider this issue raised by Mr Kenneth TING.

**MR JASPER TSANG** (in Cantonese): *Madam President, the Secretary has referred to the "Hong Kong Port — Master Plan 2020" in the last part of his main reply. May I ask who is responsible for conducting this study? Has the Guangdong Provincial Government or any expert been invited to participate in the study? How can the Government guarantee that it can fully understand the future development plans of the various ports in Guangdong Province in the course of this study?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, the "Hong Kong Port — Master Plan 2020" is conducted by a consultancy firm. As I have said earlier, we will certainly maintain close contact with the Guangdong Port Authority or the other ports in the course of the study. The GHK (HK) Limited (盈智經濟及管理顧問有限公司) is responsible for this study, and it has been conducting studies on this subject. We are mainly looking at the present growth of cargo sources and channels for our port, for example, how we can encourage more cargoes from different places to be exported by sea or land so as to increase our cargo sources. We will also take into consideration the growth of the other ports in the PRD and how cargo sources can be shared among us. Therefore, we must know the developments of the other ports before we can formulate a development strategy for the port of Hong Kong. I would like to state clearly that we have maintained close contacts in this respect.

**MR JAMES TIEN** (in Cantonese): *Madam President, from the perspective of competition, co-ordination and co-operation, the Secretary has said in part (b) of*

*his main reply that last year, the ports of Hong Kong and Guangdong Province together handled 32.4 million TEUs, and the growth in cargo volume benefited both Hong Kong and the PRD ports. However, I have noted that over the past several years, the annual throughput of the port of Hong Kong was only about 18 million TEUs while throughput of the Yantian Port increased from 3 million TEUs in the year before to 4.2 million TEUs last year. It is anticipated that it will even increase to 6 million TEUs next year. This growth rate is very rapid. May I ask what the idea of co-ordination and co-operation between Hong Kong and Guangdong Province is? Will it be that, for example, while Hong Kong can handle 18 million TEUs each year, Guangdong Province will not take away the business of Hong Kong but will only increase its throughput on its own in response to the annual growth rate of cargo sources on the Mainland? In fact, I think everyone will be benefited in this case because the charges of mainland ports are almost three times cheaper than ours. If there is no such concept of co-operation, once more ports are built on the Mainland, the business of the port of Hong Kong will decrease rapidly. May I ask the Government if we will co-operate with Guangdong Province in this manner in order to protect the industry? If so, the counterparts in Hong Kong can then handle at least 18 million TEUs each year. They can try their best to handle this amount at about this price. However, if the development of mainland ports simply involves increasing throughput, then all the benefits will be enjoyed by the mainland ports.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I would like to thank Mr James TIEN for his supplementary question. I understand that the fifth oral question to be raised by Ms Emily LAU later is on the policy on competition. As I have said earlier, in Hong Kong, we believe in market forces, therefore, it is very difficult for us to ask for all cargoes to be sent to Hong Kong or to decide on what cargoes to be sent to Yantian. We are not talking about how cargoes should be distributed for this is impossible. I have already said in my main reply that the area around South China is the factory of the world. Once there is an increase in cargo sources, so long as we have first-class facilities and high efficiency, we, as well as the ports of the PRD, will be benefited. Therefore, what Mr James TIEN has said just now is correct. The Yantian Port is really developing at a very rapid rate, but please do not forget that if we just look at the figures of last year, throughput of Hong Kong also set a record of 19.14 million TEUs. Therefore,

when I talked about co-ordination, co-operation and co-operating while competing, I meant we would make reference to each other's future development plans.

From Hong Kong's perspective, I have said earlier that we have to enhance our competitiveness instead of just asking for cargoes to be exported via Hong Kong. In fact, the principle of businessmen is very simple, and I believe Mr James TIEN knows that very well. If the charges of Hong Kong are low, and if our schedules and services are better, they will export their cargoes via Hong Kong. Otherwise, they may choose Yantian instead. I have said earlier that we will adopt a series of measures to enhance our competitiveness. If the cargoes are transported by sea, that is, sending the containers to the United States from the PRD via Hong Kong by sea, we do have a competitive edge here because it is cheaper than sending the cargoes to Yantian by land. I believe what we are talking about at the moment is that we have been keeping an eye on the development of the other ports in the PRD before drawing up our future plan to see whether CT10 should be built and how our competitiveness can be enhanced. We are all trying to gain more business through market forces, but since the pie has become bigger, everyone will still be benefited if we follow our old practices.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, I think it is natural for Hong Kong to compete with the container ports of the Mainland, the problem is how Hong Kong can think of ways to lower its operating cost. From the main reply we can see that, since the implementation of the 24-hour passenger and cargo clearance at boundary control points, there have been a substantial increase in the number of local goods vehicles crossing the border, and the three land boundary control points still have a lot of capacity to handle more vehicular passages and reduce the time required for clearance for each vehicle. I would like to ask if the Government will consider doing more in this respect? Furthermore, I understand the Secretary is ready to answer the question on container terminal handling charges. Can he tell us if there will be discussions with the operators of the container terminals so as to ask them to find ways to lower their operating cost and charges after the commissioning of CT9?*

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, can you tell me how container terminal handling charges is directly related to this question?

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the two are absolutely related because this has to do with cargo volume and the volume of cargoes handled by the port of Hong Kong.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I would like to thank Mr CHAN Kam-lam for his supplementary question. There are many parts to Mr CHAN Kam-lam's supplementary question, I will answer them as far as my memory allows. I will first answer the last part of his supplementary question which is on CT9. I have said earlier that it is hoped that the first berth can be completed in the coming month or so. By 2005, all six berths will be completed, and our handling capacity will then be increased by 2.6 million TEUs. Therefore, by 2005, the container throughput of Hong Kong will be increased to 25 million TEUs. If we believe in market forces, this increase in supply means that our competitiveness will also be enhanced. As CT9 has brought in some new operators, I believe charges can be lower. Furthermore, Mr CHAN Kam-lam has also referred to terminal handling charges. As regards this, I have promised Mr Kenneth TING that we will certainly make efforts on the issue, and meetings are also being arranged. Although the operators concerned have said that there will be no increase in charges this year, I think this does not mean anything for it is everyone's wish that the charges can be brought further down.

I totally agree that when we talk about competitiveness, just as what Mr CHAN Kam-lam has said earlier, the longer vehicles take in waiting to cross the boundary, the higher wages and the like will be. This rightly explains why we have to do so much work. For example, after the implementation of the 24-hour passenger and cargo clearance at boundary control points, the number of boundary crossing lanes has increased from two to five, and that of vehicular passages from 800 in the past to the present 2 300. With the reduction in waiting time, operating costs can also be reduced. Furthermore, we also intend to complete the construction works of the second bridge at Lok Ma Chau next year and this can also speed up the flow of goods vehicles. We should not

forget that by the end of 2005, the Western Corridor of Shenzhen will also be completed. By means of these measures, I believe we can continue to enhance our competitiveness and reduce our operating costs. As a result, we can gain more business through market forces.

**PRESIDENT** (in Cantonese): This Council has already spent more than 19 minutes on this question, but as many Members are still queuing up to ask questions, I will allow one last supplementary question.

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary has said in his main reply that the Nansha Port is an important development area of Guangzhou, and the Government has agreed to set up an expert group to sign a Letter of Intent for co-operation with Nansha, and to discuss future co-operation plans on development and the general direction, and so on. May I ask if the Government will adopt a similar mode to set up similar expert groups in the other areas of Guangdong Province so as to draw up a mode for development, or is this mode only restricted to Nansha?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, the latest development is that we set up the Expert Group on Port and Logistics Development under the Co-ordination Conference last year. The function of this expert group is not restricted to handling matters in relation to a certain port. Rather, its work is relatively extensive, that is, all matters related to logistics and development strategies of Hong Kong and the PRD are covered. I think this is a better arrangement. Otherwise, we will have to co-ordinate with individual ports and our work will be very dispersed. Moreover, overall speaking, this is also a better arrangement. As I have said earlier, after the establishment of this organization, the Nansha authorities can also discuss matters of co-operation with us through this organization. However, we must not forget that when we talk about co-operation, the situation in Hong Kong is that many of our container terminals are operated by private companies. They will also make use of their own business connections to hold discussions on their own with the operators of mainland container terminals, for example, those of the PRD on how to co-operate in their

business. This is exactly what the present situation is like. Take the Modern Terminals Limited as an example, I believe Dr Raymond HO is aware that it has made investments in areas like Shekou.

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

**Operation of Octopus System**

4. **MR LAU KONG-WAH** (in Cantonese): *Madam President, it is learnt that as Octopus cards with a negative value cannot be used before value is added onto them, members of the public who intend to enjoy the interchange concessions by using Octopus cards will not be able to do so if the remaining value of their cards is negative after paying the fares for the first leg of the journey and they are not able to add value onto the cards before paying the fares for the second leg. Under such circumstances, they can only pay the fares of the second leg in cash, thus failing to enjoy the interchange concessions. Such scenario is particularly common at some major bus-to-bus interchange points, such as the Shing Mun Tunnel Interchange Point and the Tate's Cairn Tunnel Interchange Point. In this connection, will the Government inform this Council:*

*(a) of the numbers of complaints received by the authorities and companies concerned respectively over the past six months about Octopus card deposits and the commuters' failure to enjoy the interchange concessions due to the above restriction;*

*(b) although members of the public have paid deposit at the time of purchasing an Octopus card, a card with a negative value cannot be used before value is added onto it, will the authorities discuss with the companies concerned solutions to the inconvenience and unfairness caused by the above restriction to the public; and*

*(c) whether guidelines have been issued to the companies concerned requiring them to provide adequate number of Octopus Add-Value Machines to facilitate the use of Octopus cards by the public to enjoy the interchange concessions?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, according to information provided by the Octopus Cards Limited (OCL), the Transport Complaints Unit of the Transport Advisory Committee and relevant transport operators, during the half year between November 2002 and April 2003, there was no complaint received on the $50 Octopus card deposit whereas 13 complaints were received over loss of interchange concessions due to failure to reload value onto Octopus cards.

At present, passengers who use Octopus cards with positive remaining value can utilize the reserved value of the cards to complete their journeys. The maximum reserved value of an Octopus card is $35, that is, the maximum permitted negative value is $35. This arrangement ensures that cardholders who board a vehicle by using Octopus cards with positive balance will have sufficient value on the cards to complete their journeys, including train trips from Hung Hom to Lo Wu. The $50 deposit charged by OCL covers the card cost of $30 which is paid upfront to the card supplier and $20 as part of the permitted negative value. The charging of deposit is to recover the card cost and part of the negative value. The OCL also hopes that the deposit would encourage cardholders to safekeep their cards and not to simply discard them after incurring a negative value. Since the cost of an Octopus card plus its maximum permitted negative value amount to $65, the OCL is in fact carrying a $15 credit risk per card. If a card is discarded after incurring the maximum negative value, the deposit cannot cover the company's loss. As such, the deposit amount and the arrangement of allowing Octopus cards to incur a negative value only once are commercial decisions of the OCL taking into account its mode of operation, commercial risks and users' needs.

Whether to install the Octopus system and increase the number of Add-Value Machines are commercial decisions of individual organizations. The Government has not issued any guidelines in this connection. The OCL's information shows that there are at present over 3 000 devices at about 1 700 locations providing add-value service, including those at railway stations, customer service centres of transport operators, car parks and retail outlets which accept payment by Octopus. In addition, the OCL has joined 18 banks to provide Automatic Add-Value Service for more than 300 000 holders of personalized Octopus cards.

To facilitate the use of Octopus cards, the OCL will continue to explore the installation of more Add-Value Machines at popular locations with transport operators and retail merchants. The company has also indicated that it would be happy to work with transport operators offering interchange schemes to study possible ways to ensure that passengers will be able to enjoy interchange discounts. We also understand that a bus company is considering the installation of Add-Value Machines at specific interchange points. Of course, to enjoy the convenience brought about by Octopus cards, an effective way is for the cardholders to reload value onto the cards timely, or make use of the Automatic Add-Value Service.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, since the OCL charges a $50-deposit, can the Secretary disclose how much interest has been accumulated so far? Of the $50-deposit, $20 is the permitted negative value. Although it is called the permitted negative value, it in fact is not the case. The public cannot use a cent of it and they cannot enjoy any interchange concession. I think this is a totally unsympathetic approach and also causes the public great inconvenience. The Secretary has mentioned in the fourth paragraph of the main reply that the OCL will be happy to study proposals together with transport operations, but she has not mentioned what the proposals are. This is as though she has not answered my question. May I know if the Secretary will exercise her influence and make substantive proposals to the OCL, allowing the public to really make use of the permitted negative value on their Octopus cards so that not much inconvenience will be caused when they interchange?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, Mr LAU has raised several supplementaries. Firstly, he asked how much interest the OCL can earn by charging the $50-deposit. The OCL has not provided us with substantive figures in this regard, but the company spends all the interest earned on its operating costs. Members can have a look at the following figures: at present, there are 9.5 million Octopus cards in circulation in Hong Kong, the daily total transaction amounts to about $50 million, the number of users stands at 7.34 million, but the annual profit is only $50 million. In fact, the overall operating target of the company is to adopt the principle of making a small profit margin, and this is what has been agreed on when discussions on its establishment were made with the then

Transport Bureau. So there is no question of a rip-off or charging a large amount of money as the profit of the company.

Mr LAU said that the public is inconvenienced, however, it is in fact for this reason that the Octopus card has a permitted negative value to enable passengers to complete their journeys as far as possible. Concerning interchange concessions for buses, the installation of Add-Value Machines at stations offering interchange concessions can of course be considered. I have also mentioned earlier that the OCL has invested a lot of money to provide Add-Value Machines at 1 700 places. This is a commercial decision. How many people have to use their Octopus cards twice in excess of the stored value, that is, to continue to use their Octopus cards even though there is no remaining value? Furthermore, personalized Octopus cards are now available. I also have this type of card and it is very convenient. After the cardholder has made an arrangement with the bank, a new amount will automatically be added when the Octopus card does not have any remaining value. The amount to be added is set by the cardholder. I believe the Octopus card has provided a great deal of convenience to members of the public, particularly when infectious diseases are raging lately. The public can use coins less often and the Octopus card has helped a great deal.

I hope Members will understand that the OCL is providing these services under conditions of reasonable commercial operation. As a regulatory authority, we hope members of the public can enjoy the greatest convenience, but we also have to take into account the operating costs of the company.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, at present, nearly all cards in the market are offered free of charge and no deposit is required, but a deposit is required for Octopus cards. Since more and more people get to use Octopus cards, and convenience stores, banks, fast food shops, the mass transit railway, the tram, the Kowloon-Canton Railway, buses and ferries all accept payment by Octopus cards, the OCL should in fact by now be able to recover its investment and earn a lot of money. May I ask the Secretary if the OCL will consider cancelling the deposit and provide Octopus cards to the public free of charge, and charge members of the public only when they return their cards to the company?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I do not know which type of card Mr CHAN was referring to when he said no charge was required. Credit cards are debit cards, and they are very different from Octopus cards. This is because credit cards have other ways of doing business, such as providing loans, and the interest charged is the major source of income. However, I am not an expert in this regard and do not want to say anything more.

An amount has to be paid in advance before the Octopus card can be used. The OCL has to pay the supplier $30 in advance because the card itself is worth $30. Therefore, the OCL has to foot the cost of manufacturing the smart card. If members of the public are charged only when they return their cards but the OCL has already paid the cost, this will only increase the company's operating costs. The amount charged by the OCL at present is only 1% of the amount of transaction, therefore, the operating costs have already been reduced to a minimum. However, it is necessary to constantly upgrade the software of the entire management system because the Octopus card can now be used at an increasing number of places. For example, in order to enable passengers to enjoy the convenience of interchange concessions, the OCL has to develop new software. Therefore, we believe that in order to keep the operating costs to the lowest level possible, the present arrangement of charging a deposit of $50 is highly reasonable.

**MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Secretary has said that the maximum permitted negative value of each Octopus card is $35, and it can only be used once after getting to the permitted negative value. May I ask the Secretary if it is possible to draw on the permitted negative value a number of times as long as it does not exceed $35? Is this a problem related to computer programming?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, this indeed is the case. If we have to do this, the computer programme for management will be more complicated. The investment in this area has also to be included in the operating costs. It is not impossible for us to consider this suggestion, but we have to take into account the cost-effectiveness of the Octopus card.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, the Secretary has mentioned in the second paragraph of the main reply that of the $50 deposit charged by the OCL, $30 is card cost and $20 is the permitted negative value. Having received so much money, the OCL can in fact use the interest earned over a long period of time as the capital for making other investments. This is a considerable sum of capital. May I ask if the Secretary can consider examining with the OCL to see whether, after some years, the part of the deposit for the permitted negative value can be cancelled, so that the public does not have to lend money to the company as its capital without receiving any interest?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I have explained earlier that the $50-deposit is not kept by the OCL. The company has to pay $30 to buy a smart card, and even if interest is earned from the remaining $20, it will contribute towards the operating costs. The OCL has to serve more than 7 million people, but its annual profit amounts to only $50 million. We even request the company to keep on developing new technology and software for its operation in order to provide greater convenience to the public. We also request the company to work on numerous contingency plans so that backup can be provided in the event of disorder. All these require large sums of investment. I hope Members will understand that the OCL is not ripping anyone off or using the $20 deposit paid by users to earn interest and then pockets the money. Rather, the money is used on upgrading its service and its operation.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, may I ask the Secretary if Add-Value Machines are very expensive? As a matter of fact, there are a lot of people at all the interchange points. Should the Government ask bus companies to install these Add-Value Machines extensively so as to make things convenient for passengers? Is the Government going to do so?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I have mentioned earlier that Add-Value service is provided at 1 700 locations. I believe some members of the public support the installation of Add-Value Machines at those locations. The bus companies are considering installing additional Add-Value Machines, and one of

the locations is the Tai Lam Tunnel interchange. We are now installing additional Add-Value Machines step by step.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, I have just asked whether Add-Value Machines are very expensive, but the Secretary has not given me a reply. I have also asked if Add-Value Machines will be installed at all interchanges, but the Secretary has merely replied that they will be installed at individual interchanges. May I ask the Secretary whether she considers that Add-Value Machines should be installed at all interchanges?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I believe whether Add-Value Machines are expensive or cheap depends on their cost-effectiveness. If there is such a need, they have to be installed regardless of whether they are expensive or cheap. As regards whether they should be installed at all interchanges, I have already said that because of the operating costs, the OCL has to discuss with the bus companies at which bus-stops the machines should be installed first, and which ones to follow. As far as I know, there is an order in doing so. Concerning the degree of convenience, I believe it is necessary to work with the bus companies before we know where the Add-Value Machines are needed most. At present, we have no intention of installing Add-Value Machines at all interchanges.

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

**MR JASPER TSANG** (in Cantonese): *Madam President, the Secretary has mentioned in the second paragraph of the main reply that since the maximum permitted negative value is $35, the OCL is carrying a $15 credit risk per card. If a cardholder uses up the maximum permitted negative value and discards the Octopus card, then, the deposit charged by the company will not be enough to cover the loss. After such a long period of operation, may I know if the Government has requested the OCL to conduct a study to see how high the actual risk is? In reality, when the value of an Octopus card is negative, members of the public will add value onto it and use it again. Very few people will discard the Octopus card once they use up the maximum permitted negative value of $35.*

*Therefore, is the credit risk of each card really $15? Has this theoretical risk been proven by actual experience?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, we do not have the figures in this regard. Perhaps allow me to provide the information to Mr TSANG after obtaining the figures later. (Appendix I)

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

**Promotion of Fair Competition**

5. **MS EMILY LAU**: *Madam President, regarding the promotion of fair competition, will the executive authorities inform this Council?*

*(a) in view of the World Trade Organization (WTO) Secretariat's critical comments concerning the current competition policy in Hong Kong during the Trade Policy Review (TPR) of Hong Kong in December last year, and as 80 member countries of the WTO have adopted competition laws and Singapore is planning to enact competition law within three years, whether the executive authorities will study the overseas countries' experience in adopting competition laws and consider if it is applicable to Hong Kong; if so, of the details of the study and consideration; if not, the reasons for that; and*

*(b) whether there are plans to enact a set of competition laws in Hong Kong; if not, of the reasons for that?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR**: Madam President, my reply to the two parts of the question is as follows:

(a) In formulating Hong Kong's policy on competition, the Administration has made reference to the experience of many countries in their competition policies or laws.

Our studies revealed that many economies, for example, Korea and New Zealand which had enacted a competition law, had done so when their economies were about to be transformed from a highly-regulated mode to a more liberalized one.

The situation in Hong Kong is entirely different. Our economy has always been free and open. For Hong Kong, our competition policy is a means to enhance economic efficiency and free trade, thereby benefiting our consumers. We have carefully reviewed the pros and cons for the enactment of a competition law for Hong Kong. Our conclusion is that a non-interventionist policy, supported by sector-specific measures as necessary, rather than an all embracing competition law, best suits the needs and circumstances of Hong Kong.

The Administration has regularly monitored and reviewed Hong Kong's competition policy, having regard to developments both locally and overseas. In this connection, we have carefully considered the questions raised by the WTO Secretariat during the 2002 TPR on Hong Kong. In response to these questions, we presented our case and elaborated on Hong Kong's competition policy at the TPR meeting in Geneva last December. Members of the WTO noted in their statement after the review that Hong Kong has a very competitive market, that Hong Kong's competition policy is "a textbook case of the market economy at work", and that an all embracing competition law might not be required in certain circumstances.

We gather that Singapore has announced its intention to enact a competition law in two to three years' time. While both Singapore and Hong Kong are small and externally oriented economies, the characteristics of the two economies are by no means identical. Indeed, the statement made by the Entrepreneurship and Internationalization Subcommittee of the Economic Review Committee appointed by the Singapore Government, in respect of the decision to enact a competition law, observed that the competition law would ensure fair play between all enterprises, including multinational corporations, small and medium enterprises and government-linked corporations. The situation in Hong Kong

is different: All businesses operating in Hong Kong have always received equal treatment and operated on a level playing field.

(b) The Competition Policy Advisory Group (COMPAG), chaired by the Financial Secretary, was set up to provide a high level forum to take a steer on and review issues related to competition. The Statement on Competition Policy promulgated by the COMPAG provides a comprehensive and transparent competition policy framework and clearly defines Hong Kong's pro-competition principles.

The COMPAG has kept our competition policy under review and reaffirmed that, as a small and completely open economy, Hong Kong should adopt a sector-specific approach to promote and enhance competition. This approach includes adopting measures not necessarily limited to legislation, but ranging from licensing conditions, contractual provisions, codes of practice, administrative means, public censure, to provisions against anti-competition in specific legislation. This approach affords us the flexibility to take account of the circumstances and specific operating environment of different sectors. For instance, we have enacted specific legislation against anti-competition behaviour in the telecommunications and broadcasting sectors, and are in the process of drawing up a code of practice for retail payment services, including the Easy Pay System (EPS), to promote market access, competition and efficiency in that sector.

The COMPAG also takes a proactive role in promoting competition:

(i) It critically vets existing government policies and practices to ensure that they are not hindering competition; and

(ii) It also looks into and rules on competition-related complaints and where appropriate, directs that remedial action be taken.

Taking into account Hong Kong's open economy and the competitive business environment, together with recent developments at the multilateral forum, the COMPAG remains of the view that the prevailing non-interventionist policy and our proactive approach in promoting competition, supported by sector-

specific measures as necessary, suits the needs of Hong Kong. We will, nevertheless, continue to closely monitor developments on all fronts and ensure that our competition policy serves Hong Kong's best interests and goes in tandem with changes both in the local and overseas environment.

**MS EMILY LAU**: *Madam President, in his main reply, the Secretary said that the situation in Hong Kong is different from that of Singapore, because businesses here receive equal treatment and operate on a level playing field. I want to ask the Secretary whether he is aware of the perception in the community, including people in the business sector, that we have monopolies in relation to electricity and gas supply, duopolies in supermarkets and port operations, oligopolies in oil supply, and price-fixing cartels in the sale of textbooks and airline tickets. Given such a situation, Madam President, can the Administration still maintain that barriers to entry are low, and that businesses in Hong Kong operate on a level playing field?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR**: Madam President, different people have different perceptions, of course. This subject, that is, whether Hong Kong is competitive enough, has been debated here many times, and I do not think that there has been any consensus so far. I just want to make it clear that we have our statement on competition policy and we have the COMPAG. If members of the public are of the view that there are monopolies or anti-competition practices, they are encouraged to put this to the COMPAG, because we are prepared to consider all these cases. Indeed, in the past three years, the COMPAG has considered over 30 cases, and we have taken action in certain cases.

**MS AUDREY EU** (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary has said that the COMPAG will keep competition policy under review and will conduct research into the needs of individual trades. Madam President, deflation has sustained for a number of years in Hong Kong, but prices of staple food or daily necessities have not gone down in line with deflation. I would like to ask the Secretary if the COMPAG has studied whether the situation is attributed to the phenomenon that Hong Kong is dominated by a few major supermarket chains?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, in respect of supermarket, I think there is no indication that major supermarkets in Hong Kong are abusing their market influence to engage in anti-competition behaviour. I believe Members also know that, in Hong Kong, there is actually no barrier in operating supermarkets. It is not difficult to start a business in the supermarket trade, and is not difficult to enter the market. In respect of market share, I believe it is a matter of different points of views and perspectives. Take the major supermarket chains mentioned just now by Ms EU as an example, does it mean that other companies cannot operate their own supermarkets because some supermarkets have been successful? Or is it the case that the way of operation of the successful operators are better and more efficient, thereby making it difficult for the other operators to operate? In fact, the way people see monopoly is different in different places. In some places, operators having a market share of 20% or above will be considered as monopoly. However, in other places, the threshold is set at 40%, 60% or even 80%. Therefore, the definition is different in different places; it all depends on the local circumstances. We have to consider that it may be the better practice and higher efficiency of certain operators that have attracted more customers, and the other operators are forced out of the business because they are not operating properly. Should this then be regarded as monopoly? People have different views on this.

I would like to reiterate, in respect of supermarket, I think there is no indication that supermarkets are abusing their market influence. Certainly, I know that the Consumer Council is also very concerned about this. If members of the public have complaints in this regard, they can turn to the COMPAG which I have just mentioned. We are willing to consider their views.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Secretary keeps emphasizing that there are different approaches in different places under different circumstances. He also emphasizes that different people may have different views on the same issue. Since it is so, can the Secretary assess the series of examples relating to the several industries mentioned by Ms Emily LAU just now to see whether there exist any barriers, so that people wanting to invest in those trades will not step back? We hope that the situation can be proved by some scientific figures which is better than the subjective view of Secretary IP. Has the Government conducted assessment in this respect? If it has, can the Secretary provide the relevant information to us for reference, so as to deepen*

*our understanding? If not, what are the reasons for not conducting assessment, and will assessment be conducted in future to enable us to understand the situation on the basis of objective data?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, Mr LEUNG Yiu-chung is right. I think different people have different views on the issue. Last night, when I was preparing the reply of this question, I studied some information on the debate on this issue by the Legislative Council. In November 2001, Members had a debate on this subject. After reading all the views presented by Members, I know that views of the different parties varied. Therefore, the motion on enacting legislation on competition had finally been voted down. I just want to point out that people may have different perspectives on the same issue, and certain things cannot be measured scientifically as Mr LEUNG has just said. Earlier, I have given examples of what is known as monopoly, pointing out that different places and countries have different views on the issue. Some countries, like Brazil, may consider that any company having a market share of 20% is monopolizing, but some countries may set the threshold at 80%. Therefore, we cannot adopt the indicators which Mr LEUNG has just said.

Members know clearly that there are relevant ordinances in place for some industries, like the telecommunication and broadcasting industry, and competition in the telecommunication sector is also extremely keen. Hong Kong is just a small place. If Members think that obstructions to competition exist in certain areas or places, be it in the supermarket business or in the other markets, Members are welcome to bring it to the attention of the COMPAG. We are most willing to consider this under the COMPAG.

Referring again to the supplementary question of Mr LEUNG, I have already said that in the past three years, we in fact received over 30 complaints and conducted in-depth study on the relevant trades and industries. Members may recall that in respect of food, we have studied the supply of pork. We are also studying other areas, like the EPS, and will take actions. I would like to state that the COMPAG is not useless. In fact, it is not just carrying out its work conscientiously, but is also directing the departments concerned to do their jobs. I can provide information on the previous work of the COMPAG later for Members' reference. (Appendix II)

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, I am not asking the Secretary to set a threshold on market share ……*

**PRESIDENT** (in Cantonese): Mr LEUNG, you only have to point out the part which the Secretary has not yet replied.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, what I would like to say is that the Secretary has mistaken me. I am not asking for investigation and assessment to be conducted on the basis of market share. I am asking for an assessment of investment conditions of certain industries, for example, to assess whether the monopolized situation is so serious that investors are deterred from making investment. I am only asking for assessment of this kind.*

**PRESIENT** (in Cantonese): Mr LEUNG, this is not a question; this is only your request. Please be seated.

**MR FRED LI** (in Cantonese): *Madam President, I would like to quote a few words of a leading figure in the business sector, the former Chairman of the Hong Kong General Chamber of Commerce (HKGCC), Mr Christopher CHENG. Recently, in an article on the South China Morning Post (SCMP), he said that the function the COMPAG could achieve was limited; he used the word "piecemeal" and ineffectual" and I very much agree with him. I would like to ask the Government, if a leading figure of the business sector also holds this view, how can the Government enhance the function of the COMPAG, so that the business sector will not regard the COMPAG as incompetent? In fact, the business sector also demands for the arrangement for fair competition. I would like to raise one more point, the COMPAG does not have the manpower to conduct independent survey, and has to depend on the Consumer Council or the various government departments to conduct surveys. Therefore, the degree of independence of the operation of the COMPAG is not sufficient.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I have to thank Mr Fred LI for his question. I

do not think the opinion of one person can represent the opinion of the entire business sector. Moreover, Mr LI just now has also mentioned that Mr CHENG is the former Chairman of the HKGCC. I think Mr CHENG had not submitted the representation to us when he was the Chairman. In fact, we have responded to Mr CHENG's views in detail on the *SCMP*; I can provide a copy of our reply to Mr LI. We certainly think that the COMPAG is a rather effective mechanism. I do not want to repeat the content of my previous reply. I just like to state that we are willing to conduct reviews, and we have always been doing so. We have conducted a review in response to this question by Ms Emily LAU on the WTO issue. After consideration, we think that the current practices of the relevant industries have already satisfied our requirement. However, this does not mean that we will not continue to conduct reviews. We will constantly keep an eye on the development of other places. We will monitor the situation in Hong Kong to see whether the situation has deteriorated, or whether we have to do more in certain areas. We will continue to conduct reviews.

**PRESIDENT** (in Cantonese): This Council has spent more than 17 minutes on this question. Since many Members are still waiting for their turn, I shall take one more supplementary question.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, has the COMPAG held any meetings this year, and how many meetings will it hold annually? Furthermore, has the issue on the competition policy of container terminals been discussed? Many importers and exporters have complained about the monopolized situation with regard to container terminal handling charges. This is obviously collusive pricing. They have been complaining about this for many years, why has the COMPAG done nothing about this? Is it a proof that the COMPAG is only a "toothless tiger"? Is it because no law has been enacted, therefore, the "toothless tiger" cannot do anything about the container terminal handling charges?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I would like to reply on how many meetings have been held. The COMPAG held a meeting early this year and will hold another one in June. The COMPAG usually holds four meetings every year, but if need arises, extra meetings will of course be held. If Mr LEE can furnish us with

more information, we will hold more meetings. We are very willing to discuss the issue, and the number of meetings to be held depends on the actual workload.

As regards the issue on container terminals mentioned by Mr LEE just now, I believe different people have different opinions. I have said just now that this in fact is quite difficult to …… Excuse me, Mr LEE did not mention container terminal, rather ……

**MR LEE CHEUK-YAN** (in Cantonese): *It is about container terminal handling charges.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, concerning container terminal handling charges, Members may remember that Mr Kenneth TING had raised questions on this issue many times, and I had replied many times. This is a complicated issue. It does not merely involve container terminals, but also shipping companies. In this respect, we have been doing a lot of work to enhance its transparency. I hope that Mr Kenneth TING being the representative of the sector will agree to this. If he disagrees, I think we have to continue with our efforts. I promise that a meeting will be arranged to discuss the issue as soon as possible. I believe the issue does not only relate to competition, but also involve shipping companies, terminals operators, and so on. I think we need to discuss it. This is not a problem unique to Hong Kong but a universal one. In respect of the charges, I agree to hold meetings again with the parties concerned, such as the Hong Kong Liner Shipping Association.

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

## WRITTEN ANSWERS TO QUESTIONS

### Low Fertility Rate

6. **MR ABRAHAM SHEK**: *Madam President, regarding the low fertility rate in Hong Kong, will the Government inform this Council:*

*(a) as a local survey reveals that one in every six interviewees has fertility problems, whether the authorities have assessed the impact of the declining fertility rate caused by infertility on the population age structure, when projecting the future fertility rates for the formulation of the population policy; if they have, of the assessment results; if not, the reasons for that;*

*(b) as some medical practitioners do not consider infertility an illness and the cost of fertility treatment is relatively high, whether the authorities have assessed if the resources for fertility treatment in public hospitals are inadequate, thus discouraging those who are infertile from seeking early treatment; if they have, of the detailed results of the assessment; if the resources are assessed to be inadequate, the reasons for that; if the resources are assessed to be adequate, of the details; and*

*(c) as the authorities have indicated that it is not appropriate to adopt policies to promote childbirth and pointed out that the effectiveness of the pro-natalist policies to promote childbirth pursued by some countries whose fertility rates are low (but are still higher than that of Hong Kong) is not clear, whether it is the authorities' policy to not try to adjust it to improve the situation; if so, from the perspective of sustainable development, how the authorities cope with the pressures arising from the ageing population in the future; if not, how the authorities will adjust the relevant policy ?*

**CHIEF SECRETARY FOR ADMINISTRATION**: Madam President,

(a) The population projections set out in the Report of the Task Force on Population Policy are made on the basis of certain assumptions regarding the future trends of fertility, mortality and migration. The assumptions on fertility are formulated on the basis of the trend of fertility rates of women of different ages. Although the effect of infertility has not been separately assessed, relevant factors including infertility, late marriage, preference for smaller family have been reflected in the assumptions.

(b) Infertility is a medical condition defined as the inability to conceive after 12 months of regular sexual intercourse in the absence of contraception. The causes of infertility include female factors, male factors and factors involving both partners. In a significant proportion of infertile cases, no known factor could be identified. Psychological problems are known to have ill effects on normal sex life and could lead to both female and male factors that result in infertility.

In Hong Kong, a full range of services are available in the public and private health care sectors to provide assistance and treatment to couples suffering from infertility.

At present, the 50 Maternal and Child Health Centres (MCHCs) and three Woman Health Centres (WHCs) of the Department of Health (DH), and the Birth Control Clinics of the Family Planning Association of Hong Kong (FPAHK) provide primary care services in the form of counselling and consultation services for couples with infertility problems. These can be accessed largely on a walk-in basis. Where necessary, referral to secondary care services would be made.

In addition, all nine Obstetrics and Gynaecology (O&G) units of the Hospital Authority (HA) provide primary care in infertility on an out-patient consultation basis. Most of the units also provide secondary care services consisting of basic investigations, diagnostic tests and therapeutic treatments such as ovulation induction and gynaecological operations. The average waiting time for the first appointment is around seven weeks. Secondary care services are also available at selected clinics of the FPAHK with a waiting time between two to 12 weeks.

As such, easy and affordable access to primary and secondary care services in the public and subvented sectors should not discourage couples with infertility problems to seek treatment.

The HA also provides limited tertiary and quaternary services, such as artificial insemination, microsurgery, in-vitro fertilization and

intracytoplasmic sperm injection at the three Assisted Reproductive Centres located at Queen Mary Hospital, Prince of Wales Hospital and Kwong Wah Hospital.

Apart from the above, the two medical schools in the University of Hong Kong and The Chinese University of Hong Kong provide comprehensive infertility services for those who can afford to pay higher fees.

(c) We believe it is not appropriate for the Administration to promote childbirth which is a matter of individual choice. We have, however, reviewed our current policies to see if they discourage childbirth.

The FPAHK focused on birth control as its promotional theme in its early days against a background of population influx and baby boom during the 1950s and '60s. However, in view of changing economic and social circumstances and the declining fertility rate, since 1986, the FPAHK has departed from that theme and introduced new services like pre-marital check-up, pre-pregnancy preparation, youth health care and so on. Our assessment is that the present activities of the FPAHK are not intended to discourage childbirth.

As to Hong Kong's health care system, it can be said to have a positive effect on childbirth. Maternal mortality rate has been extremely low and ante-natal, childbirth and post-natal services are available from the HA and the DH at very low costs. The Maternal and Child Health Service of the DH also provides a comprehensive range of promotional and preventive health services for women of child-bearing age and children from birth to five years old.

We have also looked at our tax system. While the differential treatment for child allowance between the first two children and the third to ninth child is unlikely to have a significant impact on the decision of a couple regarding the size of their family, the differential may not be appropriate in the light of our very low fertility rate and has been removed as from the current financial year.

In order to ensure the sustainability of our long-term development, apart from the above, we have made a number of recommendations in the Report of the Task Force on Population Policy to address our problem of low fertility and ageing population.

Apart from local births, immigration from the Mainland under the One Way Permit Scheme is a major source of population growth for Hong Kong. Of the daily quota of 150, there is a sub-quota of 60 strictly for children holding Certificate of Entitlement who, though born in the Mainland, are children of Hong Kong permanent residents. This sub-quota will be strictly enforced.

The conditions for admitting professionals and talents from the Mainland will be relaxed and aligned with that for the admission of overseas professionals to make it more attractive to mainland professionals. Furthermore, a new category of investment immigrants will be introduced to attract people who have the financial means to invest in Hong Kong but do not wish to run the business themselves.

Apart from measures to address the problem in terms of quantity, we have also recommended measures to improve the quality of our population: both local and new arrivals. We have invested heavily in education and training. We shall continue to pursue upgrading the general level of education for all and to promote and facilitate skills upgrading and lifelong education.

On the issue of how to cope with the pressure arising from an ageing population in future, we shall revisit and redefine the notion of retirement and old age and continue to develop programmes that promote active and healthy ageing. We shall also develop a sustainable financial support system for the needy elderly.

## Allowing Tertiary Students to Inspect Examination Papers in Person

7. **MR ALBERT CHAN** (in Chinese): *Madam President, it is learnt that upon receipt of students' requests for reviewing examination assessment results, some tertiary institutions, such as the Open University of Hong Kong, will only*

*arrange for a review committee to review the examination papers, but will not allow the students to inspect the examination papers in person. As such, the students will never know the mistakes they have made in answering the examination papers. In this connection, will the Government inform this Council whether:*

*(a) it knows the number of tertiary institutions students who requested a review of their examination papers last year, the number of requests refused, and the results of the reviews; and*

*(b) the Government will request tertiary institutions to revamp their arrangements for reviewing of examination papers, with a view to allowing students to inspect the papers in person; if not, of the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWR** (in Chinese): Madam President,

(a) In the 2001-02 academic year, the University Grants Committee (UGC)-funded institutions and the Open University of Hong Kong received a total of 1 636 formal requests from their students for a review of their examination results. The institutions do not keep separate statistics on requests for inspection of examination scripts.

Among the requests for review, 21 were rejected because the students concerned had not provided good reasons for the requests, or that the requests were submitted after the stipulated deadline. Among the 1 615 processed requests, grades were adjusted upward in 261 (16.2%) cases. In 1 353 (83.8%) cases, the grades remained unchanged. For the remaining special case, the student concerned had to take a re-assessment.

(b) The Administration has no intention to require tertiary institutions to revamp their arrangements for reviewing examination results, with a view to allowing students to inspect the examination scripts. In line with the principle of institutional autonomy and academic freedom, the Administration considers it more appropriate for the institutions to establish their own policy in respect of the review of

examination results and inspection of examination scripts, with a view to ensuring the objectivity and fairness of the assessment process, and encouraging students to learn from experience and strive for improvement.

**Financing of Hong Kong Internet Exchange**

8. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, it has been reported that as Hong Kong Internet Exchange (HKIX) operated by The Chinese University of Hong Kong (the CUHK) might cease operation due to the CUHK's financial constraints, the Commerce, Industry and Technology Bureau has indicated that it would discuss with the CUHK HKIX's financial provision and source of funding. In this connection, will the Government inform this Council:*

*(a) whether it knows HKIX's annual operation costs and its source of funding;*

*(b) of the progress of discussion between the Commerce, Industry and Technology Bureau and the CUHK; whether they have drawn up a discussion timetable;*

*(c) whether it has studied adopting its practice in dealing with the registration of Internet domain names last year, and set up a non-profit-making and non-statutory corporation to take over HKIX's function in local Internet data exchange; and*

*(d) whether it has formulated policies and measures to set up an Internet exchange centre in Asia, encourage local Internet service providers to link up with network operators in the Mainland, and encourage international telecommunications carrier companies to roll out their cable networks in Hong Kong, with a view to promoting the development of a commercial data exchange centre and strengthen Hong Kong's status as an information hub in Asia; if it has, of the details of such policies and measures; if not, the reasons for that?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Chinese): Madam President,

(a) According to the information provided by the CUHK, the annual operating expenditure of HKIX is approximately $1 million, which is met by the CUHK from its university general funds.

(b) In a statement issued in March 2003, the CUHK pointed out that the media report, which suggested that HKIX was under threat of closure, was incorrect, and the University has pledged to work with all parties in the public and private sectors to seek resources for the further development and enhancement of HKIX. The Commerce, Industry and Technology Bureau is actively discussing with the CUHK about the operation of HKIX, with a view to reaching a sustainable arrangement that will facilitate long-term operation of HKIX. It is anticipated that the work will complete in the third quarter of this year.

(c) Established by the CUHK in 1995 and operated by the University, HKIX provides Internet exchange service for Hong Kong. HKIX has been operating smoothly and the Government has no plan to set up a new organization to take over the local Internet exchange function.

(d) The Government has discussed with the industry about the possibility of setting up an Asia-Pacific Internet exchange in Hong Kong to serve as the exchange for Internet traffic within the region. We encourage the industry to attract early connection of Internet exchanges and major operators in the Mainland and other areas in the Asia-Pacific Region to Hong Kong, with a view to promoting the development of Hong Kong as a regional Internet exchange hub. The Government will continue to discuss with the industry and relevant organizations elsewhere to solve related commercial and operational issues as soon as possible. Meanwhile, with the full liberalization of Hong Kong's external telecommunications facilities and services markets, several submarine and overland cables linking Hong Kong with the rest of the region are already in place. The charges for external telecommunications lines linking up with Hong Kong have also become very competitive. These, together with the world-class telecommunications infrastructure in the territory, will enhance and strengthen Hong Kong's status as a telecommunications and information services hub in the region, and increase the

prospect of Hong Kong developing into an Asia-Pacific Internet exchange hub.

**Building Numbers of Ground Floor Shops**

9. **DR RAYMOND HO** (in Chinese): *Madam President, regarding the building numbers of ground floor shops, will the Government inform this Council :*

*(a) upon the allocation of building numbers to newly completed buildings by the Rating and Valuation Department (R&VD), of the party responsible for assigning individual numbers to ground floor shops of the buildings concerned; if the numbers are to be assigned by the developers, whether they have been issued with guidelines on the format of building numbers of ground floor shops; if so, of the details of such guidelines;*

*(b) whether it has surveyed the display of building numbers by ground floor shops in the past three years; if so, when the last survey was conducted, the number of ground floor shops covered in the survey and the number of them with building numbers displayed on the premises; and*

*(c) of the measures, other than issuing warning letters, taken by the authorities to ensure the proper display of building numbers by the owners or occupiers of ground floor shops?*

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

(a) To ensure that building numbers are properly displayed at all new buildings, the R&VD will allocate building numbers to new buildings within one month of their completion. The R&VD will also provide the owners and developers with guidelines on the size and location of the building numbers to be displayed and monitor subsequent compliance.

In general, the R&VD will also allocate building numbers to ground floor shops. However, for shops located inside a shopping arcade which share a common entrance, the Department will only allocate a building number to the entrance of the shopping arcade. The numbering of individual shops within the shopping arcade will be left to the developer.

(b) The R&VD carried out a building numbering campaign in December 2000. In the campaign, the R&VD conducted sample surveys on 3 840 ground floor shops. The results showed that 3 221 shops, or about 84% of the shops inspected, had their building numbers properly displayed.

(c) Apart from issuing warning letters, the R&VD's actions are mainly geared towards increasing awareness of the importance of properly displaying building numbers. In most cases, the building numbers are not displayed because they have been removed or damaged during the course of renovation. Therefore, when the R&VD becomes aware that a property has been let or is undergoing renovation work, it will issue a letter to the owners/occupiers concerned to remind them to properly display the building number after the completion of such works.

Furthermore, the R&VD launches a building numbering campaign every two or three years to ensure the proper display of building numbers. The next campaign will be carried out in December this year when the R&VD will issue letters to owners/occupiers of all ground floor shops and owners' corporations to remind them to display building numbers properly. The R&VD will also conduct sample surveys and assess the need for other follow-up actions.

**People Contracted Atypical Pneumonia in Hong Kong**

10. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding people who have contracted atypical pneumonia in Hong Kong, will the Government inform this Council:*

*(a) whether it has maintained contact with atypical pneumonia patients who have recovered, so as to keep track of their conditions; if so, of the duration such contacts will be maintained;*

*(b) whether it has provided psychological counselling for the above patients or followed up their conditions such as their emotional changes; if so, of the details; and*

*(c) of the assistance provided to the families of atypical pneumonia patients who have recovered or died, as well as the number of requests received so far for such assistance and their details?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): Madam President, the Government is fully committed to providing support for Severe Acute Respiratory Syndrome (SARS) patients and their families. As regards the specific questions raised:

(a) All discharged patients will be followed up in designated SARS out-patient clinics run by hospitals treating SARS patients. Their functional and psychological progress will be regularly monitored. They will be screened through a standardized questionnaire for need of pulmonary rehabilitation and psychosocial rehabilitation.

(b) Psychosocial and other forms of support are being provided, during hospitalization and following discharge, to SARS patients (including those who have recovered) and their families by medical social workers of the Hospital Authority (HA) and the Social Welfare Department (SWD), with backup from family service centres and clinical psychologists.

It includes psychological counselling and assistance to help them overcome fears and anxieties; serving as a link between patients in hospitals and family members, many of whom are under confinement; reassurance through various forms of assistance, including financial, accommodation and child care support; and other tangible support.

In order to provide more comprehensive psychosocial care to discharged SARS patients as well as families of discharged or deceased SARS patients, post traumatic stress debriefing, bereavement counselling, self management courses and support groups have been set up by social workers and health care professionals. In addition, the HA has joined the Centre of Behavioural Health in conducting a study project on families of children with SARS as well as children of patients with SARS.

(c) Assistance, physical and psychosocial, has been provided to families of SARS patients who have recovered (during hospitalization and following discharge) or have died.

*Welfare support*

Tangible assistance is provided in the form of the following:

(1) support for household contacts of confirmed or suspected SARS patients undergoing confinement — if required, in the form of delivery of meals, provision of daily necessities, child care arrangements, emergency financial assistance, and psychological support, intervention and psychotherapy through the use of telephone hotlines. By 16 May 2003, 826 persons in 319 households had been served by the SWD;

(2) support for children or elders without adequate support upon hospitalization of their carers — re-opening the Wai Yee Hostel to provide transitional residential placement. By 16 May 2003, seven children and two adults had received residential care at the Hostel;

(3) discharge arrangements for patients who are capable of self-care but who for various reasons (for example, psychological reasons, crowded living environment) are unable to return home upon discharge — temporary residence at the Cheung Muk Tau Holiday Centre for the Elderly. By 16 May 2003, nine discharged SARS patients had used the Centre;

(4) individualized counselling and other services for discharged SARS patients and their families requiring assistance — see (b) for details;

(5) grief counselling to family members of deceased SARS patients requiring assistance — see (b) for details. By 16 May 2003, amongst those families served, six had been referred to clinical psychologists for treatment; and

(6) various telephone hotlines (also accessible to SARS patients and their families) for offering advice, rendering support and providing psychological counselling. By 16 May 2003, 153 calls had been handled by the SWD's clinical psychologist hotlines; and over 10 000 calls relating to SARS had been received through other hotlines operated by SWD and non-governmental organizations.

*Financial Assistance*

The SWD provides financial assistance out of public funds, and helps administer certain schemes funded by community donations.

The "Emergency Financial Assistance Scheme for Prevention of the Spread of SARS" offers prompt financial assistance to persons who are identified to be close contacts of SARS patients and who are put under confinement. By 16 May 2003, 658 cases involving $552,000 had been approved. Emergency financial assistance in the form of cash grants for living expenses and grants to meet burial expenses has also been provided to SARS patients and their families. By 16 May 2003, 21 applications for cash grants for living expenses totalling $115,000 and 48 applications for burial grants totalling $487,000 had been approved.

The SWD helps administer the "Business Community Relief Fund for Victims of SARS", which provides short-term grants to families of discharged SARS patients and gratuity payments to families of the deceased. As at 16 May 2003, 313 applications (250 applications for short-term grants and 63 applications for gratuity payments) involving $9 million had been approved. Other schemes include

the "We Care Education Fund" which provides for the long-term education of the children of deceased SARS patients; and the "Project Blossom" which offers a maximum of one-year educational grant to children of recovered or deceased SARS patients.

**Handling of Inactive Accounts by Banks**

11. **MR HENRY WU** (in Chinese): *Madam President, it has been reported that a member of the public has lodged a complaint against a bank which has, without obtaining his prior consent, transferred his deposit into a non-interest-bearing account on grounds that his account has been inactive for over six years. In this connection, will the Government inform this Council:*

*(a) whether it knows the circumstances under which each bank will transfer its customers' deposit accounts to non-interest-bearing accounts;*

*(b) of the rules set by the relevant authorities on banks' unauthorized transfer of customers' accounts into non-interest-bearing accounts, and the penalties for breaches;*

*(c) whether the relevant authorities will consider requiring banks to obtain their customers' consent prior to taking such action; if so, of the details; if not, the reasons for that; and*

*(d) whether the relevant authorities will consider fine-tuning banks' procedure for notifying their customers before they take such action, so as to plug any loopholes and prevent the recurrence of such incidents; if so, of the details; if not, the reasons for that?*

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

(a) The operation of banking services, including the handling of customer deposits, must be conducted in accordance with the terms and conditions of the contracts between banks and their customers. Under the Code of Banking Practice (the Code), banks are required

to make available to customers detailed terms and conditions and general descriptive information about the operation of their accounts, which should cover the treatment of inactive or dormant accounts. The Hong Kong Monetary Authority (HKMA) will monitor banks' compliance with the requirements of the Code in its supervision of banks. We are not aware of any circumstances under which a bank may transfer its customers' deposits, which are interest bearing, to non-interest-bearing accounts without a proper legal basis to do so.

(b) In case a bank, without a proper legal basis, transferred a customer's deposit to a non-interest-bearing account, the customer would have a claim against the bank for any losses arising from such actions. The customer may make a complaint to the bank concerned. All banks are required by the HKMA to have proper complaint handling procedures in place. If the customer fails to resolve its complaint with the bank, he may make a complaint to the HKMA, which will investigate the complaint in accordance with its established complaint handling procedures and require the bank to take prompt remedial actions if the complaint is substantiated.

(c) and (d)

Any changes in the interest rates of deposits must be made in accordance with the terms and conditions of the contract with the customer. If a bank seeks to make any variations to its contract with the customers regarding the setting of interest rates, it should, as required by the Code, give its customers reasonable notice before such variations take effect. The notice should show clearly the variations and the ways in which the customer may indicate refusal. The customer may, for example, choose to terminate his relationship with the bank.

The HKMA believes that the above procedures are sufficient. In fact, the HKMA has not received any complaint relating to the transfer of deposits in inactive or dormant accounts to non-interest-bearing accounts since the HKMA complaints unit has been established in April 1999.

**Financial Hardship of Kindergartens**

12. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, it is reported that since the Government announced the suspension of kindergartens on 29 March this year, some kindergartens encounter financial crises due to the reduction in tuition income. In this connection, will the Government inform this Council:*

*(a) of the details of the reduction in tuition income of all kindergartens in the territory during April and May this year; and*

*(b) whether it will assist kindergartens in resolving their financial crises; if it will, of the details; if not, the reasons for that?*

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

(a) With the outbreak of Atypical Pneumonia (AP), all kindergartens had had their classes suspended since 29 March. While some kindergartens claimed that there were parents who failed to pay the school fees for the period, some parents had paid them as usual. Since kindergartens are not public sector schools, they are not required to submit information on their collection of monthly school fees. Therefore, there is no readily available information on the actual situations for kindergartens. The Education and Manpower Bureau will only be able to assess further the impact of class suspension on school fee income for the months of April and May after all kindergartens have resumed classes on 19 May.

(b) Since kindergartens are not public sector schools, the Government will not provide direct subsidy from public funds to ease their financial burdens. However, in order to help kindergartens get over the possible financial problems they may be facing under the effect of AP, the following relief measures have been implemented:

(i) a letter was issued to all parents through the kindergartens appealing for continuous payment of the approved school fees during the period of class suspension;

(ii) The Education and Manpower Bureau will continue to disburse funds to kindergartens under the Kindergarten Fee Remission Scheme (excluding those that have decided to waive school fees) and the Kindergarten Subsidy Scheme for the period of class suspension and until the end of the current school year;

(iii) the deadline for application for kindergarten fee remission has been extended to assist families not being able to pay their children's school fees due to financial difficulties brought by the AP outbreak. Parents in need may apply to the Student Financial Assistance Agency; and

(iv) a letter was sent to the Real Estate Developers Association of Hong Kong requesting their support to grant concession of rent or management fee/air-conditioning charges to their kindergarten tenants to help them tide over the difficulties.

Moreover, the Government has provided materials for preventing AP, including surgical face masks, ear thermometers, probe covers and chlorine tablets, to kindergarten staff and pupils. The Hong Kong Jockey Club Charities Trust has also donated a special grant to subsidize all non-profit-making (NPM) kindergartens in providing a clean and hygienic learning environment to teachers and pupils on resumption of classes. Starting from May 2003, each NPM kindergarten can receive a monthly grant of $5,000 for a period of three months.

The Education and Manpower Bureau has announced that kindergartens will resume classes on 19 May. This will help reduce the problems caused by class suspension such as parents refusing to pay school fees and pupils dropping out. The Education and Manpower Bureau will continue to keep a close watch on the development of the issue and the effectiveness of the above measures, and consider other relief measures where necessary.

**Hygiene Conditions of Country Parks**

13. **DR RAYMOND HO** (in Chinese): *Madam President, recently, there has been a substantial increase in visitors to country parks. Some of these visitors leave behind litter, thus directly affecting the hygiene conditions of country parks. In this connection, will the Government inform this Council of:*

*(a) the average number of litter bins provided by the Agriculture, Fisheries and Conservation Department (AFCD) for each type of recreational facilities (for example, picnic spots and barbecue sites) in country parks, and the average distance between such litter bins;*

*(b) the timetable and other details of the work of AFCD's staff in clearing litter in country parks; and*

*(c) to ensure the hygiene conditions of country parks, the measures the AFCD will take to address the litter problem caused by the substantial increase in country park visitors?*

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

(a) At present, there are about 4 250 litterbins and 1 550 large litter stockades in the 23 country parks in Hong Kong. About 80% of them are placed at some 460 recreational sites, including sites for barbecue, picnic and camping. The number of litterbins and litter stockades provided at these sites varies depending on the size, location, topography and popularity of the sites. On average, the litterbins and litter stockades are about 6 m apart from one another within these recreational sites. The remaining 20% of the litterbins and litter stockades are mainly placed at entrances/exits of hiking trails and footpaths, and along forest tracks and roads within the country parks. The latter are about 1 km apart from one another on average.

(b) The AFCD arranges regular litter collection in the country parks. The collection frequency depends on the utilization rate of the sites. In general, the AFCD arranges litter collection one to four times a

day for recreational sites, and four to eight times a month for hiking trails and other areas. Additional litter collections will be arranged during weekends and public holidays where necessary.

(c) The recent increase in the number of visitors to country parks mainly results in more rubbish at the popular barbecue sites during weekends and public holidays. To cope with the situation, the AFCD is deploying additional staff and has extended the service hours of its cleansing contractors to clear the litter and manage the sites. The AFCD has also stepped up patrol and law enforcement to deter littering.

Moreover, the AFCD has enhanced publicity to remind visitors to keep the country parks clean. Posters are displayed at the recreational sites and some 500 signs have been erected at the entrances to and along hiking trails in the country parks advising visitors not to leave any rubbish behind but to take it home for disposal.

**One School One Doctor Scheme**

14. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, the Permanent Secretary for Education and Manpower indicated that she had approached the Hong Kong Doctors Union (HKDU) and the Hong Kong Medical Association regarding the implementation of the "One School One Doctor" scheme before the full resumption of classes. In this connection, will the Government inform this Council of the details of the "One School One Doctor" scheme and the amount of expenditure involved?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, in the united front to fight against Severe Acute Respiratory Syndrome (SARS) and create a healthy school environment, private medical practitioners have also joined force to offer their service. The Hong Kong Medical Association (HKMA) and the HKDU have approached the Education and Manpower Bureau separately and offered to work with teachers, students and parents to combat the disease by providing voluntary advisory service to schools in various districts.

The HKDU has offered to operate a "School Advisory Service on SARS", which aims to provide schools with prompt information on SARS and answer enquiries raised by schools and parents. Medical practitioners participating in the scheme will also conduct briefings at schools upon request. The scheme has so far recruited more than 70 medical practitioners.

The "One School One Doctor" scheme of the HKMA began after the resumption of classes in secondary schools when the HKMA called on private practitioners in the Tai Po District to organize anti-SARS talks for local secondary schools. The scheme aims to provide students with a good learning environment and, in collaboration with schools, enhance students' health awareness and help develop in them the spirit of self-reliance and mutual assistance. In the Tai Po District, all secondary schools have joined the scheme, which is now being extended to primary schools. In view of the success in the Tai Po District, the HKMA has extended the scheme to all 18 districts in the territory and started recruiting voluntary medical advisors in early May. At present, more than 240 medical practitioners have signed up for the scheme.

The Education and Manpower Bureau has forwarded the lists of medical practitioners provided by the HKMA and the HKDU to School Heads' Associations or School Liaison Committees in various districts. Our District School Development Sections are also providing assistance in matching the participating medical practitioners with schools in the various districts. It is expected that the matching exercise will be completed within this month.

The above two voluntary schemes involve no government expenditure.

## Treatment Methods for SARS Patients

15. **MS EMILY LAU** (in Chinese): *Madam President, currently, the Hospital Authority (HA) mainly uses Ribavirin and steroids to treat patients of Severe Acute Respiratory Syndrome (SARS). However, the World Health Organization (WHO) and the local medical profession have pointed out that the two drugs have serious side effects on the patients, including weakened immunity and damage to hearts and kidneys. The HA also uses the sera of recovered SARS patients for treatment. In this connection, will the executive authorities inform this Council:*

*(a) of the countries or places which adopt the same methods as those adopted in Hong Kong to treat SARS patients and the mortality rates of their SARS patients, as well as the countries or places adopting different treatment methods, the details of such methods and the mortality rates of their SAR patients;*

*(b) whether they have conducted a study of the side effects on the SARS patients who have taken Ribavirin and steroids, and of the number of patients who have died of complications developed as a result of the side effects of the drugs; and*

*(c) whether they know if the HA will consider making other treatment options (such as Chinese therapies and medication, alternative therapies, naturopathy and homeopathy) available to SARS patients or their relatives; if it will not, of the reasons for that?*

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

(a) SARS is a new respiratory illness caused by a coronavirus never before seen in humans. At this stage, much remains unknown about SARS. There is no internationally agreed definitive treatment for coronavirus related SARS. The Centres for Disease Control and Prevention in Atlanta of the United States recommends that SARS patients receive the same treatment that would be used for any patient with serious community-acquired atypical pneumonia. We understand this is also the practice in many other countries/places with SARS patients. In Hong Kong, patients with SARS are treated at the initial stage of the illness, as is the practice in the United States and many other countries/places, with antibiotics for presumptively known bacterial agents of community-acquired atypical pneumonia. For patients with unsatisfactory response to antibiotics, they are treated with Ribavirin and/or protease inhibitor, with or without steroid, and/or any other treatments, on the advice of a panel of experts, comprising clinicians of the HA and leading academics from both the University

of Hong Kong and The Chinese University of Hong Kong, which is based on both laboratory and clinical experience. The attending physicians will decide on what treatment method to use on specific patients taking into account the known side effects and contra-indications of the drugs, the patient's physical conditions and response to treatment, as well as cohort variations of patients. The drugs used, the timing of prescription and dosage for patients therefore vary among attending physicians and hospitals in all parts of the world, including Hong Kong.

According to the WHO, the case fatality rate of SARS can be influenced by the profile of patients (including age and the presence of underlying diseases), and the route of exposure to and the amount of the virus. Bearing in mind that at this stage the diagnosis of SARS is based on a host of clinical factors rather than a specific accurate diagnostic test, there may be variations in the classification of cases as SARS by different countries and places. In the absence of detailed information on the diagnostic practice, the classification system and patient risk factors contributing to case fatality of other countries and places, it is not meaningful to compare mortality rates in different countries and places.

(b) The HA has formed a SARS Collaborative Group comprising representatives from all hospitals and specialties involved in the management of SARS to understand more about the natural course of this new disease and study the factors that will influence outcome of treatment of the disease.

(c) Advisory groups comprising clinicians of the HA and academics are evaluating the efficacy of alternative treatment options for SARS on the basis of evidence. One of the alternative treatment options being examined by the HA is the use of Chinese medicine. In this connection, the HA has recently invited two experts on Chinese medicine from the Guangdong Provincial Hospital of Chinese Medicine to come to Hong Kong to exchange views with local clinicians on the management of SARS patients in public hospitals using an integrated Chinese and Western medicine approach.

**Progress of Flood Prevention Works**

16. **MR AMBROSE LAU** (in Chinese): *Madam President, regarding the progress of flood prevention works at five most serious flood areas in the territory (namely Kan Tau Tsuen and Chow Tin Tsuen in Ta Kwu Ling; Yau Tam Mei Tsuen, Yau Tam Mei San Tsuen and Chuk Yuen Tsuen in Yuen Long; KCRC Bridges in Kau Lung Hang, Tai Po; Lam Tsuen Valley Basin in Tai Po; and Nathan Road between Boundary Street and Prince Edward Road West), will the Government inform this Council:*

*(a) why the flood prevention works at none of the above areas have been completed so far even though the flooding problems there have been categorized as the most serious; and*

*(b) the measures to mitigate the flooding problems in these areas before the completion of the relevant flood prevention works?*

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

(a) The Government has placed great emphasis on flood prevention and has committed significant resources to tackle the flooding problem in the New Territories. The Government has already completed about $4 billion of works in the downstream sections of major rivers and channels, providing initial relief to flooding. As a result, the previous flood prone areas such as those in the vicinity of Tin Shui Wai, Shan Pui River in Yuen Long, Tin Ping Shan and Lo Wu have been relieved of flood risks. We are now actively carrying out river training works in the midstream and upstream sections of the major rivers in the New Territories including Kam Tin River in Yuen Long, and River Ganges. Major flood prevention projects under construction include Yuen Long bypass floodway, the San Tin eastern channel, and the Regulation of Shenzhen River Stage III.

The five flooding blackspots mentioned have their own inherent geographic constraints that the flooding problem cannot easily be resolved without large scale drainage improvement works, which often need to be completed in stages from downstream to upstream.

The works completed so far and those under planning/construction are listed below:

*(i) Ta Kwu Ling area including Kan Tau Wai and Chow Tin Tsuen*

The Ta Kwu Ling area is a low-lying area within the River Ganges basin which discharges into Shenzhen River. Hence, it is subject to the tidal effects inherited from the Shenzhen River during the flooding period. The extensive flooding of the Ta Kwu Ling area will be eliminated after the full completion of Shenzhen River Regulation Project and the rehabilitation of River Ganges in 2006. The Shenzhen River Regulation Project Stage I and Stage II at the downstream were completed in 1997 and 2000 respectively while Stage III commenced construction in December 2001 for completion by early 2006. The rehabilitation of River Ganges commenced construction on 13 May 2003 for completion by end 2005.

*(ii) Yuen Long Ngau Tam Mei area including Yau Tam Mei Tsuen, Yau Mei San Tsuen and Chuk Yuen Tsuen*

Ngau Tam Mei is in the low-lying area. The training works of the downstream Kam Tin River, which has helped relieve the flood risk of Ngau Tam Mei, was completed in 1999. River training works upstream of San Tin Highway under "29CD – Main Drainage Channels for Ngau Tam Mei Phase 2" have recently been completed in April 2003. While we expect the full completion of the main drainage channel between San Tin Highway and Kam Tin River under "100CD – Main Drainage Channels for Ngau Tam Mei Phase I" later this year, the drainage channel has already been formed to line and level and starts discharging water. Furthermore, the village flood pumping scheme at Chuk Yuen Tsuen has already been completed in March 2003. It is envisaged that the flooding problem at Ngau Tam Mei will be significantly relieved towards end 2003.

*(iii) Tai Po Kau Lung Hang KCR underpass*

The streamcourse underneath the KCR bridge and the natural water course at the upstream Yuen Leng area do not possess adequate drainage capacity to meet the flood flow. The training works of the downstream Ng Tung River have recently been substantially completed. It is expected that the flooding problem at Kau Lung Hang could be resolved by the training of Ma Wat River under the drainage project "112CD – Drainage Improvement in Northern New Territories Package A". The project is currently at detailed design stage for construction to commence in 2004 with a target completion date by end 2007.

*(iv) Tai Po Lam Tsuen Valley*

The existing Lam Tsuen River and She Shan River do not have adequate capacity to meet flood flow under extreme events. Under the "109CD – Drainage Improvement in Sha Tin and Tai Po Package C", the two rivers will be trained to improve the drainage capacity. The project is currently under detailed design stage with a target completion date by 2009. We are actively considering the feasibility to advance the programme of the project.

*(v) Nathan Road between Boundary Street and Prince Edward Road West*

In urban areas like West Kowloon, the existing drainage systems were built long time ago and are not up to current flood protection standards. To provide an initial relief to the flooding in Mong Kok, the drainage improvement works at Nathan Road between Boundary Street and Nullah Road have already been completed. Works under different stages of West Kowloon Drainage Improvement Scheme have been progressing well for completion in phases from year 2003 to 2007. Construction of a flood water storage tank at junction of Boundary Street and Tai Hang Tung Road and the Kai Tak Transfer Scheme are in hand and are scheduled for

completion by 2004. It is expected that the flooding problem in this area will be significantly relieved by end 2004.

With the progressive completion of the above flood prevention projects, it is expected that the extent and severity, as well as the recurrence of widespread flooding at these locations will be significantly reduced.

(b) There are interim improvement and maintenance measures in place to help alleviate the flooding problem before the completion of the long-term improvement measures. Local drainage improvements have also been implemented to provide initial relief wherever possible.

Before the completion of the flood control projects, regular and preventive maintenance are carried out to ensure that the existing drainage will be discharging flood water in their full capacity free from blockage or siltation. The Drainage Services Department (DSD) will regularly inspect, desilt and repair the stormwater drainage system before and during the rainy season to ensure that any blockages and defects will be cleared and rectified immediately.

At locations where flooding may cause high risks to the local residents, flood warning systems (flood sirens) have been installed to monitor the flooding situations and alert residents/villagers before the arrival of floodwater.

There is also a list of flooding blackspots compiled to facilitate the deployment of resources to carry out immediate relief measures during adverse weather conditions. The DSD will closely liaise with other relevant government departments and personnel in charge of construction sites to avoid flooding due to blockage of roadside gullies, drains or watercourses by rubbish or construction debris.

During emergency, the DSD will activate their Emergency and Storm Damage Organization (ESDO) and Emergency Control Centres (ECCs). To achieve higher responsiveness in the 2003 rainy season, the DSD would deploy dedicated emergency night gangs for the whole Hong Kong, working from 10.00 pm till

8.00 am every day. The gangs would be equipped with water jetting units for clearing emergency drainage blockage and would be supervised by DSD staff.

**Repair and Maintenance Works of Schools**

17. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, some subvented schools have reflected to me that the delay in allocating funding to schools for repair and maintenance works has rendered it difficult for the school management to carry out the repair and maintenance work on various building services installations and drains for schools within this year. In this connection, will the Government inform this Council:*

*(a) of the reasons for the delay in allocating funding;*

*(b) of the respective amount of funding given to subvented and subsidized schools for such purpose in each of the past three years;*

*(c) whether it will reduce the funding for such purpose in future; if it will, of the reasons for that;*

*(d) of its plans to ensure that subvented and subsidized schools will carry out proper repair and maintenance works; and*

*(e) whether it has plans to check the design and maintenance of sewerage of all schools so as to prevent the spread of viruses and safeguard the health of students; if it has, of the details of the plans; if not, the reasons for that?*

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

(a) Every year, the Education and Manpower Bureau will invite aided schools to apply for the non-recurrent subsidy for major repair works to be carried out the next year. Based on an assessment of schools' needs and advice from the works departments, the estimates for the next financial year will be formulated. The

Education and Manpower Bureau has always notified individual school of the approved subsidy for major repair works at the beginning of the financial year and expects repair works to be carried out within that financial year. In February 2002, we tried to advance the notification to schools of the possible approved subsidy for the 2002-03 financial year to allow works to start earlier. In fact, most schools, with the agreement of the works departments, scheduled the major repair works to be carried out during the summer holidays. This year, the Education and Manpower Bureau informed schools of the approved subsidy for major repair works in March and April. The notification was later compared with last year. It is believed that the progress of schools' repair works will not be affected.

Besides, the Government has provided aided schools with the recurrent subsidy of the School and Class Grant to cover operational expenditure including those for routine maintenance and repairs. This recurrent grant has been provided to schools without any delay.

(b) The amount of funding given to aided schools for major repairs in the past three years are as follows:

| *Funding allocated to aided schools for major repairs* | *2000-01 financial year* | *2001-02 financial year* | *2002-03 financial year* |
|---|---|---|---|
| $ million | 730 | 770 | 790 |

(c) In the past two years, there was a slight increase in the Government's provision of funding for aided schools to carry out major repair works. It is believed that there would be no great difference in such funding in future.

(d) At present, the major repair works for aided schools are managed and monitored by the works departments to ensure that the works comply with the work standards and relevant legislative requirements. As regards routine maintenance and repairs, schools may consult the works departments for professional advice and must

employ qualified craftsman to carry out the repairs. In case of emergency, schools may request the works departments for emergency repair. In addition, the Education and Manpower Bureau will arrange inspection for special items including periodic inspection and testing of the electrical installations in aided schools.

Commencing from the current financial year, the Education and Manpower Bureau plans to gradually strengthen schools' participation in school repair projects and bring in professional service from the market. By so doing, the quality of school repairs and maintenance would be enhanced and better geared to schools' needs.

(e) The Education Regulations stipulate that the design and the construction of all registered school buildings shall be such that the health and safety of the occupants shall be reasonably assured. Moreover, all school premises shall at all times be kept in a satisfactory state of repair. The supervisor shall carry out such alterations and improvements to the sanitary arrangements in the school premises as may be required by the Permanent Secretary for Education and Manpower by notice in writing within a period specified in such notice.

In general, the design, repairs and maintenance condition of aided schools' premises are generally satisfactory. Schools can apply for emergency repair in case of sewerage damage or leakage. In the annual circular to invite aided school to apply for non-recurrent grants for major repairs/alterations for the 2004-05 financial year, the Education and Manpower Bureau has reminded schools to pay attention to the condition of the drainage system and to consult professional advice from the works departments in case of technical problems. After schools' submission of repair works applications, the works departments will arrange site inspection at schools.

Meanwhile, the Education and Manpower Bureau will provide reference materials on sanitary and safety of school premises, including sanitary fitments, sewerage repairs and maintenance, for all schools' information.

**Redevelopment of Ocean Park**

18. **MR AMBROSE LAU** (in Chinese): *Madam President, it has been reported that the management of the Ocean Park urged the Government two years ago to amend the legislation so as to allow the Ocean Park to increase its revenue by accepting commercial consultancy work. Recently, the Government has set up a Task Force led by the Financial Secretary to study the strategies for the redevelopment of Ocean Park. In this connection, will the Government inform this Council of:*

*(a) the reasons for its failure so far to amend the relevant legislation; and*

*(b) the progress of the work of the above Task Force?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my reply to the Honorable Member's question is as follow:

(a) We are working closely with the Ocean Park Corporation on proposals regarding its future development. Any amendments to the Ocean Park Corporation Ordinance will take into account of the future development of the Ocean Park, which is being considered by the dedicated Task Force.

(b) The Task Force is to provide high level policy steer and to facilitate interdepartmental co-ordination on matters concerning the future development of the Ocean Park. The long term development strategy of the Park will have a bearing on the future development of the Aberdeen Harbour Tourism Node. To facilitate the development of a plan of action, the Task Force has agreed that a Development Group be established to formulate recommendations on the strategy to renovate the Park. The Development Group will comprise members nominated by the Board of Ocean Park Corporation. It will be supported in the Government by the Tourism Commission, which will co-ordinate input of different departments. The Development Group is expected to complete its work within six months.

**Community Sports Clubs Movement**

19. **MR HENRY WU** (in Chinese): *Madam President, in April 2001, the Leisure and Cultural Services Department (LCSD) took over from the Hong Kong Sports Development Board (SDB) the Community Sports Clubs (CSC) movement, which aims to assist national sports associations (NSAs) to establish CSCs so as to promote sports at the community level. It is learnt that some sports clubs have made several applications for participation in that movement through the NSA concerned over the past few years, but to no avail. In this connection, will the Government inform this Council:*

*(a) of the number of such applications received by the SDB in the two years before that movement was taken over by the LCSD, the total number of applications received by the LCSD so far; among them, the respective numbers of those accepted and refused, together with a breakdown by the types of sports;*

*(b) of the time normally required respectively by NSAs for processing, and by the LCSD for vetting, such applications;*

*(c) whether it has established a mechanism for handling appeals or requests for review put forward by sports clubs against the refusal for participation in that movement; if it has, of the details of such mechanism; if not, the reasons for that;*

*(d) whether it has set upper limits on the number of participating CSCs in each district for each type of sports under that movement; if it has, of the details of the rationale for those limits; and*

*(e) whether participating CSCs are required to re-apply annually; if not, whether it has conducted regular reviews on the qualifications of such CSCs; if it has, of the details of the mechanism concerned, including the approach to deal with those participating CSCs which do not actively promote sports; if not, the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my replies to the different parts of the Honourable Member's question are as follows:

(a) During the two-year period, that is, from April 1999 to March 2001, before the LCSD took over the "CSC Project" (the Project), the SDB received 11 applications of which five were not approved. Since its takeover of the Project in April 2001, the LCSD has by now received a total of 73 applications covering 23 types of sports, of which three are rejected as the parent NSAs have not agreed to participate in the Project. Details of the applications received are at Annex.

(b) To join the Project, sports clubs must be the affiliates of respective NSAs and be recommended by the parent NSAs. Due to the different administrative practice or criteria for endorsing affiliation, the time needed for NSAs to recommend their affiliated clubs for joining the Project may vary. For the LCSD, it usually takes about seven working days to process an application.

(c) A sports club applying to join the Project should:

(i) be a non-profit-making organization whose objectives are in line with that of the Project;

(ii) be an affiliate of respective NSA;

(iii) be registered under the Societies Ordinance or the Companies Ordinance;

(iv) have adopted a club constitution;

(v) have a functional executive committee;

(vi) have a long term development plan and a yearly plan on regular practice/training and competitions;

(vii) have at least 20 active members; and

(viii) have obtained the recommendation of the parent NSA.

For those unsuccessful sports clubs, they may re-apply for joining the Project at any time once they have met all the above

requirements. It is therefore considered not necessary to set up a mechanism for appeal or review.

(d) Currently, the LCSD has no intention to restrict the number of CSCs to be formed. However, NSAs are advised to spread out the CSCs in different districts so as to facilitate the public to participate in sports activities.

(e) For those sports clubs that have joined the Project, they are not required to re-apply for membership. However, NSAs will renew the sports clubs' affiliation according to the constitution and performance of individual clubs annually, and will also submit reports on the performance of CSCs to the LCSD. For those underperformed CSCs which fail to show any improvement on advice, they will not be recommended by NSAs for application of subsidy from the LCSD and booking of the LCSD facilities. They may even lose their affiliation in the worst case. Clubs that are not affiliated to NSAs will not be eligible to join the Project.

Annex

CSC Project

Applications on joining the Project

| | *SDB* *(1 April 1999 to 31 March 2001)* | | | *LCSD* *(1 April 2001 to 30 April 2003)* | | | |
|---|---|---|---|---|---|---|---|
| *Types of Sports* | *no. of application* | *no. of successful application* | *no. of unsuccessful application* | *no. of application* | *no. of successful application* | *no. of unsuccessful application* | *no. of application under processing* |
| Rowing | 0 | 0 | 0 | 4 | 4 | 0 | 0 |
| Triathlon | 0 | 0 | 0 | 4 | 4 | 0 | 0 |
| Cricket | 0 | 1 | 0 | 3 | 3 | 0 | 0 |
| Table Tennis | 2 | 2 | 2 | 0 | 0 | 0 | 0 |
| Badminton | 1 | 0 | 1 | 1 | 1 | 0 | 0 |
| Life Saving | 0 | 0 | 0 | 18 | 18 | 0 | 0 |
| Judo | 0 | 0 | 0 | 3 | 2 | 0 | 1 |

| | *SDB* (*1 April 1999 to 31 March 2001*) | | | *LCSD* (*1 April 2001 to 30 April 2003*) | | | |
|---|---|---|---|---|---|---|---|
| *Types of Sports* | *no. of application* | *no. of successful application* | *no. of unsuccessful application* | *no. of application* | *no. of successful application* | *no. of unsuccessful application* | *no. of application under processing* |
| Archery | 0 | 0 | 0 | 3 | 3 | 0 | 0 |
| Lawn Bowls | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Orienteering | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Baseball | 0 | 0 | 0 | 4 | 4 | 0 | 0 |
| Swimming* | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| Handball | 0 | 0 | 0 | 8 | 7 | 0 | 1 |
| Athletic | 0 | 0 | 0 | 2 | 2 | 0 | 0 |
| Fencing | 1 | 3 | 1 | 1 | 1 | 0 | 0 |
| Gymnastic | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Windsurfing | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Tennis | 5 | 4 | 1 | 2 | 2 | 0 | 0 |
| Finswimming | 0 | 0 | 0 | 3 | 3 | 0 | 0 |
| Squash | 2 | 2 | 0 | 5 | 5 | 0 | 0 |
| Canoeing | 0 | 0 | 0 | 4 | 3 | 0 | 1 |
| Dragon Boat* | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| Mountaineering* | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| Rugby | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Total | 11 | 12# | 5 | 73 | 67 | 3 | 3 |

* No CSC is formed for relevant type of sports

\# Six of the applications were received before 1 April 1999

## Planning Standards for Designation of Space for Use as Kindergartens

20. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, in view of the reducing demand for kindergarten places resulting from the continuous decline in the birth rate of Hong Kong, will the Government inform this Council:*

*(a) of the planning standards for deciding whether space in public housing estates will be designated for use as kindergartens; and*

*(b) whether it plans to review such planning standards so as to avoid an oversupply of kindergarten places; if so, of the details; if not, the reasons for that?*

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

(a) Under the existing mechanism, the Education and Manpower Bureau will, at the planning stage of a public housing estate or major private housing development, project the number of kindergarten-age children in the area concerned on the basis of the forecast percentage of the three to five age group in the population of that area. Based on the standard of one bi-sessional classroom for every 67 children in the above age group under the Hong Kong Planning Standards and Guidelines (HKPSG), the Education and Manpower Bureau will then project the number of kindergartens required in the estate or development.

Apart from the number of kindergartens, the HKPSG has also provided guidelines on the location of kindergartens. According to the guidelines, kindergartens should preferably be located within 400 m measured radially from residential areas. On their way to school, kindergarten pupils should not be expected to cross any major roads which are not served by grade-separated or traffic light controlled pedestrian crossings.

For space designated for use as kindergartens based on the aforesaid standards, the Housing Department is responsible for the construction and funding of kindergarten premises in public housing estates, and individual developers for those premises within their own private housing developments.

(b) We will closely monitor the latest population projection and review the planning for kindergartens from time to time on the basis of updated population forecast for each district. In so doing, we will try to avoid under-enrollment caused by excessive supply of places within any particular public housing estate or housing development.

## BILLS

### First Reading of Bills

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

## TOWN PLANNING (AMENDMENT) BILL 2003

## PUBLIC OFFICERS PAY ADJUSTMENTS (2004/2005) BILL

## UNITED NATIONS (ANTI-TERRORISM MEASURES) (AMENDMENT) BILL 2003

**CLERK** (in Cantonese): Town Planning (Amendment) Bill 2003
Public Officers Pay Adjustments (2004/2005) Bill
United Nations (Anti-terrorism Measures) (Amendment) Bill 2003.

*Bills 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 Bills

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

## TOWN PLANNING (AMENDMENT) BILL 2003

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I move the Second Reading of the Town Planning (Amendment) Bill 2003. The Bill seeks mainly to streamline and expedite the town planning process, enhancing the transparency of the planning system, and strengthen enforcement control against unauthorized developments in rural areas.

The existing town planning process has been in place for years. There is a general consensus among members of the community that a full review of the Town Planning Ordinance is warranted. For this reason, the Town Planning

Bill was submitted to this Council in 2000 under which comprehensive amendments were proposed to the Ordinance. Unfortunately, due to the complexity of the issues involved and the controversial nature of some contents, the Bills Committee was eventually unable to, after holding nine meetings, complete its scrutiny work before the conclusion of the last term. Having carefully considered the views expressed by various stakeholders, we now propose to adopt a "progressive" method of first handling certain amendment proposals about which there is general consensus in the community and which can bring immediate benefits to society. As for other more complex and controversial proposals, we will examine them in an in-depth manner and discuss with the industry and interested persons and groups before proposing amendments. I will give a brief account on the relevant contents of the Bill.

Insofar as expediting the town planning process is concerned, there are two key proposals. First, we propose to streamline the process for consideration of representations by the Town Planning Board (TPB) by shortening the period for considering representations from nine months to six months. Moreover, we propose to standardize the statutory plan exhibition period to one month. At the same time, we propose to allow presenters to furnish the TPB with further information within four weeks upon expiry of the plan exhibition period to support their representations.

The second key proposal is to streamline the planning approval process. Under the existing legislation, a new application must be made to the TPB even if minor amendments are made to planning permission. Under our proposal, certain minor amendments to planning permission can be exempted from the requirement of submitting a new application in the interest of eliminating unnecessary administrative procedures.

As regards enhancing the transparency of the planning system, we propose that an applicant for planning permission or amendment of plan should obtain the consent of or notify the land owner concerned before submission of application. We also propose to make public all applications for planning permission and for amendment of plan and require notices to be posted on site or published in newspapers so that members of the public can express their views on the relevant applications.

As regards strengthening enforcement control against unauthorized developments, there are technical deficiencies in the existing Ordinance.

Unauthorized developers can always delay the prosecution proceedings by submission of a planning application and instituting a review. We therefore propose to amend the relevant provisions to plug the loopholes in this area.

The proposals contained in the Bill, if implemented, will help enhance the efficiency and transparency of the planning system and be conducive to Hong Kong's overall socio-economic development. I urge Honourable Members to support the Bill.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Town Planning (Amendment) Bill 2003 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.

## PUBLIC OFFICERS PAY ADJUSTMENTS (2004/2005) BILL

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I move the Second Reading of the Public Officers Pay Adjustments (2004/2005) Bill.

The purpose of the Bill is to restore the pay pertaining to each pay point on the civil service pay scales to the levels as at 30 June 1997 in dollar terms. The pay points below Directorate Pay Scale Point 3 or equivalent will be restored to the levels as at 30 June 1997 in dollar terms by two adjustments of broadly equal amount to be implemented from 1 January 2004 and 1 January 2005 respectively with a reduction of about 3% on each occasion. The pay pertaining to the pay points at Directorate Pay Scale Point 3 and above or equivalent will be restored to the levels as at 30 June 1997 in dollar terms from 1 January 2004.

Since August 2002, well ahead of the usual timetable for staff consultation on the annual pay adjustment, I had been in contact with the staff sides of the four central consultative councils and representatives of the four major service-wide staff unions to discuss the approach to be adopted for the 2003 civil service pay adjustment. In addition, I had through various channels collected feedback

from a wide cross-section of civil servants from different grades and ranks on the subject of civil service pay adjustment. In February this year, I had reached a consensus proposal with staff representatives that civil service pay should be restored to the levels as at 30 June 1997 in dollar terms by two adjustments to be implemented from 1 January 2004 and 1 January 2005 respectively. We had also reached consensus that the Government would aim to introduce legislation into the Legislative Council within 2003 to implement the pay reduction. With the full implementation of the civil service pay reduction in 2004 and 2005, the annual savings on civil service salary expenses and subventions to subvented organizations are estimated at $7 billion.

In making the above pay reduction decision, the Chief Executive in Council had taken careful account of all relevant factors under the prevailing civil service pay adjustment mechanism, including the state of the economy, the consumer price indices and the fiscal deficit. On the other hand, we noted the public criticisms on the existing methodology of the pay trend survey. Separately, the Task Force on Review of Civil Service Pay Policy and System has recommended in its Phase One Final Report that priority should be given in the short term to reviewing the pay trend survey methodology. Against this background, we consider that if we were to conduct the 2002-03 pay trend survey based on the existing survey methodology, the survey results would lack credibility. We have, therefore, decided not to conduct a pay trend survey for 2002-03. In my earlier discussions with staff representatives, the latter also supported the temporary suspension of the pay trend survey.

The Bill is for the purpose of implementing the civil service pay reductions which are to take effect from 1 January 2004 and 1 January 2005 respectively. For the longer term, the Government would consider making a piece of general enabling legislation for civil service pay adjustment. The Steering Committee on Civil Service Pay Adjustment Mechanism and the Consultative Group on Civil Service Pay Adjustment Mechanism involving staff representatives, which have been set up in April this year, will take forward the development of an improved civil service pay adjustment mechanism, including giving consideration to seeking the enactment of a piece of general enabling legislation for implementing both upward and downward adjustments to civil service pay.

The Bill provides for the adjustment of pay and the amount of allowances payable to civil servants, ICAC officers and other specified public officers. It sets out the adjusted dollar value of each pay point on the relevant pay scales with

effect from 1 January 2004 and 1 January 2005 respectively. It further provides for the employment contracts of public officers to be varied to expressly authorize the adjustments to their pay and the amount of allowances payable as stipulated in the Bill. The Bill applies to the following officers: (1) all civil servants who are remunerated on the civil service pay scales and those civil servants who are receiving personal salaries; (2) all civil servants serving in the Hospital Authority who are remunerated on the Hospital Authority pay scales; (3) all ICAC officers who are remunerated on the ICAC pay scale and those ICAC officers whose pay is determinable or adjustable in accordance with or by reference to the ICAC pay scale or the civil service pay scales; (4) certain public officers who are neither civil servants nor ICAC officers but whose pay is determinable or adjustable in accordance with or by reference to the civil service pay scales or the ICAC pay scale (or adjustments thereto); and (5) the Director of Audit. The pay for the Director of Audit is provided under section 4A of the Audit Ordinance, which provides that the Chief Executive may, from time to time, increase the rate of salary of the Director of Audit by order published in the Gazette. Given that provision, a statutory reduction of the salary of the Director of Audit is necessary.

The Bill also provides that officers who are remunerated on a delinked starting salary pursuant to the acceptance of an offer of employment made to them on or after 26 February 2003, or who are promoted to a basic rank on a delinked starting salary on or after that date will be subject to the pay reduction provided in the Bill.

The Bill does not apply to judicial officers. In considering the pay adjustment for civil servants in this exercise, the Chief Executive in Council decided that similar to the approach adopted for the 2002 civil service pay adjustment exercise, when the new institutional structure, mechanism and methodology for the determination and revision from time to time of the pay and conditions of service for judges and judicial officers are in place, an assessment would be made within that structure as to whether the previous pay reduction implemented with effect from 1 October 2002 and the pay reduction proposed for implementation on civil servants with effect from 1 January 2004 and 1 January 2005 respectively should also be applied to judges and judicial officers and if so, as from what date. Subsequently, the Chief Justice submitted to the Administration on 23 April 2003 a set of proposals which include a proposal to set up a new review body for determining judicial pay. The Government needs to examine the proposals carefully before taking a decision. As it is proposed

that the first-stage reduction under the pay reduction decision will take effect from 1 January next year, we need to take forward the legislative exercise for the Bill as soon as possible so that the pay reduction can be implemented as scheduled. In view of these considerations, the Chief Executive in Council decided that judges and judicial officers should be excluded from the scope of application of the Bill.

Finally, we note that there are a number of judicial review cases before the Court regarding the lawfulness of the Public Officers Pay Adjustment Ordinance enacted in 2002. According to our legal advice, this should not preclude us from introducing the Bill into the Legislative Council. We would, however, defer the resumption of the Second Reading debate of the Bill until after the delivery of the judgement of the Court of First Instance.

With these remarks, Madam President, I appeal for Members' support for the Second Reading of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Public Officers Pay Adjustments (2004/2005) Bill be read the Second time.

The debate is now adjourned and the Bill referred to the House Committee.

## UNITED NATIONS (ANTI-TERRORISM MEASURES) (AMENDMENT) BILL 2003

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 be read the Second time.

In the stage one anti-terrorism legislative exercise, with the concerted efforts of the Administration and Members of this Council, the United Nations (Anti-Terrorism Measures) Ordinance was enacted in 2002 to implement the mandatory elements of United Nations Security Council Resolution (UNSCR) 1373 and the most pressing elements of the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF) for combating terrorism financing.

In the stage two anti-terrorism legislative exercise, we seek to, by way of introducing the Bill:

(i) implement the requirements under UNSCR 1373 and the FATF Special Recommendations to freeze the non-fund property of terrorists and terrorist organizations;

(ii) implement the International Convention for the Suppression of Terrorist Bombings;

(iii) implement the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; and

(iv) provide for the necessary law enforcement powers.

During the Committee stage before the passage of the United Nations (Anti-Terrorism Measures) Ordinance, some Members expressed concern that the Administration should introduce an amendment bill to deal with the freezing of non-fund terrorist property and to provide for the law enforcement powers. Taking full account of their views, we have covered these issues in the Bill.

UNSCR 1373 and the FATF Special Recommendations require the freezing of funds and other assets of terrorists, terrorist organizations and those who finance terrorism.

Section 6 of the United Nations (Anti-Terrorism Measures) Ordinance already empowers the Secretary for Security to freeze any funds if the Secretary has reasonable grounds to suspect that such funds are terrorist property. To implement the abovementioned requirements of the United Nations and the FATF, we have now proposed in the Bill to extend this freezing power to non-fund terrorist property.

The International Convention for the Suppression of Terrorist Bombings aims at preventing and repressing terrorist type attacks by means of explosives or other lethal devices. The People's Republic of China ratified the Convention

and applied it to the Hong Kong Special Administrative Region (SAR) in November 2001. The Convention has become effective to the SAR as from December 2001.

To implement the requirements of the Convention, we have included new provisions in the Bill to criminalize the following acts: unlawfully and intentionally delivering, placing, discharging or detonating an explosive or other lethal device in, into or against a public place, a state or government facility, a public transportation system or an infrastructure facility, with the intention to cause death or serious bodily injury to any person; or with the intention to cause destruction of such a place, facility or system, where such destruction results or is likely to result in major economic loss. As required by the Convention, we have also stipulated in the Bill that the SAR will be able to exercise jurisdiction over any offender who commits the above offences within the SAR and any offender committing the above offences outside the SAR who is a Hong Kong permanent resident or a body incorporated under the law of the SAR.

The objective of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf is to prevent and suppress unlawful acts endangering the safety of maritime navigation and of fixed platforms used for exploiting offshore resources. The People's Republic of China ratified the Convention and the Protocol in 1991, and will apply them to the SAR.

To implement the requirements of the Convention and the Protocol, we have included new provisions in the Bill to criminalize acts endangering the safe navigation of ships and the safety of fixed platforms, such as seizing a ship or fixed platform by force or by threat of force, performing violence against any person on board a ship or fixed platform, and destroying a ship or fixed platform. In accordance with the requirements of the Convention and the Protocol on extraterritorial jurisdiction, we have made provisions in the Bill to establish extraterritorial jurisdiction over the Convention offences committed on board or against a Hong Kong ship or by a Hong Kong permanent resident; and to exercise jurisdiction over any offender who commits the Protocol offences within the SAR and any offender committing the offences outside the SAR who is a Hong Kong permanent resident or a body incorporated under the law of the SAR.

To facilitate effective investigation into the offences under the United Nations (Anti-Terrorism Measures) Ordinance and the Bill, we have included new provisions in the Bill to empower law enforcement agencies to require relevant persons to furnish information or produce materials, to search premises and seize and detain relevant materials. All these new enforcements powers are modelled on similar powers under the Drug Trafficking (Recovery of Proceeds) Ordinance, the Organized and Serious Crimes Ordinance and the Dangerous Drugs Ordinance, the exercise of which is subject to prior court authorization.

Moreover, we will amend the existing section 10 of the United Nations (Anti-Terrorism Measures) Ordinance on prohibition of recruitment of members for terrorists and terrorist organizations specified by the United Nations. The proposed new section will improve the language of the existing provision and provide for the appropriate mental elements for the offences concerned. In fact, the proposed amendment to section 10 was originally put forward as a Committee stage amendment before the passage of the United Nations (Anti-Terrorism Measures) Ordinance, but was not approved due to a technicality.

For the purpose of promoting international co-operation in combating terrorism financing, we have also proposed new provisions to enable law enforcement agencies to exchange information on transactions of suspected terrorist property with relevant overseas authorities.

Madam President, the purpose of the Bill is to fulfil our international obligations in combating terrorism and terrorism financing. It will help uphold Hong Kong's reputation as an international city and financial centre. It is also important in facilitating Hong Kong's co-operation with the international community in suppressing terrorism.

Madam President, with these remarks, I urge Members to support the Bill. Thank you.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 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): We will resume the Second Reading debate on the Interest on Arrears of Maintenance Bill 2001.

## INTEREST ON ARREARS OF MAINTENANCE BILL 2001

**Resumption of debate on Second Reading which was moved on 9 January 2002**

**PRESIDENT** (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Report of the Committee.

**MISS MARGARET NG** (in Cantonese): Madam President, I would like to first address this Council on the deliberation of the Bills Committee on the Interest on Arrears of Maintenance Bill 2001 (the Bills Committee) in my capacity as its Chairman.

At the House Committee meeting on 11 January 2002, Members agreed that a Bills Committee should be formed to study the Interest on Arrears of Maintenance Bill 2001 (the Bill). The Bills Committee was activated on 28 June 2002.

The Bills Committee has held 10 meetings with the Administration and met with representatives from eight organizations.

Under the Bill, the requirement to pay interest must be made on an application made by the maintenance payee in proceedings instituted for enforcement of the maintenance order, and the amount of interest will be calculated according to a prescribed formula.

The Bills Committee considers that arrears of maintenance should be deemed judgement debts so that interest would arise automatically upon default of maintenance payment. The Administration agrees that a maintenance order may be regarded as a judgement debt until the Court decides to have it varied or discharged. Therefore, interest will be calculated automatically in case of

default in maintenance payment until the Court, on application, makes an order to vary or discharge the original maintenance order.

The Administration recommends, and the Bills Committee agrees, that the following principle should be followed in calculating interest on maintenance arrears:

(i) simple interest as provided in section 50 of the District Court Ordinance should be adopted;

(ii) the amount of arrears should no longer be subject to the 12-month enforcement rule specified under section 12 of the Matrimonial Proceedings and Property Ordinance if it has been affirmed through enforcement proceedings as a debt by the Court; and

(iii) if the Court makes a committal order against the maintenance payer and suspends it under rule 87(6) of the Matrimonial Causes Rules, any payment made by him/her is subject to the order of priority stipulated in rule 87(8) thereof.

The Bills Committee also considers that as a further deterrent, the Court should have discretion to impose a surcharge on maintenance arrears in cases where the maintenance payer repeatedly defaults without reasonable excuse. The Bills Committee has pointed out cases where the maintenance payer repeatedly makes irregular and partial payments, even after enforcement orders have been made and despite his financial capability to make full payments.

In recognition of the not insignificant number of cases referred to by the Bills Committee, the Administration agrees that a surcharge may be imposed as a further deterrent in cases where the Court finds blameworthy conduct on the part of the maintenance payer. However, the Administration has emphasized that, a surcharge may be imposed by the Court only in deserving cases. The Administration proposes that:

Firstly, on application from a maintenance payee, the Court may impose a surcharge; secondly, an order for a surcharge should only be made when the Court is satisfied that the payer has defaulted repeatedly without reasonable

excuse; and thirdly, a maintenance payer may be summoned to the Court by a judgment summons and should be given an opportunity of defence.

As for the surcharge ceiling, the Administration proposes to set the ceiling at 30% of the total arrears of maintenance. However, all the 11 members from different parties or of no party affiliation are of the view that the surcharge ceiling should be set at 100% of the total arrears of maintenance. I shall move the relevant amendment on behalf of the Bills Committee at the Committee stage. I would like to point out that, it is very rare for us to have the unanimous support of all the members of a bills committee. However, the Administration still refuses to accept our proposal, thereby complicating the legislative procedure of today. This is somehow unfortunate.

The main justifications of the Bills Committee in supporting setting the surcharge ceiling at 100% of the total arrears of maintenance are:

Firstly, as a surcharge will only be imposed on cases where the Court finds blameworthy conduct on the part of the maintenance payer, so the surcharge ceiling must be set at a higher level for it to have sufficient deterrent effect; and secondly, an order for a surcharge would only be made when the Court is satisfied that the payer has defaulted repeatedly without reasonable excuse. Therefore, it is a most appropriate arrangement to set the surcharge ceiling at 100% of the arrears and to leave the discretion to the Court to determine the appropriate amount of surcharge in each case.

The Bills Committee is also concerned about the problem of deliberate evasion of service of summons by maintenance payers. To address the problem, some members suggest that the Court should be given the power to impose a surcharge even though the maintenance payer fails to appear before the Court, so long as the summons has been served to the address provided by the payer.

The Administration has pointed out that the blameworthy conduct of the maintenance payer in defaulting payments repeatedly without reasonable excuse is a fact to be established by the Court before a surcharge can be imposed. As accrued maintenance arrears can amount to tens of thousands of dollars and since the surcharge scheme is designed to cover all maintenance arrears cases, the imposition of a surcharge by the Court may inflict a serious detriment on some maintenance payers. From the general legal policy perspective, where there is a serious detriment to an individual on the establishment of certain facts, the

criminal standard of proof (that is, beyond reasonable doubt) would be required even though the case is not a criminal matter. The facts will not be taken to be proved merely on a balance of probabilities.

The Administration has further explained that if the Court is empowered to impose a surcharge on a maintenance payer in his/her absence, there may be cases where the criminal standard of proof is not satisfied. It is only appropriate that a maintenance payer be afforded a chance to present his/her points to the Court. Otherwise, there is no way for the Court to confirm that there is no reasonable excuse for the failure of the payer in complying with the maintenance order.

As for the application procedure for the surcharge, members note that a maintenance payee may attach an application for surcharge to any concurrent enforcement proceedings. These include judgment summons, attachment of income order, garnishee proceedings and charging order to enforce the maintenance order under which arrears have accrued.

Application for surcharge may also be made by way of summons, which provides for alternative modes of service and would cater for the scenario where the maintenance payer in question tries to evade service of the summons. Apart from personal service, the payee could choose to serve on the legal representative acting for the maintenance payer, if represented, or by sending the summons and other relevant documents to the last known address of the maintenance payer, if unrepresented. If the payer fails to attend the hearing or if the service has been unsuccessful, the Court could direct service in such manner as appropriate. If the Court is satisfied with the payee's efforts to serve the documents in the first attempt, it could make an order of surcharge in the absence of the payer at the hearing.

If the Court makes an order of surcharge in the absence of the payer, the payer may apply to the Court to set aside or vary the order or to appeal against the order after he has knowledge of the order being made.

In order to make the proposed summons procedures for application for surcharge user-friendly, the Administration has prepared the standard summons forms with the Administration's annotations and suggested wordings for completion by maintenance payees, together with a draft affidavit in support of the application for surcharge.

In view of the complicated methods involved in calculating the interest on maintenance arrears, the Bills Committee has asked the Administration to develop a computer software for calculation of interest. The Administration has held discussions with the departments concerned on the technical problems involved. The Administration will proceed with the procurement procedures once it is ready. The whole process is expected to take 90 to 110 days. I believe the Secretary for Home Affairs will give an undertaking that the Government will develop the computer software in his speech later on, and that a briefing on the computer software will be given to the Panel on Home Affairs prior to the acceptance test stage before the Ordinance comes into effect.

Another issue of great concern to the Bills Committee is the establishment of an intermediary body for the collection of maintenance payments.

The Bills Committee considers that same as those already implemented under the Attachment of Income Orders, the proposals put forward by the Bill are not cost-effective and will only benefit a small number of maintenance payees. Many maintenance payees will still encounter difficulties in collecting maintenance payments.

Due to the above reasons, the Bills Committee urges the Administration to reconsider the proposal of setting up an intermediary body for the collection and enforcement of maintenance payments. Members think that, apart from sparing maintenance payees the emotional trauma of confronting their ex-spouses, the intermediary body, with its professional and expertise and focused effort, would be more cost-effective and efficient in recovering arrears from maintenance payers. Members also share the view that more efficient collection and enforcement of maintenance payments would also help to reduce the expenditure on legal aid and Comprehensive Social Security Assistance (CSSA) Scheme.

As the establishment of an intermediary body is outside the ambit of the Bills Committee, therefore, the Bills Committee proposes that the matter should be referred to the Panel on Home Affairs for follow-up.

Madam President, my personal opinions on the Bill are outlined as follows.

Madam President, a divorce is already a serious blow to the great majority of grass-roots women, and they have to rely on the mediocre maintenance to support the living of their young children. The difficulties involved are incomprehensible to outsiders. And if they are unable to receive the maintenance and have to institute complicated proceedings for enforcement of the maintenance payments, which will very often end in vain, then apart from suffering great financial hardship, they are also tormented by the loss of personal dignity. This is not their fault, why should they be subject to such great pain?

From the perspective of social policies, the present situation is also unacceptable. It is not only unfair, but will also lead to great wastage of public money because most women in such situation are recipients of CSSA and legal assistance. We must do our best to help them, and we must try to identify a better solution for society.

This Bill cannot solve their problems. It can only slightly reduce the unfairness to them by collecting an interest and a surcharge. The Bills Committee has listened to the opinions of representatives from many woman organizations who attended our meeting in person. From them, we learn that the proposals contained in the Bill have only limited effect — they are "tasteless to the tongue, yet a pity to throw away." We share their feeling. It is exactly for this reason that the Bills Committee has resolutely taken one step further to ensure that a computer programme is in place to facilitate the prompt calculation of the interest accrued, so that upon the enactment of the Bill, the implementation of the proposals could be made simple and easy and the application procedure is user-friendly. In this way, we can avoid wasting a large amount of court time and legal fees, which could otherwise be even more than what the payees ultimately can receive.

Madam President, although I am referring to the women, in fact they do account for the majority of the payees, the same rationale also applies to payees of the male gender. I also fully understand that the difficulties very often originate from the harsh reality: Maybe the defaulter has lost his financial capability, or the defaulter is at large and cannot be found. These cannot be changed by the imposition of an interest and a surcharge.

Therefore, after the passage of this Bill today, we still have to work hard in the Panel to continue following up the simplification of court proceedings, and more importantly, to explore again the possibility of establishing an intermediary body. We hope, by that time, we can have the active support of the Administration, the public and all Honourable Members.

Madam President, I so submit.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) has no objection to the present practice of leaving the determination of the amount of maintenance to the Court. However, as there are fundamental loopholes in the entire system of enforcing maintenance payments, the effect is not very good, making many desperate maintenance payees feel rather helpless. Unfortunately, the Government has been unwilling to establish a maintenance board to solve the various existing problems once and for all, and is only keen on patching up the present system. So, with reluctance, the DAB still has to support the Interest on Arrears of Maintenance Bill 2001 (the Bill), even though we think that its coverage is not broad enough, and it cannot substantially improve the present situation of default maintenance payment even if it is implemented.

The DAB supports any suggestion that can assist divorcees in recovering maintenance arrears. Therefore, we shall not object to the proposal of collecting interest on arrears of maintenance or imposing a punitive surcharge on people who deliberately default on maintenance payment. Besides, in order to achieve sufficient deterrent effect, we think the surcharge ceiling should not be set at a level that is too low. The appropriate level should be 100% of the total arrears of maintenance. Although the Government is of the view that this is too stringent, and insists that a 30% ceiling should be set instead, we think that, as long as the defaulting party pays the arrears of maintenance on time, he absolutely does not have to shoulder any additional surcharge. Besides, the actual amount of surcharge payable is ultimately determined by the Court. The ceiling is only meant to give the Court greater room and flexibility in determining the defaulting payer should pay a surcharge of 10%, 20% or 100% to compensate the pain and anxiety suffered by the payee in the process of

enforcing maintenance payments, basing on the consideration of various factors, such as whether the reasons provided by the payer are reasonable.

The DAB is of the opinion that the most critical issue is that there are too many problems in the present system. No matter how the Government amends and tightens the existing legislation, or improves the procedures, the effect is still rather limited. The Bill proposes to impose an interest on arrears and a surcharge. This is still not an effective way of recovering arrears because if the defaulter has intentionally concealed his properties right from the beginning, and becomes missing after a maintenance order is made, then the helpless woman who is entitled to receipt of maintenance still has to spend a lot of time and effort on fighting a tough battle with the payer and visiting different government departments and the Court for different formalities. Before receiving the maintenance to which they are entitled, they have already been tortured by the tedious procedures to the point of total exhaustion.

In this connection, the DAB reiterates that the Government has to respond to the consensus reached in society for the expeditious establishment of an intermediary body, which is charged with the responsibility of collecting and enforcing maintenance payments on behalf of the payees. Do not continue with the piecemeal approach of "treating the head when there is a headache" by introducing amendment bills from time to time, such as the Attachment of Income Order passed last year and the measures discussed by us today of collecting interest on arrears of maintenance, and so on, in order to alleviate the many problems that exist in the present system of maintenance payment.

Madam President, I strongly agree with all that was said by Miss Margaret NG, Chairman of the Bills Committee. Therefore, I am not going to repeat her points. With these remarks, I support the Bill.

**DR LAW CHI-KWONG** (in Cantonese): Madam President, I would like to speak on behalf of the Democratic Party. As most of what I wish to say has already been covered in the speeches just delivered by Miss Margaret NG and Miss CHOY So-yuk, I shall keep my speech as short as possible.

Basically, when I received a copy of the Interest on Arrears of Maintenance Bill 2001 (the Bill), my first opinion was that the cost-effectiveness of this amendment was very low. The resources used in this amendment

exercise alone, that is, the total resources used by the Government and the Legislative Council, cannot be recovered in full by the total interest collected as a result of assistance given to payees in enforcing such payments in the next 10 years. And in such a calculation, we have not included the various costs incurred by the Government, the Court and the payees in each attempt of recovering the arrears of maintenance plus interest. However, as Miss Margaret NG said, the proposals are rather like chicken ribs, they are "tasteless to the tongue, yet a pity to throw away." Therefore, the Democratic Party will still support this Bill.

I would like to reiterate our opinion expressed in a meeting of the former Legislative Council in early 1997 in support of the establishment of a maintenance board. We still hope that the Government can conduct a serious study on this subject. On the issue of surcharge, the Democratic Party supports the amendment to be moved by Miss Margaret NG later on behalf of the Bills Committee. We do not intend to levy the surcharge at the rate of 100%, but would like to leave some room for the Court to impose a penalty. If the behaviour of a certain person has been really nasty, the Court may impose a punitive surcharge of a higher amount. Thank you, Madam President.

**MS CYD HO** (in Cantonese): Madam President, just as in previous legislative amendments on the procedures of enforcing maintenance payments, we are voting in support of this Bill only because we are left with no better options. In fact, this highlights once again the limited authority of the Legislative Council in putting forward legislative proposals.

In the era of the former Legislative Council, we already called for the establishment of a maintenance board. However, up till now, the work in this regard is still being co-ordinated by the Home Affairs Bureau. The Bureau has provided us with a work programme and said that it would proceed with the work according to the programme gradually; and now this is the second amendment. Some administrative measures and judicial procedures have really been simplified, for example, the payee does not have to go to the Legal Aid Department every month to repeat her case again, thereby being spared of the pain of rubbing salt monthly into her wound. This is a good measure. However, for regular defaulters, this is not a sufficient deterrent. It just reduces the pain suffered by the payee. Therefore, if the Government still

refuses to advance the payments, still refuses to set up a maintenance board, the problems of maintenance payees will not be removed completely.

This amendment stipulates that an interest will be imposed on arrears of maintenance. The Bills Committee on Interest on Arrears of Maintenance Bill 2001 thinks that it is even necessary to impose a surcharge on the arrears. The Administration proposes to set the surcharge ceiling at 30%, whereas we propose to set it at 100%. I hope when it comes to the vote later on, Members can bear in mind that they should stay in the Chamber to cast their votes. Otherwise, we may get nothing — consequently, we may not be able to collect even 1% in surcharge. I hope Members can remember this and please bear this in mind. The original interest rate proposed by the Administration, even if the higher statutory interest rate adopted by the Court is used, is just about 11%. We know a lot of women have been borrowing from others for a long time, and they in fact have nowhere else to borrow from. Most of them are making ends meet by advancing money from their credit card accounts, and the interest recovered from default payments is insufficient for repaying the interest arising from credit card loans. So we feel that this surcharge is not compensation. Instead, it is an actual need. As for the 100% ceiling, the judges have the discretion to determine the rate of the surcharge payable. Therefore, we do not have to worry that the rate proposed by us might be too high.

In fact, this amendment has not spared the payees the pressure in having to face the payers again. At least, the Court has to acknowledge the effort of the payees in serving the summons for the first time. However, for a victim of domestic violence, even one more chance of being attacked again is already too much. Yesterday, we read from the media that someone had wounded four traffic policemen for getting a traffic offence ticket. So we can see that the danger is even greater for an unarmed woman in serving the summons. Therefore, Madam President, I wish to reiterate that I request the Administration to face the reality that such patch-up amendments have little effect and consider the needs of the underprivileged, and establish an intermediary body that can advance and collect maintenance payments on behalf of the payees as soon as possible.

Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, just as what several Honourable colleagues have said, and it is also the accumulated view of us during the past few Legislative Sessions, that we feel the Attachment of Income Order passed previously as well as this Bill cannot solve the problem of enforcing maintenance payments arising from divorces.

I still recall that, before I had fallen ill, I told the Chairman at the first meeting of the Bills Committee that we were not talking about legal problems, and when the Administration tabled the Attachment of Income Order, we had already told them that it would not solve the problem. Now, the Administration had tabled yet another Bill, and we reminded it again that we should focus our effort on the problem, that is, enabling those entitled to maintenance to really receive the maintenance payments, as ordered by the Court. We think it is most important to have an intermediary body, such as a maintenance board mentioned just now. I wish to reiterate that the Government should take a look at the views expressed during past Legislative Sessions and examine if it would really incur very high costs if a maintenance board is established, as claimed by the Government. Now, the Government should come to a conclusion. When the Attachment of Income Order has encountered some problems, again the Government puts forward some provisions now. However, for those people, be they men or women, if they do not work regular jobs, or if they try all means to evade the responsibility of paying the maintenance, such provisions will not solve the problem. All of these appeals or court proceedings incur expenditure from the public coffers. If this Bill is passed today, I hope the Government can consider setting up an intermediary body, such as a maintenance board, to solve the present problem, that is, even the person has been awarded by the Court the right to receive maintenance, she/he still cannot receive the maintenance payments. Under such circumstances, how on earth can they get the maintenance? I hope the Secretary can understand our worries.

Just as the Chairman of the Bills Committee has said, it happens only once in a blue moon to have a consensus among more than 10 members of a Bills Committee. We have repeatedly discussed the content of the Bill, and the Legislative Council has also conducted many studies, and we have a lot of data in hand. It is just a pity that the Government has not adopted such data. I hope the Government can think about this: A lot of public funds would have to be used in each amendment exercise or each court proceeding. This cannot match up

with the cost-effectiveness involved. Why could the Government still not make a good conclusion on this issue to date?

Besides, as for the amendment in respect of the surcharge to be moved by the Bills Committee, we are supportive. Just as many Honourable colleagues said a moment ago, we hope the Court can be given greater flexibility in making judgement on this.

Madam President, what I wish to say today has already been covered in the speeches delivered by Honourable colleagues speaking before me. In addition, the Chairman of the Bills Committee has also gone into great details on issues related to the surcharge or the interest. I wish to stress that, when the Attachment of Income Order was passed, Members of this Council had already said at that time that it would not solve the problem of people recovering maintenance payments. Now it is just proving once again that the Government really needs to consider setting up an intermediary body, that is, a maintenance board. Thank you, Madam President.

**MS AUDREY EU** (in Cantonese): Madam President, just as the Chairman of the Bills Committee has said, this Bill is gender-neutral, that is, it applies equally to husbands and wives. However, as what usually happens in reality, most of those affected are women. Therefore, it is understandable to us that, among the 11 members on the membership list of the Bills Committee, seven of them are women. Madam President, I have done some calculation — there are altogether 10 lady Members in the Legislative Council, and seven of them have joined this Bills Committee.

Madam President, many Members have mentioned that the initial version of the Blue Bill submitted by the Government was unrealistic. The analogy just drawn by Dr LAW Chi-kwong is very correct. When we read the Bill submitted by the Government, we could not help shaking our heads. We could not understand why it had turned out like this after the Government had expended so much resources on drafting this Bill. Of course, we also invited the Law Society of Hong Kong and other people to comment on it. All the different parties came to the same conclusion that this Blue Bill was not practicable and unrealistic. This was the situation in the very beginning. Actually, it is not necessary for the Bills Committee to hold so many meetings, because the members have been unanimous in their views. However, Madam President, I

really have to lodge a complaint. The Government has been really stubborn. No matter what we say, no matter how we put forward our reminders, they still fail to understand the realistic situation. They seem to be talking about the theories with us, not the reality.

Besides, on the subject of surcharge, the amendments proposed by us are nearly introducing complete changes to the version of the Government. On the issue of surcharge, members are also unanimous in their views. I really cannot understand why the Government has to set the ceiling at 30% when it is obviously possible for us to leave the decision to the judges who would pass judgement after assessing the circumstances of each individual case.

Under such circumstances, Madam President, I can only say that I really cannot understand why the Government has to adopt such an attitude on this issue. However, I am pleased to see that Members, regardless of their political affiliations, have been unanimous in their views on this Bill. Madam President, I hope this situation can go on. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): First of all, Madam President, I would like to express my sincere gratitude to Miss Margaret NG and Members taking part in the work of the Bills Committee on Interest on Arrears of Maintenance Bill 2001 (the Bills Committee) over the past 10 months for their careful and meticulous scrutiny of the Interest on Arrears of Maintenance Bill 2001 (the Bill).

The Bill, submitted to this Council by the Government on 21 December 2001, seeks to amend the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16), the Matrimonial Causes Ordinance (Cap. 179) and the Matrimonial Proceedings and Property Ordinance (Cap. 192) to, upon an application from a maintenance payee, empower the Court to, in case a judgment debtor, that is, a maintenance payer, defaults to pay maintenance specified by a maintenance order, require him to pay

interest in respect of the arrears which accrue on or after the commencement date of this Ordinance.

Having summarized and carefully considered the views expressed by Members during the 10 meetings held by the Bills Committee, we propose to introduce certain changes to the Bill, and relevant amendments will be moved at the Committee stage. The major changes include:

(1) Arrears of maintenance should be deemed under our proposal as judgment debts so that interest would be automatically calculated at judgment rate upon payment default until all arrears have been settled or the Court, upon an application, orders to have the original maintenance order varied or discharged. Maintenance payees being defaulted may directly claim the interest from the payers.

(2) In addition to the original interest collection proposal, we propose to include a surcharge provision in our amendments to deter maintenance payers who frequently default on maintenance payments without reasonable excuse.

Lastly, as it is considered by Members that the Bill involves a certain measure of technicality and the tools involved, such as the user-friendliness of statutory forms, will directly affect the effectiveness of the proposed arrangement, we will propose in our amendments to expand the consequential amendments by jointly amending the rules and forms prescribed in the subsidiary legislation as well as adding provisions related to interest and surcharge.

We will explain these amendments one by one during the debate at the Committee stage.

The speech I am going to deliver will respond to the comments made by Miss Margaret NG and other Members earlier in the debate.

Miss Margaret NG, Miss CHOY So-yuk, Dr LAW Chi-kwong, Ms Cyd HO, Miss CHAN Yuen-han and Ms Audrey EU unanimously consider that the surcharge ceiling of 30% is too low and propose to have it raised to 100% to effectively deter those who frequently default on payments of maintenance without reasonable excuse. In their opinion, the surcharge ceiling merely acts a reference for the Court in determining the amount of surcharge. The Court will

determine the actual percentage of surcharge on the merits of individual cases. This view is however not shared by the Government. We are of the opinion that, like the actual judgement amount, the surcharge ceiling set under the law must be fair and reasonable. Pitching the surcharge ceiling at 100% is too onerous. We understand that the fines and penalty ceiling prescribed in the provisions are meant to be reference for the Court in making judgement and each case will be dealt with on its merits. The surcharge ceiling is, on the other hand, an indicator too.

In the course of scrutinizing the Bill, we pointed out that the surcharge ceiling of 30% was much higher than the surcharge on late payments generally imposed by other legislation. For instance, a surcharge of 6% is imposed on late payment of tax and government rent not exceeding six months, and 10% thereafter. It should, however, be noted that the surcharge is not automatically imposed on maintenance payers. Instead, an application has to be made to the Court by maintenance payees as a means to deter such blameworthy conduct as defaulting repeatedly without reasonable excuse. The surcharge ceiling should therefore be considered reasonable.

From the angle of maintenance payees, the proposed interest arrangement can, to a certain extent, compensate the losses incurred as a result of maintenance default. The imposition of surcharge can be seen as another means of compensating the payee for the anxiety and distress caused as a result of repeated maintenance defaults without reasonable excuse. Compared with the practice in the United Kingdom, our proposed arrangement is more stringent. In the United Kingdom, parents living apart from their children, if defaulting on child support, might be liable to additional penalty. The payers are, however, not required to make payments of interest and additional amount at the same time.

Another rationale we have for our objection to raising the surcharge ceiling to 100% is consideration of the actual financial position of maintenance payers. As pointed out by the Law Society of Hong Kong, in the majority of cases, maintenance payers cannot afford to pay maintenance. Pitching the surcharge ceiling at too high a level might lead to the payers "simply opting to disappear". This will not only render the whole arrangement meaningless, but also produce an opposite effect. Pitching the surcharge ceiling at 30% is meant to be a compromise and balanced approach. On the one hand, it can produce a deterrent effect on maintenance payers; and on the other, it can compensate the

maintenance payees for the anxiety and distress caused as a result of maintenance default.

Miss Margaret NG, Miss CHOY So-yuk, Dr LAW Chi-kwong, Ms Cyd HO and Miss CHAN Yuen-han share the view that the measures proposed by the Bill will fail to truly address the hardships faced by maintenance payees in the enforcement of maintenance payments. They suggest that the Government should reconsider the proposal of setting up an intermediary body for the collection and enforcement of maintenance payments on behalf of maintenance payees. They are of the view that this will not only reduce the emotional trauma faced by maintenance payees in the enforcement of maintenance payments, but also relieve their pressure when facing complicated legal procedures as well as the pressure on legal aid and Comprehensive Social Security Assistance (CSSA) Scheme. Here are our responses to these arguments.

First, some overseas countries do have intermediary bodies. For instance, child support agencies are set up in such places as New Zealand, Australia and Europe. These intermediary bodies were set up mainly because the amounts of maintenance payments assessed by the Court are considered varied and relatively low. These reasons are obviously different to the reasons cited by Members in relation to the hardship faced by divorcees in Hong Kong in the collection of maintenance payments. The amounts of payments determined by the child support agencies in these countries are generally higher than the previous amounts determined by the Court. As a result, the reliance of single-parents on social security is lessened. Expenditure on social security is also reduced. However, the procedures followed by the Judiciary in Hong Kong in determining the amount of maintenance payments have always been operating smoothly, and no change is warranted.

Second, setting up an intermediary body might not help reduce the reliance of single-parents on CSSA. We have reasons to believe that some maintenance payers cannot afford to pay maintenance and some maintenance payees cannot maintain an acceptable standard of living by merely relying on maintenance payment. Among these cases, the phenomenon of divorcees having to rely on CSSA can still not be eliminated. A mechanism is currently in place to enable divorcees to seek help from the Legal Aid Department to apply for maintenance orders and enforcement of such orders while applying for CSSA.

Third, as regards the functions of intermediary bodies, child support agencies in overseas countries are given extensive enforcement and investigative powers by their respective countries. For instance, they may inspect tax records and directly deduct child support from income or cancel driving licences. In the case of Hong Kong, giving an executive organ such powers may arouse human rights and privacy disputes and it is therefore not necessarily appropriate to do so. Should an intermediary body be given the principal role of a debt-collector, there will be an even greater need for us to consider whether the amount of payments collected is commensurate with the expenses of setting up such a body as well as considering whether the Government should really play this role.

Fourth, even if an intermediary body is in place, maintenance payees will still be required to participate in part of the legal proceedings in cases of maintenance default by, for instance, submitting evidence to prove to the intermediary body that the payers have failed to make payment. In the event that a payer applies for variation of a maintenance order, the payee will be required to attend the hearing on his or her own.

Fifth, the enforcement of maintenance payments by lawyers from an intermediary body does not necessarily mean that maintenance payees are exempted from the legal expenses incurred. The fees involved may be more or less the same as the fees charged for hiring a lawyer. Furthermore, the intervention by an intermediary body is likely to make the procedures even more complicated.

Sixth, should the collection of maintenance payment be included in the functions of an intermediary body, this might mean one more unnecessary hurdle for maintenance payees who are receiving full maintenance payment punctually and delay in collecting maintenance payments might be resulted.

Seventh, more caution must be exercised when it comes to public expenditure as we are faced with severe hardship caused by the fiscal deficit. As Members are aware, substantial manpower, resources and public money are required for setting up an intermediary body. We must consider the value for money of such a new organ. It must be noted that even for the child support agency in New Zealand, an organ endowed with a variety of administrative powers and even allowed to inspect tax records and directly deduct child support

from the income of maintenance payers, the amount of child support collected in 2001 to 2002 accounts for only 77% of the total amount, and only 66% of payers make full payment punctually.

Summarizing the abovementioned points, the proposal of setting up an intermediary body in Hong Kong, where the Judiciary is responsible for the judgement of the amount of maintenance payment and the enforcement of maintenance orders, will not necessarily offer divorcees and their children any significant benefits. On the contrary, improving the existing legislation and administrative measures will be more practical and in line with the interest of all parties.

Next I would like to respond to a request made by the Bills Committee earlier for me to undertake to expeditiously develop a computer software for the calculation of interest on maintenance arrears and give the Panel on Home Affairs a brief introduction of the operation of the software before the commencement of the Ordinance. We do understand Members' concern. Although the method for calculating the interest on maintenance arrears is based on a simple interest rate, irregular payment patterns and the orders of deducting the amount of payment might make it impossible for the general public to immediately grasp the calculation method. Therefore, I have acceded to Members' request and undertaken to expeditiously develop the relevant software and give the Panel on Home Affairs a brief introduction on the operation of the software before the commencement of the Ordinance. Actually, we are prepared to, after developing the software, publish leaflets to introduce the Ordinance and new measures in detail.

Madam President, I very much understand that Members share the difficulties confronting certain maintenance payees in collecting maintenance. I also understand Members' deep concern. Nevertheless, I must stress that as law-makers and public officers responsible for the enforcement of policies, we must, in formulating provisions concerning legal procedures with respect to maintenance, consider the interest of maintenance payees as well as the overall fairness, legality of the Bill and, at the same time, strike a balance between the fundamental interests of both divorce parties. Although the Bill to be put to the vote today might not be able to resolve all the problems confronting maintenance payees, it can nevertheless rectify the message that misleads people to think that the law allows late maintenance payments and help payees to collect maintenance in a more effective manner. This improvement measure has taken account of

the interest of various parties. With these remarks, I urge Honourable Members to vote in support of the Bill and the Committee stage amendments to be moved by the Government later on.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Interest on Arrears of Maintenance Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Interest on Arrears of Maintenance Bill 2001.

Council went into Committee.

**Committee Stage**

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

**INTEREST ON ARREARS OF MAINTENANCE BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Interest on Arrears of Maintenance Bill 2001.

**CLERK** (in Cantonese): Clauses 2, 3, 5, 6, 9 and 10.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 12.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move that clause 12 be amended. The amendment to clause 12 is technical in nature. It seeks mainly to incorporate the definition of "judgment rate" into Attachment of Income Order Rules (Cap. 13, sub. leg. A), so as to clearly define the interest rate at which the payee may require the payer to pay under the Rules. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 12 (see Annex)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Home 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 12 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 4, 7, 8 and 11.

**CHAIRMAN** (in Cantonese): Both the Secretary for Home Affairs and Miss Margaret NG have separately given notice to move the addition of section 20B to clause 4, section 9C to clause 7, section 53B to clause 8 and section 28AB to clause 11 of the Bill.

**CHAIRMAN** (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Home Affairs to move his amendments, as he is the public officer in charge of the Bill.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of provisions relating to surcharge in the Bill, that is, to add section 20B to clause 4, section 9C to clause 7, section 53B to clause 8 and section 28AB to clause 11 of the Bill. The details of the amendments are set out in the paper circularized to Members.

The aim of the new provisions is to levy a surcharge on maintenance payers who repeatedly fail to comply with maintenance orders of making full and punctual maintenance payments without reasonable excuse, in order to pinpoint this type of blameworthy conduct and achieve deterrent effect. Since the provisions on surcharge in clauses 4, 7, 8 and 11 are largely the same, I will give Members a general introduction on the contents of the relevant provisions.

We propose to authorize the judgment creditor, that is, the maintenance payee who is owed the maintenance, to apply to the Court for a surcharge when the judgment debtor, that is, the maintenance payer repeatedly defaults on maintenance without reasonable excuse. We understand that the Bills Committee is concerned that some payers may try to evade service of the judgment summons in order to avoid appearance in Court. In view of this, we have added a new application procedure in the amendment to solve this problem. We propose that divorced persons, apart from applying for a surcharge in proceedings instituted for enforcing a maintenance order (such as garnishee proceedings, attachment of income order and judgment summons), he/she can also make use of the proposed new procedure to apply separately for a surcharge by way of a summons. According to the proposed new procedure, the maintenance payee, apart from serving the summons and related documents personally, can also serve them by post or by leaving them to the legal representative of the payer, or by post to or leaving them at the payer's last known address. In addition, if the payer fails to appear at the hearing of the application on the date fixed by the Court and the Court is satisfied with the efforts made by the payee to duly serve the summons, it may proceed to hear the application by the payee to issue an order on the date of the hearing and require the payer to pay a surcharge to the debtor, that is, to the maintenance payee.

We understand that the procedure to apply for a surcharge by means of summons, in particular the arrangement to hear an application in the absence of the payer, may be detrimental to the basic right of the payer to a fair hearing. Therefore, we allow the payer to apply by summons to vary or set aside the order within a reasonable period of time after the Court has issued an order. As long as the Court is satisfied that there is reasonable excuse for the debtor's failure to appear at the hearing or to make full and punctual payment in compliance with the maintenance order, it may vary or set aside the order on such terms as it thinks fit. I believe the above procedure can strike a balance between the rights of the payer and payee.

The abovementioned provisions are the same as the amendments proposed by Miss Margaret NG on the surcharge. The only difference lies in the ceiling of the surcharge. The ceiling of the maintenance surcharge on arrears of maintenance proposed by the Government is 30%, while that in Miss NG's proposal is 100%.

We agree that the surcharge ceiling has to have sufficient deterrent effect and also understand that the fine or maximum penalty in the provision is reference for the Court in making decisions. The Court can vary it appropriately according to the merits of a case; yet on the other hand, this ceiling is also an indicator.

As I mentioned in my speech on the resumption of the Second Reading debate, the 30% ceiling is already on the high side compared with the surcharge levied on other types of overdue payments. However, the maintenance payee has to make an application to the Court to apply for the proposed surcharge and it is not automatically slapped on the payer. Moreover, this is targeted at blameworthy payers who repeatedly default on payment without reasonable excuse, therefore we still consider the ceiling to be reasonable. From the angle of the maintenance payee, the loss of interest caused by the default on maintenance is to some extent compensated by the proposed arrangement on interest. The surcharge can also be regarded as another type of compensation for the anxiety and distress suffered by the payee as a result of the repeated defaults on maintenance without reasonable excuse. However, if the ceiling of the surcharge is raised to 100%, this will probably be too harsh to maintenance payers in general and they may choose to disappear altogether, thus rendering this new arrangement totally ineffective. Therefore, we believe that to set the surcharge ceiling at 30% can fully strike a balance between the rights and interests of the maintenance payer and payee.

I hope Members will understand that the Government, apart from being duty-bound to help maintenance payees solve their difficulties in recovering maintenance, has also to protect the rights and interests of the maintenance payer, including the right to a fair hearing and a reasonable surcharge ceiling. I implore Members to support the Government's proposal and oppose Miss Margaret NG's amendment.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 4 (see Annex)**

**Clause 7 (see Annex)**

**Clause 8 (see Annex)**

**Clause 11 (see Annex)**

**CHAIRMAN** (in Cantonese): I will call upon Miss Margaret NG to speak on the amendments moved by the Secretary for Home Affairs as well as her proposed amendments. However, no amendments may be moved by Miss Margaret NG at this stage. Whether she may move her amendments will depend on the Committee's decision on the Secretary for Home Affairs' amendments.

**MISS MARGARET NG** (in Cantonese): Madam Chairman, on behalf of the Bills Committee on Interest on Arrears of Maintenance Bill 2001 (the Bills Committee), I propose the amendments to clauses 4, 7, 8 and 11 of the Bill, as set out in the paper circularized to Members.

The purpose of the amendments is to set the surcharge ceiling at 100% of the total amount of arrears of maintenance. Apart from the difference in the percentages of surcharge involved, the other parts of the amendments proposed by the Bills Committee are identical to the corresponding parts of the amendments moved by the Administration. Therefore, in spite of the thick pack of documents before Members, the only difference actually lies in the figures.

The Bills Committee thinks that, as a further deterrent, the Court should be given discretion to impose a surcharge on maintenance arrears in cases where the maintenance payer repeatedly defaults payments without reasonable excuse. The Administration agrees that on application from a maintenance payee, the Court may pass a judgement to require the payer to pay a surcharge.

The Administration proposes to set the surcharge ceiling at 30% of the total arrears of maintenance. However, as I have just said, the Bills Committee, including all the 11 members from different parties or of no political affiliations, are unanimous of view that the surcharge ceiling should be set at 100% of the total arrears, and that the Court should be given discretion to determine the appropriate amount of surcharge according to the merits of individual cases.

The Bills Committee supports setting the surcharge at 100% of the total arrears mainly because a surcharge will be imposed on the payers only in blameworthy cases; and the surcharge must be set at a higher level in order to have sufficient deterrent effect. It is a most appropriate arrangement to set the surcharge ceiling at 100% of the arrears and to leave the discretion to the Court to determine the appropriate amount of surcharge in each case. Although the ceiling is 100%, the Court may impose a lower percentage of surcharge if the circumstances warrant it. The proposal of the Bills Committee has given the Court greater discretion in order to accommodate different circumstances.

On the contrary, the 30% ceiling proposed in the amendments moved by the Administration would rigidly restrict the discretion of the Court, and it would substantially reduce the deterrent effect of a surcharge.

Madam Chairman, I would like to respond briefly to the reasons advanced by the Secretary in his speech for opposing the proposal of the Bills Committee. The Secretary has pointed out that this is already a very high percentage, because compared with other surcharges, such as the surcharge in the Inland Revenue Ordinance, this proposed percentage is already much higher. However, he has also pointed out that, in the example cited by him, the surcharge will increase automatically, while what we are discussing now is a discretion. Therefore, we may say that the ceiling is meant to restrict the discretion of the Court. The lower the ceiling, the greater the restriction on the Court; and the higher the ceiling, the less restriction on the Court. We may imagine that, for some grass-roots families, the amount of arrears may be very small, for example, several ten thousand dollars. If the surcharge is set at a very low percentage,

the money so collected may not serve any useful purpose, particularly in certain cases, the defaulters really deserve the punishment. If, like the Secretary has said, the payer does not have any financial capability or has not committed any mistakes, then the Court will not punish him at all. Therefore, the payer must have committed a major wrongdoing before the Court would give him any punishment. There may be cases in which the payer actually has the financial capability, but he just tries to make the payee have a hard time. On the other hand, in legal proceedings, he is adequately represented by lawyers. So he is fully aware of his obligations, but he deliberately chooses not to pay. As the amount of arrears is low, he could not care less about the fine he is required to pay. Therefore, in order to torture his ex-spouse, he might think that the surcharge is good value for his money. Do we want to see this happen? On the other hand, if we give the Court sufficient discretion, there is no need for us to worry about any possible abuse of it by the Court. Therefore, I call on Members to vote against the amendments of the Administration, and support the amendments proposed by me on behalf of the Bills Committee, so as to deter payers who repeatedly default maintenance payments without reasonable excuse even though they have the financial capability.

With these remarks, I implore Members to vote against the amendments of the Administration and support the amendments of the Bills Committee. However, Madam Chairman, I still wish to explain one point. We must first vote against the amendments of the Administration, then please stay behind and pass the amendments proposed by me on behalf of the Bills Committee. Only by then can we call it a success. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Members may now debate the amendments moved by the Secretary for Home Affairs as well as Miss Margaret NG's amendments.

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

**MS MIRIAM LAU** (in Cantonese): Madam Chairman, I rise to speak in support of the amendments proposed by Miss Margaret NG. I feel that in order to serve the purpose of imposing a maintenance surcharge, it must have sufficient deterrent effect.

As a practising lawyer, I have handled numerous cases of default maintenance payments. In an absolute majority of cases, no default payment will occur. However, when cases of default payment do occur, many different unusual situations can arise. The party required to pay maintenance will make use of all kinds of methods to evade the responsibility of making maintenance payments. After discussing the subject for such a long time, if we still think that it is necessary to make use of a surcharge to achieve some deterrent effect on maintenance payers, so that they will not evade their responsibility by all kinds of methods, then this surcharge must be set at a certain level that will achieve the desired effect. If the maintenance payer fails to make the payments just because he has financial difficulties, the possibility of making them shoulder this additional burden does not exist because once he explains his situation to the Court, I believe any reasonable judge will not do him injustice by making him pay a substantial surcharge, thereby inflicting great pain on him. However, if he is just making up some excuses in the hope of not paying the maintenance, his trick will easily be discovered, and the Court must be given sufficient power to require him to pay a large amount of surcharge as punishment. We hope not too many people would think that they can evade their responsibility by adopting some simple tricks. Therefore, Madam Chairman, I shall support the introduction of a substantial surcharge in the hope that this substantial surcharge can achieve the desired effect.

The whole Liberal Party supports the amendments proposed by Miss Margaret NG. Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Home Affairs, do you wish to speak again?

(The Secretary for Home 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 Home Affairs be passed. Will those in favour please raise their hands?

(No hands raised)

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

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is not agreed by a majority of the Members present. I declare the motion negatived.

**CHAIRMAN** (in Cantonese): Miss Margaret NG, you may move your amendments.

**MISS MARGARET NG** (in Cantonese): Madam Chairman, I move the addition of section 20B to clause 4, section 9C to clause 7, section 53B to clause 8 and section 28AB to clause 11 of the Bill.

*Proposed amendments*

**Clause 4 (see Annex)**

**Clause 7 (see Annex)**

**Clause 8 (see Annex)**

**Clause 11 (see Annex)**

**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.

(No hands raised)

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

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move that clauses 4, 7, 8 and 11 be further amended, that is, amending section 20A under clause 4, section 9B under clause 7, section 53A under clause 8 and section 28AA under clause 11 of the Bill, as set out in the paper circularized to Members.

The above amendments aim to add provisions relating to interest on arrears of maintenance in the Guardianship of Minors Ordinance, Separation and Maintenance Orders Ordinance, Matrimonial Causes Ordinance and the Matrimonial Proceedings and Property Ordinance respectively.

Some members of the Bills Committee consider that arrears of maintenance should be deemed judgment debts so that interest would arise automatically upon default of maintenance payment. We agree with this viewpoint. As the maintenance payer should be in the best position to assess his/her own financial position, the maintenance payer should apply to the Court to vary or discharge a maintenance order when he/she considers it necessary. A maintenance order is arguably a judgment debt until the Court receives an application and issues an order to have it varied or discharged and the maintenance payee has legitimate and reasonable expectation to receive full and punctual payment. Therefore, if the payer cannot make full and punctual payment on the due date specified by the maintenance order, the arrears can be regarded as a judgment debt.

On basis of the above argument, we propose the following amendments to section 20A under clause 4, section 9B under clause 7, section 53A under clause 8 and section 28AA under clause 11:

Firstly, we propose that arrears under a maintenance order should be deemed judgment debts as specified in section 50 of the District Court Ordinance (DCO) (Cap. 336) and the method of calculating the interest on arrears should also follow that provided in section 50 of the DCO, that is, simple interest. Since the calculation of interest on judgment debts begins on the date the judgement is made, therefore, as far as maintenance is concerned, we also propose that the due date of payment specified in the maintenance order should be regarded as the date on which the judgement is made.

Since default of maintenance payment under a maintenance order is deemed a judgment debt and interest would arise automatically, and maintenance payees can also recover the payment from the payer personally, we therefore propose that the requirement on the judgment creditor, that is, the maintenance payee, to apply to the Court for an order on the debtor to pay interest on the arrears in the original Bill be deleted.

Since this amendment already provides that the interest should be calculated according to the method under section 50 of the DCO, it is no longer necessary to retain the definition and formula on interest in the original provision. Therefore, we propose their deletion. On the other hand, since a number of payments may have to be made under the maintenance order, such as the proposed interest, surcharge, legal cost, maintenance payment and maintenance arrears, and so on, therefore we propose that when the judgment debtor, that is, the maintenance payer has to make payments, he/she should pay the various items in a maintenance order according to a sequence, so that the maintenance payee can receive interest and other payments in a systematic manner. In order to put into practice the main object of the Bill, that is, to compensate maintenance payees for the loss in interest on their savings or for the interest payable by them, we propose that the payment should first be used to pay the interest, then the surcharge, the legal costs, payments that are due from time to time, and finally, the arrears on maintenance payment that the Court orders the judgment debtor to pay in enforcing the maintenance order.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 4 (see Annex)**

**Clause 7 (see Annex)**

**Clause 8 (see Annex)**

**Clause 11 (see Annex)**

**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 Home 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 hand 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 4, 7, 8, and 11 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 hand 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 1.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move to add "surcharge" to the short title of the Bill eventually passed, in order to reflect the content of the Bill in a more precise way.

For this reason, I move the amendment to clause 1 of the Bill by deleting the short title of "Interest on Arrears of Maintenance Ordinance 2001" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003".

*Proposed amendment*

**Clause 1 (see Annex)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Home 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 1 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese):

| | |
|---|---|
| New heading before new clause 11A | The Rules of the High Court |
| New clause 11A | Definitions |
| New clause 11B | Application for order |
| New clause 11C | Order imposing a charge on a beneficial interest |
| New clause 11D | Forms |
| New clause 13 | Requirements relating to application made by designated payee |

| | |
|---|---|
| New clause 14 | Schedule amended |
| New heading before new clause 15 | Matrimonial Causes Rules |
| New clause 15 | Judgment summons: general provisions |
| New clause 16 | Special provisions as to judgment summons |
| New clause 17 | Forms |
| New heading before new clause 18 | The Rules of the District Court |
| New clause 18 | Definitions |
| New clause 19 | Application for order |
| New clause 20 | Order imposing a charge on a beneficial interest |
| New clause 21 | Judgment summons: general provisions |
| New clause 22 | Special provisions as to judgment summons |
| New clause 23 | Forms. |

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move that the new headings and new clauses read out just now, as set out in the paper circularized to Members, be read the Second time.

The major purpose of these amendments is to amend certain provisions involving enforcement proceedings and statutory forms by adding provisions and

entry relating to interest on arrears of maintenance and surcharge. These amendments are supported by the Bills Committee. Now I wish to explain them to Honourable Members *seriatim*.

*Clauses 11A and 18*

First of all, new clauses 11A and 18 seek to add the definition of "judgment rate" in current Rules of the High Court (Cap. 4, sub. leg. A) and Rules of the District Court (Cap. 336, sub. leg. H) respectively.

*Clauses 11B to D and 19 to 20*

Clauses 11B to D and 19 to 20 seek to add the entry relating to interest and surcharge in rules relating to garnishee proceedings and charging order under the Rules of the High Court and Rules of the District Court. New clause 11D also seeks to add the entry relating to interest and surcharge in five sets of forms relating to garnishee proceedings and charging order under the Rules of the High Court. As to the forms under the Rules of the District Court, I will explain to Honourable Members later when I introduce clause 23.

*Clauses 13 and 14*

New clause 13 proposes the addition of the entry relating to arrears of maintenance and surcharge in Rule 3(2)(f) of Attachment of Income Order Rules (Cap. 13, sub. leg A). The amendment provides that when an application for an attachment order is made by a designated payee on the ground that the maintenance payer has defaulted on payment, the application shall be supported by an affidavit of the designated payee stating the interest and surcharge payable to which the designated payee is entitled. Clause 14 seeks to make consequential amendments to Form 4 of the Schedule, that is, to add the entry of interest and surcharge in the Attachment of Income Order/Variation of Attachment of Income Order under Attachment of Income Order Rules.

*Clauses 15 to 17*

In matrimonial litigations, another common enforcement proceeding is judgment summons. To complement the implementation of the Bill, I propose to add clauses relating to interest on arrears of maintenance and surcharge in the

provisions on judgment summons under the Matrimonial Causes Rules (Cap. 179, sub. leg. A), that is, clauses 15 to 17 of the proposed amendments. Clause 15 seeks to amend Rule 87 of the Matrimonial Causes Rules by adding the definition of judgment rate, interest and surcharge, and the order of repayment for the judgment debtor, that is, the person who defaults on payment, to follow. New clause 16 seeks to amend Rule 88 of the Matrimonial Causes Rules by adding a provision that witnesses may be summoned to provide information relevant to the Court's judgement on interest and surcharge. New clause 17 seeks to add the entry relating to interest on arrears of maintenance and surcharge in two forms relating to judgment summons under the Matrimonial Causes Rules, namely, the *praecipe* for issue of judgment summons and judgment summons.

*Clauses 21 to 22*

Besides the Matrimonial Causes Rules, the Rules of the District Court also have provisions relating to judgment summons. For this reason, we propose to make consequential amendments to the Rules of the District Court in the same manner as the amendments to the Matrimonial Causes Rules. Firstly, new clause 21 seeks to amend Order 90A of the Rules of the District Court, that is, general provisions concerning judgment summons, by adding the definition of interest and surcharge, and the order of repayment for the judgment debtor to follow. New clause 22 seeks to amend the special provisions on judgment summons of Order 90A of the Rules of the District Court, which empowers the Court to summon witnesses to provide information relevant to the Court's judgement on interest and surcharge.

*Clause 23*

Clause 23 seeks to add the entry relating to surcharge in statutory forms relating to garnishee proceedings, charging order and judgment summons, covering a total of seven forms.

With these remarks, Madam Chairman, I commend the above new clauses to Honourable Members.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New headings before new clauses 11A, 15 and 18, new clauses 11A, 11B, 11C, 11D and 13 to 23.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move that the new headings and new clauses read out just now be added to the Bill.

*Proposed additions*

**New heading before new clause 11A (see Annex)**

**New clause 11A (see Annex)**

**New clause 11B (see Annex)**

**New clause 11C (see Annex)**

**New clause 11D (see Annex)**

**New clause 13 (see Annex)**

**New clause 14 (see Annex)**

**New heading before new clause 15 (see Annex)**

**New clause 15 (see Annex)**

**New clause 16 (see Annex)**

**New clause 17 (see Annex)**

**New heading before new clause 18 (see Annex)**

**New clause 18 (see Annex)**

**New clause 19 (see Annex)**

**New clause 20 (see Annex)**

**New clause 21 (see Annex)**

**New clause 22 (see Annex)**

**New clause 23 (see Annex)**

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

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bill**

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

**INTEREST ON ARREARS OF MAINTENANCE BILL 2001**

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

Interest on Arrears of Maintenance Bill 2001

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Interest on Arrears of Maintenance Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Interest on Arrears of Maintenance Bill 2001.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003.

## MERCHANT SHIPPING (LIABILITY AND COMPENSATION FOR OIL POLLUTION) (AMENDMENT) BILL 2003

**Resumption of debate on Second Reading which was moved on 7 May 2003**

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

(No Member indicated a wish to speak)

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, the Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003 seeks to give effect to amendments to the "International Convention on Civil Liability for Oil Pollution Damage, 1992" and the "International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992" adopted by the International Maritime Organization. The amendments increase shipowners' liability and the amount of compensation payable by the International Oil Pollution Compensation Fund 1992 for oil pollution.

As the amendments will be binding on Hong Kong, we need to amend the relevant domestic legislation, the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance. When the Bill comes into effect,

shipowners of Hong Kong registered vessels who have taken out insurance to cover the increased liability for oil pollution caused by their tankers can obtain "Civil Liability Convention" certificates issued by the Director of Marine, so that their tankers can enter ports of other contracting parties. The amendments are supported by the local shipping industry and are essential to maintaining Hong Kong's status as an international shipping centre.

Members are invited to support the Bill. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003.

Council went into Committee.

**Committee Stage**

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

**MERCHANT SHIPPING (LIABILITY AND COMPENSATION FOR OIL POLLUTION) (AMENDMENT) BILL 2003**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003.

**CLERK** (in Cantonese): Clauses 1 to 6.

**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.

**MERCHANT SHIPPING (LIABILITY AND COMPENSATION FOR OIL POLLUTION) (AMENDMENT) BILL 2003**

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

Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Merchant Shipping (Liability and Compensation for Oil Pollution) (Amendment) Bill 2003.

## MEMBERS' MOTIONS

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Maximum Amount of Election Expenses (Village Representative Election) Regulation.

## PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

**MR ANDREW WONG** (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee on subsidiary legislation relating to Village Representative elections, I move that the resolution, as printed on the Agenda, be passed.

The Maximum Amount of Election Expenses (Village Representative Election) Regulation (the Regulation) specifies that the maximum election expenses for a Village with not more than 1 000 electors is $14,000 and $20,000 for a Village with more than 1 000 electors. In the course of scrutinizing the Regulation, members expressed concern that the maximum amount of election expenses stipulated in the Regulation might not be adequate to meet the expenses to be incurred by a candidate in the election.

Some members have pointed out that, according to the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation, the Director of Home Affairs may make arrangements for polling for more than one Village to take place at a polling station. Therefore, candidates of these Villages may have to pay for the costs incurred for the hire of vehicles to carry electors from the Villages to the polling stations. Besides, as candidates for the office of resident representative in a Village would not have a very close relationship with electors in that Village, they may have to incur considerable expenses in producing and distributing publicity materials.

Some members have requested that the maximum amount of election expenses should be increased to $18,000 for a Village where there are not more than 1 000 electors and to $28,000 for a Village where there are more than 1 000 electors.

The Administration considers the maximum amount of election expenses proposed by members to be on the high side. The Administration has informed the Subcommittee that, according to the records in the provisional register for the 2003 Village Representative elections, there are on average not more than 150 voters in each village constituency. Besides, the maximum amount of election expenses for candidates in District Council elections with an average population of 17 000 in each constituency is set at $45,000 only. For this reason, the Administration maintains that the maximum amount of election expenses specified by the Regulation should be adequate for meeting the expenses incurred in electioneering activities by the candidates. The Subcommittee eventually decided that I, in my capacity as Chairman of the Subcommittee, should move a resolution to amend section 2 of the Maximum Amount of Election Expenses (Village Representative Election) Regulation to the effect that the maximum amount of election expenses for an election to elect village representatives be increased from $14,000 to $18,000 for a Village where there are not more than 1 000 electors, and from $20,000 to $28,000 for a Village where there are over 1 000 electors.

Madam President, I implore Members to support this resolution.

**Mr Andrew WONG moved the following motion:**

"That the Maximum Amount of Election Expenses (Village Representative Election) Regulation, published in the Gazette as Legal Notice No. 81 of 2003 and laid on the table of the Legislative Council on 2 April 2003, be amended in section 2 —

(a) in paragraph (a), by repealing "$14,000" and substituting "$18,000";

(b) in paragraph (b), by repealing "$20,000" and substituting "$28,000"."

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

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

**DR TANG SIU-TONG** (in Cantonese): Madam President, on the resolution to increase the maximum amount of election expenses in village representative elections, that is, from $14,000 to $18,000 for a Village where there are not more than 1 000 electors and from $20,000 to $28,000 for a Village where there are more than 1 000 electors, I think the recommendation of the Subcommittee merits our support. Elections held in the rural area are different from those held in the urban area. As the rural areas are geographically more extensive than the urban areas, and the voters, though not large in number, live in scattered places in the vast rural areas, launching electioneering activities in the rural areas is much more difficult than in housing estates. Besides, as there is no public means of transport providing point-to-point service, so private modes of transport such as private cars and minibuses, and so on, have to be mobilized to assist in the electioneering activities. For this reason, the election expenses are naturally much higher than those incurred in electioneering activities launched in public housing estates.

There is a practical need to increase the maximum amount of election expenses in village representative elections. Even if the ceiling of election expenses is adjusted upwards, it does not mean that the candidates will spend to the maximum permitted amount. Furthermore, the expenses are the hard-earned money of the candidates, who will only spend it when the actual need really arises. The increased maximum amount would only give them greater flexibility when there is really a need to deploy their resources in an appropriate manner. Therefore, I think the proposed increase in the maximum amount of election expenses in village representative elections merits our support. I call on Honourable colleagues to support this resolution.

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

(No Member indicated a wish to speak)

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the purpose of Mr Andrew WONG's resolution in amending section 2 of the Regulation is to raise the stipulated maximum amount of election expenses that

can be incurred by or on behalf of a candidate at an election for a Village. For a village where there are not more than 1 000 registered electors, the relevant limit will be raised from $14,000 to $18,000; and for a village where there are over 1 000 registered electors, the relevant limit will be raised from $20,000 to $28,000. The Government is of the view that Mr WONG's amendment is inappropriate.

The Government's proposed maximum amount of election expenses for village representative elections were laid down with reference to the maximum amount of election expenses for other open elections. We understand the rationale of Mr WONG's motion, but having repeatedly considered the amount of expenses actually required for the electioneering activities, the Government maintains the view that, compared to the maximum amount of election expenses for other elections, the ceilings of $14,000 and $20,000 for village representative elections is consistent and reasonable.

For this reason, I urge Members not to support this resolution.

**PRESIDENT** (in Cantonese): I now call upon Mr Andrew WONG to reply.

**MR ANDREW WONG** (in Cantonese): Madam President, I have already given a detailed account of the stand of the Government in my speech delivered a moment ago, and I have given the matter its fair deal. Perhaps Members may not be too familiar with certain parts of the facts presented by me. As a polling station may be used for the polling of several villages, it may be a long journey for the candidates to carry voters from one village to another. So the expenses to be incurred could become higher.

Another point I have mentioned is about the candidates for the office of resident representative in existing villages. I must clarify this point. These are new offices for some so-called village representatives, who are not representatives of indigenous residents. They are the representatives of the residents of the villages, that is, people who are living there. These people have never voted in past elections because they were not regarded residents of the original families of the villages. These candidates may need to print more publicity materials to promote themselves, so the expenses to be incurred could be even higher.

I missed the last point in my previous speech, and would like to discuss it here. Members of the Subcommittee are also of the opinion that the maximum amount is the maximum amount, and if a candidate does not need to use up the maximum amount, he will not do so. This is because, regardless of all the factors, he has to dig into his own pocket for any money to spend as election expenses. I hope Members will support the resolution endorsed by Members from different parties, that is, members of the Subcommittee as well as the independent Members. Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: the movers of the motions will each have up to 15 minutes for their speeches including their replies, and another five minutes to speak on the amendment; the mover of an amendment will have up to 10 minutes to speak; other Members will each have up to seven minutes for their speeches.

First motion: Expeditiously implementing the election of the Chief Executive and all Members of the Legislative Council by universal suffrage.

**EXPEDITIOUSLY IMPLEMENTING THE ELECTION OF THE CHIEF EXECUTIVE AND ALL MEMBERS OF THE LEGISLATIVE COUNCIL BY UNIVERSAL SUFFRAGE**

**MR ALBERT HO** (in Cantonese): Madam President, in the previous two weeks, the Legislative Council conducted two separate motion debates. The first one was on a vote of no confidence in the Financial Secretary, and the second one was on requesting Mr TUNG Chee-hwa to resign from office of the Chief Executive. These two motions caused great reverberations in society. However, although they were supported by a great many people in the community and most of the Members returned by democratic direct elections, they were both negatived under the system of separate voting.

Not only this, in 2002, many Legislative Council motions which received great popular support were negatived under the system of separate voting due to lobbying by various Policy Bureaux (despite the fact that they were supported by an overwhelming majority of directly elected Members). What were these motions? I will just name some of them as a reminder to Members: the motion on lowering transportation fees moved by Mr Andrew CHENG on 23 October 2002; the one on solving the unemployment problem moved by Mr TAM Yiu-chung on 9 October 2002; the amendment moved by Dr LAW Chi-kwong on 12 March 2003 to the motion on the medical fee waiver mechanism; the motion moved by Ms Emily LAU on 19 February 2003 asking for the conduct of public consultation on political reforms; and, the one on implementing international labour conventions moved by Mr LEE Cheuk-yan on 18 December 2002. All these motions were negatived under the system of separate voting.

Obviously, since our political system is not democratic enough, people's voices are often distorted and ignored in the legislature. Since the foundation of the Legislative Council is not sufficiently democratic, and also because of the system of separate voting, we have no ways to check the Government effectively. How can such a Legislative Council ensure that the executive will be genuinely accountable to the people and society as a whole?

The performance of our Chief Executive is far from being satisfactory, and he has lost the people's support totally. In the final analysis, this is closely related to the political system. Plainly, a political leader selected by a small coterie of 800 Election Committee members will not be up to scratch in terms of

political experience, temperament and vision. This is because we think that only a political leader nurtured by democratic politics and party support will have the qualities mentioned above. This has been borne out clearly by the experience of historical development.

Since our Chief Executive lacks any exposure to democratic politics, since he is not up to scratch in terms of political experience, temperament and vision, and also since he cannot command sufficient popular support and confidence, he understandably lacks confidence in his own judgement, his own appeal and his own power to foster social cohesion. That is why his handling of many important issues, especially crises, has given people an impression that he is altogether irresolute and inert. Worse still, whenever his policies encounter any majority opposition or any obstacles, he will lose his head, reverse his position and go back on his word. Such behaviour has further undermined his credibility and popularity.

Madam President, the predicament faced by Hong Kong now is not only caused by the economic downturn and the high unemployment rate, but also by the lack of confidence on the part of the Government and even some Hong Kong people. If we cannot resolve this confidence problem, how can we give full play to the vitality and impetus of Hong Kong? How can we overcome the current difficulties and tread a new path? Many Members belonging to the Democratic Party and the democratic camp believe that if we wish to make any breakthrough in our future development, we must launch democratic reforms, must return political power to the people, so that they can fully exercise the power they are supposed to enjoy as masters of their own house. It is only with a popular mandate that the Government can foster social cohesion, rally the people to its side and make a new start.

Public opinion support for democratic elections has in fact been very persistent and unequivocal down the years. Members may also remember that as invariably indicated by the dozens of opinion polls conducted since the 1990s by independent academic institutions and opinion survey organizations, the rate of support for the election of the Chief Executive and all members of the legislature by universal suffrage has persistently and continuously stood at 60%, while the rate of opposition to the idea has always stayed at 15% or so. As for those who have no opinion at all, the rate has been some 20%. Democratization has actually been the common and clear objective of the various social movements in Hong Kong since the 1980s. In 1983, when Hong Kong was

faced with the prospect of reunification, the then State President ZHAO Ziyang (sic) once made an unequivocal undertaking to the people of Hong Kong in his reply to a letter from the Students' Union of the University of Hong Kong, saying, "It is only natural and reasonable to implement democracy." I think the expression "only natural and reasonable" is both forceful and to-the-point. As a matter of fact, the people are the masters of their own house, so their right to selecting their own leader should be indisputable. Since government should be for the people, it is perfectly reasonable to demand that government services be people-oriented. Democracy should never be a gift from the government, nor should it be looked upon as alms from the government. It is explicitly stated in both the Sino-British Joint Declaration and the Basic Law that the clear and ultimate goal of Hong Kong's political development should be democracy.

Over the past 10 to 20 years, many people have been opposing the implementation of democracy on the ground that there is a need for gradual and orderly progress. But let us not forget that the beginning of representative government in Hong Kong can be dated back to as early as 1985, when functional constituency elections were introduced. Then, in 1991, there began to be direct elections. In other words, by 2007, we will have undergone a transition period as long as 22 years, a period of political development as long as 22 years. So, how can anyone still oppose the implementation of universal suffrage in 2007 and 2008 on the ground of gradual and orderly progress?

Madam President, my motion today demands that the Basic Law be amended so as to expedite the full implementation of the election of the Chief Executive and all Members of the Legislative Council by universal suffrage. One point is very clear, and that is, if we are to elect all Members of the Legislative Council by universal suffrage in 2004, it will be necessary to amend the Basic Law. This point is very clear. But if we are to introduce universal suffrage for the election of the Chief Executive in 2007 and all Legislative Council Members in 2008, we may only need to amend or rewrite some of the Basic Law Annexes in relation to elections. This will not, or probably will not, involve any amendment to the Basic Law itself. In any case, whether there will be any need to amend the Basic Law is just a technical issue. The theme of the motion today is very clear: to expedite the full implementation of the election of the Chief Executive and all Members of the Legislative Council by universal suffrage. So, I hope that instead of dwelling any further on the need or otherwise to amend the Basic Law, Members can render their support if they subscribe to this general principle. If there is really no need for any

amendments, the situation will be much simpler, and we would say all is so much the better.

Madam President, I know that the Secretary has tried very hard to persuade Members to oppose the motion. I do not know whether his lobbying is based on technical reasons or any theory against democracy. In any case, I hope that the Government can conduct a political review with an open attitude as soon as possible, instead of using any predetermined conclusion as a means of inducing Members to oppose the launching of democratic reforms in Hong Kong. This will stain the reputation of the Government and the Secretary in history. I hope that the Secretary can make a clarification here. If only technical reasons are involved, he will simply have to explain such reasons to Members, and there is no need for him to persuade Members to oppose the motion today.

Today, I also wish to remind the leaders of the other two major political parties of the public remarks which they made in 2000. Mr James TIEN is entering the Chamber now. I think he has a good memory. In 2000, when we debated whether a political review should be conducted and whether universal suffrage should be implemented for the election of the Chief Executive in 2003-04, Mr James TIEN stated very clearly that he could accept the introduction of universal suffrage for the election of the Chief Executive in 2007 and all members of the legislature in 2008. I will show him the relevant press cutting later on.

Mr Jasper TSANG similarly spoke on the same issue on another occasion. Let me read aloud part of his remarks very quickly: "If universal suffrage can be fully implemented at the earliest possible time, say 2008, that is, a decade or so after the reunification, without involving any amendment to the Basic Law, we will be able to satisfy the various sides. That should not be regarded as being too late." As some people opposed at that time the implementation of universal suffrage in 2003-04, he proposed to defer the matter until 2007-08. As far as I know, some Members belonging to the DAB subsequently questioned Mr TSANG whether he had been speaking on behalf of their political party, and Mr TSANG simply replied, "Sorry, I was not." However, the political platform adopted by the DAB in the ensuing elections did state this very clearly. Perhaps, this can show that party leaders are indeed wiser. In regard to a political review in 2007, the political platform of the DAB stated that "a political review should be conducted before 2007, with a view to introducing universal suffrage for the

election of the next Chief Executive (that is, the Chief Executive coming into office in 2007) and also all Members of the Legislative Council under the system of proportional representation." I hope that Mr TSANG can clarify his position today. If they have not backed out, or if they do not deny having made the above comments, then I would like to call upon them to support the motion today.

Let me sum up what I have been saying by quoting the words of the Chief Executive — we must "keep abreast of the times". If Members resist the currents of democracy, they will definitely be discarded by the times. Thank you, Madam President.

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

> "That this Council demands that the Basic Law be amended so as to expedite the full implementation of the election of the Chief Executive and all Members of the Legislative Council by universal suffrage."

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

**DR PHILIP WONG** (in Cantonese): Madam President, Hong Kong has already entered its "second transition period" after the reunification. In this very era when we are trying to phase out the undesirable legacy of British colonial rule in Hong Kong, when we are seeking to build up a new political culture, new systems and a new mindset — in brief, in this very era of unprecedented challenges and hopes for every one of us, while we must take stock of the vicissitudes of Hong Kong and the Motherland objectively, we must also look at the pluralistic community of Hong Kong pragmatically, and seek to foster a democratic spirit based on mutual understanding, respect and tolerance between the Government and the people, between the executive and the legislature, among the various social strata and between Hong Kong and its neighbouring regions. At the same time, we must seek to promote the people's sense of responsibility and mission towards their own country. I hope, and I do believe that Hong Kong will definitely be able to achieve the ultimate aim laid down in the Basic Law — the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with

democratic procedures. Although the expression "ultimate aim" does not specify any particular timeframe, we must still join hands to work for its realization.

The problem we now have to deal with concerns the yardstick we should adopt to assess the actual situation of Hong Kong and the principles of gradual and orderly progress as well as balanced participation. In other words, we have to explore whether Hong Kong as a society is already mature enough to select the Chief Executive by universal suffrage according to the procedures stipulated in the Basic Law. I think there is now a phenomenon which really warrants our observation and thinking — the words and deeds of some opposition factions in Hong Kong are very worrying to members of the public. In an attempt to topple the Chief Executive selected in accordance with the requirements and method specified in the Basic Law, so that they can negate the Basic Law provisions on political development, some opposition factions have been vigorously advocating that only "one person, one vote" and the "selection of the third Chief Executive by direct election" can meet the requirements of democracy. But democracy indeed is not as simple as "one person, one vote", nor can we judge whether there is any democracy solely by making reference to the "selection of the Chief Executive by direct election".

I do not wish to quote the provisions of the Basic Law in detail here. But I do think that the value of democracy should consist in respect for divergent views. Both government officials and Members should put this spirit of democracy into practice, should do everything to defend it. Some opposition factions in Hong Kong simply do not respect the mainstream public opinion, nor do they appreciate the aspirations of the silent majority in society or support the Central Government and the SAR Government. Not only do they show no respect, no appreciation and no support, they have even sought to do everything they can to oppose the Central Government, damage the SAR Government and topple the Chief Executive. In brief, they have purposefully tried to negate all the efforts made by the Government and the various sectors of society, in an attempt to create troubles, intensify social division and aggravate the economic crisis. Is this type of behaviour not a departure from the spirit of democracy?

I think the people's worry is caused by nothing but the fact that while some opposition factions in Hong Kong are acting against the spirit of democracy on the one hand, they are also trying to deceive themselves and others by disguising

as the "pro-democracy camp" on the other. They have been challenging the governance of the Government incessantly, ultimately injuring the interests of Hong Kong and those of themselves. Their attempt to bad-mouth Hong Kong in the past six years has definitely injured Hong Kong's overall interests, damaged its reputation in the world and impede its economic recovery. At the same time, they have definitely tarnished their own image and made the people warier of them. As a result, the people have had to guard themselves against their political tricks.

I have said repeatedly in this Council that while the recovery of Hong Kong economy must depend on powerful and creative economic policies, a political environment marked by co-operation and solidarity is also essential. The legislature of this commercial city called Hong Kong must retain the various functional sectors to truly reflect the views of different trades and industries. If not, investors will lose their confidence in Hong Kong.

Since the very ancient times, there has never been anything known as unrestricted democracy. In the times of ancient Rome, DEMOCRITUS, a pioneer of democracy, once emphasized that we must never let any bickering injure the cause of justice, nor let any violence harm the public interest. I wish to exhort those avowed "democrats" and "martyrs of democracy" both inside and outside the legislature by asking them, "What is the spirit of democracy all about?" They have to think about this question very carefully. I also hope that these people can open their eyes, so that they can see that following the reunification, solidarity of the entire city has become the irresistible trend, the common aspiration of the people. The precondition for universal suffrage under the principle of gradual and orderly progress as well as balanced participation should be impartiality and pragmatism instead of subjectivity and irrationality. While these people criticize the Government and their Honourable colleagues, they should all ask themselves whether they have offered any constructive advice to the Government and their Honourable colleagues as well as to the cause of overcoming Severe Acute Respiratory Syndrome (SARS).

Some time ago, an avowed "democrat" asked me inside the Legislative Council Building, "Do you believe that universal suffrage will eventually be implemented in Hong Kong?" I replied, "That will have to depend on whether the people find your words and deeds acceptable." This is therefore my conclusion: The more self-opinionated and unreasonable these people are, the

more they want to oppose the Government just for the sake of opposing, and the more they want to mess up Hong Kong by hook or by crook, the farther away will be the date of universal suffrage for Hong Kong. If only these people can understand the rationale behind Mr TUNG's advice that they should "keep abreast of the times", I believe the early implementation of universal suffrage will definitely be facilitated.

Madam President, I so submit.

**MS AUDREY EU** (in Cantonese): Madam President, since the Chief Executive, Mr TUNG Chee-hwa, last attended the Question and Answer Session of the Legislative Council, "keep abreast of the times" has become some kind of a catch-phrase in Hong Kong. Well, if this expression is used in the context of Hong Kong's democratization, the scene in Hong Kong will be very much different.

The pro-democracy movement in the 1980s is an important milestone in Hong Kong's democratization, as it succeeded in introducing direct elections into the legislature. However, very sadly, we have made very limited progress over the past 20 years or so. After all the twists and turns, we are still marking time, and many people even think that the situation now is worse than that in the past.

Madam President, I have recently noticed quite an interesting phenomenon. Some people (whom I may as well call "avowed liberals") often sound very sarcastic when they use the expression "democrats". But then if others say that these "avowed liberals" are conservative or anti-democratic, they will usually fly into a rage, claiming that they are actually staunch supporters of democracy, that they themselves have studied for many years overseas, or that all their children are studying in foreign countries. Such a phenomenon shows that most people do speak of democracy as something desirable, but if we listen to their words carefully, we will see that when these so-called liberals say that they support democracy, they are actually referring to some kind of elections in which they can ensure their desired results. In the speech of Dr Philip WONG just now, as expected, I heard him refer to "gradual and orderly progress" several times. In fact, such a reference is marked exactly by the same idea held by many: As long as they cannot ensure their desired election results, they will not think that Hong Kong is ready for full democracy. This is precisely what is so pitiable about

Hong Kong now: What we have is just a mere veneer of democracy, devoid of any genuinely democratic substance.

On the last occasion when the Legislative Council debated whether the Chief Executive should resign, Mr Abraham SHEK argued that there was democracy in Hong Kong, as people holding divergent political views could all speak freely in the Chamber. He claimed that this was democracy at work. A moment ago, Dr Philip WONG also said that democracy should be based on mutual respect. Actually, their arguments have not presented the whole truth. The voting results in the Legislative Council are just the corollary of the separate voting mechanism and the special, unfair electoral system which denies the people of "one person, one vote".

The behaviour of Hong Kong people during the onslaught of atypical pneumonia has fully demonstrated their overall quality. Most of them are sensible, tolerant, mature, generous and strictly professional in attitude. They compare no less favourably, or even more favourably, than the people in any other places. Those who claim that Hong Kong people are not yet ready for democracy are in fact the very people who are not yet ready for genuinely democratic elections.

Some complain about the prevalence of populism and "free lunches" in Hong Kong. They are worried that full direct elections will only end up exhausting all of our fiscal reserves. But are the people of Hong Kong really so foolish? Some others talk about the Liberal Party, which stands for the interests of the business sector, claiming that its poor results in direct elections is consummate proof that Hong Kong electors are not yet mature enough. But I would say that the opposite should be the case. I think such results show precisely that Hong Kong electors know only too well that under the existing political system, the Legislative Council is not a ruling institution; it can only play a monitoring role, or sometimes an opposition one. They also know that directly elected Members are in the minority, and the business sector actually dominates the functional sectors. That being the case, the business sector will naturally find direct elections not so favourable to it.

In brief, the existing political system of Hong Kong has resulted in a "three-lose" situation — the Government, the Legislative Council and the people are all losers. As long as the system remains unchanged, it will be difficult to improve the situation. "Effective governance" and "strong leadership" in the

true sense must require public opinion support. They can never be achieved by bickering with the opposition factions in the Chamber.

Mr TUNG is right in saying that times have changed. The very fact before us now is that the SAR Government is still clinging to the old approach of governance. But "stability above all" as an orientation of government has long since been outdated. Such an approach is simply unable to deal with the complex problems of a modern-day society and respond to the people's demands. Nor is it able to nurture quality politicians.

I agree with the Chief Executive that if we do not hurry up, we cannot possibly avoid the fate of being discarded by the new era. If we really want to "keep abreast of the times", we can ill-afford any further delay in the introduction of democratic political reforms.

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

**MR HOWARD YOUNG** (in Cantonese): Madam President, any changes to the development of our political system will produce far-reaching effects on our economy, society, politics, and so on. The Liberal Party therefore maintains that this issue must be tackled with prudence, and that in the interest of our economic prosperity as well as social and political stability, we should avoid any rash actions and proceed orderly after careful deliberations, even if political changes are deemed necessary for Hong Kong.

At the same time, we must make sure that the interests of the various sectors in society can be fully represented in the political system of Hong Kong in accordance with the principles of balanced participation, equity and impartiality. All studies on the development of our political system must be based on these principles, for only this is in line with the overall interest of Hong Kong.

Under the Basic Law, the method for selecting the Chief Executive shall be devised in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. Also, the method for forming the Legislative Council shall be

devised in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all Members of the Legislative Council by universal suffrage.

The Liberal Party is strongly supportive of all this. The development of the political system is an important issue that affects the interest of Hong Kong society as a whole. It is only when we adhere to the relevant provisions of the Basic Law, proceed in accordance with the principle of gradual and orderly progress and fully consider the interests of all social sectors that we can meet the practical needs of Hong Kong.

It is in fact already stated clearly in the Basic Law that a political review may be conducted after the year 2007, with the ultimate aim being the introduction of universal suffrage. We consider Mr HO's motion, which seeks to get all things done in one single bound, is inconsistent with the spirit of the Basic Law; it also ignores the intent of conducting a political review after 2007 and reduces the time and opportunity for the various social sectors to voice their views on the democratization agenda of Hong Kong.

When it comes to the issue of amending the Basic Law, the Liberal Party maintains that since the Basic Law is the constitutional law of Hong Kong, it must not be lightly amended. What is more, in view of the significance involved, the issue must be tackled with great prudence.

Article 159 of the Basic Law already contains clear provisions on the mechanisms for its own amendment, and the relevant procedures are also specified. This is not to speak of the fact that the mechanisms concerned will involve the interactive relationship among the Legislative Council, the Chief Executive, the Hong Kong Deputies to the National People's Congress, the Standing Committee of the National People's Congress and the State Council. Thus this is an issue that cannot be decided upon and tackled unilaterally by the Legislative Council. Any amendment must be preceded by extensive consultation and thorough discussions and co-ordination among the relevant parties.

We have not conducted any negotiations under the relevant mechanisms, nor have we carried out any extensive consultation, and the Legislative Council has not conducted any in-depth studies and discussions either. For all these reasons, we maintain that it is neither opportune nor proper at this stage for any

Member to propose amending the Basic Law and ask Members to vote on the proposal.

Madam President, the remarks delivered by me are based on the party platform of the Liberal Party.

**DR YEUNG SUM** (in Cantonese): Madam President, the remarks delivered by Mr Howard YOUNG apparently have not answered the question posed by Mr Albert HO earlier on, that is, the question relating to Liberal Party Chairman James TIEN's open support for the election of the Chief Executive and the Legislative Council in 2007 and 2008 respectively. Perhaps, Mr James TIEN may wish to make a clarification later on.

Madam President, on 20 February 1923, Dr SUN Yat-sen, the founding father of modern China, remarked to this effect, "Hong Kong and the University of Hong Kong were the birth place of my intellectual-self." All along, Hong Kong has been our country's window on the world; its culture and thoughts have significantly influenced our country. Despite the lack of genuine democracy, the liberties we have in Hong Kong have until very recently enabled us to enjoy an edge in economy terms. Similarly, the democratization of Hong Kong will also impact on the Mainland. In the recent Chief Executive's Question and Answer Session, the Chief Executive criticized pro-democracy Members for failing to keep abreast of the times. But the Chief Executive has been trying to resist the trend of democracy, so he himself is instead the one who fails to keep abreast of the times. The Chief Executive is bent on maintaining Hong Kong as an economic city, on implementing the dominance of the executive, but he has ignored the people's aspirations to democracy and refused to return political power to them.

The rate of those people who support returning the Chief Executive by direct elections and the introduction of full-scale democratic elections has persistently stayed at 70%. The findings of a recent survey conducted by the Democratic Party also reveal that even when the respondents were offered two options (namely, 2007 and 2012), over 60% of them still asked for the selection of the Chief Executive by direct election in 2007. And, some 60% of the respondents also asked for the election of all Legislative Council Members by universal suffrage next year. Therefore, the only way to truly keep abreast of

the times should be the election of the Chief Executive and all Members of the Legislative Council by universal suffrage as soon as possible.

Under the existing undemocratic system, the people's views cannot be fully reflected, or their views may even be distorted. Between 1998 and now, totally 71 motions and amendments were endorsed by a simple majority vote of all Legislative Council Members, but all of them were nonetheless negatived because they did not get a simple majority vote of each of the two groups of Members: Members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee. Many motions related to the people's livelihood were thus negatived. Besides, also between 1998 and now, totally 104 Members' motions and amendments got a simple majority vote of the group of Members returned by geographical constituencies through direct elections and by the Election Committee. But these motions and amendments were still negatived in the end because they were not passed by the group of Members returned by functional constituencies. For this reason, no matter how unequivocally the public had spoken on the legislative proposals to implement Article 23 of the Basic Law, and also despite its passage by directly elected Members, the motion moved by James TO in December 2002 was still negatived due to the opposition from Members returned by functional constituencies. A system which distorts public opinions in this way has not only weakened the Legislative Council as a watchdog of government authorities, but also plunged the entire society into anger and helplessness. The restoration of appointed membership and the abolition of the two Municipal Councils by the Government in the past few years have already stifled the people's opportunities of political participation. So, when even the opinions they express are distorted, the people will gradually become distrustful of the Government, the Legislative Council and the whole political system. In other words, the existing system of executive dominance will only intensify social division basically and fail to foster solidarity.

Articles 45 and 68 of the Basic Law stipulates that the methods for selecting the Chief Executive and forming the Legislative Council shall be specified in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive and the election of all Legislative Council Members by universal suffrage. Mr JI Pengfei, Chairman of the Basic Law Drafting Committee, also explained that the ultimate aim was the selection of the Chief

Executive and the election of all Legislative Council Members by universal suffrage. He once remarked that there would be a transition of 10 years, that is, from 1997 to 2007. And, we must note that the political development of Hong Kong has been progressing for nearly 20 years since the signing of the Sino-British Joint Declaration in 1984. So, will we be proceeding much too slowly if we still cling to the principle of "gradual and orderly progress"?

Some Members maintain that the people may not necessarily possess the qualities required for the implementation of a democratic political system. I really wish to ask them this question in return: Are the people really as apolitical as they imagine? Let us look at what have happened over the past few months: the people have been outraged by Antony LEUNG's car purchase scandal and the delusive accountability system; they have expressed strong discontent about the TUNG Chee-hwa administration; and, 60 000 people took to the streets to oppose the enactment of Article 23 legislation. What does all this tell us? Any Members who still maintain that the people do not possess the qualities required for the implementation of a democratic political system really owe them a apology.

If the people had been able to elect the Chief Executive, TUNG Chee-hwa would not have been re-elected. If the accountability system was a genuine one, Antony LEUNG would not be able to remain as Financial Secretary after the car purchase scandal. If the people could elect their own government, the Chief Executive and the Government would not be able to stay in office when their popularity ratings continue to drop below the passing level. If there was any democracy at all, the Government would not be able to impose Article 23 legislation on the people despite their majority objection. So, in the coming few years, instead of just focusing on dealing with economic issues and overcoming the unemployment and atypical pneumonia problems as our priority tasks, we must also fight for the election of the Chief Executive and all Legislative Council Members by universal suffrage. This is also something very urgent. Apart from putting up a struggle in the legislature, the Democratic Party is also trying to rally the people's support and mobilize the various sectors of society in a joint attempt to bring forth a democratic political system.

Lastly, I wish to say a few words on how I think about the criticism made by the Chief Executive in the Chief Executive's Question and Answer Session last week, the criticism that the pro-democracy camp has "bad-mouthed Hong

Kong for six years; reviled the SAR Government for six years". To be fair, the Democratic Party has been putting forward many policy recommendations. We have, for example, put forward a population policy; we have proposed to push the deadline for eliminating the fiscal deficit beyond 2006-07; and, we have also proposed to increase public expenditure as a means of boosting the economy and in turn employment opportunities. But the Chief Executive has all along turned a deaf ear to our recommendations despite the fact that our criticisms are all based on the spirit of "commending what is right and criticizing what is wrong". On behalf of the Democratic Party, I again wish to ask the Chief Executive to put aside his bias and re-establish a working relationship with us, so that we can once again exchange views on combating the problems of atypical pneumonia and unemployment.

I am sure that the people will all welcome the proactive approach of the Democratic Party.

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

**MR ABRAHAM SHEK**: Madam President, I am not a democrat, and never profess to be one, but it does not mean that I do not understand what democracy is. My choice is not for democracy. My choice is for political stability and prosperity for the people of Hong Kong with assurance of freedom of beliefs, expression, press and criticism. And this is the reason why I am here as a legislator, elected through the functional consistency.

The Honourable Albert HO's motion debate must have been inspired by Abraham LINCOLN's first inaugural speech of 1861: "This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their constitutional right of amending it or their revolutionary right to dismember or overthrow it." With the Honourable Albert HO's knowledge and respect of the law, and his respect in the rule of law, especially with his displeasure at the anticipated passage of the bill on Article 23 of the Basic Law in July, he has chosen to exercise his constitutional right and move today's motion — as opposed to instigating the more revolutionary route.

Universal suffrage is undeniably an election system which everyone welcomes. And in the Basic Law, it is guaranteed that universal suffrage will

be implemented for the election of legislators and Chief Executive in the future. The question is when? The reality is, we are not deprived of universal suffrage, even today, since 24 Members of this Chamber were directly elected through this method of "one man, one vote". Our present system goes further than what the Honourable Albert HO proposes in that we have given voice to a cross-section of social, economic and political interests that also have representation in this Council. This system is unique in the world and works well in providing stability and prosperity for the Hong Kong Special Administrative Region.

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

Therefore, in today's debate, we are not debating whether we should have or not have universal suffrage, but whether we should amend the Basic Law or not. My answer is very clear: simply no. In paragraph 7 of Annex I and section 3 in Annex II of the Basic Law, it stipulates that Hong Kong can change its existing election method for the Chief Executive and Legislative Council Members after 2007, but only if the proposed changes are approved by two-thirds of all Legislative Council Members, the Chief Executive and the Standing Committee of the National People's Congress (NPC). Nevertheless, if there appears an urgent need to amend the provisions in the Basic Law, such amendments must be endorsed by a two-third majority of both the Deputies of the region to the NPC, and Legislative Council Members, plus the Chief Executive, and then they further require the NPC's approval. It is evident that during the last six years — six years of experiment, six years of administration by "Hong Kong people ruling Hong Kong" — the noble concept of "one country, two systems" has been highly successful. During this period, there is only one incident where the Administration sought the NPC's interpretation of the Basic Law, that being the case of the right of abode issue. The Basic Law has unfailingly served the people of Hong Kong during this difficult period and it is a testimony that this document, the Basic Law, was so well drafted that no change or amendment is needed.

Moreover, with regard to the constitutional development of Hong Kong, the Basic Law has also made provisions. It already stipulates that Hong Kong can review and change its existing election method for the Chief Executive and Legislative Council Members after 2007. The main objective of this 2007 constitutional review stipulation is to maintain Hong Kong's political stability in

its reunification with the Mainland. In the absence of major changes to this successful implementation of "one country, two systems" or failure of this Government in its mandate to rule Hong Kong, there is no justification for Hong Kong to request amendments to be made in the Basic Law which has been accepted by all nations in the world.

If the Basic Law is recklessly amended simply to meet the desire of a number of specific groups, it may open up dangerous precedents and vulnerable situations for our society. The ultimate loss is to the people of Hong Kong.

In fact, the election of the Chief Executive and all Legislative Council Members by universal suffrage concerns constitutional reforms fundamentally connected to the political, economic and social stability and development of Hong Kong. The effect of any such changes will last for years and even decades. Therefore, any reforms should be slowly implemented, step-by-step in accordance with the Basic Law. The Government should have ample time to prepare its plans, conduct various studies, and listen to the community's wide range of opinions. Before a majority consensus is reached, it would be pointless to try to implement universal suffrage elections for the Chief Executive and Legislative Council Members at this stage.

Hong Kong is now facing its most challenging time ever with the effects of Severe Acute Respiratory Syndrome and the economic downturn. Instead of debating and arguing whether we should amend the Basic Law, which would bring disunity and polarization among the people of Hong Kong, what we now need is unity among ourselves to work for the betterment of Hong Kong. And only with this focused spirit could we make Hong Kong the great place that we like. Thank you, Madam Deputy.

**MR ANDREW WONG** (in Cantonese): Madam Deputy, I am already a bit tired of this topic. I first became a Member of the former Legislative Council in 1985, and soon afterward, in 1986, I started to chair the Subcommittee on Political and Constitutional Development. In those years, we held some internal discussions on political review and published a report, but did not draw any conclusions. In 1988, however, we published another report on the Basic Law consultative draft. In Chapter 4 of the report, we discussed in detail what the future political system should be like, but there was no mention of any electoral issues. The draft Basic Law was published in 1989, and on 24 May in

the same year, the then Unofficial Members of the Executive and Legislative Councils reached a consensus that full direct elections could be held after the transition period, that is, in 1999. We had a consensus at that time. I can remember that Madam Deputy and Mr James TIEN were among us.

But earlier than that, in 1984, that is, before I considered the idea of becoming a Legislative Council Member, I accepted Miss Maria TAM's invitation and held a discussion with the then Unofficial Members of the Executive and Legislative Councils for more than two hours. My position since the time of this discussion has been very consistent. I have always held the view that Hong Kong should move in the direction of establishing a legislature consisting fully of directly elected members and based on the principle of universal suffrage and equal participation. If people want something more conservative, I would rather they choose the bicameral system, with the upper house consisting of representatives from various trades and industries or former Executive Council members. Under the bicameral system, the powers of the lower house are markedly greater than those of the upper house. Anyway, we have not chosen the bicameral system but have instead selected the queer separate voting system. But this system is totally unable to achieve the effects of the bicameral system.

I have however never thought that we should adopt the American system, that is, the presidential system, whereby all real powers are vested in the head of the executive, for I think the parliamentary system is already sound enough. In a legislature returned by direct elections based on universal suffrage, there must be a stable majority party, or at least a relatively stable, I mean, not necessarily unstable, ruling coalition. Obviously, even when the majority party, or the ruling coalition, fails to perform well, the government will still be able to function, whether we are talking about the British system or the French system. Under the French system, all government officials are not allowed to serve concurrently as members of the legislature, but under the British system, one must be a Member of Parliament before one can become a government official. Whichever system we are talking about, we can see clearly that if an administration supported by the ruling majority of the time implements policies which run counter to wishes of the latter, or if the policies of this administration lead to very bad consequences despite their compliance with the ruling majority's wishes, the administration will have to shoulder full responsibility, and voters will not vote for them in the next election.

For these reasons, there are usually two heads under the parliamentary system. One is the head of a place, or the head of state, usually just a figurehead. But the other head, who is supported by the ruling majority, be him called a premier or prime minister, or even the Chief Secretary for Administration or whatever, will form the government, which is responsible to the legislature. I think the parliamentary system is more suitable for Hong Kong. But I will not dwell on other reasons and justifications.

I agree entirely that long before today, we should have returned all Legislative Council Members by direct elections based on universal suffrage and equal participation. As for the office of Chief Executive, I am of the view that we do not actually need to adopt the current arrangement. As I said before, it may not matter so much even if Beijing assigns a non-Hong Kong resident to assume the office of Chief Executive. As long as such a Chief Executive knows how to pick the right persons to rule and can command majority support in the legislature, things will be alright. The credit of good governance will go to the persons chosen, but they will also be held responsible for all adverse consequences of their administration.

In this way, the Chief Executive will not be held responsible for the policies implemented by the government. Therefore, even when the people are discontented with the administration by the government, there is still a figurehead, thus ensuring continuity. This can prevent the Chief Executive from becoming the target of all when the people are discontented with the administration.

My position on motions of this kind has always been very simple. I agree entirely that long before today, there should have been a legislature composed entirely of members elected by universal suffrage. However, I cannot accept any form of direct elections which is not preceded by thorough discussions, and which merely sounds appealing as an ideal. The President or the head of the executive of the United States is directly elected, and it is also the case in Taiwan; even the President of Russia is directly elected. But is such a system really suitable for Hong Kong? Is this the best system?

We can see what is happening in Taiwan. CHEN Shui-bian belongs to the Democratic Progressive Party, but in the Legislative Yuan, the People's First Party and the Nationalist Party are in the majority. How can he possibly rule?

There will be lots of trouble. I cannot support this motion, but I do not want to vote against it either because its underlying spirit is entirely correct. This is really a very dogmatic motion; it sounds very appealing.

I must therefore make my position clear. I cannot support the motion, but I do not want to oppose it either. If I stay here and abstain at the vote, I will in effect be opposing it. The existing arrangement is really very "queer", found only in the Basic Law. That is why I wish to withdraw from the Chamber. But I must make it very clear that it is meaningless to put up any further delay. I do not wish to join the debate; if I do so, I will have to respond to the speeches of Dr Philip WONG and Mr Abraham SHEK. But I do not wish to have any debate; I simply want to state my position. My position is: We should realize that democracy is not the means to attain any ideal. But democracy is the very system under which mistakes can most easily be corrected, under which people can correct their errors. I am not saying that democracy is necessarily almighty and infallible because that cannot be possible at all. Even a saint cannot achieve this aim, so how can that be possible with government officials elected by universal suffrage? But with democracy, there is at least a chance to replace government officials. If the people are vested with the power to replace government officials, the latter will be more cautious in their work.

Thank you, Madam Deputy.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, the future development of the political system of Hong Kong is already set down very clearly in the Basic Law. Article 45 of the Basic Law provides that "the method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." And, Article 68 also states as follows: "The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." The above provisions stipulate that the agenda of development towards the election of the Chief Executive and the

Legislative Council by universal suffrage shall be determined in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. There is no ambiguity at all. The existing methods for selecting the Chief Executive and forming the Legislative Council are actually two integral parts of the agenda of political development set down in the Basic Law; they are part of the whole process of political evolution, and thus should not be lightly omitted. Any request for expeditiously implementing the election of the Chief Executive and all Members of the Legislative Council by universal suffrage without the backing of sufficient justifications will violate the principle of "gradual and orderly progress" prescribed by the Basic Law.

I can remember that from 1985 to 1990, when I worked on the Basic Law Drafting Committee, I was engaged for a long time in detailed discussions on the part of political development and the spirit and fundamental principles involved. The Basic Law is an important constitutional document of Hong Kong, and some even call it a "mini constitution". So, we should not lightly ask for any amendments to it. What is more, the methods for selecting the Chief Executive and forming the Legislative Council are key issues in the political development of Hong Kong, which is why we should handle them all the more carefully. And, we must also let society conduct extensive discussions beforehand. Until then, this Council should not make any decision lightly.

Admittedly, political development is very important to the future of Hong Kong, but the most pressing task faced by Hong Kong now is how best to resolve the current economic problems. I am of the view that the SAR Government and the various sectors of society, including Members of this Council, should all put aside their differences and join hands to revitalize Hong Kong economy. If we do not do this, if we force through some hasty political changes and implement universal suffrage, I am afraid that such drastic changes may produce social and economic uncertainties or even adverse consequences. This is definitely not the kind of development desired by the wider public.

The Government should first consider the actual social situation and then conduct a full-scale public consultation exercise on political development in compliance with the Basic Law. And, it should also implement all relevant arrangements in accordance with Basic Law provisions.

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

**MISS MARGARET NG** (in Cantonese): Madam Deputy, I support Mr Albert HO's motion on expeditiously implementing the election of the Chief Executive and Legislative Council Members by universal suffrage. I, however, do not think that this will necessitate any amendment to the Basic Law beforehand.

Madam Deputy, TUNG Chee-hwa's second term of office as the Chief Executive will expire on 30 June 2007. At a time when everybody is eagerly expecting to see the election of the third Chief Executive by universal suffrage, a new interpretation has cropped up: Under the Basic Law, the soonest possible time for the introduction of universal suffrage should be the time when we elect the fourth Chief Executive. The reason given is that paragraph 7 of Annex I to the Basic Law provides as follows: "If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007....." As argued, since the term of the third Chief Executive will commence within the year 2007, by "subsequent to the year 2007", it must be meant the next term, even at the soonest.

I do not agree to this interpretation. We have all along thought that the method for selecting the Chief Executive can be changed beginning with the term of office of the third Chief Executive in 2007. I do not think there is anything wrong with this. Well, let us perhaps put aside our political arguments for the time being and examine how we should interpret the relevant provisions of the Basic Law from the legal point of view.

The legal principle involved is very clear — we have to adopt the "generous and purposive approach" instead of rigidly looking at the wording. While we must look at the wording of the provision, we must also pay attention to the whole context, taking into account its relationship with other relevant provisions and the integrity of the overall underlying spirit, with a view to arriving at an interpretation that can bear out the legislative intent and purpose. If there are any doubts, we may refer to the literature on the drafting of the Basic Law.

To put it simply, I am of the view that "subsequent to the year 2007" should be interpreted to mean "subsequent to 30 June 2007", that is, the time when the term of office of the second Chief Executive expires. This interpretation is in no violation of the normal use of language. For example, when we refer to "before 1997" or "after 1997", we all understand that we

should be referring to the time before or after 1 July 1997. And, when we talk about the 2000 to 2004 Legislative Council term, we should be referring to that term of the Legislative Council which ends on 30 June 2004, instead of talking about the period from 1 January 2000 to 31 December 2004.

In other words, the term of office referred to in Annex I is not a calendar year, which explains why the above interpretation is perfectly proper. Actually, if "subsequent to the year 2007" is interpreted to mean "subsequent to 31 December 2007", all will become so unreasonable and groundless.

If one still finds my explanation not clear enough and still sees the need for further clarification, we may refer to an appendix to the Basic Law, the speech delivered by Director JI Pengfei at the Third Session of the Seventh National People's Congress on 28 March 1990.

Referring to the method for selecting the Chief Executive laid down in Annex I, he said, "在1997年至2007年的十年內由有廣泛代表性的選舉委員會選舉產生，此後如要改變選舉辦法，由立法會全體議員三分之二多數通過，行政長官同意並報全國人大常委會批准。" By "1997年至2007年的10年內", it is of course meant the 10 years from 1 July 1997 to 30 June 2007, and "此後" obviously means "subsequent to 30 June 2007".

The English translation is equally clear: "In the ten years between 1997 and 2007, the Chief Executive will be elected by a broadly representative election committee. If there is need to amend this method of election after that period……" — "that period" should end at midnight 30 June 2007, not 31 December 2007.

Madam Deputy, Director JI Pengfei explained that the arrangements laid down in Annex I were meant to give the kind of flexibility that could facilitate necessary changes. Therefore, the election of the third Chief Executive by universal suffrage on 1 July 2007 under Article 45 of the Basic Law will not necessitate any amendment of the Basic Law.

Of course, the kind of universal suffrage mentioned in Article 45 will involve the "nomination by a broadly representative nominating committee in accordance with democratic procedures". I am simply quoting Article 45 of the Basic Law. If we wish to dispense with the hurdle posed by the nominating committee, we will have to amend the Basic Law. I am of the view that as long

as the third Chief Executive can be selected by universal suffrage, we can put up with the nominating procedure for the time being. This is only an issue of secondary importance.

Madam Deputy, I so submit.

**MR TAM YIU-CHUNG** (in Cantonese): Madam Deputy, I heard Mr Albert HO said in his speech earlier that we should not get entangled over the issue of amending the Basic Law. However, I must point out that today's motion is a demand to amend the Basic Law, and we think it has disregarded the provisions and mechanism provided under the Basic Law and it is a very irresponsible approach. As we all know, the Basic Law is a constitutional document that has fully embodied "one country, two systems" and "Hong Kong people ruling Hong Kong", and every detail and provision of the Basic Law is the product of extensive consultations over a long period of time. I was also very fortunate to have participated in the drafting of the Basic Law. The drafting of the Basic Law took four years and eight months, out of which the consultation period was as long as four years and eight months from the official forming of the Basic Law Drafting Committee (BLDC) on 1 July 1985 to the formal completion of the draft at the ninth general meeting of the BLDC on 17 February 1990. Therefore, this constitutional document has fully reflected the demands of Hong Kong people and practically protected the rights of Hong Kong people.

During the consultation period of the Basic Law, a more controversial subject, which attracted varied views was the method of returning the Chief Executive and Legislative Council. The BLDC drafted the existing provisions, which cover long-term objectives, a progressive schedule and a mechanism for amendment, after repeated studies and discussions. Therefore, we support the relevant arrangement prescribed in the Basic Law and think that it is the best solution for resolving differences in opinion. Under the circumstances in which no prior consultation was conducted in the community, today's motion as a demand to amend the relevant provisions of the Basic Law has obviously failed to respect the views of Hong Kong people and is also an immature and irresponsible approach. As a member of the then BLDC, I oppose the motion.

An amendment of the Basic Law is a major issue and has to go through a stringent process. Article 159 of the Basic Law has not only laid down the

procedure for amending the Basic Law but also clearly stated that "no amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong." Insofar as I understand it, the gradual and orderly development of democracy is one of the basic policies. Therefore, if amendments are to be introduced, we have to take into account the interest of various sectors of the community. While the proven policies under our original political system should be retained, a democratic system that is in line with the situation of Hong Kong should also be developed in a gradual and orderly manner. Some people wish to unilaterally amend some of the provisions in the Basic Law in accordance with their personal wish, this we cannot support.

Article 45 of the Basic Law clearly provides that "the method for selecting the Chief Executive shall be specified in light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." Furthermore, Article 68 of the Basic Law also provides that "the method for forming the Legislative Council shall be specified in light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all members of the Legislative Council by universal suffrage." As regards how the aim of "election by universal suffrage" could be achieved, we in the Democratic Alliance for Betterment of Hong Kong (DAB) have expressed our views and put forward suggestions on the direction of political development, and we would also continue to work hard for a real success of democratization in Hong Kong. Therefore, the DAB thinks that a comprehensive political review should be conducted to facilitate full participation of various sectors of the community in the discussion so as to formulate a plan that can look after the interests of all sectors of Hong Kong and the actual situation of Hong Kong for the benefit of the public at large. And, it is only by doing so that we can be responsible.

Madam Deputy, I have listened to the speeches of several Members in the opposite camp, and they gave me a feeling that the main purpose of this motion is to seize the opportunity to strike another blow at the Chief Executive. I really do not want to see such things happen again, because the people whom I have

come into contact have all expressed the wish that the community can stand together to overcome the present difficulties and do something constructive to help the public to ride out the storm.

With these remarks, the DAB opposes the motion.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, in the Question and Answer Session last Thursday, Mr TUNG hurled a criticism at the democrats; he also posed a question and tendered an advice to the democratic camp. I think this motion today is the most forceful response to that criticism, question and advice.

Mr TUNG criticized the democrats for having bad-mouthed Hong Kong for six years, reviled the Hong Kong Special Administrative Region (SAR) for six years, negated "one country, two systems" for six years, and abused the Chief Executive by all means for six years; and he said that seldom could he hear constructive proposals from the democratic camp. I think these remarks are fallacious. They are fallacious in that they have equated Hong Kong with the SAR Government and the Chief Executive. No doubt the democratic camp has consistently criticized the policies of the SAR Government and the Chief Executive over the past six years. Perhaps the Chief Executive likes to call criticisms abuses. He is at liberty to do so. But we must stress that we have never bad-mouthed Hong Kong. Just that the Chief Executive has taken himself as the equivalent of Hong Kong, thinking that criticisms against him are criticisms against Hong Kong. This is sheer confusion of the two concepts. We must ask, "Why has the Chief Executive confused these concepts?" The reason is simple. It is because Hong Kong does not have full direct elections and members of the public cannot elect their leader to represent Hong Kong. Therefore, the puppet of Beijing thinks that he himself represents the citizens of Hong Kong, and that he can be a local despot in Hong Kong since he is handpicked by the Central Authorities. So, to root out this confusion, it is most important to implement the election of the Chief Executive by universal suffrage.

Moreover, Mr TUNG mentioned that seldom could he hear constructive proposals from us, the opposition camp. This remark of Mr TUNG may be a fact, because it is true that he seldom hears such proposals. But the fact that he seldom hears such proposals does not mean that the democratic camp seldom puts forward constructive proposals. In fact, we have always put forward

proposals. Yesterday, for instance, a number of Honourable colleagues, including Mr LEE Cheuk-yan and Mr Michael MAK, and I met with the Financial Secretary and made proposals on the creation of jobs. We at the same time proposed the withdrawal of legislation in respect of Article 23 of the Basic Law, so as to create an atmosphere of social unity. The Government, however, did not take heed of these views, and these constructive proposals are treated as non-constructive proposals. The reason for this is also very simple. Under an undemocratic system, the Chief Executive is not in the least obliged to heed the opinions of the opposition camp. He will only draw the royalists in the Legislative Council over to his side. However strong the popular mandate and reasons of the other opinions, he could simply ignore everything and force his own proposals through. So, the problem lies not in whether there are constructive proposals, but the absence of a democratic system. It is because without a democratic system, opinions, particularly dissenting opinions, will certainly not be respected. Nor will they stand a chance to be respected.

Mr TUNG also asked last Thursday why our view on the SAR Government and himself was so negative. This question reminds me of a programme on current affairs some six months ago in which Mr Allen LEE, a former Member of the Legislative Council, asked why CHEN Shui-bian was still held in high repute by his political enemy, MA Ying-jeou, despite the fact that CHEN Shui-bian's government had plunged Taiwan's economy into a state as messy as that in Hong Kong. The other hosts of the programme still could not come up with an answer after thinking it for a long while. Finally, an audience pointed out that the reason was simple. It was because however badly CHEN Shui-bian had performed, he was still elected by the people through a democratic system. What MA Ying-jeou respects is the choice of the people. Madam Deputy, I think the Chief Executive can find the answer from this example. The absence of a popular mandate is precisely a congenital defect of the SAR Government.

Towards the end of the session last week, the Chief Executive advised the democratic camp to keep abreast of the times and criticized us for holding onto the past. He said that the times had changed and we would only be discarded by the times if we still did not embrace this new era. Perhaps we are not in the right "channel" to be in tune with Mr TUNG and so, it is difficult for us to have dialogues. We do not know what Mr TUNG meant when he said that the times had changed. But according to the interpretation of some pro-government newspapers, Mr TUNG seemed to be telling the democrats that Hong Kong had

now reunited with the Motherland and so, they should not linger on the thinking of the colonial era, and that the powers are now in the hands of the SAR Government under the leadership of Mr TUNG, so the democratic camp should trim their sail to the wind, act in line with the trend and cease to fight for democracy. However, we must point out that the democrats have never had any affection for the colonial system. In fact, like some of the royalists here today, we were also targets of suppression by the old colonial government. We have no affection whatsoever for anything in the colonial era. On the contrary, although the Government is now led by Hong Kong people, its mindset is still colonialist in substance, in that it still suppresses democracy and suppresses the opposition force and voices in society. It has been most regrettable that those who used to be suppressed by the colonialists in the past have instantly behaved in the old ways of those colonial masters once they came into power, and joined in the suppression of democracy. Could this be keeping abreast of the times, so to speak?

We must ask the Chief Executive, "Why is your view on democracy and universal suffrage so negative and why are these considered eyesores to you?" Facts have proven that democracy is a major global tide. According to a large-scale academic research study, of the 172 institutions covered in this study, 101 are democratic institutions, and the number is also on the increase. This is the trend of the times. Why can the Chief Executive not keep abreast of the times? Perhaps the Chief Executive is still lingering on the thinking of the colonial era. If so, I wish to ask Secretary Stephen LAM and Prof LAU Siu-kai, both being important members of the Chief Executive's think-tank in respect of the constitutional system this question. Why have they not advised the Chief Executive to keep abreast of the times? That Secretary LAM has not given advice to the Chief Executive is understandable, for he is used to following the wish of the Chief Executive. But for Prof LAU, being an academic himself, who should pursue truth and who have conducted many studies on development of democracy and social stability, why has he not given honest advice to the Chief Executive? Could it be that he, like the Chief Executive, has also confused the meaning of "trimming the sail to the wind" and "keeping abreast of the times"?

In this society of Hong Kong, some have chosen to be GOETHE's Faust, who was willing to sell his soul to the Devil in exchange for wealth and powers. They are free to do so. The democratic camp does not go after this trend. The democratic camp will definitely work for a democratic society, a society that

progresses with the global tides. Indeed, in the pursuit of democracy, we democrats will definitely not make compromises or beat a retreat.

Madam Deputy, I so submit.

**MR NG LEUNG-SING** (in Cantonese): Madam Deputy, just before my turn to speak from my script, a friend of mine telephoned me, asking me to say a few words on his behalf in today's debate on the pace of democratization. He said that during the onslaught of the Severe Acute Respiratory Syndrome, he saw that in Beijing, a place with little democracy, a Xiao Tang Shan Hospital could be built within a few days and over one thousand medical workers immediately reported duty there. In Hong Kong where only a little bit of democracy is lacking, there are still people telephoning radio stations making complaints in tears about the supply of masks in hospitals. In a place with the greatest degree of democracy, over a hundred doctors had run away, and I also heard that even a relative of the leader, who studies medicine and whose job is to rescue the dying and heal the wounded, had not shown up at work. My friend asked me to tell this story today and so, I say a few words for him in passing.

Next, I will speak from my script. Madam Deputy, three months ago, we debated in this Council a motion on starting public consultation on constitutional reforms. While the original motion and the two amendments were negatived, it was very clear that colleagues of this Council all agreed on the need to make appropriate preparations for a review of the post-2007 development of the political system, only that Members had different views on the timing of the public consultation on constitutional reforms. Let me quote the remarks made by Mr Albert HO at that time: "……To make preparations for constitutional reforms which have such far-reaching impact, we certainly must conduct a very extensive consultation exercise. We must also conduct studies and discussions, forge consensus in society, and set the legislative mechanism in motion before reforms can be implemented." But three months later, the views expressed by Mr HO on this motion today have changed, as he is demanding that the Basic Law be amended immediately so as to expedite the implementation of the election of the Chief Executive and all Members of the Legislative Council by universal suffrage. I wonder if he was actually hypocritical and pretentious in his speech on the previous occasion, or he has begun to "keep abreast of the

times" on the advice of the Chief Executive. But anyhow, I think Mr HO's stances in these two debates are very puzzling.

I think the Basic Law has, in the form of a mini-constitution, provided for the constitutional development of the Hong Kong Special Administrative Region towards the ultimate aim of the full implementation of universal suffrage. Any amendment to the Basic Law should proceed in accordance with the stipulations in Annexes I and II to the Law. But before that, even though a consultative committee or a drafting committee to commence many rounds of work as suggested by Mr TAM Yiu-chung is not set up, we should at least, as suggested by Mr HO, "conduct a very extensive consultation exercise, and we must also conduct studies and discussions, forge consensus in society, and set the legislative mechanism in motion before reforms can be implemented". As for the timing of public consultation, I think after the Government and the Legislative Council have handled the issues relating to the impending Legislative Council elections in 2004, there will still be ample time for studies and discussions to be conducted on issues relating to constitutional development after 2007. By then, it would be an appropriate time to conduct public consultation. Moreover, all sectors of the community can explore and study this topic in the context of the future constitutional development of Hong Kong on their own anytime with no limitation. Like other issues of public concern, government arrangements may not be entirely necessary. This sort of exploration and studies has long existed in the community. But the openness of these initiatives should be further enhanced so that all quarters and strata of the community can explore and analyse, without any predetermined position, the various options for development and arrangements in respect of the future constitutional system.

The epidemic has not yet been completely eliminated. At the moment, Hong Kong is striving hard for a reasonable reassessment of the local health conditions by the international community and the World Health Organization. The economy is still in very bad shape, and all trades and industries have yet been revived. Under such circumstances, the Government and the Legislative Council should set out the key initiatives and work priorities very clearly. Otherwise, they cannot respond to the demands of the people and reflect the aspirations of the community. Comparatively speaking, while constitutional development is enormously significant in the long run, it is not a very pressing issue. Owing to its importance and complexities, the best way to handle this

issue is to work step by step and in an orderly manner. We absolutely should not work hastily and recklessly. Therefore, I cannot support this motion. Madam Deputy, I so submit.

**MS EMILY LAU** (in Cantonese): Madam Deputy, I speak in support of Mr Albert HO's motion.

This motion is on the amendment of the Basic Law and I also support this, but regrettably, at present we do not even have a mechanism for this. At the meeting of the Panel on Constitutional Affairs held on Monday, I discussed this issue with Secretary Stephen LAM many times but he still could not come up with anything concrete. Here, once again, I would like to mention that I do not know what the Constitutional Affairs Bureau is doing for it has not put forward a mechanism for amending the Basic Law, has not reviewed the political system and has not launched any discussion on other issues. Therefore, I have to repeat a point made by Miss Margaret NG. Why has Secretary LAM suddenly suggested that he has to look into whether the 2007 review will cover the Chief Executive election. Miss Margaret NG has already put forward her views and many people will certainly subscribe to them. And, since Secretary LAM would not possibly raise any more items for discussion at the next Panel meeting, we would invite people from various sectors to talk about their views on this matter, for we are actually greatly puzzled by the sudden introduction of this view.

Madam Deputy, several Members have spoken against Mr Albert HO's motion earlier in the debate and they said it is not the time to conduct political reforms for they should be conducted in a gradual and orderly manner. Dr Philip WONG, Mr Howard YOUNG, Dr Raymond HO and Mr Abraham SHEK have all said the same thing. However, Mr Albert HO has clearly stated that the Sino-British Joint Declaration was signed in 1984 and after that, we have gone through a transitional period of more than a decade. If we really start to have direct elections by then (for it is very difficult to amend the Basic Law), more than 20 years would have elapsed from 1984 to 2007 and a child could have been born and grown up during this period of time. Mr Howard YOUNG even said to do so is attempting to get the result in one bound. After a lapse of 23 years, could we still say that this is attempting to get the result in one bound? I think we should be fair when we say something and it is fine to raise objections, but please do not distort the facts.

Furthermore, Mr Howard YOUNG also said that for the Legislative Council election to be fully representative, it must take care of the interest of different sectors, and he is referring to functional constituencies, and that is, privileges. I fail to find the people of any country that have elections demanding to have the interests of all sectors fully represented, and very often, the elites of the community could be elected through the one-person-one-vote system. In fact, having enjoyed the privileges for so long, should the system not be opened up now?

Dr Raymond HO said the introduction of political reforms at this point of time is not conducive to our development, and I believe he referred mainly to economic development. However, I must ask, right now there are so many squabbles inside the Legislative Council and in the community outside this Council — I also asked Prof KUAN Hsin-chi yesterday (he is the head of the Social Cohesion Unit of the Central Policy Unit) whether they have considered the possibility of disturbances in Hong Kong — but then, as many people are very aggrieved and there are greatly diversified views in the community, is the present situation conducive to stability?

Madam Deputy, we have heard that there would be a great demonstration on 1 July and many people would take to the streets to protest against the Government. I heard that stockbrokers would join the demonstration, taxi drivers would join the demonstration, certain religious bodies would join the demonstration and people from all walks of life also said they would join the demonstration. So are such factors conducive to social stability? If someone assume that the suppression of certain developments and prohibition of discussions and changes could generate a cohesive force, then I believe this person is certainly deceiving himself as well as others.

Madam Deputy, like you, Mr Andrew WONG is also a veteran of the Legislative Council. He reminded us that a consensus reached by the former OMELCO, a consensus reached under a colonial framework, was even more progressive than that of the Hong Kong Special Administrative Region after the handover. The model proposed by them in May 1989 was the election of the whole Legislative Council by universal suffrage in 1999. Looking back, we have fallen very short of that target. Apart from Mr Andrew WONG, I hope Members who were party to the consensus back then — no matter whether they were against or for the motion, but I believe they must have supported the motion, for a consensus could only be reached if everyone were for the motion — could

share their thoughts with us today and tell us why they could have supported the motion in 1989 and what changes have occurred since then that led them to oppose the motion today. Originally, it was said that the whole Legislative Council would be elected by universal suffrage in 1999 but it really seems we are "back-pedalling" now.

Mr TAM Yiu-chung said the Basic Law promulgated in 1990 gave full expression to the wishes of Hong Kong people. If that were the case, then Mr Albert HO would not have said earlier that the public opinion polls in recent years showed that over 60% to 70% of the respondents supported direct elections for the Chief Executive and Legislative Council. Therefore, I think that comments should better be based on facts.

Madam Deputy, Mr Albert HO just showed me something Mr Jasper TSANG once said, and that is, a news article dated 4 January 2000, for back then, he really said that he hoped the Chief Executive could be elected by universial suffrage in 2007, and I really find the change of tune most regrettable. At that time, he said two terms of office were just the right lead time for election of the Chief Executive by universal suffrage. He said if the Legislative Council was returned by direct elections, then the Chief Executive would be in a more difficult position, therefore, he greatly supported that the Chief Executive should be elected by universal suffrage in 2007 and the Legislative Council be elected by universal suffrage in 2008. He even said he thought that it was the consensus of the DAB for when asked, he said it was their hope and consensus to see such a scenario. This must certainly be a good thing and the ultimate aim set out in the Basic Law could soon be reached.

What an ultimate aim! It is really a great pity that though the leader of the DAB has said something with great wisdom, he does not have the support of his party members. However, I believe many Hong Kong people also agree what Mr Jasper TSANG said then was correct and everyone also hope that we can soon have a fully directly elected government. I so submit.

**MR AMBROSE LAU** (in Cantonese): Madam Deputy, if we genuinely attach importance to the well-being of the people, and think in the way the people think and sense the urgency of the people, then we should be more concerned about fighting the epidemic and reviving the economy, rather than dwelling on the trivialities to the neglect of essentials by demanding an amendment of the Basic

Law, which would stir up unnecessary political arguments. For this reason, the Hong Kong Progressive Alliance (HKPA) considers this motion inappropriate at this point in time.

Firstly, on the method for the selection of the Chief Executive, the HKPA considers that the Basic Law has never stipulated that the Chief Executive must be returned by universal suffrage in 2007. On 28 March 1990, Chairman of the the Basic Law Drafting Committee, Mr JI Pengfei, pointed out expressly in the explanations on the Basic Law and its related documents at the Third Session of the Seventh National People's Congress that "In the ten years between 1997 and 2007, the Chief Executive will be elected by a broadly representative election committee".

Article 45 of the Basic Law provides that "The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." This shows that the ultimate aim of universal suffrage is still subject to nomination by a nominating committee, and this is a combination of indirect election and direct election. In fact, in Western countries, not all heads of government are returned by direct elections purely on the basis of "one person, one vote". For example, the President of the United States is not directly elected by "one person, one vote", but through indirect elections.

Secondly, on the method for the formation of the Legislative Council, the HKPA considers that under Article 68 of the Basic Law, the method for forming the Legislative Council shall be specified in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. Then what is the actual situation in Hong Kong? First, all election methods must go through a process of comparison and accumulation of experience. Second, all types of elections should be consistent with the spirit of balanced participation. According to the actual situation in Hong Kong, it is inappropriate to adopt universal suffrage as the only method for the formation of the Legislative Council. Rather, it is more appropriate to adopt a combination of election methods. In other words, the functional constituency election must be preserved. Annex II to the Basic Law provided for the relevant arrangement

"if there is a need to amend" the methods for forming the Legislative Council. This does not mean that the methods "must be amended". The words "if there is a need" mean that it is necessary to look at the actual situation to see if there is this need.

The HKPA considers that judging from the formation and practical operation of the first and second terms of the Legislative Council, the 30 functional constituency seats in the Legislative Council have reflected the principle of balanced participation from all quarters of the community given their broad representation. They have therefore performed their legislative functions very well and won general recognition from all sectors of the community. This proves that a combined electoral system currently adopted for forming the Legislative Council is in line with the actual situation in Hong Kong and is practicable and successful. Certainly, the composition of functional constituencies can be adjusted as appropriate in the light of the situation in respective constituencies.

Any electoral system must be in line with the actual situation of the place where it is adopted. No electoral system can be copied mechanically. Changes and development of an electoral system must also proceed in a gradual and orderly manner, for haste will only make waste.

Madam Deputy, I so submit.

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

**MR LEUNG FU-WAH** (in Cantonese): Madam Deputy, the topic of Mr Albert HO's motion today is "expeditiously implementing the election of the Chief Executive and all Members of the Legislative Council by universal suffrage". I really wish to ask Mr Albert HO whether it has ever occurred to him when he proposes such a motion that he should respect the Basic Law. Has he ever considered the actual situation in Hong Kong? Has he ever considered the interests of the people? I also asked Miss Margaret NG these questions when she moved "a vote of no confidence in the Financial Secretary" on 7 May. And, I also asked Mr Albert CHAN these questions last week when I spoke on his motion "calling for the resignation of the Chief Executive, Mr TUNG Chee-

hwa". Unfortunately, both of them did not answer my questions. I do not know whether this was due to any intention on their part to avoid these questions, nor do I know whether that was because they had never thought about these questions before moving the motions, so they could not give an answer right away. I hope Mr Albert HO can give me an answer today. I believe members of the public would also like to have an answer from Mr Albert HO.

Why have I asked the three Members the same questions for three weeks in a row? The answer is very simple. I simply hope to let members of the public know whether Members of the opposition factions who move such politicized motions have ever considered the overall interests of Hong Kong. Admittedly, Members can move motions in the Legislative Council, and whether passed or negatived, these motions will have no binding legal effect, but this does not mean that they can thus ignore the realities and use the moving of motions as opportunities to turn the Chamber into their battlefield of political wrangles and struggles and to oppose the SAR Government and the Central Government, with the aim of currying favour with foreigners and in total disregard for the overall interests of Hong Kong.

Actually, the methods for selecting the Chief Executive and forming the Legislative Council are already set down clearly in the Basic Law. I do not think I have to say anything more on this. Since the conditions fostering Hong Kong's political development are not the same as those in other countries, and also because the Legislative Council of Hong Kong is just a local legislature (or a subordinate legislature), it is not at all surprising that Hong Kong's political development should be looked at differently from the parliamentary elections of foreign countries. The circumstances surrounding Hong Kong's political, economic and social developments are unique. If we do not appreciate the need for gradual and orderly progress, if we ignore the realities, if we do nothing but criticizing the Government and asking it to give "handouts", and if they still make use of various excuses to divide the community and mislead the people even when Hong Kong is being battered so severely by Acute Severe Respiratory Syndrome (SARS), even when the Government and the people thus have to join hands to combat the epidemic, this will definitely jeopardize Hong Kong's overall interests. Having seen their behaviour, how can the people have any confidence in the electoral system being advocated by them?

(THE PRESIDENT resumed the Chair)

The repeated attempts by Members belonging to the opposition factions to bring up motion topics of a similar nature really remind me of Taiwan's Democratic Progressive Party, which is ridiculed as a group of boy scouts trying to run Taiwan. Taiwan has made several attempts to join the United Nations and to become an observer of the World Health Organization, but all these attempts have failed. The reason is very simple. The world has long since recognized the fact that there is only one China. Since Taiwan is just a part of China, why does it need to make any attempts to become an observer of the World Health Organization? If the Taiwan authorities really wish to rally the support of all to combat SARS, CHEN Shui-bian and his political party should stop turning the epidemic into a political issue. If they do not do so, it will be difficult to bring SARS under control, and not only this, the overall political, economic and social development of Taiwan will be dealt the heaviest blow ever. But they will not listen to us anyway, because their aim is to bring about the independence of Taiwan, not to work for the well being of the people.

Madam President, *Xiao Zan* complied by ZHAO Nanxing of the Ming Dynasty contains many jokes. One of the stories entitled "In Eulogy of Farting" — yes, I really mean "farting" — is about a scholar who was summoned before the King of Hell after his death. During the audience, the King of Hell suddenly farted. Seeing this, the scholar quickly wrote a prose entitled "In Eulogy of Farting" for the King of Hell: "Arms held up solemnly, the King released a precious current, as melodious as music to the ear and as fragrant as flowers to the nose. Standing below him, I could but marvel at the fragrance of the current." The King of Hell was so pleased by the prose that he added 10 years to the predestined lifespan of the scholar. Thereupon, the scholar was released from Hell and sent back to the world of the living. The Democratic Party has been working so hard to sell the concept of universal suffrage. Some countries may be so pleased as to offer them the right of abode — who knows?

Madam President, the purpose my quoting this piece of writing is to illustrate the point that the opposition factions in Hong Kong and the political party of CHEN Shui-bian are equally poor in performance, though there is a one-word difference in their names. Like the scholar in the story, they have both tried to put up shows to curry favour with foreigners, in total disregard of right and wrong. They will do whatever foreigners want them to do in Hong Kong, including confounding right and wrong.

Madam President, I wish to reiterate that I do not oppose the full implementation of universal suffrage, and that I do know that the election of the Chief Executive and all Members of the Legislative Council by universal suffrage has been their aspiration all along. But I also think that the development of the political system of Hong Kong must proceed in the light of the actual situation and in accordance with the principle of gradual and orderly progress laid down in the Basic Law. Any hasty moves will only jeopardize the overall interest of Hong Kong in the end.

With these remarks, Madam President, I oppose the motion.

**MS CYD HO** (in Cantonese): Madam President, I do not know why there should be such logic in this Chamber, that whether or not a democratic political system should be established is dependent on the performance of the pro-democracy camp. Political system is a system, while the performance of the pro-democracy camp is about what certain parties have done. In fact, if the performance of the pro-democracy camp is really so bad, such democrats will surely be deserted by the people. Then how could the democrats be so silly as to demand the implementation of a democratic political system? If Members of the pro-democracy camp are really so poor in their performance, those who are opposed to political reforms should be happy, for once a democratic system is established, these 20-odd persons who are making so much noise will not be able to get the votes of the people, and in future the Legislative Council will operate very efficiently. So why can we not work together to promote political reforms? I believe this is because "everyone has a clear picture of his/her own position". Some people know very well that, once their positions and views are presented to the people and let the people make the decision, what kind of people will eventually come into power. Most probably, the existing power centre will be deserted by the people. This reflects that people opposing political reforms know that what they are upholding is different from the aspirations of the people, and they are afraid that the people would rather opt for the democrats who care less about the economic issues.

In fact, everyone does not have to worry. The people know that the role of the democrats now is just limited to monitoring the Government. When they have to choose the ruling party, they will have more stringent requirements. They will require such candidates to have financial knowledge and the ability to

formulate comprehensive policies. Persons from the business sector will also stand chances of being elected, but the difference will be that the elect must be accountable to the people. In this way, the elected leader will not be able to use emotional responses to scold directly-elected Members in this Chamber, just as what has happened recently.

A Member said that we should now do something constructive to boost the economy. I recall that moving this motion debate in fact has been a ritual of Mr LEUNG Yiu-chung. He has been moving this motion debate annually since 1998. Madam President, the economic situation in 1998 was not bad. When the economy was good, the motion was negatived, and when the economy was bad, it was negatived as well. This makes me recall that Dr YEOH Eng-kiong once said something similar when he put forward his proposal on medical financing: Fees cannot be raised when the economic conditions are good, and when the conditions are bad, it is more unlikely to raise the fees. That means we can never raise the fees. So when can we raise the fees? All political parties state in their election platforms that they will support universal suffrage in their next term of office. However, with the lapse of four years after four years, and another four years after another four years, we still do not know how long we have to wait. Maybe those parties which will vote against the motion today should set out a schedule about which they will never go back on their words. Would that be all right?

The people would like to establish a democratic political system, only that they have not taken any action to fight for it. Although several opinion polls have revealed that over 65% of Honourable Members are in support of direct elections to return the Legislative Council and the Chief Executive, it is really difficult to mobilize a lot of people to take part in a public demonstration under such heavy financial pressure. So if 60 000 or 100 000 people should take to the streets, it will represent an enormous body of grievances and voices of discontent.

The progress of democratization in Hong Kong has been very slow. I believe this is attributable to the lack of a bloodshed history. We are different from Taiwan, which has been subject to the high-handed rule of the Kuomintang in the past. The Taiwanese know too well that they will be badly treated if they are subjected to the governance of a high-handed regime. In the past, the colonial government adopted an appeasement policy in governance. As a result,

the living standard of many people was improved, and the economy improved as well. So, people were indifferent to a lot of unfairness, thereby undermining the rights or even the personal safety of some people. The importance of building up a fair system was thus overlooked.

Madam President, in fact, in this Chamber, the DAB, rather than we democrats, should be in a better position to talk about the bloodshed history, about the painful past. The suppression of the riots in the 1967 had led to the death of many people. Of course, those who had caused the riots should be punished by the law. But many people had been sent to the Victoria Detention Centre for two to three years without going through proper legal proceedings before they were deported after imprisonment. The procedures were extremely disorderly and confusing. Such painful experience must have become the lifelong unforgettable memory of those involved. It is a lifelong scar. Why can we not turn such painful memory into a determination to develop a democratic political system, instead of continuing to support a governing framework that is not accountable to the people, a system that leaves too much room for infringement upon the rights of the people?

Madam President, with social progress, I wish we could bring about changes in a peaceful manner. We should learn from history and resolve conflicts in a civilized manner by persuading the people to reach a consensus and seek the representation of public opinion through universal suffrage. And the Chief Executive will not have to use emotional languages to respond to criticisms, thereby resulting in an "all-lose" situation in which the Chief Executive, the Legislative Council and the people are the losers.

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

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, in last week's debate, I said that there was a new kind of virus known as the "Tung virus". Like Severe Acute Respiratory Syndrome (SARS), the "Tung virus" mutates very quickly. In a week's time, it has already mutated into a "Ying virus". This "Ying virus" is the same as "Tung virus", for both are caused by too many contacts with the Central Authorities. It is because from newspaper reports, LEUNG Chun-ying, when being asked what temperament and qualities the third

Chief Executive should possess, had thought for a while and said that it was most important to be able to communicate and maintain a good relationship with the Central Authorities. So, this has proven one thing. Last week, I said that the "Tung virus" started to spread from the handshake with JIANG Zemin or "JIANG's handshake". A handshake with the Central Authorities is also considered most important for the "Ying virus", because success will be ensured once the handshake takes place.

However, this mutated virus is different from "Tung virus" in some ways. I said on the last occasion that the symptoms of "Tung virus" were blindness, deafness, and saying one thing but meaning another. I do not wish to repeat them here. But this "Ying virus" will attack the brain and after it has attacked the brain, a symptom will develop and that is, stammering. How is that stammering like? One will speak like this: step by step by step by step by step. What has been said over and over again is step by step and step by step. That is, when it comes to democratic elections, LEUNG Chun-ying will say that this should be done step by step, that we should take one firm step first before taking the next step. This is the kind of stammering that I referred to. He also said that insofar as the pursuit of political convictions was concerned, haste would only make waste. He had even cited MAO Zedong as an example. MAO Zedong had fought to gain control of the country in the shortest time, for he succeeded after a fight of some 30 years. LEUNG Chun-ying nonetheless said that he would not have succeeded if he worked in haste. It really beats me as to why he would say this. While LEUNG Chun-ying has achieved some success today, I only feel that he is talking nonsense, and worse still, he is suffering from stammering.

Another type of virus is the "Tsang virus". The Chairman of the DAB, Jasper TSANG, has been infected because he has stayed too much with and too close to Mr TUNG. He has also been contaminated. The virus that he has contracted also attacks the brain, making him suffer from senile dementia. That is why he has forgotten what he had said before. However, I do not know why he was unwilling to answer Mr Albert HO's question earlier on. In fact, Mr Albert HO asked the same question, "Has he forgotten that the DAB used to support that the ultimate aim should be achieved as soon as possible?" Now he suffers from senile dementia, forgetfulness and amnesia, and he has forgotten the platform of the DAB. Then he remarked that he would support the election of the next Chief Executive by universal suffrage and that all the seats of the

Legislative Council thereafter (after 2008) should be elected by proportional representation on the basis of universal suffrage. I do not know whether all these are caused by the "Tsang virus". Nor do I know whether his infection has gone so bad today that he has therefore become dumb. I hope he can give a response.

In fact, I must say that not all consequences caused by the "Tung virus" are negative, similar to the fact that not all the consequences of SARS are negative. Although we are very afraid of SARS and hope that this epidemic can be eliminated sooner, SARS has revealed one thing, that is, the importance of keeping Hong Kong clean and the importance of public hygiene. It affirms the need that we must maintain a sound medical system.

Similarly, not everything brought along by the "Tung virus" is negative. This virus has stimulated the immune system of Hong Kong and generated a democracy antibody. I wish to say a few words in order to do Mr TUNG justice. Mr TUNG is a *de facto* democrat. Mr TUNG is actually an undercover agent for the democratic camp. To borrow the words of Dr David LI, he is "unprofessional" and not my "class". It means that Mr TUNG is absolutely unprofessional and he is not up to scratch. But it is precisely because he is unprofessional and not up to scratch, and it is because his governance has "screwed up" Hong Kong for six whole years that the people have come to realize how badly an undemocratic and incompetent government can "screw up" things and they have come to realize the importance of democracy. This is not something that we democrats can do. But Mr TUNG has managed to do that. Mr TUNG can be said as the mentor of Hong Kong people in democracy.

Here, I must tender a piece of advice to Mr TUNG: Mr TUNG, you have already fulfilled your historical mission and I thank you for making the people realize the importance of democracy. But would you please keep abreast of the times and step down from the pedestal to make way for a Chief Executive returned by democratic elections. If you are willing to do that, you will not only be the mentor in democracy. I believe you may even become the father of democracy too.

I hope that the full direct election of the Chief Executive and all Members of the Legislative Council can be achieved as soon as possible in Hong Kong,

because I think that if we cannot have a government elected by the people, it is downright impossible to achieve cohesion and unity; it is impossible to make people forge ahead, and it is impossible to restore public confidence in the Government. So, I very much support the motion of Mr Albert HO today. I also hope that Members can think about the speeches made by many Members earlier, who said on and on that we must proceed step by step in a gradual and orderly manner, similar to what LEUNG Chun-ying has said. However, for how many years have we waited? We have been talking about direct elections since 1991, and when it comes to the constitutional review in Hong Kong, we have been talking about it since 1984. As Ms Emily LAU said earlier, we have been talking about it for a time long enough for a child to grow up and become a parent and with a bit of luck, he may even have several kids already.

Hong Kong can only wait. We have waited from the beginning till now, and the pace is still like that of an ant or a snail. I think this is absolutely tragic for Hong Kong. I do not wish to see things continue to be tragic for Hong Kong. I think there should be a fair system. Only in this way can we do justice to the people of Hong Kong. Hong Kong people are absolutely mature enough, be it economically, educationally and politically, to elect their own Chief Executive. Thank you, Madam President.

**MR FREDERICK FUNG** (in Cantonese): Madam President, the topic of this debate today has been discussed for many times. In past debates, I used to look at this issue mostly from a theoretical perspective. But today, I would like to look at the actual situation purely from a personal viewpoint.

In fact, in academic studies, a democratic system has all along been considered a component of free market economy. That is, where there is a free market economy, it is necessary for it to be complemented by such a system, and a democratic political system will precisely play this complementary role. It strikes me as strange that some Members from the business sector in this Council, such as Dr Philip WONG and Mr Abraham SHEK, oppose this motion. Last Sunday, I happened to listen to a programme of the Radio Television Hong Kong in which CEOs are interviewed. The CEO being interviewed then was Sir Gordon WU. He said that he was a staunch supporter of democracy, but he disagreed that direct elections be held in Hong Kong at this stage.

The remarks of these people are very strange. They are all educated overseas and have a good understanding of the democratic systems in the United States and Britain, but they oppose such a system after returning to Hong Kong. This, I found very puzzling indeed. In which of those countries where market economy is successfully practised do we see that members of the legislature are not returned by popular elections? Even for the so-called indirect elections in the United States as mentioned earlier, they are actually conducted using the election method of "one person, one vote", only that a different method is used for counting votes at the state level. In Britain, needless to say, theirs are definitely returned by direct elections, and direct elections are also adopted in France, Germany and Japan. Even for Mr Andrew WONG's concept of indirect election as mentioned by him earlier, it will only create one more tier above popular election, and universal suffrage will still form the basis of election. This is obviously the case.

Indeed, a democratic system is precisely the cornerstone of stable management of market economy and also the foundation of governance. The present situation in Hong Kong may also be attributed to the fact that the Chief Executive and Members of the Legislative Council are not returned by a democratic system, thus resulting in inconsistencies and incompatibilities between the system of governance and the free market economy.

I am more familiar with the history of Britain. Looking back, we can see that before World War II, Britain had actually been ruled by bourgeois or business-oriented political parties. The Labour Party came into power for the first time in the popular election during World War II in 1945. One may find it strange as to why Winston CHURCHILL, a war hero for justice in the world, would ever lose to the Labour Party. It is because at that time, the British wished to be ruled by the political party which had rebuilt the country. Indeed, popular election can very often reflect the wish of the people. When the wish of the people is in tune with the demands of the times, there will be a certain outcome, and that will lead to a decision on which party to vote for. But in retrospect, from World War II to the present, insofar as Britain is concerned, despite alternating rule by the Conservative Party and the Labour Party, we can see that Britain is more often ruled by the Conservative Party, and at some rough estimates, the two parties take power at a ratio of about 6:4 or 65:35.

In other words, even in a society where popular election is implemented, it is indeed not easy for a party founded on the grassroots and workers to win in an

election. Looking back, after World War II, as the Labour Party had the chance to rule the country, cases of workers resorting to violence to deal with labour disputes and issues had drastically decreased. In fact, this was only because of a shift in the method of resolving struggles and disputes from resorting to violence to releasing them at parliamentary assemblies via the electoral system. So, this is the beauty of direct election and popular election institutionally.

The present situation is different from that before 1997 in that our system has already changed. Madam President, first of all, the Governor and civil servants used to form the ruling party (Members may recall that I have expressed this view before). That was a system formed by a chain of levels from the Governor to the civil servant on the lowest end who works on the street. But after 1997, the situation has become different. The Chief Executive is now returned by an election of the Election Committee, and the civil servants are no longer regarded as members of the ruling party. When things develop along this line, civil servants will begin to gradually distance themselves from politics. Indeed, the Accountability System for Principal Officials or the ministerial system advocated by us before is precisely an embodiment of this development of the Chief Executive ceasing to partner the civil servants to form the ruling party.

However, as we have no popular election, the practices of our Chief Executive are totally different from those of heads of states returned by popular election. For a Chief Executive, President or Prime Minister returned by popular election, if he found problems with his cabinet members, the first thing that he would think about is not whether the official concerned is his old friend or whether he is trustworthy, and not the morals of that official either. Rather, he will think about this: Will it be in the interest of the entire cabinet, government and country if this official remains in office? He may even think further about whether the next election will be affected if this official remains in office or otherwise. A Chief Executive not returned by popular election will definitely not think about these. He will only think that this official is an old friend of his, and as he has never betrayed him and has been loyal to him for the past decade or two, it is impossible for him to have done anything wrong, and he should still be forgiven even if he has done something wrong. So, their thinking can be totally different.

Secondly, the relation between the Chief Executive and the people is also different. For a Chief Executive returned by an 800-member Election

Committee, I think for all celebrations or functions organized by people or organizations behind those 800 voters, our Chief Executive, who is returned by this very method, will show up to congratulate them. But how often has he attended large-scale community activities or come into contact with the mass public? Prime Ministers, Governors, provincial governors or state governors returned by popular election will definitely take part in these activities. Even though they are not invited to these activities, they will organize such activities themselves, in order to make direct contact with the masses. So, their relations with the masses are completely different, in that a leader returned by popular election knows that he can grasp the wish of the people with support from a majority of the people, so why should he be afraid of the democratic camp? Even if the democratic camp is supported by 50 000 or 60 000 votes and Frederick FUNG has obtained 50 000 or 60 000 votes, these are just trivial figures, for the Chief Executive may secure hundreds of thousands of votes and even millions of votes from the people. Since the Chief Executive has secured more votes than those of the democratic camp, why should he be afraid of attacks from the democratic camp?

In fact, we can see the difference between Members returned by functional constituency elections and Members returned by direct elections. Members returned by direct elections appear to be able to make louder voices in the media, for these Members are closer to the voices of the people. A Chief Executive, who has not been baptized by popular election, will not hear these voices. Worse still, he will not make any progress and advancement in this regard. In fact, it is the system that has induced changes in a person.

Madam President, according to a research study conducted by the World Bank in 2001, of 40 countries and territories (including Hong Kong) with the best performance in practising market economy in the world, 33 have adopted democratic systems and implemented direct elections, accounting for 80% of the total number of these countries and territories. Hong Kong is outside this 80%. Sometimes I think what we have now is a deformed, ugly system. So, at this stage, I entirely agree with my teacher, Mr Andrew WONG, who said that we should not be working for popular election only today, for we should have been working for it since yesterday. If we still do not implement it expeditiously today, and if we do not implement it expeditiously tomorrow, I think management of the system will become even more difficult.

Thank you, Madam President.

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

**MR MARTIN LEE** (in Cantonese): Madam President, I think Mr Jasper TSANG's absence now is a stratagem deliberately employed by him, and he will come back after I have spoken.

Madam President, when I was still the Chairman of the Democratic Party, Mr Jasper TSANG, Mr James TIEN and I had actually attended many interviews or seminars, hosted whether on English channels or Chinese channels or by foreign journalists, and we held the same view at the time. I said that it was necessary to amend the Basic Law so as to expeditiously implement the election of the Chief Executive and all Members of the Legislative Council by direct elections, while the two of them said that no amendment should be made to the Basic Law. Yet, they still considered that the Chief Executive must be directly elected in the election of the third Chief Executive in 2007, followed by the direct election of all Members of the Legislative Council in 2008. They stated this view very clearly. Mr Albert HO said today that he could only provide records to show that they had said so on one occasion. But I have personally heard them say this for many times. This is the reason why both of them do not wish to speak today.

I heard many Members who have spoken suggest that the development of democracy be stalled. Nobody said that they opposed it. They only suggested to stall it. They suggested to stall it indefinitely. To sum up their remarks, their arguments are fallacious and specious; they are deceiving other people and themselves, and they are simply insulting the intelligence of the people of Hong Kong.

I remember Dr Philip WONG once said that as long as we did not have the spirit of democracy to respect one another, we would not be qualified to have democracy. But then, he said that implementing universal suffrage alone did not represent democracy. This, I agree. But without democratic elections, surely there is no democracy. So, to achieve democracy, the first step is to hold democratic elections. Now, he does not support democratic elections, but he is asking us to have the spirit of democracy. This is like a school testing a student's performance at Secondary Five level when actually it is admitting Secondary One students, and when it is found that the student has scored

distinctions in all Secondary Five subjects, the school then admits the student to one of its Secondary One classes. It means that we can have democracy only under a situation similar to this. This is baffling indeed. Sometimes, even his good self may not know what he is talking about.

Let us take a look at Mr Howard YOUNG. He said that Mr Albert HO's motion was trying to achieve everything in one bound. Has he got something wrong? There are 23 years in total between 1984 when discussion on this topic was kicked off in the Joint Declaration and 2007 when the Chief Executive will be returned by direct elections. If the direct election of all Members of the Legislative Council will be implemented only in 2008, that will be 24 years. In fact, many Members have mentioned that there is a gap of some 10 to 20 years in between. They have all forgotten that there are actually 23 and even 24 years in the interim.

Well, let us then look at Mr NG Leung-sing. He was funny. He said that this motion had nothing to do with him, because his friend had telephoned him asking him to look at how the Severe Acute Respiratory Syndrome (SARS) was handled in Taiwan, and to look at how terrifying the medical and health workers in Taiwan were because they had scampered away, while their Hong Kong counterparts deserved high praises for their bravery and could even become heroes if they died. So, what was the conclusion? The conclusion was that Hong Kong should not have democracy. I trust that the local health workers will be seething with anger on learning this.

Now, let us look at Dr Philip WONG again. Dr Philip WONG said that we did not have the spirit of democracy now. It means that the excellent performance of medical workers in Hong Kong is attributable to the lack of democracy here in Hong Kong. The comments of the duo are arbitrary and contradictory indeed.

Let us look at Mr LEUNG Fu-wah. He kept on asking us whether we had considered the interest of Hong Kong people. Had we not considered the interest of Hong Kong people, why would we fight for democracy for Hong Kong people? In all opinion polls, the number of people calling for the direct election of the next Chief Executive or the direct election of all Members of the Legislative Council is two times more than those in opposition. This has been the case for more than 10 years. Mr LEUNG Fu-wah then said that there was

SARS now and so, let us not discuss this issue at the moment. What about the past when there was no SARS? There was no room for discussion either. Even if the problem of SARS is resolved in the future, he will say that the economy is still in the doldrums and suggest that the economy should be dealt with first. Does it not mean that there is again no room for discussion and the issue should again be deferred? In fact, he had been quite honest, for he said that it would depend on the actual situation. But the question is: What does actual situation mean? The actual situation is reflected in the remarks made by a University of Hong Kong alumnus of mine, Dr Raymond WU, and I very much agree with his remarks. He said to this effect, "When it comes to democracy in Hong Kong, if the Democratic Party or the democratic camp continues to win in the elections as usual, there will not be democracy in Hong Kong; but when the DAB wins in the elections, then there will be democracy in Hong Kong tomorrow". I trust that Mr LEUNG Fu-wah will agree with this too. Does the so-called actual situation depend on whether or not they can win? If they will surely win, then there can be greater liberalization. It is clear as to whether this is the spirit of democracy or the spirit of DAB.

Madam President, I wish to talk about Mr Abraham SHEK. He is still obsessed with functional constituencies, saying that it was necessary to take care of the interests of all sectors of the community. I wonder if he knows that it is clearly stated in Article 68 of the Basic Law that there will not be functional constituencies eventually. Indeed, the interests of all sectors of the community can be maintained by electing representatives through direct elections. Take a look at this Council. We now have a directly elected representative of the legal profession. In the past, there were also directly elected representatives of the medical profession, such as Dr HUANG Chen-ya and Dr Conrad LAM, who were representatives of doctors returned by direct elections. People from all trades and industries can be elected to the Legislative Council through direct elections. For example, there are many directly elected Members from the labour sector; teachers and professors can also elect their representatives through direct elections. This is entirely viable. Let us also take a look at other countries. All trades and industries can elect their representatives by direct elections and they are fully representative.

Finally, I wish to respond to Mr Andrew WONG. He dislikes the system in the United States, as he always does. According to the electoral system in the United States, the President and members of the parliament are elected separately. The British system is always his favourite. But regrettably, the

British system is not adopted in the Basic Law. So, the British system is out of question, and he has not proposed to amend the Basic Law in order to adopt the British system. He has stated that he supported Article 68 of the Basic Law which provided for the direct election of all Members of the Legislative Council, but he opposed Article 45 of the Basic Law under which the election of the Chief Executive is conducted in a way similar to the elections in the United States. This shows that he likes one article but dislikes the other. What is it if we take 45 out of 68? It is 23. *(Laughter)* Article 23 is born precisely against this backdrop. So, I hope that Mr Andrew WONG, having listened to what I said, and if he also dislikes Article 23 of the Basic Law, should hurry back to vote in support of Mr Albert HO's motion.

Thank you, Madam President.

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, Mr Albert HO's motion today demands that the Basic Law be amended so as to expedite the full implementation of the election of the Chief Executive and all Members of the Legislative Council by universal suffrage. As the Basic Law has provided for the method for selecting the second Chief Executive in 2002 and the method for forming the Legislative Council in 2004, any changes relating to the selection of the Chief Executive and the formation of the Legislative Council will require amendments to the Basic Law. From the order of the wordings of Mr Albert HO's motion, my understanding is that he would like the election of the Chief Executive by universal suffrage to happen before the election of all Members of Legislative Council by universal suffrage. But by chronological order, the election of Members of the Legislative Council by universal suffrage in 2004 actually precedes the election of the Chief Executive by universal suffrage in 2007.

This Council has debated the constitutional system of the SAR and the related electoral arrangements for many times before. The views put forward by Honourable colleagues were broadly within the parameters of the relevant provisions of the Basic Law, namely, Annexes I and II to the Basic Law. However, this motion of Mr Albert HO expressly calls for the amendment of the Basic Law at the outset. As long as the proposals are endorsed in accordance with Article 159 of the Basic Law, the election of all Members of the Legislative Council and the Chief Executive by universal suffrage in 2004 and 2007 respectively is feasible in theory.

The question is judging from the present situation in Hong Kong, is it necessary to make such drastic amendments to the Basic Law? Can this appeal for amendment of the Basic Law meet the requirements of Article 159 of the Basic Law and obtain the requisite support? From a realistic angle, even though Mr Albert HO's motion is submitted to the National People's Congress (NPC) by the delegation of the region to the NPC after obtaining the consent of two thirds of the Deputies of the region to the NPC, two thirds of colleagues of this Council and the Chief Executive, the proposal will be examined by the NPC only in March next year (2004) the earliest. Therefore, insofar as the electoral arrangements are concerned, I do have misgivings about whether universal suffrage could be introduced on time for the Legislative Council elections next year.

Besides, is it necessary for Hong Kong to make such radical changes to the electoral arrangements next year, that is, seven years after the reunification? All changes must go through a process, so that people from different strata can adapt to and accept these changes, thereby obtaining support and recognition of the majority public. More importantly, Annexes I and II to the Basic Law have already stipulated that the election of the Chief Executive and all Members of the Legislative Council will progress in a gradual and orderly manner towards universal suffrage. Mr JI Pengfei, Chairman of the Basic Law Drafting Committee, said in 1990 when submitting the draft Basic Law to the NPC that "The political structure of the Hong Kong Special Administrative Region should accord with the principle of "one country, two systems" and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong's reality should gradually be introduced."

The objective fact is that as Chairman JI Pengfei said, Annexes I and II to the Basic Law already provide that in the 10 years between 1997 and 2007, the methods for electing the Chief Executive and all Members of the Legislative Council will progress towards democracy in a gradual and orderly manner, and it is also provided that the ultimate goal is universal suffrage. Therefore, when the Basic Law was promulgated in 1990, it was generally supported by the people of Hong Kong and a consensus was also reached in society.

Any constitutional reform must go through a process. Take the United States as an example. JEFFERSON drafted the Declaration of Independence in 1776 advocating human rights concepts and ideals. He said, "We hold these truths to be self-evident, that all men are created equal……". But does the American people's right to vote in elections embrace the principle of all men are equal? Women in the United States at least had to wait for almost 150 years more, because it was only in 1919 after the passage of the nineteenth amendment to the Constitution of the United States of America that women began to enjoy the right to vote in 1920. The contents of the amendment was: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." Despite that women were then given the right to vote, they generally enjoyed less rights than men did. This is a fact. Even in today's United States, the President is elected by way of electoral votes, instead of being directly elected by "one person, one vote". This explains why there were disputes in the last presidential election in the United States. In Britain, the road to universal suffrage was even longer. It was only in 1918 that British males aged 21 or above began to have the right to vote in elections, whereas females had to wait until 1928 before they could enjoy the right to vote. It was in 1969 when the voting age was lowered to 18.

Madam President, I have no intention to assert that Hong Kong people should not have the right to elect the Chief Executive and all Members of the Legislative Council by universal suffrage. As I stressed in the last debate, the Government is duty-bound to put forward different proposals on this important issue to facilitate extensive public discussion, so as to forge a consensus in the community. The Government should then conduct a review after the Legislative Council election in 2004 and carry out public consultation before a decision is reached. By then, any decision on changes or reforms made by the Legislative Council on the basis of the consensus reached by the community as a whole will only require amendments to the relevant Annexes to the Basic Law, rather than amendments to the Basic Law itself.

The Democratic Party, to which Mr Albert HO belongs, has for many times criticized the Government for its policy reforms in respect of finance, education, medical services, civil service pay, and so on, arguing that those changes are overly drastic and that the Government should not seek to achieve all the objectives in one bound. When the relevant motions were proposed in the Legislative Council, they had voted against them. But in respect of constitutional reforms, they have conversely adopted a different attitude, asking

for an amendment of the Basic Law as soon as possible, so as to implement the election of the Legislative Council and the Chief Executive by universal suffrage in 2004 and 2007 respectively. This gives the impression that they are contradictory.

Madam President, to quote the words of Chairman JI Pengfei, "The method for selecting the Chief Executive is provided in an annex to make it more amenable to revision when necessary". This is the most proper and appropriate way to implement constitutional reforms. With these remarks, I oppose the motion.

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

(No Member indicated a wish to speak)

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, Members of the Democratic Party have over the past few weeks adopted a "one motion and one position per week" strategy by moving more substantial topics one after another for Members' discussion in this Council. The topic for discussion today is related to constitutional reforms. Actually, constitutional development has been discussed repeatedly over the past six months in debates on the policy address or Budget.

On 19 February, Ms Emily LAU urged the Administration to conduct as soon as possible a public consultation on constitutional reforms. Views on her proposal were divided and her motion was not carried. In the debate held on that day, I explained to Honourable Members that three principles would be followed in reviewing constitutional reforms.

First, we will work according to the Basic Law. The Basic Law stipulates that universal suffrage is the ultimate aim for constitutional development, and the electoral methods should be specified in the light of our actual situation and the principle of gradual and orderly progress.

Second, we will set aside sufficient time for extensive public consultations to be conducted.

Third, we will also reserve sufficient time to trigger the amendment mechanism prescribed in the Basic Law, and amend the relevant electoral system and deal with local legislation.

I also took the opportunity to outline to Honourable Members important time slots for the constitutional review to be carried out. Our plan is to conduct internal research in 2003, consult the community in 2004 or 2005, and deal with local legislation in 2006.

Internal study has begun in accordance with our policy objective. The study covers specific procedures to be taken, the scope of the review and steps to be taken to consult the public.

Madam President, I will now make several points of comment in response to the motion moved by Mr Albert HO.

One of the arguments frequently advanced by Members from the pro-democracy camp in their calls for the expeditious implementation of the "one-man-one-vote" electoral system is that directly elected members are broadly representative, whereas Members from functional constituencies are often merely able to reflect the interest of their own sectors. However, many live examples could be seen over the past couple of months which show that indirectly elected Members, that is, those returned by functional constituencies, are absolutely capable of acting in the overall interest of the territory.

Mr James TIEN from the Liberal Party initiated a fund-raising campaign in the business sector in a bid to provide financial assistance to families affected by atypical pneumonia.

Dr LO Wing-lok, representative of the medical sector, actively encouraged private practitioners to co-operate with the Department of Health and the Hospital Authority. The "one doctor for one school" scheme proposed by him recently was well received by teachers and parents.

In the tourism, retail and hotel sectors, a completely different domain, Mrs Selina CHOW and Mr Howard YOUNG teamed up with the sectors to promote the "We Love Hong Kong" campaign for selling cheap air-tickets. The enthusiastic response from the public has proved to be helpful to the sectors.

Mr Ambrose LAU and representatives from other professions demonstrated their concern for residents of Amoy Gardens by providing free building maintenance services ……

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, please pay attention to the speech delivered by the Secretary for this is not the time for talking. Secretary, please continue.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Thank you, Madam President. Let me repeat that Mr Ambrose LAU also demonstrated his concern for residents of Amoy Gardens by joining his friends from other professions to provide free professional services with respect to building repairs, maintenance, and so on.

I have cited these latest examples to let Honourable Members see the facts for themselves. Actually, like directly elected Members, Members from functional constituencies are absolutely capable of taking care of the overall interest of Hong Kong society and serve the people of Hong Kong.

For the above reason, I believe Members from the Democratic Party and the pro-democracy camp should understand and accept that Members from functional constituencies are equally important and representative. Of course, the Democratic Party and the pro-democracy camp also comprise Members from functional constituencies.

Another point worth mentioning, albeit pretty obvious, is that Members from the pro-democracy camp should not forget that, besides them, there are directly elected Members from other political factions and parties as well. They also represent certain voices and views in the community.

As such, it is absolutely inappropriate of pro-democracy Members to frequently belittle Members of the Democratic Alliance for Betterment of Hong Kong (DAB), the Hong Kong Progressive Alliance (HKPA), the Liberal Party, the Breakfast Group as well as other independent Members by labelling them as "royalists" and deny their representativeness. This is not only unfair to their colleagues in this Council, but also disrespectful and unfair to the industries and electors represented by them. I believe this fundamental attitude must be

adjusted and changed before we can be better able to discuss Hong Kong affairs and the way forward for Hong Kong's constitutional development.

Madam President, Mr Albert HO and several other Members have strong views on the performance of the SAR Government and the governance of the Chief Executive. We are aware of the views and public sentiments reflected by them. We are always willing to listen to positive and reasonable criticisms. We will also see them as a warning to remind ourselves to exert our utmost to upgrade the services provided to the public as well as the standard of our services.

Although our performance over the past six years since the reunification may not necessarily be able to satisfy the aspirations of the public, we are after all a pragmatic government. We hope to open up new horizons and remove all challenges before us.

In 1998, we entered the market to protect ourselves from the Asian financial turmoil and stabilize Hong Kong's financial markets; we succeeded in our bid to build a Disney theme park in Hong Kong to be hopefully completed by 2005; talks on the Closer Economic Partnership Arrangement (CEPA) are being held with the Mainland to hopefully reach an agreement by June. To be more detailed and direct, we hope to, following better integration between the Mainland and the Pearl River Delta (PRD), upgrade and alter Hong Kong in terms of economic transformation to enable us to find a new path and space. In addition, we have proposed to implement the construction of a bridge across the Pearl River for the promotion of economic co-operation and integration between the PRD and Hong Kong. Certainly, we are now working hard with Honourable Members to fight against atypical pneumonia.

Madam President, I have cited these examples because I wish to demonstrate that we have always been a pragmatic government. Perhaps Mr Albert HO and his colleagues can, if given the opportunity, reflect on themselves to see what they have actually done for Hong Kong since the reunification.

Madam President, let me come back to this motion. Mr Albert HO proposed to amend the Basic Law to expedite the full implementation of the election of the Chief Executive and all Members of the Legislative Council by universal suffrage.

In relation to this motion today, I was questioned by Mr Albert HO why I should communicate with other Members. Madam President, I am obliged under the Basic Law to explain to Members the Government's position. It is only natural and right for me as a Director of Bureau to assume this responsibility. I hope Mr Albert HO will not think that this is fundamentally inappropriate.

Actually, I have only two points of comment to make. Public consultation must first be carried out before deciding on the direction of constitutional reform. It is thus unnecessary for a final decision to be made today. It is also precisely because members of the community have not yet been publicly consulted on constitutional development that I deem it inappropriate of Mr Albert HO to have jumped the gun today in calling on this Council to make known its position on the constitutional reforms to be carried out beyond 2007 and come up with a final decision.

I note that Mr Albert HO and his colleagues have, in designing this motion, packaged it very wisely. On the surface of it, there is flexibility for no timetable has been set with respect to their call to "expedite implementation of election by universal suffrage" and Members are allowed to elaborate the matter in their own way. However, we can note very clearly from the speeches delivered by Mr HO and his colleagues that they fundamentally call for the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively. This is why I maintain that the motion moved by Mr Albert HO today actually seeks to call on this Council to make known its position expeditiously.

Back to the Basic Law, the constitutional review can actually be properly dealt with entirely under the Basic Law. With respect to the arrangements for the fourth-term Legislative Council, a mechanism has been put in place in Annex II to the Basic Law whereby the Hong Kong SAR is allowed to amend the method for the formation of the Legislative Council subsequent to the year 2007.

As regards the election of the Chief Executive, as I pointed out in the Budget debate held on 9 April, since the wordings of "the Chief Executives for the terms subsequent to the year 2007", as appeared in paragraph 7 of Annex I to the Basic Law, are far from perfectly clear, we are not yet certain as to whether the method for electing the Chief Executive in 2007 can be amended in accordance with Annex I to the Basic Law, and careful study is thus warranted.

Since the study is still ongoing, it will be too hasty to make any proposals at this stage to amend the Basic Law.

As stated by Ms Emily LAU, discussions were held by the Panel on Constitutional Affairs two days ago and it was decided that scholars of law and people from other fields would be invited to express their views on legal issues arising from Annex I. I welcome the chances of listening to more opinions and believe this will be helpful to us in examining this matter.

Coming back to the overall political system of Hong Kong, if we have digested the arguments advanced by Mr Albert HO and his colleagues today as well as their previous comments, we can see that their arguments are really straightforward — only through universal suffrage can a comprehensive constitutional system come into being. In their eyes, the existing constitutional system is incomplete.

Madam President, I do not subscribe to their position. Certainly Hong Kong's constitutional development has to continue to make steady progress, yet in our existing constitutional framework, we already have a representative legislature, a transparent and accountable executive organ, an independent judicial organ, and the liberal and open mass media. The institutions in Hong Kong are comparable to those in other advanced, liberal and open societies.

Mr Albert HO and his colleagues have a lot of comments on the system of separate voting in this Council. This arrangement is actually prescribed by the Basic Law. Support of the whole Council or the Finance Committee must be sought before government work, bills and budgets can be passed and implemented. The fact that these bills, policies, budgets, initiated by the executive organ, are subject to the scrutiny of this Council precisely demonstrates our system of checks and balances. It is comparable and similar to systems practised in overseas countries, so what is wrong with it? I think we should cherish what we have at present and, on the basis of the existing system, continue to provide impetus to constitutional development.

Madam President, before concluding, I have to respond to the speeches delivered by Ms Emily LAU and Mr LEUNG Yiu-chung. Using the tactic of "passing off fish eyes as pearls", Ms Emily LAU frequently complained of insufficient topics for discussion at the meetings held by the Panel on Constitutional Affairs. What the Honourable Member said might reflect that

she worries too much. Since I took office in July last year, a dozen meetings have been held by the Panel on Constitutional Affairs, in which dozens of documents have been submitted, numerous topics discussed, with each meeting lasting at least two hours. I therefore cannot see the possibility of any changes. As long as Ms Emily LAU and other Members are present in this Council, we will surely continue to discuss with them in earnest.

Madam President, I strongly object to Mr LEUNG Yiu-chung's speculation that a new colonial system might possibly emerge in Hong Kong since his remark is absolutely inconsistent with the facts. His remark has actually trampled on the concepts of "one country, two systems" and "Hong Kong people ruling Hong Kong". After the reunification, Hong Kong is now run by Hong Kong people. Madam President, while Mr LEUNG Yiu-chung and his colleagues have aspirations for Hong Kong, our colleagues working in the Government also have our commitment towards Hong Kong. They are concerned about the future of Hong Kong, and so are we. Before the reunification, I took part in the work of the Joint Liaison Group with various colleagues and spent more than 10 years resolving a series of issues, including the setting up of the Court of Final Appeal, the issuance of SAR passports, and the extension of some 200 multilateral agreements in the run-up to the reunification to enable Hong Kong's external relations to continue after the reunification in 1997.

Madam President, both my colleagues serving in the Government and I are very pleased that today we have "one country, two systems", something so tangible that we can witness every day. I have said all this because I want to make it clear to Mr LEUNG Yiu-chung that my colleagues of this generation and I have over the past two decades endeavoured to make preparations for the implementation of "one country, two systems". Members seated here have also made contribution in their respective posts. Future constitutional development is going to play a vital and increasingly mature role in facilitating "one country, two systems" and "Hong Kong people ruling Hong Kong". I strongly believe constitutional development and development of political parties are complementary. For these reasons, I will propose and promote such subsidy schemes as $10 for one vote in an effort to tie in with the development of political parties and constitutional development. Nevertheless, I would like to warn Mr LEUNG Yiu-chung against making sweeping generalizations and "shooting the arrow at random".

Having said that, Madam President, in relation to this motion today, I would like to reiterate that the constitutional review can be properly dealt with entirely in accordance with the Basic Law.

As I said a moment ago, upon the completion of our internal study, public consultation will be carried out in 2004 or 2005 and, based on the views collected, a proposal will be made to be followed by voting conducted in accordance with the relevant Annexes to the Basic Law.

Madam President, I therefore urge Members seated here to oppose today's motion.

Madam President, Secretaries assigned to reply on behalf of the Government will usually conclude their speeches at this stage. Today's matter can be considered having been properly dealt with after it is put to the vote. However, Madam President, I would like to spend a few more minutes to make several points.

As Members are aware, "one man, one vote" is the political ideal and notion of the pro-democracy camp. However, we should all remember and understand that democracy, human rights, freedoms and the rule of law are not the franchise of any particular political party. All the 60 Members seated here swore to uphold the Basic Law during the inauguration ceremony. Therefore, I believe all of them will subscribe to the notion that universal suffrage is the ultimate goal for Hong Kong's constitutional reform and electoral systems.

While different political parties and Members might be divided on the timetable, speed and process of achieving this goal, there is only one destination — universal suffrage.

This Council has debated topics of more substantial substance recently. It is definitely not my wish to leave the minds of Members entirely blank after today's debate. It is not my wish to see another Member move another motion different in form but not in content several weeks after. Watching Members reiterate their notions will only give the public a feeling of helplessness. This is definitely the last thing I wish to see.

Madam President, I hope I can work closely with Members seated here to promote the development of democracy in Hong Kong in accordance with the Basic Law. I hope government officials and Honourable Members can address the mission assigned to us by history.

Each time I talk about constitutional reforms, I will reiterate that I hope to deal with the constitutional review on the basis of the principle of "seeking common ground while reserving differences, reaching consensus". This is no empty talk. I earnestly hope Members seated here can identify their common ground. To achieve this, different political parties and Members must adopt a pragmatic attitude, come off down their high horse, face one another sincerely, show mutual respect and demonstrate their willingness to listen and contemplate their different ways of thinking arising from different policies and positions.

We must be able to do this before the fundamental requirements can be met to create more favourable conditions and new room for progress to be made in constitutional development beyond 2007. I believe a number of Members seated here are willing to do so. Will Mr Albert HO and his colleagues be willing to do so?

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr Albert HO, you may now reply and you still have two minutes 22 seconds.

**MR ALBERT HO** (in Cantonese): Madam President, first of all, I must point out that Mr Jasper TSANG and Mr James TIEN have not responded to the question I put to them clearly earlier in the debate. That is, in January 2000, they expressed to the media on many occasions the view that they supported the election of the Chief Executive by universal suffrage in 2007 and the election of all Members of the Legislative Council by universal suffrage in 2008. Have they actually back-pedalled? They were speaking on behalf of their political parties at that time. For that cheque issued by them, are they going to withdraw it now? If so, I think they owe the public an explanation. I must say in

particular that although Mr Jasper TSANG was speaking in his own capacity at that time, the subsequent platform of the DAB was very clear and happened to coincide with his remarks. Disregarding whether they are back-pedalling or withdrawing their cheque, I think they owe the public an explanation. This is a moral kind of courage, and they must clearly state and explain their own position. I think their attitude of not giving a response today shows a lack of courage on their part.

Secondly, Secretary Stephen LAM has spoken at great lengths. He said that we had proposed a motion once a week and stated a position once every seven days, and that we had proposed many motions of great significance. This precisely shows that debate is the only channel through which Legislative Council Members can express their positions to the Government. Do not think that the Legislative Council will take a gentle attitude over everything and discuss issues of little significance. This is not something that the Legislative Council should do. The Secretary praised the work of many Members of functional constituencies. It is true that many Members of functional constituencies are as good-natured as members of the public are, and what they have done are things that should be done. In fact, the Secretary should have sung Miss Margaret NG praises. We in the democratic camp hold her in high repute. Why did he not praise her? The Secretary should even have praised Mr CHEUNG Man-kwong. We are not suggesting that Members of functional constituencies are incompetent. The question is: Why do some of them wish to be specially protected? This is the question that we wish to ask. Why should they be elected by such a small number of people whose right to vote is made a prerogative? This is the biggest problem.

Finally, it is not true that we do not wish to co-operate with the Government. The truth is that the Chief Executive has been hostile to the democratic camp. All our criticisms are considered by the Chief Executive as attempts to bad-mouth Hong Kong. So, how can dialogues be started? I hope the Chief Executive can also reflect on himself.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

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

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

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the motion.

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

Ms LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr

Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, five were in favour of the motion, 17 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 15 were in favour of the motion and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**PRESIDENT** (in Cantonese): Second motion: Independence of statutory organizations handling public complaints.

## INDEPENDENCE OF STATUTORY ORGANIZATIONS HANDLING PUBLIC COMPLAINTS

**MS CYD HO** (in Cantonese): Madam President, democracy is not the answer to all questions, therefore, there are organizations for the protection of human rights in democratic countries playing an arbitrator role between political regimes and people's rights. These organizations can assist the public in making complaints and seeking justice when a regime returned by democratic elections infringes upon civil rights. Such a system is implemented in democratic countries. In places such as Hong Kong where democratic government is a distant aspiration, it is all the more necessary to maintain the

independent operation of these organizations so that they can effectively perform their functions and bear the responsibility of checking the Government.

My motion today is related to four organizations including the Independent Commission Against Corruption (ICAC), the Office of the Privacy Commissioner for Personal Data, the Office of The Ombudsman and the Equal Opportunities Commission (EOC). I will collectively refer to them as "statutory organizations" in the rest of my speech. A common point of these organizations is that they are independent of the executive authorities and vested with statutory powers to perform their functions, and they can assist people in following up complaints and even conduct investigations and institute prosecutions. For the Government, they exist as a two-bladed sword that can allay people's grievances on the one hand but create more trouble for the Government on the other. Of course, the departments or individuals being investigated will have pressure. The crucial point lies in whether the Government can see that these organizations which will "bite" the Government are actually conducive to social stability and are the indispensable elements of good governance. A broad-minded and far-sighted government will have the breath of mind to allow the independent operation of these organizations, but a short-sighted government may not be able to realize the merits.

Merely accepting the existence of these statutory organizations is not enough, and we should take open and transparent measures institution-wise to ensure that they are free from government intervention and can operate independently. More importantly, the Government should demonstrate to the public that it has the courage and breath of mind to accept the checks and balances of these statutory organizations on it rather than asking them to play the role of a large vase only. There are three elements that ensure the independence of these statutory organizations: first, a fair and open appointment mechanism and a set of principles for selecting suitable candidates; second, the conferral of statutory powers on the organizations by legislation; third, stable resources and sufficient funds to support the long-term operation of statutory organizations.

First of all, I would like to discuss candidates and appointment. A document entitled the Paris Principles was adopted in 1991 and it states the elements that the appointment mechanism of national human rights protection institutions should have. The United Nations Commission on Human Rights

and the United Nations General Assembly adopted the document in 1993 and 1994 respectively. The document mainly states that, in appointing candidates, their independence and pluralist representation must be ensured and that the members of these institutions should include the representatives of non-governmental organizations competent in the field of human rights and the fight against racial discrimination, trade unions, concerned socio-professional organizations, including lawyers, doctors, journalists, scientific personalities and so on; philosophical and religious movements; academics and parliament (meaning Legislative Council Members in Hong Kong). Has the Government of the Hong Kong Special Administrative Region (SAR) considered all the principles and factors listed above when it makes appointment? At least, I fail to see the appointment of the representatives of the religious sector or individual Members in their capacity as Legislative Council Members, and certainly no representatives of the media have been appointed at present.

The independence of the leaders of these statutory organizations is certainly more important because they will have a bearing on whether these organizations will perform their functions actively and progressively. At present, the relevant arrangements for appointment of candidates and retirement are not transparent, the final decision is only made by the Chief Executive and the public do not know why a candidate is appointed or not reappointed at all. We very much worry that if a person concerned has offended the Government in performing his duties during his term of office, he may be considered as disobedient or too meddlesome and he may disappear under the black box operation of the appointment mechanism.

When Mr Andrew SO was The Ombudsman, he invoked his power of direct investigation 16 times and presented a widely applauded report after the chaos at the new airport, and made very fine achievements. However, he was replaced after his five-year term of office, being notified only at the end of January 1999, one month before the expiry of this contract, that he was not reappointed. He had to leave office even though a new Ombudsman had not taken office at that time and acting arrangement had to be made. Evident in the above example, has the Chief Executive really taken the appointment of public officers seriously? The practice is disrespectful to the incumbent and the new appointee, and it is questionable whether the person concerned has to leave office just because he has faithfully discharged his responsibility of monitoring the Government.

If the Chief Executive does not have time to do his best in appointment well in advance, I suggest that a nominating committee should be established to comprise members being the representatives of the various sectors as referred to in the Paris Principles. They should do some lead work of nomination for the Chief Executive and adopt the nominations by means of a minority veto. A minority veto means that a nomination will only be adopted if a nominee gets a simple majority vote and his nomination is not opposed by more than a certain percentage of the attendees. For instance, when there are 10 attendees, there should be opposition by not more than two of them; when there are nine attendees, there should be opposition by not more than two of them, too. This can ensure that the person will be trusted by various quarters.

The next step is that a nominee should be questioned at the Legislative Council so that the public can get to know him through the transparent mechanism of the Legislative Council before the Chief Executive finally confirms the appointment. If the Chief Executive does not accept the nominated candidate, he has to give an explanation. I hope this mechanism can give a public office elect more credibility and dispel the worries of the public that the Government would punish disobedient persons.

The arrangement for retirement is equally important because this can also jeopardize the independence of public officers, and a review should be conducted. In the past, several ICAC Commissioners were transferred from the Civil Service. A lot of opinions show that this would inevitably give rise to a role conflict because, facing their former colleagues, it is even more important for the Commissioner elects to be devoted to public service as to forget their own interests in order to be impartial. The arrangement for the two preceding ICAC Commissioners to be posted back to the Civil Service after leaving office is really bad. Mrs Lily YAM became the Secretary for the Environment and Food after she left office and Mr Alan LAI is now the Permanent Secretary for Commerce, Industry and Technology, the assistant to the Secretary for Commerce, Industry and Technology, after leaving the office. When the ICAC Commissioner is in office, the objects of investigation by the ICAC may be his future colleagues or superiors and he may have some misgivings that would compromise impartiality.

Madam President, there is no reason for me to question the personal conduct of the two ICAC Commissioners mentioned, but there are impacts on independence institution-wise. Therefore, I suggest imposing the restriction that persons who have worked as the ICAC Commissioner should not take up any post within the government structure after they have left office. We know that jobs in the business sector are very big incentives to these public officers and they can affect their conduct, thus, stricter restrictions should be imposed on them even if they take up certain jobs in the business sector after they have left office.

At present, an improvement has been made to the contract of the Privacy Commissioner for Personal Data in the specification that his appointment within six months after retirement from office must be reported to the Chief Executive. It was not necessary to do so in the past. Thus, we can see that it is a very serious role conflict for a retired Privacy Commissioner for Personal Data to take up a post with the Electronic Data Systems Corporation that has won the contract for the Smart Identity Card System. Nevertheless, it is not enough to report the appointment within six months after retirement from office. We should advocate the proposal that a retired Privacy Commissioner for Personal Data can take up a job in the business sector only with the approval of the Chief Executive.

Next, I wish to discuss statutory powers. The four statutory organizations are subject to their respective ordinances that provide a legal basis for their exercise of powers. The powers of the EOC cannot be exercised when the Government is involved due to some exemptions. Under sections 59(1) and (2) of the Sex Discrimination Ordinance, provided that there is a certificate signed by the Chief Secretary for Administration certifying that an act specified in the certificate is done for the purpose of protecting the security of Hong Kong, the power of the EOC cannot be exercised on certain acts of the Government. Nevertheless, the EOC can grant exemption on its own if the case involves trade unions, religions or reproductive technologies. Thus, sections 59(1) and (2) of the Sex Discrimination Ordinance provide the Government with an amulet. Why should the Chief Secretary for Administration be given the power to decide the opening or closing of the door? In fact, if the EOC is independent, it would be a more satisfactory arrangement for the Government to apply for a judicial review on a decision of the EOC and refer the case to the Court for judgement in case the EOC has acted *ultra vires*, rather than specifying in the ordinance that a

decision has to be made by the Chief Secretary for Administration. This part of the ordinance should be amended.

Similar circumstances are found in the Personal Data (Privacy) Ordinance, and the Privacy Commissioner for Personal Data can be instructed that an inspection or investigation should not be made when there is a certificate signed by the Chief Executive or the Chief Secretary for Administration and for the reasons given in the certificate when security affairs are involved. Can we say there is independence in that case? In the past, this Council had asked the Secretary for Security time and again how the Government dealt with videotape recordings made by the police during peaceful assemblies, and the Secretary had just told us that there were codes and monitoring and they were internal affairs, and that independent third parties such as the Privacy Commissioner for Personal Data might not have access to the relevant information. I do not have a crystal ball now, so I do not know whether the Chief Executive would give his consent if the Privacy Commissioner for Personal Data asks for access to the relevant information. Nevertheless, the fact is that the Privacy Commissioner for Personal Data has to obtain the Government's consent if he wishes to access information involving security affairs.

In my opinion, it is necessary to review the statutory powers of the ICAC along with the implementation of the Accountability System for Principal Officials (accountability system). At present, the ICAC does not have the power of prosecution and it can only carry out investigations and submit reports, and the Secretary for Justice will decide whether prosecutions will be instituted. Nevertheless, with the implementation of the accountability system, we really have to conduct a relevant review seriously. When we discussed the accountability system last year, we repeatedly asked for the exemption of the office of the Secretary for Justice from political appointment, but our requests were declined by the Government. There is an example at hand that may give rise to a role conflict. The ICAC is currently investigating the Financial Secretary, and the Financial Secretary and the Secretary for Justice belong to the same cabinet, they are colleagues and they belong to the same ruling group. The Secretary for Justice has to decide whether a prosecution will be instituted after the ICAC has presented a report, which is a very specific issue of role conflict. Therefore, I suggest making a legislative amendment so that the ICAC does not need to obtain the consent of the Secretary for Justice and can institute a prosecution independently when the subject of an investigation is an official on political appointment.

Finally, Madam President, we cannot do anything without money. Regardless of how good the persons we have and how sound the legislation is, a lot of work cannot be carried out if there is a lack of financial support. "Turning off the water tap" is the simplest and most effective control. For example, the allocation to the EOC has no provision for legal proceedings and resources have to be deployed for prosecution through reducing other expenditures. Just think about this. If the EOC does not have the financial resources for legal proceedings, many Primary Six female students will still not receive fair treatment now and the incident of disability discrimination at the Richland Gardens may not have been resolved.

Apart from legal proceedings, these statutory organizations also need stable financial support to carry out medium-to-long-term work programmes and educational work in the community. The report of the European Parliament on the SAR Government adopted on 8 April has especially mentioned that the SAR Government is urged to ensure that the four statutory organizations are given sufficient resources for independent operation. I suggest establishing a trading fund for these statutory organizations that is sufficient for 10 years' expenditure and that the principal officers of these organizations should submit financial reports to the Legislative Council annually to enable this Council and the community to jointly monitor them.

Madam President, the above phenomena under the existing system can undermine the independence of these statutory organizations. I hope Members will support this motion and future amendments to measures and legislation to ensure the independent operation of the four statutory organizations. Thank you, Madam President.

**Ms Cyd HO moved the following motion: (Translation)**

> "That this Council urges the Government to ensure the independence of the Independent Commission Against Corruption, the Office of The Ombudsman, the Equal Opportunities Commission and the Office of the Privacy Commissioner for Personal Data."

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

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

I now call upon Miss CHOY So-yuk to speak and move her amendment.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, if we merely consider the wordings of the original motion, I believe none of us can possibly oppose it. Of course, it is necessary to highly affirm the independence of the Independent Commission Against Corruption (ICAC), the Office of The Ombudsman, the Equal Opportunities Commission (EOC) and the Office of the Privacy Commissioner for Personal Data. But just as colleagues of this Council would not propose a motion urging the Hong Kong Police Force to catch thieves or reminding the Fire Services Department of fire fighting, the motion has implied that the independence of the above organizations is being subject to impact and the Government should be urged in a high-profile manner by means of a motion to think of ways to mend the fold after a sheep is lost, lest the complaints of victims should fail to be independently and fairly investigated and the image of Hong Kong in maintaining the highest standard of the rule of law at all times should be damaged. It is a great pity, or perhaps I should say it is very lucky that we completely fail to see these circumstances have already emerged.

Since both the passage and rejection of the original motion will give outsiders a wrong message and cause them to mistakenly think that the independence of the relevant organizations has been nibbled or, more seriously, that this Council opposes maintaining the independence of these organizations, the Democratic Alliance for Betterment of Hong Kong (DAB) has no alternative but to propose an amendment to pre-empt that. We hope to have the support of Honourable colleagues and let outsiders know clearly that the independence of these organizations has not been undermined and this Council supports the Government in making its best efforts to continue to maintain the *status quo*.

Madam President, it will be very serious indeed if the situation implied in the original motion really happens. We need to produce hard evidence if we think that the crisis has already emerged, otherwise, if we shout loudly and warn that a crisis has already come only on the basis of a few words or hearsay in

some newspapers, it will inevitably give people an impression that we are being irresponsible.

We are really doubtful about whether there is any substantive evidence to show that investigations by the relevant organizations are subject to restraints. Firstly, it was widely rumoured earlier on that the Government would downgrade the EOC and incorporate it into the establishment of the Home Affairs Bureau in order to eradicate dissidents. It was also asserted that the post of the chairperson of the EOC would be downgraded from D8 to D6 or even D5. However, it was proved afterwards that it was sheer fabrication. Even Ms Anna WU, Chairperson of the EOC, has said that the Government of the Hong Kong Special Administrative Region (SAR) has clearly stated that it would maintain the independence of the EOC as a statutory organization. Thus, the rumour that its powers have been slashed and there is intervention should be scotched.

Even so, along with the changes in the social environment, it gives no cause for much criticism and is only natural even if some organizations are upgraded or downgraded as a result of reorganization, and no organization is sacred and inviolable or totally untouchable. It is also unnecessary for us to raise issues to the higher plane of principles and maintain that the structural changes must have concealed secrets that cannot be divulged or are measures for one camp to suppress another or even obstinately say that the changes are intervention in independence simply because they are not to somebody's liking. Of course, to avoid unnecessary misunderstanding, the Government must be particularly careful and prudent when handling such changes. It must handle them openly and it can definitely not work behind closed doors lest its prestige in governance should be affected.

From another perspective, let us look at the block allocation to the above investigation bodies. In the year 2003-04, the budget allocation to the ICAC is $700 million, 1.1% more than last year; it is $38 million to the Office of the Privacy Commissioner for Personal Data, 2.4% more than last year; $79.5 million to the EOC, 1.9% less than last year. Since the allocation to the Office of The Ombudsman last year included the rents and management fees of its permanent office, the allocation this year has reduced more substantially, by 9.1%, as compared with last year.

Madam President, with a fiscal deficit for years in a row, it is only natural for government and public organizations to be given reduced allocations. However, on the whole, even though the allocations to the above organizations have not risen against the market trend, they are better than the worst in any case. Have these figures not clearly reflected that these organizations are operating as usual? Is it not one of the proofs to refute that their powers of investigation have been crippled?

Some will certainly continue to make an issue of the point that the contract of a person-in-charge of an organization is not renewed and interpret it as the price to be paid for him to be antagonistic to the Government. Nevertheless, in all fairness, it is really a common sight for a person-in-charge of an organization to come and go. As the saying goes, "government offices are like iron and officials are like running water", whether a person-in-charge will be reappointed upon the expiry of his term of office naturally depends upon many factors, such as his competence and the availability of a more suitable person. All of us cannot regard the post of a leader as an iron rice bowl and that a person-in-charge cannot be replaced, or else this would mean interference with the independence of an organization. Concerning some frequent rumours that cannot be confirmed or denied, unless more reliable evidence can be given, however much time Honourable colleagues spend to quibble over the particulars, I am afraid they would have worked to no avail eventually.

Some people have suggested establishing a selection committee to select chairpersons. I think that it is worthwhile to consider all suggestions that will help make the system more open and reduce embroidered stories, malicious gossips and discord on each occasion when a person-in-charge is replaced.

Investigation bodies such as the ICAC, the Office of The Ombudsman, the EOC and the Office of the Privacy Commissioner for Personal Data have enjoyed very high credibility for a long time. This is the fruit of the hard work of the members of these organizations, and the independent operation of these organizations without restraints from outside force is an important reason that has induce public confidence in their complaints being handled impartially. Madam President, for the SAR Government to continue to uphold the spirit of the rule of law in Hong Kong, one of the indispensable links is that it must exert

all efforts to ensure that these organizations are unbiased in handling everything and make the public really feel that they are perfectly impartial.

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

**Miss CHOY So-yuk moved the following amendment: (Translation)**

"To delete "ensure" after "That this Council urges the Government to" and substitute with "continue to maintain"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Miss CHOY So-yuk to Ms Cyd HO's motion, be passed.

**DR RAYMOND HO** (in Cantonese): Madam President, in a civilized society, people should live under the principle of fairness and justice. Over the last two decades or so, Hong Kong has not only come a long way in economic development, but also made remarkable achievement in upholding justice. To maintain prosperity and stability in Hong Kong and to uphold the territory's good international image, we must continue to work hard in this regard.

During the '50s and '60s, corruption was rampant. The operation of society was far from healthy and the people's living was unstable. Fortunately, the then Hong Kong Government subsequently established the Independent Commission Against Corruption (ICAC) to combat corruption stringently. After 30 years of hard work, Hong Kong is generally recognized as a clean society, so clean that we are considered by many countries as a model to follow. In this connection, the people of Hong Kong should feel proud.

The ICAC has managed to make such achievements mainly because it can operate independently, free from any sort of influence or control. The ICAC is an exemplar of the many independent statutory organizations set up by the Government in the interest of the mass public.

After the establishment of the ICAC, the Hong Kong Government has also set up organizations of different natures to protect the rights of the people. For

example, the Office of The Ombudsman which provides a channel of redress for the public; the Equal Opportunities Commission which is set up to ensure fair treatment for the people; the Office of the Privacy Commissioner for Personal Data which protects the personal privacy of the people. All these organizations can truly operate independently and have made important contribution to the prosperity of Hong Kong.

These statutory organizations have been operating very well. Their independence should continue to be maintained and should not be disrupted. Otherwise, their hands might be tied and they might not be able to handle cases within their ambit impartially. Members of the public should also support their work.

A civilized society upholds fairness, equity and justice. Only when these qualities are preserved can Hong Kong enjoy perpetual prosperity.

Madam President, I so submit.

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

**MRS SELINA CHOW** (in Cantonese): Madam President, the Liberal Party has made in-depth consideration after reading the original motion and amendment. Of course, if we merely consider the wordings of the original motion, we will find that there is really no cause for criticism because the Government is urged to ensure the independent operation of the four statutory organizations. However, after we have heard the remarks just made by Ms Cyd HO, it seems that it has been proven that the worries of some colleagues about her motion are right. Though she has used the word "ensure", what she actually means is that the organizations are not fully independent or there is a crisis that they may not be able to maintain independence. We definitely cannot agree with that because the four statutory organizations have perfectly been able to meet the public's expectations of them and every person-in-charge of each of the organizations is recognized and respected by the community.

Some examples cited by Ms Cyd HO earlier, such as the one related to the Equal Opportunities Commission (EOC), are somewhat strange. Actually, we

all think that Ms Anna WU of the EOC has done a very good job and is highly independent, and the Government also affirms her independence.

Ms HO has also referred to the Privacy Commissioner for Personal Data. The preceding Privacy Commissioner for Personal Data is a professional who left the Government and became the Privacy Commissioner for Personal Data at that time, and I do not think there is any conflict for him to subsequently take up a post in the profession again. Let me take the incumbent Privacy Commissioner for Personal Data as an example. We all know that he is a lawyer by profession and he has left the legal profession and taken up the post of the Privacy Commissioner for Personal Data. Will there be any conflicts or contradictions if he leaves the post of the Privacy Commissioner for Personal Data and rejoins the legal profession in the future? I fail to see any conflicts or contradictions. The duties of the Privacy Commissioner for Personal Data involve the public's privacy as protected by law, and I fail to see any contradictions between that and his role as a professional.

I believe I do not have to talk too much about the achievements of the Independent Commission Against Corruption (ICAC) for more than two decades in the past because other colleagues have just made that very clear. Actually, the ICAC has always upheld its convention of independence and it has managed to demonstrate that. The public and Members of this Council have very highly appraised the ICAC and they extremely support defending its independence and catering for its needs for resources. This undeniably reflects the support and commendation of the ICAC by the community.

Ms HO has just cited another example about The Ombudsman and said that the contract of a certain Ombudsman was not renewed because of something that he had done. I am not sure if that is the best way to handle the case. Nevertheless, can the fact that the contract of the said Ombudsman was not renewed prove that The Ombudsman lacks independence? I fail to see that. Besides, up to this very moment, the Legislative Council has unceasingly conducted monitoring in this respect. As we all know, the independence of The Ombudsman has recently been further enhanced, both in respect of the appointment of The Ombudsman and his employment of staff, which has further affirmed his independence.

I think that the four organizations are largely able to bring their independence into play at present. Moreover, this Council and some Members

of this Council can also give play to their monitoring functions and hold these organizations accountable on various occasions and in various organizations and institutions. Since the Liberal Party is of the view that the current operation of these organizations is worth maintaining, we will support Miss CHOY So-yuk's amendment but we will not support Ms Cyd HO's original motion.

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

**MR JAMES TO** (in Cantonese): Madam President, as time is limited and this question involves a number of statutory organizations, I therefore will only speak briefly on each of them.

According to my understanding, Ms Cyd HO's motion seeks to further enhance the independence of the statutory organizations. Are there really no ways to enhance the independence of these organizations? In fact, from the past experience and the example I am going to cite, I think some improvements can still be made.

Firstly, I wish to speak on the Independent Commission Against Corruption (ICAC). I agree that it seems to be not the best arrangement to let the ICAC Commissioner, provided that he is a civil servant, rejoin the Civil Service or join the private sector after leaving the ICAC. In the past, the British Hong Kong Government would choose to appoint an official from the Legal Department, who would soon retire, as the Commissioner of ICAC, because he would retire soon after he left the ICAC. Just because he was due for retirement, everybody believed that he had nothing to worry about, unless someone subjectively accused him of breaching the regulations and demanded to revoke his pension in some extreme cases. But that was quite impracticable, because he could initiate proceedings in court.

Furthermore, Legal Department officials had been monitoring the ICAC in the past, therefore they were familiar with issues relating to prosecution, obtaining evidence and the legality of certain operations. For that reason, it was not a bad idea to make appointments from the Department. Subsequently, by the time Mr Michael LEUNG was appointed, it was his last tour of office before retirement, that is, he would retire after serving on the post. However,

his successor, Mrs Lily YAM was transferred back to work for the Government on retirement from the ICAC office. In fact, at this point, the arrangement started to become not so satisfactory, and the case with Mr Alan LAI was similar. Recently, the post was taken over by Mr Ambrose LEE. I do not wish to speak about personal issues, but I wish to point out that such an arrangement would give the public an impression. That is, if the Government appoints a retired chief of the disciplined service to assume office in the ICAC Commissioner, and given that the ICAC would generally be involved in the investigation of the disciplined service, then it is inevitable that people will feel that the reason for appointing a person who used to belong to the disciplined service to investigate the disciplined service is simply attempting to keep them in check once again. Besides, such kind of investigations would also induce certain apprehensions, such as so and so is the crony of another person who associates with the Secretary for Security, therefore he could be ignored for the time being. Therefore, the Government should bear in mind that it should take these details into consideration before making the appointment.

In the past, some problems had attracted our attentions, such as the Sally AW case. At the very beginning, the ICAC adopted a tough stance on the issue of prosecution (at least I truly believe it was the case), it had (perhaps not so rightly) disclosed some of the information to the public, or even deliberately disclosed the indictment, which had prompted the Secretary for Justice to give the public some paradoxical and peculiar justifications, as well as the emergence of some bizarre and inapt charges in various aspects, in the course of considering the case.

Furthermore, with regard to the Operations Review Committee (ORC) of the ICAC, I have spoken on the same issue on several occasions in the past. At present, all of its members are appointed by the Chief Executive. It is very important as it is the body which monitors the operation of the ICAC. If an investigation that has been started with a view to pressing prosecution has to be terminated, then the consent of the ORC should be sought before the investigation can be stopped. I consider that the Chief Executive is not a Chief Executive who can stand aloof from everything. Every now and then, he will become quite politically-oriented. For example, he often aims at the democratic camp, and on various occasions, he even deliberately blew the trumpet for some political parties or persons who supported the ruling coalition. Under a given circumstance, for example, in an extreme case that if the ICAC is going to

investigate a minister, who is a close friend of the Chief Executive (at present, every member of this ORC is appointed by the Chief Executive), I think a better solution will be for the Chief Executive to appoint new members in addition to existing members, that is, to add some seats for members who are returned through specified channels, such as members elected from among Members of the Legislative Council, or appointees selected through other channels. We can consider all of these possibilities. This will give the public an impression that even if the Chief Executive is unable to appoint all of the members of the ORC, the performance of the ICAC can still be checked, or when the investigation of a certain case has reached the final stage, the ORC still has the say to stop the investigation.

On the other hand, I think some of the practices of the Government are not deliberate, but still it has to deal with them in a more cautious way. That is, let us take the Budget as an example. The ICAC is a relatively small department, but insofar as the rate of resource reduction is concerned, the treatment it received was the same as other sizeable law enforcement agencies, such as the Hong Kong Police Force, the Correctional Services Department and the Immigration Department. In this respect, the Government should understand that the flexibility and economy of scale of the ICAC, that is, the economic result or efficiency, are not as good as bigger departments. Very often, the ICAC has to seek outside help directly or indirectly. I feel that it will give the people an impression that the ICAC is exceptionally aggrieved in this respect.

As to the incident of the Financial Secretary, long before the ICAC started the investigation, the Chief Executive had spoken publicly on more than one occasion that the mistake made by the Secretary was unintentional. In fact, the unintentional mistake did not only include the so-called moral judgement made by the Chief Executive, it also meant that the Chief Executive believed the motive behind the mistake of the Secretary was unintentional. If the motive of the mistake was unintentional, then there would be no motive in the criminal respect, and that is practically in effect telling the ICAC to cease the investigation, because the Chief Executive considers that the Secretary has made an unintentional mistake only. However, under what circumstance could the Chief Executive present the evidence to support his view? On the other hand, all of the particulars provided by the staff of the car dealer, including their conversation, are all important evidences.

**DR TANG SIU-TONG** (in Cantonese): Madam President, an important reason why Hong Kong can become an international metropolis is that we have the Independent Commission Against Corruption (ICAC), the Equal Opportunities Commission (EOC), the Office of The Ombudsman and the Office of the Privacy Commissioner for Personal Data. They are statutory organizations with operation independent of the Government and concepts that are widely recognized by the community. These organizations highlight the importance that Hong Kong has attached to combating corruption, promoting equality, enhancing the quality of governance and protecting the rights and interests of the individual over the years. These are the essential conditions that enable a city or region to be recognized and praised highly by the international community. Of course, the handling of public complaints very often involves knotty legal problems, deep-rooted undesirable concepts and vested interests, and it is very often necessary to confront the Government and wealthy and influential people and enterprises in court. If the operation of these statutory organizations is not independent of the Government, and if they do not have sufficient initiative in their hands and legal powers as the imperial sword to keep off visible and invisible political pressure or executive intervention, they will only be reduced to toothless tigers and the pillar of the success of Hong Kong and our good international image that has been painstakingly established would be tottering.

It is gratifying that although these statutory organizations are brought up by the Government and the persons-in-charge are appointed by the Government or the Chief Executive, the Government and the Chief Executive have always stuck to the principle of minding their own affairs and they have not made indiscreet comments about or violently intervened in the policy directives and specific affairs of these organizations. Undeniably, some extremely controversial issues such as the high-profile arrest of SIN Kam-wah, Senior Superintendent of the Narcotics Bureau, by the ICAC last year and the reform of the long-standing allocation system for secondary school places by the EOC to enable boys and girls to be processed together have exceptionally aroused tit-for-tat public confrontations between the relevant government departments and the relevant organizations, and quite a few members of the media and the public are dissatisfied with the ways in which the relevant organizations have handled the issues. Nevertheless, these are basically exchanges of views that are concerned with facts but not individuals. The Government has not shown any intention to flagrantly reverse the decisions of the relevant organizations. Nor has it denied the necessity to maintain the independence of these organizations.

The handling public complaints often involves fighting for rights and interests and it is very natural for conflicts to be aroused easily. Therefore, the leading echelons of the relevant organizations and some colleagues of this Council should not sensitively suspect that those critiques have ulterior motives and intend to intervene in the affairs of these statutory organizations and dent their independence once they have heard that the Government or public opinion has different views or has criticized the work of the relevant organizations. The attitude that these organizations should adopt towards the relevant criticisms is that they should correct mistakes if they have made any and guard against them if they have not, and they should not conceitedly think that they enjoy unique statutory and professional status and treat others strictly while being broad-minded towards themselves or that the magistrates are free to burn down houses while the common people are even forbidden to light lamps. In recent years, the media have revealed from time to time the mismanagement by the EOC, its leading echelons appointing relatives to jobs, overstaffing, underemployment, and suspected wastage of public money. Since the Legislative Council and foreign countries have all along known very little about the day-to-day operation of the EOC, it is really very hard for them to judge whether the relevant reports are right or wrong. The EOC should take the initiative to give a public account of the actual situation and it should not only criticize that some people have stirred up trouble by rumourmongering.

Actually, the Government and the public recognize such values as integrity, equality and human rights rather than the statutory organizations themselves. That the relevant organizations can operate independently of the Government does not mean that they can become independent kingdoms without being accountable to the public. The Government has entered the era of accountability and various statutory organizations handling public complaints should keep abreast of the times. While fighting justice for the people, they should continue to conduct themselves with dignity and strive to become better lest they should fail to live up to the trust of the Government and the expectations of the public.

Madam President, I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, Mr Andrew SO, the former Ombudsman said before he left office that "As I have to be

independent and unbiased, I may offend other people but I can do nothing about it." Madam President, undeniably, it is most important for a statutory organization handling public complaints to be independent and handle matters impartially even if the subjects of investigation are very important people for it can only command credibility that way.

When the powers of the Independent Commission Against Corruption (ICAC), the Office of The Ombudsman, the Equal Opportunities Commission (EOC) and the Office of the Privacy Commissioner for Personal Data were expanded, they could help more people handle various complaints and devote themselves to enhancing their independence such as enhancing their powers to initiate investigations of their own accord. Unfortunately, in the past few years, the Government of the Hong Kong Special Administrative Region considered that the practice was not proper and sought to tighten it. As a result, the Government has conversely imposed various restraints on their independence. Although Mrs Selina CHOW has just said that it is difficult to assert anything without evidence, there are indications that the Government really intends to tighten control over these organizations and reduce their monitoring of the Government. Though several colleagues have earlier cited a number of examples, I might as well say something more. A more recent example is that the Government intends to downgrade the EOC, as a colleague has just mentioned. It makes people suspect that the Government wishes to punish the EOC because it has sued the Government in respect of the incident concerning the allocation of secondary school places. I have used the word "punish". Apart from this example, it is also suspected that the contract of the former Ombudsman was not renewed because his views differed from those of the Government on the incident concerning the police's tightening up the disclosure of the facts of cases. As I have just mentioned, perhaps the contract of Mr Andrew SO was not renewed because he had taken the initiative to investigate the chaos at the airport. Even worse, an Administrative Officer finally took up the post. Madam President, in addition to the above examples, there is an example involving the ICAC. As Mr James TO has just mentioned, after the conflict between the police and the ICAC, the Government capitalized on the implementation of the Accountability System for Principal Officials and replaced the ICAC Commissioner with a former member of the disciplined services. Under such circumstances, these moves really make people suspect whether these statutory organizations can still independently handle public complaints

after all. Can the credibility of these organizations be as strong as before? This really makes us feel worried and anxious.

Under these circumstances, it is most important to establish the credibility of these statutory organizations, and I think that we must start with the fundamentals of the system. In my opinion, the existing practice under which the Chief Executive shall select and appoint the persons-in-charge of these monitoring bodies is actually outdated. We might as well review some history, and we will find that the said system is no different from the monitoring system established during the Qin Dynasty of China more than 2 000 years ago. There was a monitoring office (御史府) at that time, then there were a monitoring office (御史台) and remonstrating officials (諫官) during the Tang Dynasty and monitoring officers (監察御使) during the Qing Dynasty. The question of whether or not these organizations could bring their functions into play mainly depended on the degree of tolerance of the leaders. Those who had a high degree of tolerance such as LI Shimin of the Tang Dynasty could modestly accept remonstrations while those who were short on tolerance would not only restrict the monitoring abilities of these organizations but conversely make use of these organizations to spy on the privacy of the people and suppress dissidents. Madam President, the times have changed and the public can no longer tolerate a system under which the liking of a leader determines the effectiveness of a monitoring body. In particular, in Hong Kong today when the leader has such a low degree of tolerance, we think that we should keep abreast of the times and reform these monitoring and appointment systems to enable the monitoring mechanism to be really independent and the monitoring bodies to really monitor the Government and other organizations on behalf of the public and uphold justice.

Madam President, the powers of these complaint bodies must come from the people and they should be responsible to the people. Therefore, the relevant appointments must be made by organs of public opinion and the Chief Executive should not make the decision alone. Otherwise, they can definitely not give full play to their abilities when carrying out investigations on some senior government officials, for instance, cases in which these officials have harboured other people, and they may worry that the Government may square accounts with them after they have completed their work. Certainly, this latter possibility will affect credibility and I think we must use draw reference from the practices of the

western European countries where parliamentary assemblies formed on the basis of universal suffrage will make such appointments. The election of all Members of the Legislative Council by universal suffrage has not yet been achieved at present, even so, I think that it is after all better for the appointment to be made by the legislature than by the Chief Executive for the decisions of Members can at least be monitored by the public.

It is also necessary to expand the powers of various statutory organizations and boost public confidence in them. Take The Ombudsman as an example. Past data show that half of the cases were not handled mainly because the powers of investigation of the organizations were subject to restrictions in law. Thus, people will mistakenly think that the organizations cannot help them. Worse still, people may think that the organizations and government departments have acted in collusion with each other and rejected their complaints. If this is allowed to continue, the credibility of these statutory organizations would naturally be undermined and their abilities in monitoring the Government would certainly be crippled. Therefore, it is really necessary for the Government to expand the statutory powers of these organizations such as expanding the ambit of investigation and the powers to carry out investigations of their own accord, and so on. It is essential to make these changes.

Madam President, the discussion on these issues will definitely involve the issue of resources eventually. Although quite a number of statutory organizations are independent in terms of finance and establishment, it does not mean that they have adequate resources to carry out the necessary investigations. Especially when the Government is cutting down resources, I believe it would be more difficult for these organizations to further expand the scope of their work.

Madam President, a complaint or monitoring system will certainly impose certain restrictions on the executive departments but if these organizations fail to curb the improper practice of the Government in time, the problems would become more and more serious and it would then be very difficult to rectify the mistakes. Hence, a sound monitoring system is the foundation of the success of every government and the Government of the Hong Kong Special Administrative Region should keep abreast of the times and conduct a thorough reform at once, in particular, it should introduce reforms pinpointing the lack of comprehensive independence at present. Madam President, I so submit.

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

**MR NG LEUNG-SING** (in Cantonese): Madam President, understandably, the rationale behind the establishment of various statutory bodies outside the government machinery is that in the execution of their respective policy functions, they can enjoy the kind of independence not otherwise found in government departments, and that in the end, they are thus able to discharge their responsibilities much more effectively in furtherance of social and public interests in the relevant policy areas. As for discussions on the functions and independence of these bodies, they must not be conducted in isolation from the existing relevant ordinances.

On the issue of independence, we may look at the Independent Commission Against Corruption (ICAC) as an example. Under the Independent Commission Against Corruption Ordinance, the Commissioner shall be appointed by the Chief Executive and shall discharge the specified statutory responsibilities on his behalf. Annual budgets of the ICAC must also be approved by the Chief Executive. In a way, it may be said that the Commissioner is the Chief Executive's anti-corruption agent. However, this certainly does not mean that the ICAC does not enjoy any independence. Quite the contrary, the ICAC does enjoy a great degree of independence, as evidenced by the remarkable results it has achieved in anti-corruption and corruption prevention over the years. So, what members of the public should pay attention to should instead be those sensitive cases which arouse greater public concern. They should note that once the ICAC has accepted a case and commenced investigation, it will not be appropriate for anyone to add his or her opinions. This Council is no exception, even on some important occasions such as the Chief Executive's Question and Answer Session. We should not, for example, assert that there is sufficient *prima facie* evidence or ask anyone to confirm so. Nor should we argue that the relevant facts can obviously constitute the commission of an offence or even propose the ICAC to institute prosecution. All these will make people think that somebody is trying to test the independence of the ICAC. Such subjective guesses really abound, but they are all inappropriate and will only hinder and affect the judgement of the ICAC in its investigation. This is unfair to all the sides involved and in the end, will achieve the opposite result of really injuring the independence of the ICAC as a statutory body.

In other policy issues, society must also show its concern for the independence of the relevant statutory bodies in appropriate ways. For instance, we should look at the pay and grade structure reviews of statutory bodies with an open heart, telling ourselves that like the Civil Service, these bodies also need to keep abreast of the times in terms of establishment, pay and fringe benefits. Even in the case of organizations like the Judiciary which enjoy sufficient independence, I believe we should still put in place a pay and fringe benefits structure which is in line with the economic realities, and which can take account of the people's livelihood, the state of public finances and the sentiments of taxpayers. If we argue that the introduction of any changes to all these respects are tantamount to injuring the independence of the statutory bodies concerned, people may well think that we are carrying our argument too far, trying to deprive taxpayers of any say in the name of ensuring the independence of statutory bodies.

Madam President, I so submit.

**MS EMILY LAU** (in Cantonese): Madam President, I speak in support of Ms Cyd HO's motion.

I agree very much with Ms Cyd HO's remarks, especially in a place without democratic government, we more earnestly hope that these statutory organizations can help the public seek justice. Of course, I have no intention of saying that the public does not trust these organizations at all and I do not wish to deal a blow to their credibility. I have praised the Independent Commission Against Corruption (ICAC) in public and I have also praised The Ombudsman, but I believe it is essential for Ms Cyd HO to propose this motion in order to ensure the independence of these organizations. Some people such as Miss CHOY So-yuk and other Members have asked if the need to ensure the independence of these organizations mean that they are not independent now. I believe the answer is certainly affirmative.

Madam President, I have asked questions about the ICAC at the meetings of this Council on 16 October last year and 2 April this year respectively. The question asked in October last year was about the reasons for the sudden replacement of the Commissioner and whether a fixed term of office would be set for the Commissioner, so as to prevent the Chief Executive from arbitrarily

replacing the incumbent. I also asked why a former member of the disciplined services was appointed as the Commissioner and whether it might dent the independence of the ICAC. It was because the ICAC might very often investigate officers of the disciplined services officers, and it made people worry that the new Commissioner might be biased towards his former colleagues. I also asked whether the Government would consider allowing this Council to take part in the selection of the Commissioner. Nevertheless, the answers to all of these questions were certainly negative and it was only stated that the Chief Executive was confident that the Commissioner was able to uphold impartiality.

Madam President, I believe we should make people feel that they can still have confidence in certain matters, and that was why I inquired about the reasons for the sudden replacement of the Commissioner. I got the answer that the arrangement was made in the light of service exigency and the Commissioner at that time was told to stop taking no pay leave and was immediately posted back to the Civil Service to take up the post of permanent secretary. In my opinion, it is absolutely inappropriate for the post of the Commissioner to be handled that way and I insist that a fixed term of office should be set for the Commissioner. Moreover, in respect of the appointment of the Commissioner, just like the appointments to a few other statutory organizations as Ms Cyd HO has mentioned, if we wish to give people an impression that the appointed Commissioner has credibility, the executive authorities should seriously consider a practice similar to that of the Judicial Service Commission. Of course, the Chief Executive should ultimately appoint the Commissioner but there should still be a committee whose members include the representatives of various quarters who will handle the matter. Actually, I suggest that this Council should participate in the selection of the Commissioner and, even if that cannot be done, a committee within this Council should consider the candidates and make a recommendation to the Chief Executive.

Besides asking a question about the ICAC in October last year, I also asked a question on 2 April this year about the incident mentioned by Ms Cyd HO because the ICAC is investigating the incident of car purchase by the Financial Secretary. I asked the Chief Executive whether he had met with the Commissioner and whether or not he had discussed with the Commissioner the car purchase incident. The answer was that the Chief Executive had a meeting with the Commissioner in mid-March but he declined to disclose whether they had discussed that incident. I also asked about the measures in place to ensure that the ICAC could independently investigate the incident without interference.

Madam President, I would continue to ask these questions that I have already asked because we have worries. Many people have always supported the ICAC and I hope that it can continue to have such support. Nevertheless, people will be suspicious if certain things happen. Why did I ask those questions? It is because many people have asked such questions. We have asked many questions because many people wish to ask those questions and they have entrusted and asked us to raise such questions.

I have praised The Ombudsman many times. In my opinion, even though she determines that a complaint is not justified after she has investigated the case, her decision is very often acceptable. I have drawn a comparison between the Office of The Ombudsman and the Complaints Against Police Office, and I find that when the Complaints Against Police Office determines that a case is not justified, a lot of people will be very angry but when The Ombudsman determines that a case is not justified and she can give explanations, people will find her decision more acceptable.

Nevertheless, Madam President, I wrote to The Ombudsman, Ms Alice TAI, on 11 July last year, about her criticism of the public in the newly published Annual Report for using the complaint mechanism of the Office of The Ombudsman to achieve their objectives. Madam President, what is stated in the Annual Report? It is stated that "many complaints are lodged by citizens intent on getting their pound of flesh from public servants and not really to seek protection from maladministration or malpractice by public institutions." I told Ms TAI that it was a very severe criticism and I hoped that she could provide some information to reflect the facts or serve as the basis of the facts. I also told her that she should know that the complaint channels of the Office of The Ombudsman should be unimpeded but she had openly criticised the public of abusing the complaint mechanism, which might deal a blow to the public's desire to complain and was actually unwise and unfortunate. The Ombudsman gave me a reply on 31 July after her leave, but she failed to provide me with any evidence for her claim the public had taken advantage of the mechanism.

We have just discussed a lot about the Equal Opportunities Commission (EOC) but its Chairperson, Ms Anna WU, has stated clearly at a meeting with the Panel on Home Affairs of this Council that there are too many rumours and the morale within the EOC is very low, and some have even said that the EOC would be dissolved. Therefore, I wrote to the Secretary for Home Affairs on 12 February this year asking whether the EOC would be downgraded or

dissolved. I also pointed out that doing so would undermine its importance, deal a blow to staff morale and unsettle public confidence in the EOC's defence of equal opportunities.

Madam President, what answer have I got? I have not got any answer to date. Madam President, I believe this motion today may not be passed and some people would say that Ms Cyd HO needs not harbour such worries for everything is fine. Nevertheless, we feel uneasy about certain matters. Although they may not necessarily shake public confidence in these organizations, these messages that are made public by the persons-in-charge or given by them on various occasions have really surprised many people. I believe the alarm has been sounded. If we close our eyes and plug our ears and pretend that nothing has happened, the independence of these organizations and their powers in upholding the rights and interests of the public may be nibbled away gradually.

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

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

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, the first motion debate today is related to democratic government and the second motion debate is also closely related to democracy because the statutory organizations that monitor the Government play very important roles in a mature civil society and they can bring the functions of democratic supervision into play. I have to emphasize the term "statutory organizations" because the executive authorities can very easily recall their powers if they are not established by law. But if they are established by law, they have at least a basis expressly provided in law.

The four organizations under discussion today, namely, the Independent Commission Against Corruption (ICAC), the Office of The Ombudsman, the Equal Opportunities Commission (EOC) and the Office of the Privacy Commissioner for Personal Data are statutory organizations. In fact, a tendency of the Government is worrying us and we do not know whether it wants to start recalling more executive powers from statutory organizations. We have

observed a tendency, for instance, Mr Michael SUEN, incumbent Chairman of the Housing Authority, has said that the Housing Authority would be scrapped and it has also been said that the Employees Retraining Board would be scrapped. Does the Government want to start recalling powers from some statutory organizations and then concentrate the powers in the hands of the executive authorities? If so, people will be very worried. Of course, I believe, insofar as the four organizations just mentioned by me, I have not yet heard that the Government would recall all of their powers. In other words, they would not become purely advisory bodies and the legislation upon which they are based would not be repealed. I believe the Government has not yet come up with the idea and I believe it is still sincere to continue to maintain the four statutory organizations. Nevertheless, on the whole, I am concerned that the executive authorities may want to recall powers.

Although the four statutory organizations are established by law, they are actually not that safe. Therefore, I find the debate just now very interesting. Ms Cyd HO's motion uses the word "ensure" while Miss CHOY So-yuk's amendment uses the words "continue to maintain". I often do not understand one point, that is, if we "continue to maintain" something, it must be perfectly fine now. How does she know that the organizations are perfectly fine now? Nobody knows that indeed. Frankly speaking, nobody knows whether the Government has intervened in these organizations. Who knows what has happened?

Ms Emily LAU has just cited an example and asked why the ICAC Commissioner was suddenly replaced. Before the replacement of the ICAC Commissioner, the ICAC issued a press release. The police strongly objected to the press release issued and the ICAC Commissioner was replaced afterwards. What has happened? I do not know. Is Miss CHOY So-yuk in the know? If Miss CHOY So-yuk knows that or Members of the DAB know that (Mrs Selina CHOW has just said that we can continue to maintain these organizations, that is, she thinks that they are perfectly fine now, and if she knows that), please tell me what has happened because I really have no knowledge of it all.

Therefore, if we have no knowledge of the situation, to "ensure" only means that we hope the Government can do better under the circumstances that we are not too sure. Frankly speaking, the Government has to exercise great restraint in respect of these statutory organizations, which is not easy. Even

saints will make mistakes and the four organizations have their eyes glued to the Government. The Ombudsman receives public complaints about maladministration and the EOC can sue the Government in respect of cases related to sex, disability or family status discrimination. Therefore, the Government has to exercise great restraint in face of these statutory organizations because it may also be a subject of investigation.

Nevertheless, though these organizations are established by law, the Government has controlled two items and its lack of restraint is very easily shown through these items. The first item is money and the second is the power of appointment. The powers of appointment of the posts of these organizations are vest completely in the Government's hands, for in addition to the chairmen or chief executives, the Government holds the power to appoint the members of committees. The Power for Democracy has conducted a survey and it is found that the Government has actually appointed many people repeatedly. Is it because it is very difficult for the Government to find people it can trust? Yet, we are not discussing this issue today. Members should bear in mind that the most important point is that the Government has the money and the power of appointment in its hands. If the Government does not exercise restraint, it will intervene in these statutory organizations very easily.

Several Members have earlier referred to some rumours about the EOC. Ms Emily LAU has just said that people are on tenterhooks within the EOC. However, it is sometimes very hard for people not to worry when we are given some information. There was a report in *The Sun* on 20 February that "an informant disclosed that the Government had received quite a few criticisms of the EOC, for instance, it handled a small number of cases of legal proceedings each year (this is certainly the case because it does not have allocation for legal proceedings) and briefed out more cases of legal proceedings and had therefore utilized resources badly. Having taken into account the fact that the functions of the EOC had changed, the Government thought that the EOC should be downgraded to a committee under the Home Affairs Bureau".

I do not know if a Bureau Director or a Secretary of Department would later clarify these rumours but the problem is why there is a so-called informant. Actually, the biggest problem is that an informant will not be made up for no reason. I believe the news reporters in Hong Kong observe good ethics and they will not report or publish something if nobody has given the information.

Nevertheless, a practice is very popular within the Government now. I am also interested in finding out the number of times that the term "government informant" has appeared in newspapers within a year and I believe it will probably exceed the number of times that such names as "TUNG Chee-hwa" and "Donald TSANG" have appeared. At present, it is popular for all information to come from informants. There are rumours all over the place and some information is disclosed by informants. Although they have denied that, how has the information been disseminated if they have not given the information? I am really unable to make head or tail of it. I believe if reporters have heard something, the top echelons must have told it. I will not disclose information because I have no knowledge of it, and those who do must have other purposes. No wonder these organizations sometimes think that the Government has intentionally intervened in them because only the Government can become an informant. Hence, if the Government does not exercise restraint, it will very easily impose restrictions in respect of candidates and money, causing the statutory organizations to lose independence.

We only hope that the debate today can heighten the alertness of Members. We are not saying that the Government thinks that these statutory organizations are devoid of any merit and wishes to scrap all statutory organizations as a result. We have not said so but we only hope that Members can become more vigilant. For this reason, I hope that Members will support Ms Cyd HO's motion.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Ms Cyd HO, you may now speak on Miss CHOY So-yuk's amendment.

**MS CYD HO** (in Cantonese): Madam President, Miss CHOY So-yuk said earlier that my motion implied that these statutory organizations were being affected. Madam President, I was not implying that. I have always stated my

views expressly and candidly. I was stating that explicitly. I can find very clearly provisions in the ordinances which may inhibit these statutory organizations from working independently. I also wish to state in express terms that financial provisions must be made available as a fund to finance their operation in the long run. This is the only way to guarantee their independence in the medium-to-long term.

There are also relevant provisions in the Paris Principles. As they are originally written in English, I will read them out in English: "The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence." What is said here cannot be clearer. I never beat about the bush. If there is room for improvement in the existing institutions, I hope the Government can work with us together to make improvements. I hope the Government will really have such breadth of mind, so that these organizations checking on the Government can operate more effectively and independently.

Regarding the removal or appointment of office bearers, is it that the arrangements for some individuals to leave their posts or the Government not announcing their appointments in a timely manner can prove that the individuals are being penalized? I already cited Mr Andrew SO as an example earlier on. This is obviously not the only example. Other examples are Mr Stephen LAU and Ms Anna WU. Last year, Ms Anna WU's employment contract was due to expire on 31 July but it was only on 29 July that she was notified of the renewal of her contract for one year. This year, Ms WU's contract will again end on 31 July. It is already 21 May today, 70 days away from the end of her contract. Why can the Government not give notification of these appointments well in advance and why can it not make the announcement earlier?

As for the intention, it is impossible for us to speculate on the thinking of the Chief Executive. Nor is it possible for us to confirm anything. Therefore, a highly transparent and fair mechanism is all the more important. This is fair to the office bearers. This is also fair to the Chief Executive, because with this mechanism in place, public concerns about the Chief Executive could be allayed and all speculations would be obviated.

Madam President, concerning rumours about the Equal Opportunities Commission (EOC), I hope to be able to produce the facts, rather than dwelling on rumours only. In fact, the Home Affairs Bureau and the Chief Secretary for Administration's Office are conducting a review separately. The Chief Secretary for Administration's Office has compiled a Report on Internal Review of Remunerations of Senior Executives of Government-funded Bodies. In the paper submitted by it to the Legislative Council, three of those statutory organizations will be subject to a further review. The EOC is one of them.

With regard to the control of the finances of these statutory organizations, the paper has proposed four principles, three of which are related to remuneration, including mandating remuneration packages for subvented staff, setting cost ceilings for remuneration packages, and giving subvented bodies a complete free hand in determining their remuneration arrangements. On these principles, I believe there should not be any disagreement from the staff of statutory bodies, because employees in other sectors also face a severe cut in their remuneration. So, everyone should be willing to ride out the storm together. However, there is a rather strange principle and that is, ensuring value for money by controlling output rather than checking staff costs. On the point of controlling output, I do find it puzzling because the EOC is not a factory and its output depends on the number of complaints handled by it. Similarly, the output of the Office of The Ombudsman, the Office of the Privacy Commissioner for Personal Data and the Independent Commission Against Commission is determined by the amount of work carried out by them for the people. As the economy is in such a bad shape, we are very worried that the number of corruption cases may increase day by day. We have also seen many cases of unreasonable dismissal mostly due to discrimination on the ground of disability or family status. If the Government determines the amount of funding to these statutory bodies on this principle, we would be very worried indeed, for a cut in their funding is the most effective way to stop them from carrying out any work.

For these reasons, Madam President, I oppose the amendment of Miss CHOY So-yuk.

**CHIEF SECRETARY FOR ADMINISTRATION**: Madam President, on behalf of the Administration, I would like to thank the Honourable Cyd HO for

moving this motion which aptly underlines the importance that we and the community attach to the work of our complaints-handling bodies. I am more grateful to the amendment of the Honourable CHOY So-yuk in clarifying the unrivalled independence that these bodies already enjoy. In performing their primary duty to receive and handle public complaints, these bodies serve an important role as the guardian of an open, clean and caring civil society. We also see them as the foundation of a modern, efficient and accountable public administration.

Today's motion focuses on four statutory bodies, namely, the Independent Commission Against Corruption (ICAC), the Office of The Ombudsman, the Equal Opportunities Commission (EOC) and the Office of the Privacy Commissioner for Personal Data (PCO). Some Members have just now echoed the views of many in recognizing the valuable contributions that these independent offices have been making to Hong Kong. I endorse these remarks.

Indeed, the very success of these complaints-handling bodies hinges on whether they are endowed with the mandate, powers and institutional arrangements for them to perform their functions in an independent and impartial manner. I can assure Members that this is the case for all of the four statutory bodies covered by the motion today. My colleague, the Secretary for Home Affairs, and I will explain to the Legislative Council the long-standing arrangements that the Administration has taken to safeguard the full independence of these four statutory bodies. I shall begin by setting out the case of the ICAC and the Office of The Ombudsman. The Secretary for Home Affairs will then elaborate on the EOC and the PCO.

Many see the ICAC as the precursor of independent statutory bodies. It was set up in 1974 to take over the detection and investigation of corruption from the Police Force. With its unique background, independence of the ICAC has been, and will continue to be, the cornerstone of the Commission's effective operations. For this reason, Article 57 of the Basic Law requires that the Commission shall function independently and be accountable to the Chief Executive. In the same vein, the Independent Commission Against Corruption Ordinance (ICAC Ordinance) makes it clear that the Commissioner shall not be subject to the direction or control of any person other than the Chief Executive.

The ICAC Ordinance provides the statutory charter to protect the Commission's independent operations. It contains comprehensive provisions to

safeguard the Commissioner's full autonomy over the management of his staffing and financial matters. For example, the Commission is empowered to appoint and terminate officers, and draw up standing orders for the control, direction and administration of the Commission. Expenses of the ICAC are charged to the general revenue and the Commissioner appears before the Legislative Council as the vote controller to account for the ICAC's financial matters.

In addition to the ICAC Ordinance, the Commission also derives its powers from the Prevention of Bribery Ordinance and the Elections (Corrupt and Illegal Conduct) Ordinance for the investigation of corruption in public and private sectors and in the domain of electoral activities. The specific statutory mandate endows the ICAC with a well-defined remit. The extensive but essential investigative powers vested in the Commissioner effectively insulate the Commission from any form of conceivable interference, thus enabling it to combat corruption independently, without fear or favour.

Independent and effective operations of the ICAC are overseen by various committees appointed by the Chief Executive. These committees are made up of non-official chairmen and members drawn from all sectors of the community, including Members of the Legislative Council. The Advisory Committee on Corruption is the principal advisory body to review the operational, staffing and administrative policies of the Commission. The Operations Review Committee, in particular, monitors the investigative work of the Commission by receiving reports on major operations, cases that have been investigated for over 12 months, or searches authorized by the Commissioner personally under the Prevention of Bribery Ordinance. Without the Operations Review Committee's agreement, the ICAC cannot terminate any investigation unilaterally. As regards corruption prevention, the ICAC is assisted by the Corruption Prevention Advisory Committee which advises on management practices and measures to eliminate corrupt practices in public bodies. Last but not least, the Citizens Advisory Committee on Community Relations advises the Commissioner on measures to bolster and deepen anti-corruption culture in the community. While these advisory committees keep the exercise of powers by the ICAC under review, they also serve to reinforce the independence of the Commission by subjecting its investigation, prevention and education duties to public scrutiny.

The statutory and institutional arrangements that I have just outlined have worked extremely well in safeguarding the independence of the ICAC. The

success of the Commission is borne out by the high degree of public confidence in its work. As an indication, the number of corruption reports and pursuable complaints exceeded 4 300 and 3 200 for the last two years in 2001 and 2002 respectively. According to the annual telephone survey conducted by the ICAC, the community's willingness to report corruption has been on the rise in recent years. Over 98% of the respondents considered the ICAC as deserving their support.

Madam President, the work of the ICAC has been the subject of international acclaim for many years. The Hong Kong Special Administrative Region continues to be rated as one of the least corrupt places in the region and around the world. To quote a few examples, the Transparency International's Corruption Perceptions Index, released in August last year, ranked Hong Kong the 14th least corrupt place amongst 102 nations and territories and the second least corrupt in Asia. According to the Global Corruption Report, published in October 2001, the ICAC was widely viewed as a model anti-corruption agency. I can assure Members that the Administration will abide steadfastly to uphold the independence of the ICAC at any cost, and that the Commissioner himself will not let up on efforts to guard against any possible interference in honouring his constitutional and statutory duties.

I would now turn to the work of the Office of The Ombudsman. Similar to the ICAC, The Ombudsman is an independent authority established under the law — The Ombudsman Ordinance. The Ombudsman has the statutory duty to investigate and report on complaints arising from maladministration. Maladministration includes such matters as inefficient or improper administrative decisions, acts, recommendations or omissions. The Ombudsman may also initiate investigations on her own volition, and can investigate complaints of non-compliance with the Code on Access to Information.

Comprehensive powers are defined clearly under The Ombudsman Ordinance to ensure the independence of The Ombudsman in performing her functions and duties. The Ombudsman has the discretion to undertake, continue or discontinue an investigation, and such decision is final. She has the power to obtain information and documents from such persons as she thinks fit, to summon any person to provide information relating to investigations, and enter any premises of the organizations under The Ombudsman's jurisdiction to conduct investigations.

Following investigation of a complaint, The Ombudsman is empowered to report opinions and reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head of the relevant organization. The Ombudsman may publish an anonymized investigation report in the public interest. If the report recommendation has not been acted upon within a reasonable timeframe, The Ombudsman may submit a report to the Chief Executive. Indeed, if The Ombudsman believes that there has been a serious irregularity or injustice done, she may make a report directly to the Chief Executive. Such report is bound by law to be laid before the Legislative Council for public scrutiny.

To address the concern that the independence of The Ombudsman could be compromised by the secondment of civil servants to the office, the Administration introduced and the Legislative Council enacted The Ombudsman (Amendment) Ordinance in December 2001. The Amendment Ordinance entrusts The Ombudsman, now a corporation sole, with full statutory powers to conduct the office's administrative and financial business. As a result, The Ombudsman possesses the legal capacity to sue and to be sued, to appoint the office's staff and technical or professional advisers, to acquire and hold property, to enter into contracts and to charge fees for services provided by the office. The independent status is further fortified by the provision stating clearly that The Ombudsman is not a servant or agent of the Government.

As in the case of the Commissioner of the ICAC, The Ombudsman is also directly accountable to the Chief Executive. She accounts for her office's financial matters at the Legislative Council and meets regularly with the full Council to exchange views with Members. Her Report is published and released in the Legislative Council, and the Administration will, as a standard practice, provide a government minute stating out the follow-up actions taken by bureaux and departments in response to the recommendations of The Ombudsman in her Report. Since the delinking of The Ombudsman from the Civil Service under the 2001 Amendment Ordinance, The Ombudsman has been subject to examination by the Director of Audit on the economy, efficiency and effectiveness with which the office's resources are expended. The Office of The Ombudsman is also made a "public body" and subject to the control of the Prevention of Bribery Ordinance, similar to the arrangements for major statutory bodies including the EOC and the PCO. All these measures enable effective public monitoring of the independent performance of The Ombudsman.

Since its operation in 1989, the Office of The Ombudsman has established itself as a credible and accessible avenue for administrative redress. Last year, The Ombudsman received some 15 200 enquiries and 4 600 complaints. The steadily increasing caseload is clear evidence of community support and public confidence in the independent and effective operation of The Ombudsman. Indeed, The Ombudsman has gained international recognition and enjoys respect worldwide for improving the quality of public administration and promoting the concept of ombudsmanship. In this respect, Members may wish to note that the incumbent Ombudsman has been elected Secretary of both the Asian Ombudsman Association and the International Ombudsman Institute. With Members' support for the 2001 Amendment Ordinance, the Office of The Ombudsman now enjoys full independent legal status and delinking from the Civil Service, which have helped strengthen the institutional safeguards in respect of The Ombudsman's duties, powers and accountability.

Madam President, I would like to thank Members for their suggestions and advice in further ensuring the independence of the ICAC and the Office of The Ombudsman. Before I invite the Secretary for Home Affairs to join the debate on this motion, let me refer to a specific remark by the Honourable Cyd HO. She was concerned that the current appointment arrangements of these bodies might undermine their independence. I wish to make three points in response. First, the present arrangements have proved to work well. There is no thread of evidence to prove that any of these bodies has not operated in an independent way. They enjoy the trust of the public and growing international acclaim. Second, there is the overriding rule of law in Hong Kong. These bodies must operate according to their constituting ordinances, nor can they surrender the autonomy vested in them under the law. Third, we must trust the immense power of transparency through the totally free news media in the enforcement of the highest ethical and professional standards in Hong Kong. This is superior to any vetting or selection arrangements that the executive or the legislature can devise in this regard. Let me reassure the Legislative Council and the community of the Administration's determination to safeguard the independence of these statutory bodies and fight against any attempt to interfere with the work of important complaints-handling agencies such as the ICAC and The Ombudsman. Thank you.

**SECRETARY FOR HOME AFFAIRS**: Madam President, the Chief Secretary for Administration has just spoken on the Independent Commission Against Corruption (ICAC) and The Ombudsman, I will now speak on the Equal

Opportunities Commission (EOC) and the Office of the Privacy Commissioner for Personal Data (PCO).

The EOC operates independently from the Government. Its power is set out in legislation. The EOC is a statutory body established under the Sex Discrimination Ordinance (SDO), comprising a Chairperson and four to 16 members — all appointed by the Chief Executive. The SDO states clearly that no public officer can be appointed as EOC members. And the EOC shall not be regarded as a servant or agent of the Government.

The EOC is empowered to implement the SDO, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. It is charged with the responsibility of handling complaints, conciliating parties in disputes, bringing legal proceedings and conducting formal investigation. The EOC has established procedures to handle complaints and the Government does not interfere with the EOC's ways, nor the process, of complaints handling.

The EOC's administrative independence is also protected by the SDO. The SDO has spelt out the EOC's autonomy in arranging its administration for the performance of its functions — for example, it may establish committees, acquire and hold property, enter into any contract with another party and hire its own staff. The EOC may determine its staffing structure and appoint its own staff on terms and conditions of service determined by the EOC, subject to some general subvention guidelines.

Financially, the EOC enjoys a high degree of autonomy and flexibility in deploying its resources. However, Members will also appreciate the importance of striking a balance between an organization's financial flexibility and the need to ensure efficient utilization of public money. Therefore, the SDO stipulates certain basic requirements such as requiring the EOC to furnish the Chief Secretary for Administration and the Legislative Council with its statement of account. The Director of Audit may also examine whether the EOC has complied with the principle of economy, efficiency and effectiveness in expending its resources. In deploying resources, the EOC will also follow some general guidelines agreed by both the EOC and the Government. The Government's principal role is to ensure that public money is well spent.

There are two other aspects to the relationship between the Government and the EOC. First, the EOC advises the Government on matters of equal opportunities policy and law. We also work together to promote equal

opportunities. For example, the EOC consulted and worked with individual bureaux or departments in developing the Codes of Practice, school curriculum and training materials, and conducted researches. Secondly, the EOC is the watchdog of the Government because the three anti-discrimination ordinances bind the Government. In the year 2002, the EOC received a total of 80 complaints against government bureaux or departments, of which 59 were followed up by investigation and 32 were conciliated. Thirty-five such cases were concluded in the year 2002.

To conclude, it is clear that the EOC's independence is enshrined by law and law which only the Legislative Council has the power to change. The Government will continue to respect and honour the EOC's independence, to provide the necessary assistance and to work with it in creating an inclusive society free of discrimination. Now let me move on to the PCO.

The post of the Privacy Commissioner for Personal Data and the PCO are set up in accordance with the provisions in the Personal Data (Privacy) Ordinance (Cap. 486) (PD(P)O). In terms of the institutional framework, section 5 of the PD(P)O provides that the Privacy Commissioner shall not be regarded as a servant or agent of the Government. This section also stipulates that whilst the Privacy Commissioner is appointed by the Chief Executive, he can only be removed from office by the Chief Executive with the approval by resolution of the Legislative Council. This mechanism underlines the independence of the Privacy Commissioner.

Under section 9 of the PD(P)O, the Privacy Commissioner may employ or engage persons as he thinks fit to assist him in the performance of his functions, and the exercise of his powers. He may also determine the remuneration and terms and conditions of employment or engagement. All staff of the PCO are employed by the Privacy Commissioner, and none is a civil servant.

The PCO operates independently. It oversees and supervises the implementation of the PD(P)O, monitors all data users, including the Government and public bodies, and promotes compliance with the PD(P)O by all persons.

The PCO realizes a high degree of independence and autonomy in performing the above functions, which include the investigation of complaint cases. It is not subordinate to the Administration. Since its establishment, the

PCO has conducted compliance checks and investigation of complaints involving government departments. In cases of non-compliance with the PD(P)O by departments, the PCO would take action impartially. Actions taken included provision of recommendations, issue of warnings, or even enforcement notices to the departments concerned. In the year 2002, the PCO has in total issued 13 warnings and three enforcement notices. Of these, two warnings and one enforcement notice were directed at government departments.

The Home Affairs Bureau is the Policy Bureau for the PD(P)O, but not the PCO. We are responsible for reviewing policy issues relating to the PD(P)O and issuing relevant guidelines to government departments. We are the focal point of contact between the Administration and the PCO. We take care of the resource allocation to the PCO, and hence bear the responsibility of monitoring whether the PCO can achieve its work targets through efficient deployment of available resources.

The operational independence of the EOC and the PCO is guaranteed by law. They enjoy autonomy in discharging their duties under the law. We fully respect their position. I can assure Members that we and the two organizations have very good working relations and that will continue. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Miss CHOY So-yuk to Ms Cyd HO's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Cyd HO rose to claim a division.

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

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

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

Functional Constituencies:

Mr Kenneth TING, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Henry WU and Mr IP Kwok-him voted for the amendment.

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted against the amendment.

Ms LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms Audrey EU, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted for the amendment.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Mr WONG Sing-chi voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 13 were in favour of the amendment, five against it and one abstained; 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 amendment 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 amendment was negatived.

**PRESIDENT** (in Cantonese): Ms Cyd HO, you may now reply and you have one minute 30 seconds.

**MS CYD HO** (in Cantonese): I really have to thank the President for making it possible for the amendment to be negatived. I would like to respond to the three points of comments made by the Chief Secretary for Administration.

The Chief Secretary for Administration mentioned in his speech earlier that the four statutory bodies have all along been performing well, though there is still room for the appointment mechanism to be interfered. I must point out that good performance does not mean the mechanism needs not be improved.

Second, according to the Chief Secretary for Administration, there is rule of law in Hong Kong. What I fear is that the more laws we have, the more draconian they become. Eventually, these statutory bodies will have both their hands and feet tied.

Third, concerning the independence enjoyed by the news media in Hong Kong, now that the Government is going to enact legislation to implement Article 23 of the Basic Law, I am afraid that, with the passage of the legislation, the relevant reports will become damaging disclosure. The growing number of laws violating human rights also explains why extra efforts must be made to ensure the independence of the four statutory bodies.

Madam President, justice must not be taken for granted. In the face of political power, it seems like we are sailing against the current and we must keep

on fighting to strive for human rights. Human rights will gradually lose its protection should we fail to keep our vigilance.

Thank you, Madam President.

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

(Members raised their hands)

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

(Members raised their hands)

Miss CHOY So-yuk rose to claim a division.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong, Ms LI Fung-ying and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Henry WU and Mr IP Kwok-him abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Ms Audrey EU and Mr MA Fung-kwok voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr YEUNG Yiu-chung and Mr Ambrose LAU abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, nine were in favour of the motion and 10 abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 15 were in favour of the motion and nine 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.

**NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 28 May 2003.

*Adjourned accordingly at thirteen minutes past Ten o'clock.*

**Annex**

INTEREST ON ARREARS OF MAINTENANCE BILL 2001

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Home Affairs

| Clause | Amendment Proposed |
|---|---|
| 1(1) | By deleting "Interest on Arrears of Maintenance Ordinance 2001" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003". |
| 4 | (a) In the heading, by deleting "**Section**" and substituting "**Sections**". |
| | (b) By deleting "is" and substituting "are". |
| | (c) In the proposed section 20A(1) - |
| | (i) by adding "and section 20B" after "this section"; |
| | (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 ( of 2003)"; |
| | (iii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop; |
| | (iv) by deleting the definition of "judgment rate". |
| | (d) In the proposed section 20A(2), by deleting everything after "order, the" and before "interest" and substituting "judgment creditor is entitled to". |

Clause | Amendment Proposed

(e) By deleting the proposed section 20A(3) and substituting -

"(3) For the purposes of subsection (2) -

(a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

(a) interest accrued under subsection (2);

Clause Amendment Proposed

(b) surcharge payable under section 20B;

(c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;

(d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

(e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.".

(f) In the proposed section 20A(4), by deleting -

"(4) In determining"

and substituting -

Clause Amendment Proposed

"(7) If an application is made under subsection (6), in deciding".

(g) In the proposed section 20A, by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).".

(h) By adding after the proposed section 20A -

**"20B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

Clause | Amendment Proposed

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the

Clause | Amendment Proposed

judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address

Clause Amendment Proposed

of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

Clause | Amendment Proposed

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the

| Clause | Amendment Proposed |
|---|---|
| | Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).". |
| 7 | (a) In the heading, by deleting "**Section**" and substituting "**Sections**". |
| | (b) By deleting "is" and substituting "are". |
| | (c) In the proposed section 9B(1) - |
| | (i) by adding "and section 9C" after "this section"; |
| | (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 ( of 2003)"; |
| | (iii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop; |
| | (iv) by deleting the definition of "judgment rate". |
| | (d) In the proposed section 9B(2), by deleting everything after "order, the" and before "interest" and substituting "judgment creditor is entitled to". |
| | (e) By deleting the proposed section 9B(3) and substituting - |
| | "(3) For the purposes of subsection (2) - |
| | (a) the arrears in respect of each periodical payment or payment of a lump sum, as the case may be, under a maintenance order |

Clause | Amendment Proposed

shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

(a) interest accrued under subsection (2);

(b) surcharge payable under section 9C;

(c) if there are any proceedings instituted for enforcing the maintenance order, the costs

Clause | Amendment Proposed

ordered by the court to be paid under those proceedings;

(d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

(e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.".

(f) In the proposed section 9B(4), by deleting -

"(4) In determining"

and substituting -

Clause | Amendment Proposed

"(7) If an application is made under subsection (6), in deciding".

(g) In the proposed section 9B, by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).".

(h) By adding after the proposed section 9B -

**"9C. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

Clause | Amendment Proposed

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

Clause | Amendment Proposed

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

Clause Amendment Proposed

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order

Clause | Amendment Proposed

made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

| Clause | Amendment Proposed |
|---|---|
| 8 | (a) In the heading, by deleting "**Section**" and substituting "**Sections**". |
| | (b) In the proposed section 53A(1) - |
| | (i) by adding "and section 53B" after "this section"; |
| | (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 ( of 2003)"; |
| | (iii) by deleting the definition of "judgment rate". |
| | (c) In the proposed section 53A(2), by deleting everything after "order, the" and before "interest" and substituting "judgment creditor is entitled to". |
| | (d) By deleting the proposed section 53A(3) and substituting - |
| | "(3) For the purposes of subsection (2) - |
| | (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336); |
| | (b) the interest under subsection (2) shall be calculated in accordance with that section 50; and |

Clause Amendment Proposed

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

(a) interest accrued under subsection (2);

(b) surcharge payable under section 53B;

(c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;

(d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the

Clause Amendment Proposed

most recent arrears will be discharged first);

(e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.".

(e) In the proposed section 53A(4), by deleting -

"(4) In determining"

and substituting -

"(7) If an application is made under subsection (6), in deciding".

(f) In the proposed section 53A, by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).".

Clause Amendment Proposed

(g) By adding after the proposed section 53A -

**"53B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

Clause | Amendment Proposed

(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

Clause Amendment Proposed

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the

Clause Amendment Proposed

judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

| Clause | Amendment Proposed |
|---|---|
| | vary or set aside the order on such terms as it thinks fit.<br><br>(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.<br><br>(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.<br><br>(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.<br><br>(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).". |
| 11 | (a) In the heading, by deleting "**Section**" and substituting "**Sections**". |
| | (b) By deleting "is" and substituting "are". |
| | (c) In the proposed section 28AA(1) - |
| | (i) by adding "and section 28AB" after "this section"; |

Clause Amendment Proposed

(ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 ( of 2003)";

(iii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;

(iv) by deleting the definition of "judgment rate".

(d) In the proposed section 28AA(2), by deleting everything after "order, the" and before "interest" and substituting "judgment creditor is entitled to".

(e) By deleting the proposed section 28AA(3) and substituting -

"(3) Subject to subsection (5) and for the purposes of subsection (2) -

(a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

Clause Amendment Proposed

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If the court grants leave, on the application of a judgment creditor for leave under section 12, to enforce arrears of maintenance which became due for more than 12 months, the interest under subsection (2) shall be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(6) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

(a) interest accrued under subsection (2);

(b) surcharge payable under section 28AB;

(c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;

Clause Amendment Proposed

(d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the date on which payment is due (that is, the most recent arrears will be discharged first);

(e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(7) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.".

(f) In the proposed section 28AA(4), by deleting -

"(4) In determining"

and substituting -

"(8) If an application is made under subsection (7), in deciding".

(g) In the proposed section 28AA, by adding -

Clause | Amendment Proposed

"(9) A judgment debtor who is aggrieved by a requirement under subsection (8) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).".

(h) By adding after the proposed section 28AA -

**"28AB. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

Clause Amendment Proposed

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

Clause | Amendment Proposed

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

Clause | Amendment Proposed

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court

Clause | Amendment Proposed

may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) Subject to subsection (13), the amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) If the court grants leave, on the application of a judgment creditor for leave under section 12 to enforce arrears of maintenance which became due for more than 12 months, the surcharge under subsection (1) shall be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(14) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An

Clause | Amendment Proposed

action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(15) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

New — By adding after "CONSEQUENTIAL AMENDMENTS" -

"**The Rules of the High Court**

**11A. Definitions**

Order 1, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended, by adding -

""judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the Ordinance;".

**11B. Application for order**

Order 49, rule 2 is amended, by adding after paragraph (b) -

"(ba) if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating -

(i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of

Clause | Amendment Proposed

Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

(ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

**11C. Order imposing a charge on a beneficial interest**

Order 50, rule 1(3) is amended, by adding after paragraph (b) -

"(ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating -

(i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section

Clause Amendment Proposed

9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

(ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

**11D. Forms**

Appendix A is amended -

(a) in Form No. 72 -

(i) in the second paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

Clause | Amendment Proposed

(ii) in the third paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "order),";

(b) in Form No. 73 -

(i) in the first paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the second paragraph, by adding ", $…… interest and $…… surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after judgment debt";

(c) in Form No. 74, by adding "and $…… interest and $…… surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "debtor";

Clause | Amendment Proposed

(d) in Form No. 75, in the second paragraph, by adding "(interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)";

(e) in Form No. 76, in the second paragraph, by adding "($…… interest and $…… surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)".

12 By deleting everything after "Rules" and substituting -

"(Cap. 13 sub. leg. A) is amended -

(a) in the definition of "related maintenance order", by repealing "20(1AA)", "9A(1AA)" and "28(1AA)" and substituting "2" in all places;

(b) by adding -

"" judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the High Court Ordinance (Cap. 4) or section 50(1)(b) of the District Court Ordinance (Cap. 336), as the case may be;".

| Clause | Amendment Proposed |
|---|---|
| New | By adding - |

"**13. Requirements relating to application made by designated payee**

Rule 3(2)(f) is amended -

(a) in subparagraph (i), by repealing "and" at the end;

(b) by adding -

"(iii) the interest payable in respect of arrears of maintenance that the designated payee is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and

Clause | Amendment Proposed

Property Ordinance (Cap. 192), as the case may be; and

(iv) the surcharge payable in respect of arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

**14. Schedule amended**

The Schedule is amended, in Form 4 -

(a) by renumbering "*1.", "*2." and "*3." as "*3.", "*4." and "*5." respectively;

(b) by adding -

"*1. The sum of $..... being interest as

Clause | Amendment Proposed

referred to in rule 3(2)(f)(iii) of the Attachment of Income Order Rules (Cap. 13 sub. leg. A).

*2. The sum of $..... being surcharge as referred to in rule 3(2)(f)(iv) of the Attachment of Income Order Rules (Cap. 13 sub. leg. A).";

(c) in the fourth paragraph, by repealing "or 3" where it twice appears and substituting ", 3, 4 or 5";

(d) in NOTE 2, by repealing "*or 3*" and substituting "*, 3, 4 or 5*".

## Matrimonial Causes Rules

### 15. Judgment summons: general provisions

Rule 87 of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) is amended -

(a) in Paragraph (1), by adding -

""interest" (利息) means interest in respect of arrears of maintenance payable under section 20A(2) of the

Clause | Amendment Proposed

Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;

"judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the High Court Ordinance (Cap. 4) or section 50(1)(b) of the District Court Ordinance (Cap. 336);

"surcharge" (附加費) means a surcharge in respect of arrears of maintenance payable under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes

Clause | Amendment Proposed

Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be.";

(b) in paragraph (5)(a), by adding "the interest and surcharge payable," after "costs of the judgment summons,";

(c) in paragraph (6), by adding "the interest and surcharge payable," after "costs of the judgment summons,";

(d) by repealing paragraph (8)(a) and substituting -

"(a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of -

(i) interest;

(ii) surcharge;

(iii) the costs of the judgment summons;

Clause Amendment Proposed

(iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

(v) if the court makes an order on a judgment summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and".

**16. Special provisions as to judgment summons**

Rule 88(2) is repealed and the following substituted -

"(2) Witnesses may be summoned -

(a) to prove the means of the judgment debtor; and

(b) to provide information relevant to the court's decision on interest and surcharge,

Clause Amendment Proposed

in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may, for the purpose of subparagraph (a) or (b), be issued out of the registry in which the judgment summons was issued.".

**17. Forms**

The Appendix is amended -

(a) in Form 22, by adding after the entry relating to "Amount due and unpaid in respect of the order and costs ....." -

"Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment .....

Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court .....";

(b) in Form 23, by adding after the entry relating to "Amount due and unpaid in respect of the order and costs ....." -

"Interest payable in respect of the arrears of maintenance, at

Clause | Amendment Proposed

the judgment rate calculated from the date on which maintenance payment is due to the date of payment ……

Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court ……".

**The Rules of the District Court**

**18. Definitions**

Order 1, rule 4(1) of the Rules of the District Court (Cap. 336 sub. leg. H) is amended, by adding -

""judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 50(1)(b) of the Ordinance;".

**19. Application for order**

Order 49, rule 2 is amended, by adding after paragraph (b) -

"(ba) if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating -

(i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under

Clause | Amendment Proposed

section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

(ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

**20. Order imposing a charge on a beneficial interest**

Order 50, rule 1(3) is amended, by adding after paragraph (b) -

"(ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating -

(i) the interest payable in respect of the arrears of maintenance that the

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judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

(ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

**21. Judgment summons: general provisions**

Order 90A, rule 2 is amended -

(a) in paragraph (1), by adding -

""interest" (利息) means interest in respect of arrears of maintenance payable under section 20A(2) of the Guardianship of Minors

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Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;

"surcharge" (附加費) means a surcharge in respect of arrears of maintenance payable under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be.";

(b) in paragraph (5)(a), by adding "the interest and surcharge payable," after "costs of the judgment summons,";

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(c) in paragraph (6), by adding "the interest and surcharge payable," after "costs of the judgment summons,";

(d) by repealing paragraph (8)(a) and substituting –

"(a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of -

(i) interest;

(ii) surcharge;

(iii) the costs of the judgment summons;

(iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

(v) if the Court makes an order on a judgment

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summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and".

**22. Special provisions as to judgment summons**

Order 90A, rule 3(2) is repealed and the following substituted -

"(2) Witnesses may be summoned -

(a) to prove the means of the judgment debtor; and

(b) to provide information relevant to the Court's decision on interest and surcharge,

in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may, for the purpose of subparagraph (a) or (b), be issued out of the registry in which the judgment summons was issued.".

**23. Forms**

(1) Appendix A is amended -

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(a) in Form No. 72 -

(i) in the second paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the third paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "order),";

(b) in Form No. 73 -

(i) in the first paragraph, by adding "and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

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(ii) in the second paragraph, by adding ", $…… interest and $……. surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "judgment debt";

(c) in Form No. 74, by adding "and $…… interest and $…… surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "debtor";

(d) in Form No. 75, in the second paragraph, by adding "(interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)";

(e) in Form No. 76, in the second paragraph, by adding "($…… interest and $…… surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)".

(2) Appendix D is amended -

(a) in Form No. 1, by adding after the entry relating to "Amount due and unpaid in respect of the order and costs …… $" -

"Interest payable in respect of the arrears of maintenance, at the judgment rate

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calculated from the date on which maintenance payment is due to the date of payment ..... $

Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court ..... $";

(b) in Form No. 2, by adding after the entry relating to "Amount due and unpaid in respect of the order and costs .....$" -

"Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment ..... $

Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court .....$".".

INTEREST ON ARREARS OF MAINTENANCE BILL 2001

**COMMITTEE STAGE**

Amendments to be moved by the Honourable Margaret NG

| Clause | Amendment Proposed |
|---|---|
| 4 | By adding - |

**"20B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

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(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise

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expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

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(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

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(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

7 By adding -

"**9C. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

Clause Amendment Proposed

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the

Clause | Amendment Proposed

judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

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(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

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(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

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8 By adding -

**"53B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

(b) in the manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

(b) the name and the address for service or last known address of the judgment debtor;

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(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

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(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have

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been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the

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order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

11 By adding -

"**28AB. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order; or

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(b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;

(e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);

(f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

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(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may -

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

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(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

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(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) Subject to subsection (13), the amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) If the court grants leave, on the application of a judgment creditor for leave under section 12 to enforce arrears of maintenance which became due for more than 12 months, the surcharge under subsection (1) shall be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(14) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(15) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).".

**Appendix I**

## WRITTEN ANSWER

**Written answer by the Secretary for the Environment, Transport and Works to Mr Jasper TSANG's supplementary question to Question 4**

The $50 deposit per card charged by the Octopus Cards Limited (OCL) covers the card cost of $30 which is paid upfront to the card supplier and $20 as part of the permitted negative value. If a card is discarded after incurring a negative value above $20, the deposit cannot cover the company's loss.

The OCL keeps detailed records on the usage of Octopus cards including the number of cards with negative value and the number of damaged cards. According to the company's information, as of 31 May 2003, the total number of Octopus cards with negative value of over $20 is about 100 000, resulting in a float liable to the company of about $2.7 million. After deducting the $20 deposit reserved for negative value, the actual risk borne by the OCL is $700,000 per day.

**Appendix II**

## WRITTEN ANSWER

**Written answer by the Secretary for Economic Development and Labour to Mr LEUNG Yiu-chung's supplementary question to Question 5**

The Competition Policy Advisory Group (COMPAG) was set up under the chairmanship of the Financial Secretary in December 1997 to review competition issues that have substantial policy or systemic implications. The COMPAG has, since its establishment, promulgated a Statement on Competition Policy (Policy Statement), a comprehensive, transparent and over-arching competition policy framework which clearly defines the Government's pro-competition principles as well as sets out business practices that may be considered restrictive and detrimental to economic efficiency. The COMPAG has also requested all Policy Bureaux and government departments to:

(i) adhere to the Policy Statement;

(ii) propose initiatives for furthering the policy objective; and

(iii) examine the impact of all new proposals on competition.

The COMPAG has requested all Policy Bureaux and government departments to ensure that all statutory bodies under their purview pay heed to the Policy Statement for the purpose of promoting competition. The COMPAG publishes a report annually setting out in detail its work in the year. The report is sent to Members of the Legislative Council every year on its publication. This annual report is also distributed to trade/business organizations and is also available at public enquiry counters of Home Affairs Department.

The COMPAG has just published its fifth annual report (COMPAG Report 2002-2003) on 2 July 2003 covering its work from April 2002 to March 2003. During this period, the COMPAG has considered and supported seven initiatives adopted by various government bureaux and departments to promote competition in the telecommunication, securities trading, transportation, lift maintenance and other sectors. During the same period, the COMPAG has examined a total of 14 competition-related complaints and the results are set out in the COMPAG reports.

**WRITTEN ANSWER** — *Continued*

In tandem with the Government's initiatives to promote e-Government, the COMPAG reports are published electronically. The COMPAG Report 2002-2003, as well as previous annual reports of the COMPAG, are available online at the COMPAG website <www.compag.gov.hk>.