

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 10 July 2003

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

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

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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, J.P.

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

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

THE HONOURABLE WONG YUNG-KAN

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

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

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

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

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK, J.P.

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

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

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

CLERKS IN ATTENDANCE:

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

BILLS

Council went into Committee.

Committee Stage

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

BETTING DUTY (AMENDMENT) BILL 2003

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

CLERK (in Cantonese): Clauses 3, 5 to 10, 12, 14, 15, 16, 18 and 20 to 23.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Clauses 2, 4, 11, 17 and 19.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move the clauses read out just now be amended. First of all, in clause 2, I propose to delete "Gaming" and replace it with "Football Betting and Lotteries".

This amendment is proposed in response to the suggestion by the Bills Committee on Betting Duty (Amendment) Bill 2003, which considers that the name "Gaming Commission" is not an accurate reflection of the Commission's functions. We have agreed to change the name to "Football Betting and Lotteries Commission" to fully reflect the Commission's function of offering advice to the Home Affairs Bureau on the licensing and monitoring of football betting and lotteries activities.

I also propose to amend the proposed section 1A in clause 4. The aim of this amendment is to amend the definition of "football" to exclude Australian Rules Football. This amendment is based on the advice of the Bills Committee and is meant to define "football" more clearly.

I also propose to amend the proposed section 5(2) set out in clause 11 (b), by deleting "3" and substituting "5", as set out in the paper circularized to Members. This amendment aims to raise the existing penalties for the making, printing, issuing, selling or offering for sale of horse-racing tickets from a fine at level 3 (\$10,000) to a fine at level 5 (\$50,000). This amendment is based on the advice of the Bills Committee and meant to enable the fine to achieve sufficient deterrent effect on the relevant crimes.

I also propose to amend clause 17(b). This is a purely technical amendment, deleting "者" and substituting "商" in the Chinese version to achieve consistency with the Bill's references to lotteries activities.

Finally, I propose to amend the proposed regulation 3A set out in clause 19, the aim being to set out more clearly the auditing requirements to be met by the licensed operator in respect of betting duty. In essence, the qualified person shall state in the audit report whether, in the opinion of the qualified person and in relation to that charging period, the operator has complied with the requirements on the keeping of records under the Betting Duty Ordinance.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex II)

Clause 4 (see Annex II)

Clause 11 (see Annex II)

Clause 17 (see Annex II)

Clause 19 (see Annex II)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for 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.

(Members raised their hands)

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

CLERK (in Cantonese): Clauses 2, 4, 11, 17 and 19 as amended.

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

(Members raised their hands)

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

(Members raised their hands)

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.

MS CYD HO (in Cantonese): Madam Chairman, I move that clause 1 be amended to defer the effective date of the Betting Duty (Amendment) Bill 2003 to 1 January 2004, so that following the enactment of this legislation in 2003 and before any immediate introduction of football betting, the Government can put in place measures on preventing and addressing the problems connected with gambling.

Madam Chairman, gambling is no crime in itself, but if a gambler gets carried away and loses control, he will push on when he wins and seek to win back all the money lost when he loses. Gradually, he will gamble to the excess, and if he cannot extricate himself from the quagmire in the end, he will inflict harm on himself and bring forth family problems. Therefore, what we have to tackle is not the act of gambling itself but a kind of maniac behaviour that takes away one's self-control, because there are many kinds of maniac behaviour in life, such as shopping mania, extravagance, credit card over-spending, unwise speculation and speculation mania, which will all cause personal financial problems that will affect individuals and families. But we cannot legislate against credit card spending or stocks transactions simply because of someone's lack of self-control. In all fairness, from the very ancient times, the human world has been marked by many temptations. The ultimate solution should not be a total ban but the provision of assistance to people, so that they can make the best choice for themselves and their families.

During the scrutiny of the Bill, we invited many organizations to help us study the problem of gambling. One of the individuals invited was Dr HONG Kwai-wah, who told us that pathological gamblers do have some common features. Their self-image is very low, and they often do not have too many skills that can give them any sense of achievement. That is why they usually like to get some momentary self-confidence by trying their luck in gambling. This kind of personality, marked by a lack of self-confidence and a low image of oneself, can in fact be formed as early as one is zero to six years old. But

education later in life can help a gambler identify his interests and gain self-confidence, so he does not need to rely on gambling as a source of satisfaction. This explains why education and counselling are extremely effective in preventing pathological gambling. Unfortunately, the initiatives of the authorities in this respect are belated and much too slow. Mr Stephen FISHER, Deputy Secretary for Home Affairs, told us during the scrutiny of the Bill that counselling services could only start at the end of October or even early December at the soonest. However, once the Bill is passed today, the Hong Kong Jockey Club (HKJC) will start to accept football betting very soon. On the one hand, the Government wishes to bring illegal gambling under regulation, but on the other, it does not launch the preventive measures early enough. Therefore, I will move an amendment, and I must make it very clear that if my amendment is not passed, I will vote against the Third Reading of the Bill.

In June 2001, the Government published the Consultation Paper on Gambling Review to gauge the opinions of people. In fact, the Government also recognizes that gambling will produce both positive and negative impacts, and it is especially concerned about pathological gambling and underage gamblers. Teenagers are particularly susceptible to temptations. At that time, the Government proposed to conduct surveys and studies to evaluate the severity of these problems, and university academics were invited to conduct studies and join us in considering what measures could be taken to provide counselling and treatment services to pathological gamblers. In March 2003, the consultation report was finally published, and everybody agreed that counselling and treatment services should be launched. But so far, the relevant work still remains at the very tentative stage.

In respect of education efforts, the Government has done far less work on football betting than on the enactment of national security legislation. We once raised this point with Education and Manpower Bureau officials, and in response, they just gave us a secondary school teaching kit consisting of 10 programmes on how to make good use of time and look at life. Only one of the programmes is about gambling, but then the Government has distributed as many as 100 000 CD-ROMs on the enactment of Article 23 legislation to secondary school students, teaching them how to draw conclusions through interactive games. Thus, the saying that the Government cannot do anything is not true; rather, it does have the resources and manpower required. But why is it treating the education and counselling work in this respect so lightly?

The Government also argues that football betting is just a very mild form of gambling, and that it may not necessarily turn one into a pathological gambler overnight. So, it concludes that there is no need to associate football betting with pathological gambling. I agree that one cannot be absolutely sure, cannot make any definite connection between pathological gambling and football betting, or any other form of gambling for that matter. But we still wish to ask the Government how it can make sure that there is really no connection whatsoever between the two. The Government has repeatedly failed to answer this question. I therefore think that as far as the order of actions is concerned, we will need to lay a sound groundwork of preventive measures before bringing illegal gambling under the regulation of the law.

The Government has been trying to lobby Members, saying that since the HKJC has recruited several thousand workers, if the Bill cannot be passed today, the jobs of these people will be affected. Honestly, I really hope that the Government can act like the HKJC, which plans so well ahead. The Government has been discussing this matter since June 2000, but it has done so little so far. In contrast, before the Bill is passed, the HKJC has already conducted such a massive recruitment exercise in preparation for this. The Government and the HKJC are so different in attitude. I therefore hope that government officials can learn from the HKJC's example, so that there can be more justifications for us to vote for the Bill.

According to the Government, if we do not pass the Bill, it will be impossible to combat illegal gambling. Frankly speaking, I do not think that this is a reason at all, because there has always been illegal gambling. Besides, following many discussions, we have come to a common understanding that even if football betting is legalized, illegal football betting will still be very attractive to people, because the football betting options offered by the HKJC are subject to many restrictions. People fond of football betting may not find betting with the HKJC so appealing, and they may also think that these restrictions will make betting with HKJC less exciting than gambling with illegal bookmakers or foreign bookmakers. This means that passing the Bill should be a separate issue, and following this, we will still need to carry on with the fight against illegal gambling. That is why I will not accept the reasons given by the Government.

Madam Chairman, I naturally understand that if the amendment is passed, the revenue of the HKJC and the Government's betting duty revenue will be reduced. But if we do attach any importance to such a social policy which will

seriously affect our young people, if we really decide to have football betting and make it legally accessible to all, then I hope that even if we do have divergent views, we will still try as much as possible to put in place a greater number of matching administrative measures before introducing any legislation to liberalize gambling.

Madam Chairman, I hope that Members can support the amendment.

Proposed amendment

Clause 1 (see Annex II)

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

MRS SELINA CHOW (in Cantonese): Madam Chairman, the Liberal Party will not support Ms Cyd HO's amendment, simply because we think that we should separately handle the various services mentioned by Ms Cyd HO, the Government's follow-up actions on pathological gambling, and also the decision on authorization of football betting. Should we implement such an arrangement? Actually, as also mentioned by Ms Cyd HO, the HKJC, which is going to be the licensee, has already made all the preparations required, and several thousand people have been recruited for the relevant jobs. Therefore, we maintain that the work related to the Bill should be done as quickly as possible. We do not support the idea of deferring the implementation date of the Bill.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I shall speak for the Democratic Party on Ms Cyd HO's amendment.

We oppose the whole Bill, so we oppose the resumption of its Second Reading and also its Third Reading. Ms Cyd HO's amendment proposes to defer the implementation date of the Bill to 1 January next year; if we support this amendment, we will in effect be supporting the Bill's implementation. But we think that we may have to make do with the less satisfactory, because we must face the harsh realities, that is, the realities that the Bill already passed through Second Reading, and the chances of its passing Third Reading later on are also very high. Well, since the Bill will be passed anyway, we naturally

hope that its implementation can be deferred as much as possible. Ms Cyd HO has already put forth some of the reasons — basically because the Government told us in the Bills Committee that there were not enough support measures. After thorough consideration, the Democratic Party has come to the conclusion that although we oppose the Second and Third Readings of the Bill, at this stage, on its implementation date, we will support the idea and viewpoint of Ms Cyd HO.

Madam Chairman, let me perhaps say a few words on how we criticized the Government in the Bills Committee for its insufficient public education measures, especially the lack of measures dealing with the negative impact on youngsters, after it had given us its views. We all know that the authorization of football betting or the legalization of football betting will produce the greatest impact on youngsters aged under 18. I believe that adults are not the only ones who like to watch football matches; many school boys and girls have also been closely following the English Premier League and some particular football stars. In other words, football has become very popular as part of the sports culture among secondary and primary school students.

The Government is telling us today that football can be a form of gambling, but the moral or civic education we have had all along tells us that we should not gamble and should not overcome by any momentary greed. Here lies conflict felt by young people. That is why we have been demanding the Government, especially the Education and Manpower Bureau, to make preparations in terms of moral education and teaching materials. But when we enquired with the representatives of the Education and Manpower Bureau, asking them to come before the Bills Committee and tell us what they had done, the answer we got was utterly disappointing.

Government officials replied that a series of so-called radio dramas entitled "點做至好" (What should be done?) had started to be broadcast during the youth programme of "倫住嚟試" (Your turn to try) of Radio Hong Kong Channel 2 in August 2001. Madam Chairman, I have never listened to "倫住嚟試", but I have asked some secondary school students on the youth programmes of Radio Hong Kong Channel 2. Very few of them have listened to this programme. "點做至好" was divided into 13 topics, including national identity, making good use of one's leisure, facing up to adversities, worshipping of popular culture idols, parent-child communications, love and genders, falling in love, the individual and the group, making friends on ICQ, household chores,

environmental protection, target setting and good preparations, and there was of course one part on the harms of gambling. In other words, even if a youngster did listen to "點做至好", he would only have listened to one radio drama on the harms of gambling which called on youngsters not to expect returns without working. And, this is only a small portion of the 13 dramas. I wish to ask the Secretary for Education and Manpower this question: With just a "flimsy" moral education teaching kit, how can our young people and youngsters stand against the impacts of football betting starting from August?

The radio drama explains very clearly at the very beginning that children and youngsters are in their formative years, when their minds are not yet mature enough and their value judgements have yet to be formed. Since they are in addition not capable of thinking independently, they are susceptible to peer and social influences. Madam Chairman, the Government has thus clearly explained that children and youngsters are susceptible to social influences.

The Government's policy on gambling has been on the side of stringency, which is why we spent more than two years on amending the Gambling Ordinance, after reaching the conclusion that besides horse racing and the Mark Six Lottery, Hong Kong people cannot tolerate any other form of legal gambling. The Government has now relaxed its policy on gambling, and this will induce more people to engage in gambling. There will be huge impacts on youngsters who see that their parents and even peers all like to place a bet or two.

I hope that the Secretary can seriously consider our criticism that the Government has failed to put in place adequate support measures, and I also hope that it can thus refrain from hastening to bring the law into effect to increase its duty revenue. One just does not know whether the expected revenue of \$1 billion or \$800 million is just an exaggeration. If the revenue cannot offset the social costs and other harms in the future, I hope that before implementing this piece of legislation the Government can defer the matter and make as many preparations as possible in terms of public education and teaching materials, or even introduce more support measures on the gambling problem.

The Secretary has recently written to us, trying to convince us that public education work is already in full swing. Madam Chairman, I note that what "already in full swing" really means is that the authorities have just started to provide professional training courses to principals and teachers of primary and secondary schools. It is only in the 2003-04 academic year, that is, September

this year, that a professional training course will be held for principals and teachers of primary and secondary schools to enhance their knowledge of the gambling problem. And, it is also only in the 2003-04 academic year, that is, also September this year, that teaching methods on preventing the gambling problem will be provided. And, The Chinese University of Hong Kong has only just been commissioned to organize this latter course. All support measures are still under preparation, but then football betting is going to be launched immediately. If youngsters pick up this bad hobby in these coming few months and fail to withstand the harms of gambling, how can the Government face them? How can it face their parents? How can it face society, which expects so much of our youngsters?

I really cannot understand one thing. When the idea of legalizing football betting was first mooted by the Government, why did it not submit a Blue Bill to us for discussion? Why did it not start its preparations earlier? It is instead forcing the Legislative Council to complete its scrutiny of such a detailed Bill on betting duty within a matter of months. Madam Chairman, I can tell Members that if we are to scrutinize the Bill as usual, we will definitely need nine months to one year for thorough amendments and discussions, and for formulating adequate support measure. This is what we as responsible Legislative Council Members should do.

Unfortunately, I believe Ms Cyd HO's amendment stands little chance of passage, but I still think that I should put the voice of my conscience on record. The hasty move of the Government in passing the Bill definitely runs counter to people's expectation in respect of public education. Mr TUNG always claims that he will spare no effort in improving education, but what he is doing on the other hand will waste the resources that have been spent on education. I feel so very sad because of this.

Some Members say that the gambling problem is a moral issue. I admit that some Members do look at this problem from the moral perspective. But as I said yesterday, this is not just a moral issue; it also involves the moral development of our youngsters and even the infiltration of schools by triad elements and also the problem of pathological gamblers. To address all these problems, the Government simply cannot just say that when football betting starts in August, there will be support measures and all will be fine then. The Government often asks people to trust that the Government can do well, but the existing system of the Government cannot make us see that it can do well. If

the Government wishes to convince us, it must do a good job of all the support measures. At least, training courses must be provided to principals and teachers of primary and secondary schools. The course is still under preparation now, so how can they face this strong gambling climate in society?

Madam Chairman, I shall end my speech here. Those Members in support of the Government may vote for the Bill later on, but being one of the opponents, I hope that Members will all work with us to check whether the Government can provide support measures and teaching materials as promised. If there is any omission on the part of the Government, society will certainly fail to bear the resultant negative consequences.

Thank you, Madam Chairman.

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

MR IP KWOK-HIM (in Cantonese): Madam Chairman, since the Democratic Alliance for Betterment of Hong Kong opposes the authorization of football gambling, it will abstain from voting on the amendment.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, Ms Cyd HO has moved an amendment to clause 1 to defer the effective date of the Bill to January 2004, because she thinks that the Government should first put in place measures on preventing and addressing the problems related to gambling. I do not agree to her proposal.

We understand that some members of the community think that consideration should be given to the authorization and supervision of football betting only after sufficient and effective measures have been put in place to prevent and address the problems related to gambling. But we maintain that the two matters should be dealt with separately. There are two major reasons.

First, the need for measures on the problems related to gambling has not arisen solely because of the proposal on subjecting football betting to authorization and supervision. Many existing forms of gambling may also

create problems for a gambler, and football betting is just one form of gambling. The main aim of authorizing and supervising football betting is to bring the existing demand for illegal gambling under supervision. We are not trying to introduce a new form of gambling or create any new demand for it. Since illegal football betting has become increasingly rampant in Hong Kong, we think that there is an urgent need to bring football betting under authorization and supervision in August this year, that is, before the commencement of the next football season. With the licensed operator, the demand for football betting, which is expected to rise sharply, can be diverted from illegal channels and met under authorization and supervision, thus pre-empting the revival of illegal bookmakers who have been dealt a heavy blow since the last amendment to the Gambling Ordinance at the end of May last year. This can thus alleviate the law and order problems caused by illegal football betting, cut off the source of income of triads and also reduce problems related to loan-sharking and other triad and criminal activities connected with illegal gambling.

Our proposal on authorizing and supervising football betting can also reduce the negative impacts of illegal gambling, which may become more serious as a result of the rising demand for gambling in August this year. The reason is that the demand for football betting will be met under regulation, and the supervisory measures proposed by us will help prevent the problems caused by indulgence in gambling.

Gambling-related problems have always been there, and we agree that we need to put in place some measures to prevent and address these problems. It is precisely because of this that we have decided to establish a dedicated fund for the implementation of the measures required. Regardless of whether or not and at what time the proposal on authorizing and supervising football betting can be implemented, we will still proceed with the work concerned. The relevant measures have been put in place since June 2003. The latest progress is as follows:

- (1) Publicity posters and banners have been posted in various districts and off-course betting outlets to warn members of the public against indulgence in gambling.
- (2) An Announcement of Public Interest on indulgence in gambling will start to be screened on television from the middle of July this year.

- (3) An invitation on the operation of two pilot centres for the counselling and treatment of problem and pathological gamblers has been sent to various non-governmental organizations. It is expected that two organizations can be selected by August 2003 to run these centres.
- (4) An education programme targeting on youngsters and students will be launched in late July or early August.

Over the past two years, the Education and Manpower Bureau has put in place a number of education measures targeting on students, so as to help them develop a healthy lifestyle and build up positive value judgements and attitudes. These education measures cover civic and moral radio programmes on the problem of gambling, moral and civic education training courses for principals and teachers of primary and secondary schools, teaching kits on the gambling problem and the inclusion of the gambling problem in the civic education curriculum of schools receiving grants from the Civic Education Fund. The Education and Manpower Bureau will, in co-ordination with the Government's implementation of football betting authorization, enhance its education measures on the problem of gambling, in particular football betting, starting from August this year. These measures include training courses for school principals and teachers and the provision of learning and teaching resources. The aim is to ensure that students can firmly resist the temptation of gambling and wisely handle the problems caused by gambling.

Besides, in order to enhance youngsters' understanding of the gambling problem, we will make use of the dedicated fund for addressing gambling-related problems to launch a special education programme targeting on youngsters and students. The programme aims to enhance students' understanding of pathological gambling and the related risks, to strengthen their self-control and to prevent indulgence in gambling. We will make preparations for setting up an education website which co-ordinates the dissemination of related information, and organize a series of events to induce the education sector to pay attention to, study and discuss gambling-related problems. Through the Hong Kong Education City, we will launch a project entitled "Sports Summer", with the aim of encouraging students to take part in sports activities during the summer holidays and cultivate a balanced and healthy way of life. It is hoped that this can prevent them from indulging in gambling.

To sum up, we are of the view that the enactment of legislation to authorize football betting is in no conflict with the education sector's endeavours to educate youngsters against gambling. We should in fact grasp the opportunity and explain clearly to school youngsters that the authorization of football betting is just a way of tackling the serious social problems caused by rampant illegal football betting, instead of any moral recognition or encouragement of gambling. Honestly speaking, we should let the young people living in our pluralistic society today realize that many morally contentious social acts just should not be judged right or wrong solely on the basis of their legality or otherwise. Youth development and education is a complex topic requiring the co-operation and participation of various social sectors, and this is also one of the major tasks of the Home Affairs Bureau. I hope that in the future and on other occasions, I can exchange views with Members in a more in-depth manner about this subject.

We are of the view that there is an urgent need to introduce both the authorization of betting and measures on addressing gambling-related problems. That is why both must be implemented at the same time. Only this is in line with the overall interest of society.

For the reasons explained above, the Government opposes the amendment. It also calls upon Members to vote against Ms Cyd HO's amendment. Thank you, Madam Chairman.

MS CYD HO (in Cantonese): Madam Chairman, education is indeed a long-term endeavour. Government officials once wondered whether we had to wait five or six years if football betting was to be allowed only after students had been properly educated on the matter. I am not asking for something like this. My only wish is to see some objective criteria being adopted.

First, counselling centres must be put into operation beforehand. Second, as we mentioned in the Bills Committee, apart from teaching students how to spend their leisure, we must also explain to them some basic legal liabilities. For example, why is it that while people aged over 18 and their parents can vote but they cannot? After a match between two school teams, the beaten team has to treat the other team to dinner. But will this break the law? What if a student asks others to bet for him? What should a student do when someone walks up to him and says this to him, "Kid, I will place a bet for you. Though

you are already 18, you cannot enter the off-course betting centre because you wear a school uniform."? And, can parents tell their children to go to off-course betting centres to place bets for them?

All the examples mentioned above involve very clear legal liabilities which must be explained to students immediately. At the meetings of the Bills Committee, I saw the government official there jotting down notes. But then the Secretary did not offer any explanation on these examples when he spoke just now. I really hope that following the authorization of football betting, students can at least be told what acts will break the law and what will not.

Generally, during the scrutiny of the Bill, when we discussed amendments and measures on implementation with government officials, we got the best responses from them. Their responses are already not as good today, when voting is to take place. They will surely forget about everything once the voting is over. That is why I have to move this amendment. Unfortunately, having listened to the positions declared by the various political parties and groups just now, I know that it is highly likely that my amendment will be negated. But I still hope that the Panel on Home Affairs can invite the Secretary to come again in September to brief us on the progress of the follow-up actions in these few months. I hope that when they come again, government officials can discuss with us as patient and open as they were in lobbying Members to vote for the Bill.

Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Cyd HO rose to claim a division.

CHAIRMAN (in Cantonese): Ms Cyd HO has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

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, Dr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr LAU Ping-cheung voted against the motion.

Mr IP Kwok-him abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted for the motion.

Mr Andrew WONG, Mr Jasper TSANG, Mr TAM Yiu-chung, Dr David CHU, Mr NG Leung-sing, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Dr TANG Siu-tong and Mr YEUNG Yiu-chung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, four were in favour of the motion, 22 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, 10 were in favour of the motion, seven against it and five 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.

MRS SELINA CHOW: Madam Chairman, I move that in the event of further divisions in respect of the remaining clauses of the Betting Duty (Amendment) Bill 2003, the Committee do proceed to each of such divisions after the division bell has rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed. Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions in respect of the remaining clauses or amendments of the Betting Duty (Amendment) Bill 2003, the Committee do proceed to each of such divisions after the division bell has rung for one minute.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 1 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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 13.

CHAIRMAN (in Cantonese): Both the Secretary for Home Affairs and Mr Andrew CHENG have separately given notice to move amendments to clause 13. The Secretary for Home Affairs proposes to make a series of amendments and Mr Andrew CHENG's amendments are specific to sections 6E, 6G, 6R, 6U and 6Z of clause 13 only.

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. After the debate is closed, I will put the question on the amendments to section 6E to the Committee first, followed by the questions on sections 6R and 6U, and then on sections 6G and 6Z.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that clause 13 be amended in respect of a number of provisions. Many of the amendments proposed by us are technical amendments to the provisions on the levy of betting duty. They are mainly about the introduction of an additional assessment mechanism and the imposition of a surcharge on betting duty not fully paid before the specified date. Besides, there are also some amendments to the appeal mechanism for a licensed operator, meant chiefly to suspend the imposition of a fine and adjust the terms of the licence until the completion of all appeal hearings. The detailed contents of these amendments are set out in the paper circularized to Members.

I shall now give a brief account of several major amendments to clause 13.

(1) Gaming Commission (may be retitled the Football Betting and Lotteries Commission)

The first amendment concerns a number of adjustments to the provisions on the Gaming Commission. To begin with, we propose to amend the proposed section 6E in clause 13, so as to specify that the quorum for a meeting of the Football Betting and Lotteries Commission (the Commission) shall not be less than six members or one third of the total number of members of the Commission, whichever is the greater. It is also specified that the business of the Commission may transact through circulation of paper only if the Chairperson reasonably believes that it is impracticable to call a meeting. These adjustments are made in response to the views of Bills Committee members, the aim being to specify clearly the ways in which the Commission shall transact its business and convene meetings.

I propose to specify that the Chairperson of the Commission must be a non-official member; this proposal is made in response to the views of Bills Committee members. Besides, the composition of the Commission will also include one member each from the education, social welfare and religious sectors. This adjustment is meant as a response to the view of a Bills Committee member

who advocates that the Bill should specify that the composition of the Commission should include one member each from the sectors concerned, because the three sectors are more concerned about gambling and its related problems and the expertise of these members will be useful to the work of the Commission. We have accepted this view and agreed to adopt the Bills Committee's recommendation that the education functional constituency as defined in the Legislative Council Ordinance shall be adopted as the qualification of the Commission member from the education sector. Reference will also be made to the definition of the religious sector contained in the Human Reproductive Technology Ordinance to define the qualification of the Commission member from the religious sector. And, for the social welfare sector member, the definition of a registered social worker in the Social Workers Registration Ordinance shall be adopted.

I also propose that if the position of any member, including that of any of the three members from the education, social welfare and religious sectors, is vacant, thus making the number of non-official members lower than eight, the Chief Executive must appoint a replacement within three months. This is also meant as a response to the view of Bills Committee members, the aim being to ensure that the normal functioning of the Commission will not be affected by any prolonged membership vacancy.

(2) Fit and Proper Person Requirement

The second amendment proposes to add a section 6AAA on a "fit and proper person" requirement as a pre-condition of licence issuance by the Government to a company. In determining whether a person is fit and proper, the Secretary for Home Affairs shall take into account a series of factors such as the person's financial status and financial integrity; the person's qualifications and experience; the person's ability to act honestly and fairly; the person's reputation and reliability; whether there is any potential or actual conflict of interest; and whether the person has been charged with or convicted of any offence. This practice is similar to those found under other licensing systems and is also in line with the practices adopted in other places where betting activities are subject to regulation. The "fit and proper person" requirement can help ensure the licensee's compliance with the licensing conditions and requirements related to football betting and lotteries activities, thereby increasing public confidence in the licensee.

(3) *Licensing System and Conditions*

The third amendment seeks mainly to amend the proposed sections 6G and 6S in clause 13, introducing adjustments to the provisions on the licensing system and conditions related to football betting and lotteries activities.

We propose to clearly stipulate that the licensed operator can only conduct fixed-odds and pari-mutuel betting. This adjustment is made in response to a Bills Committee member's view that the types of bets should be specified more clearly in the Bill.

Besides, we have also accepted the Bills Committee proposal on clearly setting out some of the licensing conditions in the legislation, hence making it mandatory for the licence issuing authority to incorporate these conditions as the prerequisites for issuing football betting and lotteries licences. The prerequisites are as follows:

- (i) The licensee shall not accept betting from juveniles (that is, persons under the age of 18), nor shall it permit juveniles to enter its betting premises or make any payment of winnings to juveniles;
- (ii) the licensee shall not offer any credit for betting or accept credit cards;
- (iii) the licensee shall not advertise football betting on television or on the radio from 4:30 pm to 10:30 pm on any day;
- (iv) the licensee shall not make juveniles the target in its advertisement or advertise in ways which exaggerate the chances of winning, explicitly or implicitly suggesting that betting is a source of income or a solution to financial problems; and
- (v) the licensee must display warnings on the serious problems caused by indulgence in gambling and give information on the services available to problem gamblers and pathological gamblers in Hong Kong at conspicuous locations in its betting premises and web sites.

The purpose of these mandatory conditions is to protect juveniles and reduce the impact of gambling on society. If necessary, the Secretary may, in

the future, issue codes of practice on these licensing conditions to provide guidance to the licensee on the implementation of the relevant measures.

(4) Hedging or Laying-off of Bets

The fourth major amendment adds a new section 6QA to enhance the control over hedging bets. The relevant provision will specify that a football betting conductor must set down a policy on the hedging bets mentioned in the proposed section 6Q of the Bill. The policy to be formulated shall mainly cover the factors to be considered and the procedures to be followed in placing hedging bets. The policy must be submitted to the Collector of Stamp Duty for approval. If the Collector is of the view that the conductor has not placed its bet according to the policy, the bet shall not be taken as a hedging bet and will not be included in the calculation of betting duty. This is meant to enhance the monitoring of football betting conductors and prevent any abuses of hedging bets. The scope of a hedging policy shall cover:

- (i) the purpose of hedging bets;
- (ii) pre-requisites;
- (iii) organizations accepting hedging bets and ceilings of transactions;
- (iv) the decision-making process;
- (v) circumstances surrounding the delegation of authority;
- (vi) monitoring of policy compliance;
- (vii) clearance; and
- (viii) audit requirements.

(5) Penalty for the Sale of Football Betting and Lotteries Tickets

The fifth major amendment involves the adjustments to sections 6R and 6U proposed in the Bill in order to increase the penalty for illegal sale of betting and lotteries tickets. We propose to increase the penalty for making, printing,

issuing, selling or offering to sell a football betting ticket and lotteries ticket from level 3 (that is \$10,000) as originally proposed to level 5 (that is \$50,000), so as to increase the deterrent effect of the fine.

(6) *Hearings of the Appeal Board*

The sixth major amendment seeks to adjust section 6ZD proposed in the Bill to specify that hearing of an appeal shall be held in public unless the Chairperson decides otherwise. This is meant as a response to members' view that appeal hearings should be held in public, so as to protect the right of the licensee and increase the transparency of appeal hearings. However, it is also considered that in case an hearing involves any sensitive information and commercial secret, or for other special reasons, the Chairperson shall have the power to conduct a hearing in camera.

Next, I wish to explain the Government's views on the amendments proposed by Mr Andrew CHENG.

Mr Andrew CHENG proposes to amend section 6E proposed in the Bill, specifying that all meetings of the Commission shall be conducted in public unless the Chairperson deems that a meeting must be kept confidential in public interest. We oppose this amendment.

According to the Bill, the Commission shall be an advisory body offering advice to the Secretary for Home Affairs on football betting and lotteries activities. Meetings of the Commission will cover various monitoring topics, so it is expected that the related discussions may from time to time involve sensitive or confidential information about the operation of the licensee. Although we agree in principle that the operation of the Commission should be transparent, we still think that a certain degree of flexibility should be reserved for it, so that it can decide whether and how to hold a meeting or part of a meeting in public. According to the proposed section 6E(2), the Commission may set down rules governing the procedures of its meetings. Therefore, we consider it more appropriate to allow the Commission to decide its meeting procedures in the future.

Mr Andrew CHENG has also proposed an amendment to section 6G proposed in the Bill. The first part of the amendment mainly seeks to restrict the types of betting to be conducted by the licensee to results of football matches,

replacing the Government's proposal on allowing the licensee to conduct betting on the results of, or contingencies relating to, football matches. We oppose this amendment.

The scope of betting proposed by the Government aims to offer sufficient flexibility to the licensee to conduct betting on contingencies relating to football matches, so that it can divert football betting demand from existing illegal bookmakers to regulated channels. If betting is restricted to the results of football matches, the types of bets that the licensee may accept will be greatly restricted. This will not only defeat the purpose of combating illegal football betting, but also give rise to the opposite result of opening loopholes to illegal bookmakers. They will take advantage of this restriction and conduct betting on things not related to match results, such as half-time scores and league champions. This will greatly reduce the competitiveness of authorized football betting, rendering it unable to achieve the aim of combating illegal gambling. What is more, the legislation on sports betting found in other countries do not carry such a restriction. Instead, they are roughly similar to the scope of betting proposed by the Government.

Moreover, Mr Andrew CHENG also requests that the types and names of football matches for which the licensee may accept bets should be stipulated in the Bill or a Schedule to the Bill. We maintain that this will unnecessarily reduce the flexibility enjoyed by the licensee, rendering it unable to make swift adjustments in response to market changes. For example, when the name of a certain type of matches changes, or when there is a new type of matches, the licensee will fail to make adjustments swiftly in response to market changes. This will greatly reduce its competitiveness. In other countries, the types of matches on which bets may be accepted are not specified in relevant legislation.

Some members of the community fear that if the licensee is given too much flexibility, it may offer too many types of betting options on various types of football matches, thus fanning the flame of gambling. We do not agree, because the main aim of authorizing football betting is to divert the demand concerned from illegal bookmakers to regulated channels. Owing to the keen competition in the international football betting market, licensing conditions must make allowance for a certain degree of flexibility which can enable the licensee to make swift adjustments to the types of matches and bets. This is most important as a means of ensuring that the licensee can compete effectively with illegal bookmakers all over the world. Any proposal to specify operational

details in the legislation will seriously affect the competitiveness of the licensee and thus the effectiveness of combating illegal football gambling activities. In the future, if society thinks that the betting options offered by the licensee have produced very bad effects on society, the Commission may express its views, and the Government may also adjust the licensing conditions and issue codes of practice, demanding the licensee to adjust or even abolish the betting options or matches concerned.

Another major amendment of Mr CHENG proposes to specify that the operating hours of all betting outlets should be from 9 am to 11.30 pm. We are of the view that since the conditions of different betting outlets do vary, the operating hours mentioned just now should not be applied uniformly to them. We think that it is more appropriate to specify the location and operating hours of a betting outlet in the licence than to do so in the legislation. This can retain the flexibility required, so that the operating hours of individual betting outlets can be quickly adjusted in consideration of various factors, such as the effectiveness of combating illegal football betting in the neighbourhood, the nuisance caused to the residents nearby and the views expressed by neighbouring residents.

Mr CHENG also seeks to amend the proposed sections 6R and 6U in the Bill, making the giving away of a football betting ticket or a lotteries ticket to a juvenile a criminal offence punishable by a maximum fine at level 6 (that is, \$100,000). We do not consider this amendment necessary, and we also think that there will be enforcement difficulties.

To begin with, we have proposed amendments to sections 6R and 6U in response to the request of the Bills Committee, raising the fine for making and selling football betting tickets and lotteries tickets to level 5 (that is, an increase from \$10,000 to \$50,000), with a view to increasing the deterrent effect and preventing people from selling any betting tickets to others, especially youngsters.

Some Members think that some unruly elements may take advantage of this loophole in the law and sell betting tickets to juveniles on the pretext of gift. We understand that the amendment is founded on the good intention of providing further protection to youngsters. But we also think that it will be most inappropriate if we thus make all acts of giving away betting tickets to juveniles a criminal offence.

The sale of a betting ticket under the guise of giving it away as a gift involves the establishment of proof connected with the offence of selling a betting ticket. We do not think that we should thus make it an offence to give away a betting ticket to a juvenile under other circumstances which do not involve any sale and purchase. This is not to speak of the fact that under one of the licensing conditions, the licensee is not permitted to make any payment of winnings to juveniles, meaning that it will be difficult for a juvenile to place bets by buying betting tickets from any third party. There are difficulties in establishing proof, because both sides must admit that the betting ticket concerned has not been sold at a monetary price. Besides, this amendment will also make the penalty for giving away a betting ticket to a juvenile higher than that of selling one to him or her. There are practical prosecution difficulties.

We also think that the fine for the crime is much too high. The fine proposed by us for making and selling football betting tickets is only at level 5. But this amendment proposes to impose a level 6 fine on anyone who gives away a betting ticket to a juvenile. This is much too heavy and will make the fine for giving away a betting ticket higher than that of selling one. This is simply unreasonable.

For the above reasons, the Government opposes the various amendments proposed by Mr Andrew CHENG, implores Members to vote against his amendments. Thank you, Madam Chairman.

Proposed amendment

Clause 13 (see Annex II)

CHAIRMAN (in Cantonese): I will now call upon Mr Andrew CHENG to speak on the amendments moved by the Secretary for Home Affairs and also his own amendments. However, Mr Andrew CHENG cannot move his amendments at this stage. Whether he can move his amendments will depend on how the Committee vote on the amendments moved by the Secretary for Home Affairs.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I have proposed several amendments to clause 13 of the Bill. I shall give my justifications for these amendments, and also respond to the comments made by the Secretary on my amendments a moment ago.

My first amendment seeks to provide for the conduct of open meetings of the Football Betting and Lotteries Commission (the Commission). Sections 6B and 6E of the Bill provide mainly for the composition of the Commission. I propose to add one provision to section 6E to require that the Commission must conduct open meetings. Unless the Chairperson does not think that open meetings are consistent with public interest, there should be no questions about this practice. Madam Chairman, the Commission is an advisory body that offers advice to the Secretary for Home Affairs, so I maintain that its operation should be marked by as much transparency as possible. Since the Commission shall offer advice to the Secretary for Home Affairs on the regulation of football betting and lotteries and on such decisions as to whether a licence is to be issued or revoked, the public should have sufficient access to information.

Madam Chairman, I noticed that the Secretary was having a very hard time reading out the script prepared by Mr Stephen FISHER for him. His voice turned coarse and he even coughed many times. In the future, he may not be able to grasp the advice offered by the Commission just as easy. Frankly speaking, the Secretary has never attended any meetings of the Bills Committee. Many colleagues in fact talked highly about Mr Stephen FISHER yesterday, and Mr FISHER is no doubt the most "versatile" government official. He did a good job when he was in the Urban Renewal Authority. This time around, he has also worked very hard on the Bill, giving the Secretary lots of advice. I believe that many of the policies and conclusions mentioned by the Secretary today are in fact the brainchild of Mr FISHER. This is precisely the point. An accountable Bureau Director will not know everything, so the Secretary may not necessarily be able to grasp all the advice given by the Commission in the future. That is why we maintain that the public should have the right of access to the record of proceedings, deliberations and even justifications and conclusions of the meetings of the Commission.

Madam Chairman, what my amendment seeks is precisely the conduct of open meetings by the Commission. Actually, Mr FISHER has already accepted the request for open hearings of appeals made by us in the Bills Committee. I am thus very delighted. Besides, the Government has also accepted many other proposals put forward by us, but when it comes to open meetings of the Commission, it has all along adhered to the position of holding meetings in camera by all means. In the 21st century, members of the public and the mass media are absolutely entitled to accessing the proceedings of important meetings. Therefore, Madam Chairman, I hope Members can understand my amendment

and render it their support. This is not to speak of the fact that, as proposed by the amendment, the Chairperson of the Commission can still exercise absolute discretion in deciding whether a meeting should be held openly. This means that my amendment actually makes an allowance. If the Chairperson of the Commission considers that some confidential information may be involved in the course of discussions, he may exercise his power to decide whether or not to hold a meeting in camera. Madam Chairman, some panels of the Legislative Council also follow the same practice. The Chairmen of these panels may decide to hold closed-door meetings in case the discussions involve confidential and very sensitive information or even commercial interests. My amendment is based on the same practice, allowing the Chairperson of the Commission sufficient flexibility to decide how to conduct a meeting. My amendment is based on the rationale that there must be sufficient transparency for the meetings of statutory and advisory bodies.

Madam Chairman, my second amendment is about regulating the types of football matches and the forms of betting. I have proposed two major amendments to section 6G proposed in the Bill. The first is on the regulation of the types of football betting and the forms of betting. The second is about the operating hours of football betting centres. Under the Government's proposal, the types of football betting that can be offered by the licensed company and also the operating hours of betting centres will be specified only in the licence issued. I do not think that this is enough.

Although at the meetings of the Bills Committee, the Government did not describe in detail which countries' football matches will be covered by the licensed company, I guess the premier league and cup matches of England, Germany, Italy and Spain should be included. But what about the division 2 matches of these countries? What about the soccer leagues of other countries, such as those of Finland and Sweden, the J-League of Japan, the K-League of Korea, the Major League Soccer of the United States, those of Brazil and Argentina and even our China A-League?

Madam Chairman, representatives of the Hong Kong Jockey Club (HKJC) were once invited to make representations in the Bills Committee. I remember that when we asked them about the types of matches for which the HKJC would like to accept bets, instead of giving any answer, they expressed the hope that the Government could specify the types of matches, the clearer the better, in the code of practice. Once the Bill has passed Third Reading, there will be no

mechanism whereby the Legislative Council can monitor the matter. Although the Panel on Home Affairs may still request the Secretary to attend its meetings and brief Members on the progress of football betting, we will no longer have any more say in how the Government and the HKJC handle the problems concerned. Therefore, what is the bottomline of the Government? According to the Government, because of the need to combat illegal bookmakers, the licensee must be given as much flexibility as possible. But, Madam Chairman, we must not forget that the Home Affairs Bureau's policy on gambling still appears to be on the side of stringency. This means that the Government must have some sort of a bottomline. We cannot permit the licensee to accept betting on all football matches in the world. If we do so, we will be promoting gambling.

The Bureau says that its aim is to compete with illegal bookmakers, but we still think that there must be a bottomline or criterion of some kind. Then, what is the criterion? The fact is that some web-based bookmakers are already regularly accepting online bets on the less important matches just mentioned by me. When the leagues of England, Germany, Italy and Spain have their yearly breaks, that is, during the summer holidays now, the league matches of other countries are in full swing, so this may already have aroused a sustained public demand for football betting. That being the case, should the Government permit members of the public to bet on these matches? We maintain that since it is the intention of the Government to regulate football betting, it must focus on proper regulation to prevent excessive gambling by the public. Therefore, my amendment proposes that the relevant provisions should only cover the World Cup, the European Cup, the European Champions League, the UEFA Cup and also the league and cup matches of England, Germany, Italy and Spain.

Madam Chairman, I have another amendment which specifies that only bets on football match results will be accepted. The reason is that under the Bill, the Secretary may, by issuing a licence to a company, authorize the company to conduct betting on the results of, or contingencies relating to, football matches. I do not understand why the Bureau wishes to let people bet on "contingencies relating to" football matches. "Contingencies relating to" football matches may cover a very wide range of things. A "contingency relating to" a football match may be about which football club BECKHAM may switch to, a matter of great interest to many of us; it may be about the player number of BECKHAM's vest; it may be about whether or not BECKHAM can score any goal in his first match for Real Madrid; and it may be about whether BECKHAM scores the first goal

with his right leg or left leg. All these are "contingencies relating to" football matches. But, Madam Chairman, do we really wish to see such a crazy state of football betting in Hong Kong? Madam Chairman, on behalf of the Democratic Party, I can say, "No.". We hope that the regulation of football betting can be confined basically to the results of football matches. There can still be a lot of options indeed if bets can only be placed on the results of matches as provided for in the Bill. I notice from the training provided by the HKJC to its new recruits that the results of a football match may actually be about the final results of a match, the total number of scores in the end, half-time results, whether there is any extra time for a cup match and hence whether there are any golden goal and penalty kicks. Hence, there are already many forms of betting. We do not wish to see any more "contingencies".

Madam Chairman, my amendment also proposes the addition of a Schedule 2 which specifies that the operating hours of a betting centre shall not start earlier than 9 am (not 9.30 am as mentioned by the Secretary) and end later than 11.30 pm. The Government considers that it is more appropriate to specify the operating hours in the licence instead of the legislation. The point is that at present, District Councils are already very critical of the establishment and operating hours of off-course betting centres. If the operating hours of football betting centres are specified in the licence only, the Secretary will enjoy too much discretionary power. I fear that the Government may just say that there is a need to combat illegal gambling and then allow some betting centres near bars to operate until very late at night (though these centres may well be far away from residential buildings). The Bureau may argue that some betting centres are set up inside shopping arcades. But people going into shopping arcades or the food establishments nearby will definitely cause nuisances to the neighbourhood. I believe that Members here will not want football betting to cause such a problem.

The Government maintains that inflexibility will result if we specify the types of football matches and the operating hours of betting centres in the Schedule. But, Madam Chairman, I wish to emphasize that this amendment is just about changing the types of football matches and operating hours by the negative vetting procedure. This means that the Government will still enjoy a sufficient and reasonable degree of flexibility that can enable it to increase or reduce the types of matches and even adjust the operating hours of betting centres in the light of practical needs in the future. We maintain that if all cases are left

to the decision of the Secretary, there will be no proper checks on his powers. This is my purpose of proposing the amendment.

Madam Chairman, finally, we also wish to amend the provisions forbidding the offer of betting tickets to youngsters as a gift. The amendment seeks to provide more protection to youngsters aged under 18, and the proposal is in line with the youth policies on youngsters aged under 18 formulated by the Government in the past. The fine concerned must be set higher than that applicable to the illegal sale and printing of tickets; it must be set at level 6. In its letter to us, the Government expresses its understanding that my amendment is intended to make sure that juveniles will not come into contact with football betting and lotteries. Although the Government thinks that the existing penalties are already strong enough, we still maintain that since it also stresses the importance of protecting youngsters in authorizing football betting and lotteries, we should then fully reflect this intention in the legislative provisions, so as to achieve a sufficiently strong deterrent effect and reduce the possibility of youngsters falling unknowingly into the habits of betting on football matches and lotteries. Earlier on in this debate, the Secretary simply kept on saying that there would be enforcement difficulties, and that our proposed penalty was much too high. But I would like to ask the Secretary to look at the provisions on protecting youngsters in another piece of legislation — the Control of Obscene and Indecent Articles Ordinance. The Ordinance provides that the maximum fine for showing indecent articles to youngsters under 18 shall be \$200,000, so the level 6 fine proposed by us, that is, a fine of \$100,000, is much lower already. Therefore, I hope the Secretary can realize that there are already some measures on protecting youngsters. Since our proposal is also meant to protect youngsters, the Government should not keep on talking about enforcement problems. When it comes to enforcement, it is all a question of determination, the only problem being whether or not the Bureau is prepared to enforce its policy. I am sure that the enforcement agencies will definitely be able to provide support.

Madam Chairman, I so submit.

CHAIRMAN (in Cantonese): Honourable Members, when Mr Andrew CHENG was speaking just now, there were some loud noises of radio interference. I noticed that several Members were rather concerned and had hastened to check if their microphones were working properly. I wish to tell Members that your

microphones are all working properly, without any problems. The only problem was that Mr Andrew CHENG carried his cell phone when he was speaking. If a Member carries a cell phone or pager with the "vibrate" setting while he or she is speaking, the "vibrate" signals will interfere with the functioning of the broadcasting system, and hence the noises of radio interference just now.

This problem has actually occurred quite a number of times before, and I have also requested the Secretariat to issue notices to Members. Therefore, I hope Members can remember that when you speak, you should put your cell phones or pagers on the "vibrate" setting aside. In this way, the audibility of your speeches will not be affected. In the legislature, audibility of speeches is very important to Members.

MR ANDREW CHENG (in Cantonese): Excuse me, Madam Chairman, I think I have to respond because you mentioned my name earlier.

I also thought that the "vibration" signal came from my mobile phone. I have referred to my phone record and confirmed that I did not receive any call. I find it very strange too; even my pager has not received any signals. Those noises were therefore not caused by me. I hope the President or the Secretariat can find out the source of the noises.

I originally thought that those noises had come from my mobile phone. Madam Chairman, you can see from my telephone record that there is no missed call.

CHAIRMAN (in Cantonese): I am not going to debate or discuss with any Member with regard to the cause of those noises. I just repeated what I was told by our technicians after their repeated examination.

All in all, it is best for Honourable Members and people sitting in the Public Gallery to switch off their mobile phones upon entering this Chamber. I do understand that some Members sometimes have to communicate with people outside this Chamber. Given their need to do so, I am not going to exercise undue interference. However, it is most important to note that the delivery of speeches in this Chamber must not be affected.

Members may now debate the amendments moved by the Secretary for Home Affairs as well as Mr Andrew CHENG's amendments. Does any Member wish to speak?

MRS SELINA CHOW (in Cantonese): Madam Chairman, on behalf of the Liberal Party, I would like to express our views on the amendments proposed by the Secretary and Mr Andrew CHENG.

The amendments made by the Government were actually prompted by the Bills Committee after going through numerous discussions. We have indicated in the Bills Committee that we greatly support the amendments proposed by the Government in response to the requests of Honourable Members. I will therefore not dwell on the amendments referred to by the Secretary earlier *seriatim*.

Nevertheless, I would like to say a few words on why the Liberal Party cannot subscribe to Mr Andrew CHENG's amendments. Regarding the issue of whether open meetings should be held by the Commission, we very much hope that the Commission can tender advice in a frank manner, given its role is to advise the Secretary. Since the Secretary might not be able to solicit frank opinions if the meetings are not held in camera, it is better for the meetings to be held in camera rather than in public. Should the meetings be held in public, the Commission will have to consider numerous factors such as what and how the public will think, how they will react, and so on, and the views expressed will be influenced instead.

We cherish transparency very much. The Government is also committed to maintaining transparency as far as possible. What does transparency really mean? Examples are keeping agenda transparent, holding certain public hearings in public, inviting certain people or organizations to attend hearings and make representations, inviting licensees to express their views on the code of practice for the consideration of the Secretary, and so on. It is indeed possible for all these meetings to be held in public. However, what matters most in principle is whether it is desirable for the Commission to open all of its discussions to the public. For instance, certain discussions might involve

commercial secrets, particularly when it comes to betting. Some of the discussions might need to be kept confidential for they involve operation. Sometimes, the views expressed during frank exchanges of ideas might further develop in the course of discussion and a new idea might emerge. Making these discussions public will very often hamper the frank exchange of ideas between the relevant parties. As the role of the Commission is to provide the Secretary with the best recommendations, we consider it unnecessary in principle for all these meetings to be held in public. Nonetheless, we think the meetings should be held in public as far as possible, particularly when members of the public are invited to present their opinions.

I consider certain parts of the speech delivered by Mr Andrew CHENG earlier not at all appropriate and he was suspected of trying to provoke disputes. He said the Permanent Secretary had accepted many suggestions raised by Honourable Members in the Bills Committee. He also said the Secretary did not attend the meetings held by the Bills Committee and doubted the Secretary's understanding when he was speaking from his prepared speech. I consider Mr CHENG's remark not necessarily very helpful to the conduct of our discussion.

Next I will talk about the types and methods of betting, and this will bring us back to the issue of principle. If Members do not agree to the basic principle, it is practically impossible for Members to agree to narrow the types of betting and betting itself. Why? Why should the HKJC be allowed to be the licensee? This is for the sake of combating illegal bookmakers. Should the HKJC be restricted excessively, the illegal bookmakers will know what the HKJC is unable to do. They will then do what the HKJC cannot do. Whenever the HKJC wishes to change anything, it is necessary to amend the law, seek the Secretary's permission, and so on. This will actually give illegal bookmakers more room to maneuver. Flexibility is therefore crucial. We must also bear in mind that we do have regulation. In the course of discussion, we did discuss a wide range of matters such as the number printed on the team vest BECKHAM is going to wear, the accessories worn by individual players and the names of the players, which foot used by players in scoring the goal, and so on. The Government however stated that the HKJC had no intention to accept bets on these items because they were not mainstream betting items. The Government is of the view that this is not directly related to football matches, and that betting should be confined to items directly related to football matches.

We believe maximum flexibility should be allowed, but it is necessary to build up a framework in the laws. We consider the existing framework appropriate. I think it is self-contradictory of the Government to impose excessive restrictions in saying that the HKJC is simply unable to combat football gambling syndicates on the one hand, and attempting to tie the hands of the HKJC to prevent it from combating illegal syndicates on the other. If we are to combat illegal syndicates, the HKJC must be given sufficient room, to put it in a suitable position to do this.

Regarding the operating hours, I believe providing for this in law is not necessarily the best way. This is because other nuisances should be taken into consideration in addition to business hours. In principle, we hope the normal lives of the public will not be affected by football gambling. The problem is not merely related to business hours. Can the problem be solved if it is stipulated that operations shall end at 11.30pm? Some betting centres might be located near residential premises. Even for those operating inside commercial buildings, if the buildings are very close to residential buildings — this point was raised by Mr Andrew CHENG, we very much share his view — residential premises will be affected too. Therefore, the purpose of imposing restrictions cannot be achieved by simply stipulating the operating hours. We should indeed consider the matter from different angles.

What matters most is whether the Secretary has listened to the views expressed by the public. Since it is now possible for District Councils and the public to reflect to the Bureau any nuisances encountered by them through a variety of channels, we disagree that the operating hours be restricted. Both the Bureau and the HKJC must give full consideration to this. We think it is undesirable for a rigid timetable to be stipulated in law because such a timetable does not necessarily guarantee the prevention of all nuisances. We would rather ask the Secretary to be sensitive to this matter at any time and at any place. I believe this is a matter of concern to all Honourable Members, particularly as football betting takes place in the middle of the night.

I believe Honourable colleagues are also very much concerned about the youths. However, we cannot protect them fully by simply raising the level of fine. Mr Andrew CHENG cited the Control of Obscene and Indecent Articles Ordinance as an example for the purpose of determining the level of fine. In my opinion, instead of citing another piece of legislation, it is more suitable to

use similar activities such as horse racing, Mark Six Lottery, and so on, for comparison since we are now talking about football gambling.

Madam Chairman, the Liberal Party supports the Bureau's amendment but opposes Mr Andrew CHENG's amendment.

MS CYD HO (in Cantonese): Madam Chairman, I will focus on section 6E as proposed in the Bill. The Betting Duty and Lotteries Commission (the Commission) is primarily set up to advise the Secretary for Home Affairs on football betting and other lottery activities. At the meetings of the Bills Committee, the authorities had taken on board many of our views and made amendments. In fact, our views revolved around one purpose and that is, to maintain the independence of the Commission and ensure that its composition can include people who hold different opinions.

The original section 6E provides that a consensus can be reached by circulation of papers. If this provision is endorsed, it will be unnecessary to hold meetings and there will not be any opportunity for discussion even though members hold different opinions. The several members from the religious, education and social service sectors are, after all, a minority in the Commission. Their greatest function is to disseminate information on what they have learned from the meetings concerning the decisions to be made and the relevant justifications, so that the public can lobby the Commission and the authorities to listen to the views of members of the community before giving effect to a new decision. Having listened to our views, the Government made an amendment to this provision on circulation of papers, so that when members' opinions are different, the reasons of the supporters and those of the opponents can be made public, thereby facilitating discussion in the community.

I think Mr Andrew CHENG's amendment embraces a higher degree of transparency, for meetings will be conducted openly in principle and closed-door meetings will be conducted only when sensitive information is involved in discussion, rather than making it a principle to conduct meetings in camera and hold open meetings only when public interest is involved in discussion. There is a fundamental difference in terms of the level of transparency. I hope that members from various sectors of the community, on accepting appointment to the Commission, can also be candid in open meetings. As long as they express

in good faith opinions in public interest, they can still conduct discussions even in open meetings, and the community will still accept and appreciate this. Thank you, Madam Chairman.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I wish to respond to the points raised by Mrs Selina CHOW. I was not trying to foment any discord between the Secretary and Mr Stephen FISHER. I really did not have any such intention, and I do not know why Mr Selina CHOW should think so.

I simply said that the Secretary had really been having a hard time reading out the script, to the extent that he literally coughed, probably because the script was loaded with information. I was in fact trying to say that the Secretary did not attend any of the Bills Committee meetings, but that I did understand that this was the practice of the Government. I also said that the Secretary might not understand some specific contents of the Bill and the various technicalities of football betting. This was all I was trying to say.

I trust that Mr FISHER, having spent so much efforts on discussing with the Hong Kong Jockey Club (HKJC) and other parties, must have gained a very in-depth understanding of the authorization of football betting. Actually, we are all learning, because Members will not possibly understand many of the details if they have not been betting on football. This is an art; I have heard that some 200 experts are now working for the HKJC to assess whether football betting can become a viable business. Besides, the analyses of matches and their results will also require experts. This is really an art.

Since the Secretary is the head of the Home Affairs Bureau, which is responsible, among other things, for football betting, we do not wish to see him accepting or rejecting any conclusions reached by the Football Betting and Lotteries Commission (the Commission) with the public knowing nothing about them all. This is something we do not wish to see. It is stated in the Bill that meetings of the Commission will be held behind closed doors in principle, and there will be open meetings only when necessary. But given people's aspiration to openness and transparency nowadays, the reverse should be the case, as advocated by Ms Cyd HO. Like the Appeal Board, the Commission should hold open meetings in principle and convene behind closed doors only when necessary. I fail to see why the Liberal Party or the Government should be so firmly opposed to this idea.

Besides, I hope that when the Secretary speaks on the authorization of football betting later on at this meeting, he will not deliver a scripted speech anymore, because I really wish to know what is in his mind. On this issue, we got an impression in the Bills Committee meetings that Mr FISHER's was most ambiguous in position, trying to make allowance for something more. I guess even the HKJC representatives present on that day were not quite sure about the Government's basic criteria and bottomline concerning the types of betting. What football league and cup matches are included? Besides match results, what can people bet on? I believe the Secretary and the HKJC must have discussed all these; only that he does not want to disclose them to us. If the Secretary objects to my amendment and insists on retaining the expression "contingencies related to", he will have to tell me what the Bureau means by "contingencies related to" football matches. Will the Secretary please tell me what is meant by this? Perhaps, Mr FISHER may write a note to the Secretary now. The Secretary represents the Home Affairs Bureau and the Government. Will he please tell me the kinds of contingencies related to football matches which the Government fears may arise in the future? What are the contingencies he does not wish to see? I am sure that as the prospective licensee, the HKJC would like to know. The public would also like to know, and so do people intending to engage in football betting.

Why do we consider it necessary to delete the expression "contingencies related to"? One reason is that the Government has not formulated a code of practice. The Government has so far failed to present even a draft code of practice to us, so I think the HKJC should be very anxious now. Mrs Selina CHOW reckons that which foot BECKHAM uses to shoot will probably not be included as a type of betting. What does she mean by "will probably not"? The law is the law, and if that is not allowed, there should not be any case of "will probably not". The law should always be very clear. If the law says that people can bet on contingencies related to football matches, then why can they not bet on which foot BECKHAM uses to shoot and even on the player number of his vest? Why should all these be excluded from the definition of contingencies related to a football match? We wish to ask the Government whether its policy on gambling also covers all these. The Democratic Party is firmly against these types of betting. Our amendments are to a certain extent violating our own principle, because given our firm opposition, we should not have put forward any more amendments at all, but we still wish to minimize the impact, which is why we want to impose some kind of restriction and limit

betting to match results. As I mentioned a moment ago, match results alone can already accommodate many different options of betting, such as the final scores of the two sides, the total number of goals in a match and whether there are any penalty kicks. There are already so many common options of football betting, so why is there still a need to make allowance for more? Is that because it is intended to enable the licensee to compete with illegal bookmakers in the future? This is precisely the reason for our opposition.

Mrs Selina CHOW says that we are self-contradictory. She is wrong! There is no question of contradiction. I hope she will realize that we oppose football betting because we do not want the Government to curb gambling with gambling. This is precisely the result of curbing gambling with gambling. The Government wants football betting to offer an "endless" range of betting options to people, but at the same time, it claims that it wants to use regulated football betting as a means of curbing illegal football betting. This will lead to a vicious cycle, inducing the spread of gambling, increasing the gambling population and worsening the problems caused by pathological gambling. Mrs Selina CHOW says that we are self-contradictory. But, sorry, we will vote against the resumption of Second Reading of the Bill. We oppose the idea of curbing gambling with gambling, and we are not self-contradictory. However, the Government still keeps on claiming that besides continuing to combat illegal football betting, it still wants to maintain a stringent policy on gambling, saying that if the case had been otherwise, it would not have spent two years on clamping down on offshore betting. I think that the Government must not allow itself to appear to be so self-contradictory. The Liberal Party says that we are self-contradictory, but I would say the Government is instead the most self-contradictory.

When it comes to betting centres, Madam Chairman, I have many questions. There are some one hundred to two hundred betting centres in Hong Kong now, and I have looked at their addresses carefully. Can any Member here or any people in Hong Kong find a betting centre which is situated in a sparsely populated area with practically no pedestrian flow? They definitely cannot, because even the HKJC wants to set up betting centres at convenient locations. Mr FISHER told us in the Bills Committee that the betting centres would be located in shopping arcades and would not cause nuisances to residents. But we must not forget that a large housing estate may be found above or near a betting centre. If this is not the case, the HKJC will not set up a betting centre there at all. Major European football matches usually start at 2.45 am, and I do

not know whether the Secretary has watched any of these matches. At 2.45 am, a residential neighbourhood should be so quiet, but if people still enter and leave the betting centre there, or if people still linger around the bars nearby, drinking and watching a match, can we imagine the nuisances suffered to the residents there? Madam Chairman, I am sure that the 18 District Councils and the Home Affairs Bureau will receive loads of complaints from residents. People are already complaining a lot about horse betting centres and bars now, so football betting is bound to aggravate the related problems. My amendment only aims to restrict the operating hours. The latest closing time proposed is 11.30 pm. This is exactly the same as the latest closing time of existing HKJC betting centres, not a minute earlier or later.

Finally, the purpose of my reference to the Control of Obscene and Indecent Articles Ordinance is that although the Bill is underlined by a similar spirit, I just do not think that the Government has done enough. Everybody wants to protect youngsters, and no one wants to see any youngster falling under the influences of football betting, so all of us wish to impose heavy penalties on people who may induce youngsters to come into contact with football betting. I do not think that this in any way runs counter to the Government's intention of protecting youngsters. That is why I have included this point in the amendment. Madam Chairman, although my amendment stands almost no chance of passage, I still wish to put it down in the record of the debate as a means of showing our consistent position.

I now see that Mr FISHER has written a note to the Secretary. I hope that the Secretary can, in his official capacity, explain to the Legislative Council what is meant by "contingencies related to" football matches, so that there can be some kind of record. That way, we will be able to follow up and monitor the issue and seek to understand the position of and benchmarks adopted by the Secretary or the Government regarding football betting. Will the Secretary please explain what is meant by "contingencies related to" football matches? Thank you, Madam Chairman.

MRS SELINA CHOW (in Cantonese): Madam Chairman, I must respond to Mr Andrew CHENG's earlier remarks about a comment made by me just now that I considered his arguments problematic. In fact, he has all along insisted on opposing the authorization of football betting, and we know that his position is very clear. Yet, he said that he still remained unconvinced that the Government

would be able to combat illegal football betting activities by authorizing football betting. A point at issue is whether illegal football betting can be curbed judging from the way football betting will be conducted as proposed by the HKJC, that is, focusing on international matches, and also judging from the proposed types of bets and the manner in which bets are placed. He said on the one hand that the proposals of the HKJC cannot in the least combat illegal football betting, but on the other hand, he argued in a way as if saying, "Please tie up its hands so that it cannot combat illegal football betting". This is indeed contradictory. On the one hand, he said that the authorization of football betting could not combat illegal football betting but then he asked people to tie up the hands of the HKJC so that it could not combat illegal football betting. So, basically, we think that his argument cannot stand. Thank you, Madam Chairman.

MR ANDREW CHENG (in Cantonese): Madam Chairman, it really baffles me as to why Mrs Selina CHOW, being the Chairman of the Bills Committee, is still holding such a totally wrong interpretation of my rationale and principle. It is really a great pity. The Democratic Party is firmly opposed to football betting, maintaining that curbing gambling with gambling is unacceptable. Insofar as football betting is concerned, that is, in regard to betting on football match results and all contingencies related to a football match, the Government has clung to the position that no restriction must be imposed on the prospective licensee in terms of the types of bets. Its rationale is that once any restriction is imposed, it will be impossible to combat illegal football betting. We maintain that curbing gambling with gambling simply will not work. During the resumption of Second Reading debate, we did make our opposition very clear. That was why we never said that the Government should curb gambling with gambling. But very much unfortunately, the Bill has passed Second Reading and may thus become law. So, the Democratic Party now wishes to minimize the harms of football betting. Therefore, the argument we now want to put before the Government is that if it insists on retaining the existing wording, the types of bets available may well increase endlessly in number. We hence want to tell the Government, and we also want to tell Mrs Selina CHOW and the Liberal Party that if they support the amendment of the Government, gambling will become increasingly widespread. This is the major evil which society will have to suffer. In conclusion, we hope that Mrs CHOW can realize this point, instead of saying that we are self-contradictory. It is the Government which is self-contradictory. Thank you, Madam Chairman.

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 amendment moved by the Secretary for Home Affairs to the proposed section 6E in clause 13 be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members who have just come in return to their seats as soon as possible to cast their votes?

MISS MARGARET NG (in Cantonese): Excuse me, Madam Chairman, can you repeat the question put?

CHAIRMAN (in Cantonese): Certainly. The question now put is: That the amendment to section 6E of clause 13 moved by the Secretary for Home Affairs be passed. The amendment to section 6E should already be set out in the paper.

Miss CHOY So-yuk, please hurry up. Mr LAU Ping-cheung, please hurry up too.

I advise Members not to leave this Chamber again to enable voting to be speeded up.

Will Members please check their votes and check if they are consistent with their intentions.

CHAIRMAN (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Raymond HO, Dr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Ms Cyd HO, Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong and Mr WONG Sing-chi voted against the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Miss CHOY So-yuk, Dr TANG Siu-tong and Mr IP Kwok-him abstained.

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

THE CHAIRMAN announced that there were 51 Members present, 29 were in favour of the motion, 14 against it and seven abstained. Since the question was

agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Home Affairs has been passed, Mr Andrew CHENG may not move his amendment to section 6E of clause 13, which is inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments to sections 6R and 6U under clause 13 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.

(Members raised their hands)

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

CHAIRMAN (in Cantonese): As the amendments moved by the Secretary for Home Affairs have been passed, Mr Andrew CHENG may not move his amendments to sections 6R and 6U of clause 13, which are inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments to sections 6G and 6Z of clause 13 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.

(Members raised their hands)

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

CHAIRMAN (in Cantonese): As the amendments moved by the Secretary for Home Affairs have been passed, Mr Andrew CHENG may not move his amendments to sections 6G and 6Z of clause 13 nor his amendment to add new clause 16A which are inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the other amendments to clause 13 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.

(Members raised their hands)

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 13 as amended.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): New clause 12A Section added.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that new clause 12A, which adds a new section 6AA to the Ordinance, as set out in the paper circularized to Members, be read the Second time. The object of this amendment is to stipulate once again the original penalty provisions of the Bill in respect of the conduct of football betting, in order to avoid a situation under which the amendments to other penalty provisions in the Bill may inappropriately nullify the original penalties in the Bill. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 12A 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.

(Members raised their hands)

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

CLERK (in Cantonese): New clause 12A.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that new clause 12A be added to the Bill.

Proposed addition

New clause 12A (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 12A be added to the Bill.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that the long title be amended as set out in the paper circularized to

Members. We propose to replace "Gaming" with "Football Betting and Lotteries" for exactly the same reason underlying the amendment to other provisions, that is, the replacement of "Gaming Commission" by "Football Betting and Lotteries Commission". Thank you, Madam Chairman.

Proposed amendment

Long title (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment moved by the Secretary for Home Affairs to the long title be passed.

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.

(Members raised their hands)

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.

BETTING DUTY (AMENDMENT) BILL 2003

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

Betting Duty (Amendment) Bill 2003

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

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

MRS SELINA CHOW (in Cantonese): Madam President, I am not speaking as Chairman of the Bills Committee or the House Committee. But as a long-serving Member, I wish to say just a few words.

Insofar as the Bill is concerned, Members do have some dissatisfaction. The Government did not submit this very controversial Bill to the Legislative Council until very late. We therefore hope that the Government can avoid similar situations as much as possible in the future. We know very well why the Government wants to pass the Bill as quickly as possible. The authorities do have its own reasons; there may be revenue reasons, and the Hong Kong Jockey Club also wants to launch football betting as early as possible. But Members still think that the schedule is a bit too tight. Anyway, though time is running short, Members have still rendered their co-operation, in apt reflection of the fact that the Legislative Council will always co-operate and work with the Government. Besides, I also think that we have already done all that we should do. Though the Bill is highly contentious and many organizations have very strong opinions about it, we have still given them ample time to voice their views and made arrangements for Members to listen to their representations. In addition, we have also tried as much as possible to discuss the divergent views among Members.

I also agree with some Members that we should be appreciative of the Government's attitude this time around, because the Government has put forward many amendments after listening to the views of Members and various organizations. I think it will be nice if every Bills Committee can do so in the

legislative process. I hope that whether any individual Members were on the Bills Committee, they can realize that if a Bills Committee can always receive this kind of support and responses from the Government, things will be much smoother. Thank you, Madam President.

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

MR ANDREW CHENG (in Cantonese): Madam President, I greatly share the personal views of Mrs Selina CHOW. Despite the fact that, in the course of discussion, we were dissatisfied with the Government for not presenting the Bill to this Council earlier, and that I disagreed with Mrs Selina CHOW in a number of areas in the debate earlier as well as during the deliberations on the Bill, at least I believe Mrs CHOW, Mr FISHER and I have been doing our utmost to work in collaboration in dealing with this issue. I am referring particularly to Mr FISHER. Many praises were sung on him yesterday. However, I did not sing him any praises yesterday. Nor did I wish to do so. Many colleagues took part in the scrutiny of the bill relating to the Urban Renewal Authority (URA). Mr FISHER promised at that time that a lot of things would be done. Up till today, has the URA honoured its promises? This is our major concern.

A number of questions were raised during the scrutiny of the Bill. We were very much concerned about such questions as the code of practice of the Hong Kong Jockey Club (HKJC), the types of bets, and so on. Madam President, a number of colleagues are sitting here waiting to cast their votes, however, I believe our chances of successfully thwarting the Bill's Third Reading are getting increasingly slim. This is because several Members in the opposition camp are not here in this Chamber today. Nevertheless, I still wish to make a last-ditch effort to share with Members some of my overseas experience.

I recall I visited Nevada, the United States, a couple of years ago, the year in which the September 11 incident happened. Compared with other states in the country, gambling is most popular in Nevada. During my visit, the legislature of Nevada happened to be holding a discussion on American football gambling in American colleges, and even high schools. Such gambling activities have indeed existed for a long time. Many parents, educational institutions, and even many government officials as well as members of the

legislature held the view that the problem would deteriorate, should the trend be allowed to continue. They advised us that it is easier to relax gambling than to control it. It is possible for the problem facing them then to become a problem for Hong Kong in eight or 10 years. As such, I earnestly hope Members can take the matter seriously. We must not be shortsighted by just focusing on a hundred or so millions of dollars in revenue, for the price to be paid by the community in future is going to be very high.

I stressed once again earlier that I hoped the Secretary could give us a response by explaining the meaning of "the results of football matches" and "contingencies relating to football matches" referred to in the Bill. I saw Mr FISHER passing a note to remind the Secretary. However, the Secretary, in an unusual move, declined to respond following the delivery of speeches by Members. Madam President, I hope I can make an appeal through you to the Secretary to respond. This is because repeated attempts have been made in the Bills Committee to ask the Secretary to clarify this issue. We will feel very sorry if the Secretary is still unable to provide us with a clearer position and policy at this very moment when the Bill, having been read the Second time, is going to be read the Third time today. I hope the Secretary, being an accountable official, can respond to my queries later in his reply.

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

(The Secretary for Home Affairs indicated that he did not wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

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

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

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

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Raymond HO, Dr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr LAU Ping-cheung, Ms Audrey EU and Mr MA Fung-kwok voted for the motion.

Ms Cyd HO, Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr WONG Yung-kan, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Dr TANG Siu-tong, Mr Michael MAK, Mr WONG Sing-chi, Mr Frederick FUNG and Mr IP Kwok-him voted against the motion.

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

THE PRESIDENT announced that there were 55 Members present, 30 were in favour of the motion and 24 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Betting Duty (Amendment) Bill 2003.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Prevention of Child Pornography Bill.

PREVENTION OF CHILD PORNOGRAPHY BILL

Resumption of debate on Second Reading which was moved on 23 January 2002

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

MR ANDREW CHENG (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Prevention of Child Pornography Bill (the Bills Committee), I shall report on the major deliberations of the Bills Committee.

The objective of the Prevention of Child Pornography Bill (the Bill) is to protect children against sexual exploitation. The Bills Committee held 16 meetings with the Administration and considered views from 17 organizations. Members of the Bills Committee also visited the Hong Kong Police Computer Forensics Laboratory to better understand how computer forensics investigation and digital evidence recovery would be conducted.

Members expressed concern about the use of the expression "appears to be a child" in the definition of child pornography, as the expression was not precise and different people might have different impressions as to the age of a person. Members queried how a person would be determined as appearing to be a child, especially one who was near the age of 16. Members noted that the expression "depicted as being" was used in the definition of child pornography in the Criminal Code of Canada and suggested that the expression "appears to be a child" be amended along the lines of Canada.

The Administration explained that a person would not be convicted of a child pornography offence unless the prosecution could prove beyond reasonable doubt that the person depicted was or appeared to be under the age of 16.

The Administration agreed that "appears to be" was not a precise expression. However, if the "appears to be" limb was taken out, there would likely be significant enforcement difficulties. Nevertheless, the Administration accepted views raised by members and agreed to replace the expression "appears to be a child" by "depicted as being a child" in the definition of child pornography.

Madam President, to comply with the International Labour Convention No. 182, clause 14 of the Bill amends the Crimes Ordinance to make the use, procurement or offer of a person under the age of 18 for making pornography or for live pornographic performances an offence. In this context, a two-tier definition for pornographic depiction involving children is proposed in the Bill, that is, for children under the age of 16 and for those above the age of 16 but under 18.

Members expressed concern about the proposed two-tier definition as it was complicated and might cause confusion especially in enforcement. Members also pointed out that such a two-tier definition could not be found in similar legislation in Australia, Canada, the United Kingdom and the United States.

The Administration explained that the proposed two-tier definition had the merit of affording greater protection to persons under the age of 16 from being used, procured or offered for making child pornography or for pornographic performances. The Administration also believed that there would not be particular difficulties in law enforcement and prosecution. In the light of members' view, the Administration agreed to adopt the definition presently proposed for persons under the age of 16 to be applicable to all persons under the age of 18.

Madam President, the Bills Committee scrupulously studied clause 3(3) of the Bill which stipulated offence of possession of child pornography and relevant defence for child pornography. Members were in full support of the objective of the Bill, but were concerned about the proposed offence of possession. Members were concerned that people might possess child pornography in the

form of spam e-mail, unsolicited films or possibly publications circulated in public, but might not know that they contained child pornography. Despite the various defences provided in clause 4 of the Bill, members still worried that innocent people might be caught by the offence. Members pointed out that a person might receive unsolicited child pornography through electronic means on a recurrent basis. It would be too onerous to require a person to destroy, within a reasonable time, each and every unsolicited child pornography image that he received. Moreover, some people may not be well versed in computer operation, and may have difficulties to even destroy the unsolicited e-mail containing child pornography.

Members also queried who would be held liable for the possession of child pornography found in a flat shared by two persons. Some members suggested that an express mental element be included, so that a person who knowingly has in his possession of child pornography commits an offence.

In addition, members have expressed concern about placing the evidential burden on the defendant, especially for simple possession offence to establish a defence under the Bill, bearing in mind the unnecessary burden placed on innocent people to adduce evidence.

The Administration explained its policy intent that a person should not be guilty if he received unsolicited publication, e-mail or other electronic data and neither knew nor suspected the nature of the publication, e-mail or other electronic data being child pornography. To establish that an offence has been committed by the defendant, the prosecution has the burden to prove these three elements beyond reasonable doubt and must prove that: the defendant possessed something in the sense that it was within his custody or control; the defendant knew that he possessed something; and the something possessed by the defendant was child pornography. Therefore, if a certain thing is found in a flat shared by two persons, but it cannot be proved beyond reasonable doubt which person has custody or control over the thing, neither of them would be convicted.

The Administration pointed out that although the word "knowingly" was not included in the relevant legislation, mental element was one of the essential elements to be proved by the prosecution. If the word "knowingly" were to be included in the offence provision, the prosecution would have to prove at the outset that the defendant knew both that he had the child pornography in his possession and that its exact nature was child pornography. Such an inclusion

would cause serious difficulties in prosecution, thus undermining the effectiveness of the legislation.

Regarding the evidential burden on the defendant, the Administration explained that the defendant only needed to adduce evidence to raise the issue of knowledge. The level of proof was not the high level of beyond reasonable doubt, or even balance of probability. The burden of proving guilt was throughout on the prosecution.

To address members' concern that innocent people might be accused of possession of child pornography, the Administration eventually agreed to introduce amendments to the defence provision in clause 4(2) of the Bill and remove the objective standards in the proposed defence provisions.

Addressing members' concern about the evidential burden on the defendant charged with an offence of possession, the Administration would propose an amendment to provide a lower standard of proof in respect of the defence provisions in clause 4. In addition, the Administration proposed to expressly provide that the standard of proof was on a balance of probabilities in cases other than possession.

Members expressed concern that those who were accused of possessing child pornography might be less able to take reasonable steps to ascertain the age of the person depicted in the child pornography or it was not practicable for them to take any effective steps to ascertain that age. To address this concern, the Administration proposed to single out clause 4(5)(a) so that the provision by itself would be a defence that a suspect may invoke as defence against the possession charge.

Furthermore, the Administration would propose various amendments, including defence for those who make, produce, reproduce, copy, publish, import, or export any child pornography to establish that all such steps as were reasonable and practicable in the circumstances of the case to ascertain the age of the person pornographically depicted in the child pornography when originally depicted.

Madam President, the new section 153P of the Crimes Ordinance to be added by the Bill extends the application of 24 sexual offence provisions listed in the new Schedule 2 to the Crimes Ordinance to an act committed against a child

outside Hong Kong if the defendant or the child has connections with Hong Kong.

The Administration explained that the extraterritorial effect of the relevant offence provisions was essential to combating child sex tourism. Permanent residents and persons who ordinarily reside in Hong Kong, irrespective of their nationality, should be prohibited from engaging in the heinous acts of child sex tourism occurred outside Hong Kong. The rationale for including the 24 offences was because they had more direct relations to sexual exploitation of children.

Members queried whether the defence provided in the proposed new section 153P(3) of the Crimes Ordinance would also be available to a husband procuring his wife under the age of 16 for an unlawful sexual act with a third person. As it was not the policy intent, the Administration would introduce amendments to narrow the scope of the defence. Thus, the defence as amended would not apply to offences involving assault of the victim, abduction or detention of the victim or procuring a sexual act with a third person.

Lastly, the Bills Committee urged the Administration to enhance publicity on the contents of the Bill.

Madam President, I have just now reported on behalf of the Bills Committee this highly complicated report on the numerous discussions with the Administration on the contents of the Bill.

I believe the President could see the importance of the legislation from this 22-paragraph report, as it may help the SAR Government effectively to prevent child pornography and protect our children and teenagers from being sexual exploited by unruly elements.

The Democratic Party supports the Bill. Miss Eliza YAU of the Security Bureau showed her meticulousness in the 16 meetings with the Government straddling almost two Legislative Sessions. She has also provided us a lot of ideas in the legal aspect as well as overseas' legislation for our reference. The Government was highly co-operative with Bills Committee members and Members on the issue.

Today, the Secretary for Security is in this Chamber to prepare for the Second and Third Readings of the Prevention of Child Pornography Bill. I believe she feels more comfortable and relaxed than it would have been the resumption of the Second Reading of the National Security (Legislative Provisions) Bill, which was supposed to be read on 9 July, as she knows that the representative of the Security Bureau was highly co-operative with Members and we share a common objective.

I sincerely request the Secretary and her colleagues in the Security Bureau to conduct rational discussions on the premise of sincere co-operation and mutual understanding in future, irrespective of the issue being national security or child pornography, as I believe the opinions of the public and Members are of the utmost importance. With regard to the Bill, Madam President, we have held 16 meetings, made reference to the opinions of 17 organizations and conducted discussions straddling two Legislative Sessions. The initial results are satisfying. We hope the Administration will enhance publicity on the contents of the Bill in future so as to effectively protect children from sexual exploitation by unruly elements. I believe that is the common goal of everybody in Hong Kong and the Security Bureau.

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

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

MRS SOPHIE LEUNG (in Cantonese): Madam President, offences involving child pornography are horrendous and serious criminal acts. Although the issue of child pornography is not very serious in Hong Kong, that the prosecution of 31 cases among the 38 cases reported during the period between 1996 and 2000 indicates that there is much room for review in the current legislation. Moreover, in view of the prevalence of the Internet, the channels for the distribution and dissemination of pornography have increased tremendously, which would probably aggravate the problem. Article 34 of the United Nations Convention on the Rights of the Child (UNCRC) stipulates that children should be protected from all forms of sexual exploitation and sexual abuse. Since the UNCRC applies to Hong Kong, the Liberal Party therefore supports the legislation to criminalize such activities as child pornographic performance, child pornography and child sex tourism.

A more controversial part of the Bill was the adoption of the element of "appears to be a child" in the definition of child pornography. The expression was not precise enough as judging the age of a person was only a matter of point of view. I remember the Administration did show us a movie clip in a meeting of the Bills Committee in which the age of the leading actress had induced a debate among members, as members held different views on the issue of whether she was under the age of 16.

The Administration pointed out that if the "appears to be" expression were taken out, there would likely be significant enforcement difficulties, since it was very difficult for the authorities to distinguish whether or not the image of a child in the pornography appeared to be under the age of 16. After a heated debate, members of the Bills Committee were of the view that the expression "appears to be a child" was probably too subjective, besides, in a case of the Court of the United States, the definition had been overthrown by the Court. For that reason, I am happy that the Administration finally agreed to amend the expression of "appears to be a child" by replacing it with "depicted as being a child" in the definition of child pornography with reference drawn from the definition of child pornography in the Criminal Code of Canada, as this expression adopted a more objective standard of test rather than what was in the mind of the author or possessor. The new definition is apparently more reasonable.

Furthermore, with regard to the offence of possession of child pornography, Ms Miriam LAU suggested that a mental element be included in this offence provision and the onus of proof should be on the prosecution just as other offences under common law. The authorities considered that such an inclusion would cause serious difficulties in terms of burden of proof on the prosecution. However, if simple "possession" were an offence, in fact a lot of innocent people would feel concerned that they may fall into the dragnet without the knowledge of possession at all. The authorities subsequently agreed to amend the defence provision that a defendant may invoke the defence provisions, if sufficient evidence is adduced to raise an issue with respect to the fact he had established, and the contrary is not proved by the prosecution beyond reasonable doubt.

Furthermore, the Liberal Party and some members of the Bills Committee were concerned that people might practically possess child pornography in the form of spam e-mail, unsolicited films or publications, but might not know that they contain child pornography elements. In view of this, the authorities

amended the defence provisions of the Bill that as long as the person endeavoured to destroy child pornography received without request within a reasonable time, he could use that as a defence. However, a person may not necessarily discover unsolicited child pornography received through the Internet within a reasonable time. Just as the Chairman of the Bills Committee said, some people might not be well versed in computer operation, and might have difficulties to even destroy the unsolicited e-mail containing child pornography. We hope the Administration will pay attention to that in enforcement, so as to avoid catching the innocent.

Furthermore, with regard to the reference to "on reasonable grounds" in the defence of mistake as to age in possession cases, the Liberal Party and some members of the Bills Committee considered that it was adequate for the defendant to believe that the person pornographically depicted in the child pornography was not a child when originally depicted and that the person was not depicted as a child. For that reason, the objective reference to "on reasonable grounds" should be deleted. In response to members' request, the Government proposed an amendment to enhance the protection of the innocent people. The Liberal Party welcomes the amendment.

Finally, the Bill allows artistic merit defence. Whether a child pornography material has artistic merit is up to the Court to decide. The Liberal Party agrees to this arrangement as the artistic merit of a pornographic article involves a rather subjective judgement. The approach of leaving it to the Court to come to a decision having regard to a variety of factors and evidence is a more objective way to deal with the matter. For that reason, we welcome such an arrangement.

On the whole, the Liberal Party supports the spirit of the Bill and the amendments proposed by the Administration. However, we hope the authorities would make more publicity efforts and introduce the Bill to the public so as to let the public have a better understanding of the provisions and prevent innocent people from being caught by the law.

Madam President, the deliberations on the Bill were lengthy and numerous meetings were held. We appreciate that the Government has readily accepted good advice and not only listened carefully to our opinions, but also accepted our views despite we have been insisting on our own views for a while in relation to certain points of argument. Moreover, I had proposed views to the Secretary for Security on certain major items and she accepted them and said that she

would look carefully into them. I think that this attitude of hers in performing functions of a public officer is commendable.

Madam President, I so submit.

MISS CHOY SO-YUK (in Cantonese): Madam President, the exposure of numerous crimes involving child pornography all over the world has eventually awakened the world to the fact that every day a large number of innocent children are helplessly exposed to the gloomy and deformed world of adults, and their existence is to fulfil the freakish desire of the latter. This will not just make one feel extremely angry, but also cause serious injuries to children who are least capable of protecting themselves.

A law professor who used to teach copyright law in New York Law School was found keeping over a hundred thousand child pornography photographs. In 1999, a paedophile website was busted by the United States Government and credit card information of 250 000 clients from all over the world was found. The most shocking part was that there were doctors, nurses, teachers or even police officers among 1 300 paedophiles arrested by the British Government according to the credit card information!

These incidents show that paedophiles are large in number and the market is enormous. With the appeal of lucre, one could anticipate that more children would be forced to pose for pornographic pictures by threat and blandishments and the situation would deteriorate.

In order to co-operate with various places in the world in the full-scale clampdown on these activities, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the prompt passage of the Bill, with a view to prohibiting the production, possession and distribution of child pornography.

With the aim of making the definition of the offence more unambiguous and removing subjective ideas of individuals as the factor in determining whether a crime has been committed, the DAB welcomes the fact that the Government has taken the initiative to propose an amendment and refrained from insisting on using the expression of "appears to be" in the definition of child pornography; alternatively, it followed the Criminal Code of Canada by adopting the expression of "depicted as being" as a objective standard for the offence. That

is, it is based on the depiction and what it would be conveyed to a third party observer, rather than what is in the mind of the author or possessor.

Some members of the Bills Committee wished to add a mental element to the provisions of the Bill, so that an offence is committed by the defendant only if the defendant clearly knows that he is possessing child pornography. The DAB agrees that it is necessary to protect the right of innocent people from being caught inadvertently, for example, even if a person receives child pornography through e-mail that he has neither solicited nor has knowledge about it, he should not be considered having committed the offence. However, conversely, we also believe that once the mental element is added to the Bill, it would undermine the deterrent effect of the provision. For that reason, the DAB accepts the Government's proposal of amending the defence provisions to a great extent with regard to the possession offence and providing a lower standard of proof for the defendant to prove his innocence. Under this proposal, the legislation could not only persevere the power to combat possession of child pornography, but also protect innocent people from being caught by the offence.

Meanwhile, with regard to the Government's original definition for pornographic depiction, whereby a two-tier definition would be drawn up according to the age of the person depicted, in which the age of 16 was the threshold, the DAB considers that it would cause confusion. Since different people may have different impressions as to the age of a person, thus there would be not much difference with regard to the effect of making a child pornographic movie acting by a 15- or 17-year-old girl. For that reason, as the Government eventually adopted a practical and realistic way to standardize the definition of pornographic depiction and readily accepted good advice, the DAB considers that worthy of support.

One last thing I need to mention is that another major objective of the Bill is to curb child sex tourism. I do not know how many Hong Kong people would commit acts against children outside Hong Kong. However, according to the information of a non-government organization, over 1 million children in Asia alone are forced to take part in the sex industry. For that reason, the DAB supports the proposed amendments to the Crimes Ordinance by adding new sections with extraterritorial effect in order to protect children all over the world. Besides, we have to let all paedophiles in Hong Kong know that it would be an offence no matter the acts against children are committed in or outside Hong Kong, and there would be no escape from the long arm of Hong Kong laws.

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

DR DAVID CHU (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance, I rise to speak in support of the Prevention Of Child Pornography Bill (the Bill) and the Committee stage amendments proposed by the Government. The Bill can enhance the protection for children and prevent them from being used in pornographic activities. Currently, there is no specific law in Hong Kong which makes the possession of child pornography a crime. I am of the view that stricter laws can help protect children who are vulnerable and not capable of acting independently. In particular, making the possession of child pornography a crime will curb the demand for such articles and can thus tackle the problem at root. As a matter of fact, similar laws are also found in Europe and the United States.

I am of the view that the Bill can already strike a proper balance between the prevention of child pornography and the protection of innocent persons and organizations. I urge the Government to step up the publicity work required, so as to let people know that the possession of child pornography is a crime. Meanwhile, I call on it to enhance various measures to protect children against abuse. I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Prevention of Child Pornography Bill was introduced to the Legislative Council on 23 January 2002 for First and Second Readings. The Bill provides for offences of pornography that depicts children, child live pornographic performance and child sex tourism so as to enhance the protection of children against sexual exploitation.

I am very grateful to Mr Andrew CHENG and other members of the Bills Committee for their detailed deliberations on the Bill and comprehensive discussions. In the meetings of the Bills Committee, Members made many valuable suggestions and after listening to their recommendations, I agreed to propose some amendments to the Bill to better the legislative proposals. I would propose the amendments at the Committee stage later and explain the reasons for doing so.

The main proposals of the Bill are:

- (1) to create offences of making, producing, publishing, importing, exporting, distributing, advertising and possessing pornography that depicts children who are under the age of 16 or appear to be under the age of 16;
- (2) to create an offence for any person who uses, procures or offers to another person who is under the age of 18 for making pornography, or for a live pornographic performance; and
- (3) to extend the application of certain sexual offence provisions to acts committed against children outside Hong Kong and prohibiting the making of any arrangement relating to the commission of those acts and advertisements for such arrangements.

Under Article 34 of the United Nations Convention on the Rights of the Child as applied to Hong Kong, children should be protected against pornography and sexual abuse. Therefore, the enactment of laws to prohibit child pornography and child sex tourism is a positive move made to fulfil our obligations under the Convention.

The concerns expressed by the Bills Committee about child pornography offences are mainly as follows:

- (a) the reference to "appear to be" in the definition of "child pornography";
- (b) the word "knowingly" being not included in the provision on the offence of "possession of child pornography"; and
- (c) the application of the defence provided in clause 4 in possession cases.

The definition of "child pornography" as proposed in the Bill means "a photograph, film, computer-generated image or other visual depiction that is a pornographic depiction of a person who is or appears to be a child, whether it is made or generated by electronic or other means, whether or not it is a depiction

of a real person". Some Members have queried the use of the expression "appears to be" as it may be subjective and whether or not a depiction which is not of a real person can be banned on this ground to protect the children.

As a matter of fact, laws of different countries include in their scope of child pornography offences articles which "appear to be a child" but in reality no real persons are involved or those which adults impersonate as children. The Administration has made reference to relevant legislation in Britain, Australia, the United States and Canada on their definitions of child pornography and found that there are concepts and expressions of "appears to be", "depicted as" or "computer-generated".

Members have tendered valuable advice in this respect and after consideration we will propose to replace the expression "appears to be" by "depicted as being" in the definition of "child pornography". When amended, "child pornography" will mean a photograph, film or computer-generated image or other visual depiction that is a pornographic depiction of a person who is under the age of 16 or depicted as a child, whether it is made or generated by electronic or other means, whether or not it is the depiction of a real person and whether or not it has been modified.

In the discussions held in the Bills Committee, some Members expressed the concern that the word "knowingly" is not included in the offence provision on the possession of child pornography and people may be caught by the law if they come to such possession out of inadvertence.

Relevant laws in Britain, Canada and Australia do not include the word "knowingly" in their definitions of child pornography. According to authoritative cases, to establish that an offence of possession under clause 3(3) of the Bill has been committed by the defendant, the prosecution must prove the following three elements which constitute the offence:

- (a) the defendant possessed something in the sense that is within his custody or control;
- (b) the defendant knew that he possessed the thing; and
- (c) the thing possessed by the defendant was child pornography.

If the word "knowingly" is included in the offence provision, it would cause serious difficulties in enforcement and prosecution, for the prosecution would have to prove from the outset that the defendant knew both that he had the child pornography in his possession and that its exact nature was child pornography. As this involves the mental element of the defendant, this would be extremely difficult to establish an offence.

The present legislative proposal is that after the above three elements are proved by the prosecution beyond reasonable doubt, the defendant may choose to give an explanation. The defence provisions only require the defendant to adduce evidence on the issue of knowledge. When this issue of knowledge is raised as a point of argument, the prosecution must prove beyond reasonable doubt the defendant's knowledge of that matter. If the jury is not satisfied beyond reasonable doubt, then the defendant cannot be convicted. Once there is dispute on the issue of knowledge, it will be crucial to whether the defendant is guilty of the charge and the burden of proving guilt beyond reasonable doubt is on the prosecution throughout the trial.

As to the defence provisions, notwithstanding the clarity and rigour in the proposed definition of child pornography, the Bill also provides for certain defence provisions to enable people with reasonable grounds to make a defence and to prevent innocent people who have come into contact with child pornography out of inadvertence from being prosecuted.

In the discussions held in the Bills Committee, Members noted with particular concern about the defence provisions applicable to the offence of possession of child pornography. Members are of the view that as the word "knowingly" is not included in the offence provision, it is necessary to set out the related defence provisions in a manner which can easily be invoked by the defendant so that this would prevent people from being caught by the law when they come into the possession of child pornography out of sheer inadvertence.

We understand the apprehensions of Members and have agreed to improve the defence provisions in the Bill, in particular the offence of possession. We propose to delete the requirement in the defence provisions that a defendant should be proved to have violated certain objective standards. A person accused of possessing child pornography is only required to adduce evidence to raise an issue, then his defence is considered to have been established. These

amendments will enable the defendant to adopt such defence easily to clear himself of the liability.

In addition, the Bills Committee has also presented some views on the defence provisions on offences other than possession. We have agreed to these views and proposed amendments to these provisions. Compared to relevant legislation in Britain, Canada, Australia and the United States, the amended defence provisions will offer more comprehensive protection.

The Bill also creates an offence for any person who uses, procures or offers another person who is under the age of 18 for making pornography or for a live pornographic performance. This is meant to comply with the stipulations in International Labour Organization Convention No. 182 which is a widely recognized international labour convention. Signatories to the Convention all pledge to take effective measures to prohibit and eliminate the worst forms of child labour so that children can be better protected.

Under the proposed offence provision, if the pornographic article or performance is a visual depiction of a person who is under the age of 18 in an activity of an explicitly sexual nature, then it is considered to be a breach of the procuring offence irrespective of whether the child is actually involved in the act.

After discussions, the Bills Committee has agreed to these recommendations and the Administration has accepted the proposal made by the Bills Committee that a uniform definition of pornographic depiction be applied to protect all persons under the age of 18.

With respect to child sex tourism, another proposal made by the Bill is to tackle the problem of child sex tourism. It has become a cause of international concern that adults leave their countries to engage in sexual exploitation of children, especially underage prostitutes. Countries should join hands to tackle the problem. Now if a Hong Kong resident goes to a foreign place and sexually abuses a child and if he is not prosecuted in that place, the Hong Kong police cannot take any action against him when he returns to Hong Kong. He can thus be free from legal sanction. Even as the child in question may not be a Hong Kong resident, it is commonly agreed by the international community that joint actions should be taken to protect children in all places from pornographic activities. Likewise, we should afford similar protection to our children so that if they are sexually abused in a foreign place, the Courts in Hong Kong can have extraterritorial jurisdiction in the matter.

Therefore, we propose to extend the application of 24 sexual offence provisions listed in the Crimes Ordinance to an act committed against a child under the age of 16 outside Hong Kong and that the maximum sentence for sexual acts committed against a child under the age of 16 outside Hong Kong would be deemed as if the act had been committed in Hong Kong. Provided that the offender or the victim is a permanent resident of Hong Kong or ordinarily resides in the territory, the extraterritorial effect will apply. We propose that arrangement and advertisement of child sex tourism should also be made an offence. Subject to the passage of the Bill and its commencement, the abovementioned acts of sexual abuse against children will be triable in the Courts of Hong Kong.

The Bills Committee has discussed these proposals and the relevant provisions and agreed that an amendment be proposed by the Administration to the effect that a valid marriage in the place concerned can be used as a defence.

Apart from the proposed amendments mentioned and after making reference to the views of the Bills Committee, I would propose other amendments to improve the Bill and make some additions of a technical nature. I would explain them one by one later.

To promote public awareness of the implementation of the Bill after enactment, the Administration would launch publicity on the key contents of the Bill, including the message that possession of child pornography is a criminal offence. The publicity plan of the Administration would include the distribution of posters and pamphlets and publicity on the Internet and the television. All these are aimed at promoting public awareness of the key contents of the legislation and greater vigilance against child pornography. Members of the public will therefore have fewer chances of coming into contact with child pornography inadvertently.

The protection of children from being exploited in pornography and sexual abuse is essential to the provision of safe and healthy conditions for their growth.

Madam President, I hope Members will support the Bill and the amendments which I shall propose later at the Committee stage.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Prevention of Child Pornography Bill.

Council went into Committee.

Committee Stage

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

PREVENTION OF CHILD PORNOGRAPHY BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Prevention of Child Pornography Bill.

CLERK (in Cantonese): Clauses 1, 3, 6, 7, 9, 12, 13, 15 and 17 to 26.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 5, 8, 10, 11, 14 and 16.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that the clauses read out just now be amended, as set out in the paper circularized to Members.

The amendment to clause 2(1) is proposed in response to Members' comment that, in the definition of "child pornography", the expression "appears to be" has a subjective overtone, and it may be unfair to the defendant. In the meetings of the Bills Committee, Members made reference to the relevant legislation of Canada as well as a ruling made by the Supreme Court of Canada in *R v Sharpe*, in which the Canadian Court had studied the expression "depicted as being" in the definition of child pornography. The Canadian Court was of the opinion that the definition had introduced objective criteria for assessing the outward age of the person depicted, that was, basing on the relevant depiction, what kind of ideas will be conveyed to a reasonable observer. After considering the comments made by Members, I agreed to amend the definition of "child pornography" in clause 2(1) by replacing the expression "appears to be" by "depicted as being".

Meanwhile, I also propose to make a similar amendment to the definition of "pornographic depiction" by replacing the expression "appears to be" by "depicted as being" so as to achieve consistency.

In addition, in the light of the view of the Bills Committee, I agree to amend the defence provisions in clause 4 by deleting the requirement of the defendant to meet certain objective criteria in the defence provisions under the offence of "possession". Instead, persons charged with the offence of possession, when he is required to prove any fact in his defence, he only has to

satisfy a lower standard of proof. Meanwhile, consequent to such amendment, we propose, for offences that may make use of the defence provisions, to rearrange the order of the defence provisions under clause 4. This would have the effect of improving the provisions.

Among the amended defence provisions, subsection (1) stipulates that it is applicable to the defence of all offences. It is a defence for the defendant if artistic merit is present in something alleged to be child pornography, or something which has been classified as Class I or Class II articles under the Control of Obscene and Indecent Articles Ordinance.

Subsection (2) stipulates that the defence is only applicable to offences other than the possession offence. It is a defence for the defendant if he has committed the act of child pornography that is for a genuine educational, scientific or medical purpose or the related act is for serving the public good in other aspects; or he has not seen the child pornography and does not know, nor does he have any reasonable cause to suspect, it to be child pornography; or he has already taken all reasonable and practical steps to ascertain the age of the person pornographically depicted, and if the defendant could influence the way of depiction of the person depicted, he has already taken all reasonable and practical steps to ascertain that the person is not depicted as a child; and the defendant believes on reasonable grounds that the person depicted is not a child, and is not depicted as a child.

Subsection (3) stipulates that the defence is only applicable to offence of possession. It is a defence for the defendant if his possession of the child pornography is for a genuine educational, scientific or medical purpose, or for serving the public good. In addition, after deleting the objective criteria contained in the defence provisions, the defendant is only required to prove that he has not seen and does not know, nor does he suspect the article concerned is child pornography; that he has not asked for any child pornography, and after it comes into his possession, he has endeavoured to destroy it; or he believes that the person depicted is not a child, and is not depicted as a child, and all these could be used as defence.

Finally, subsections (4) and (5) clearly stipulates the burden of proof for the defendant when he has to prove any fact in his defence. The defendant accused of possessing child pornography is only required to adduce sufficient evidence to a triggering point, and the prosecution has to undertake the

responsibility of proving the contrary beyond reasonable doubt. A defendant charged with other offences may put forward the balance of probability when he was proving any fact in his defence.

On the other hand, we have accepted two suggestions of the Bills Committee to amend clause 14 of the Bill, by simplifying the two-tier definition of "pornographic depiction" originally suggested in the Bill into a single definition, thereby making the legislation less complicated and more readily comprehensible. The two-tier definition originally proposed in the Bill is included as new section 138A(4) of the Crimes Ordinance. In prohibiting the procurement of a person under the age of 16 and for those above the age of 16 but under 18 for participation in the production of child pornography or live pornographic performance, it distinguishes the prohibition into two different categories, so as to provide greater protection to children under the age of 16. As for those above the age of 16 but under 18, a narrower definition is adopted to avoid making the restriction imposed by the legislation overly stringent.

However, as Members think that the two-tier definition of pornographic depiction may not be fully justified, and may cause great confusions, I am proposing to extend the application of the definition originally for those under 16 in the Bill, to all the persons under 18. This will provide all the persons under the age of 16 with the same level of protection.

The amendment to clause 16 of the Bill seeks to narrow the scope of defence under new section 153P(3) of the Crimes Ordinance. The proposed section 153P seeks to give extraterritorial effect to certain sexual offence provisions contained in Schedule 2 to the Bill, such as under the circumstances when the "victim" is under the age of 16, and "the offender" and "the victim" are Hong Kong permanent residents or are ordinarily resident in Hong Kong. The purpose of adding new section 153P(3) to the Bill is to ensure that the sexual acts made between a husband and a wife with consent would not be considered an offence within the jurisdiction which permits persons under 16 to get married.

After conducting a further analysis later, we discovered that the scope covered by section 153P(3) could be too extensive. It may become a defence for a husband even if he procures his wife under 16 for an unlawful sexual act with a third person, which is not the policy intent of that defence. Therefore, after discussion with the Bills Committee which endorsed our proposal, I

propose to narrow the scope of the defence by making it only applicable to the sexual act done by the defendant with or to another person under 16, while two other elements of the defence, that is, the marital relation and the consent of the victim, will be retained. Therefore, the amended defence will not be applicable to the offence committed by the defendant in procuring the victim for an unlawful sexual act with a third person.

As for the other amendments to clauses 2, 4, 5, 8, 10, 11, 14 and 16, they are technical additions or amendments to make the intended meaning more explicit, thereby reflecting more accurately the policy intent and eventually making them consistent with the above major amendments.

Madam Chairman, the above amendments are proposed after careful discussion with the Bills Committee which has endorsed them. I implore Members to support the passage of the relevant amendments. Thank you.

Proposed amendments

Clause 2 (see Annex III)

Clause 4 (see Annex III)

Clause 5 (see Annex III)

Clause 8 (see Annex III)

Clause 10 (see Annex III)

Clause 11 (see Annex III)

Clause 14 (see Annex III)

Clause 16 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 5, 8, 10, 11, 14 and 16 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

PREVENTION OF CHILD PORNOGRAPHY BILL

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

Prevention of Child Pornography Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Prevention of Child Pornography Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Prevention of Child Pornography Bill.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Village Representative (Election Petition) Rules.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I move the motion set out on the Agenda be passed so as to amend the Village Representative (Election Petition) Rules (the Rules).

Under the Village Representative Election Ordinance (Cap. 576), the electors or candidates concerned may lodge election petitions on specified grounds. In this connection, the Rules were tabled before the Legislative Council on 11 June 2003 to provide for matters relating to election petitions.

While the Rules were under scrutiny of the relevant Legislative Council Subcommittee, the New Territories Heung Yee Kuk (HYK) made a written submission to the Subcommittee proposing an amendment to section 5(4) of the Rules. This section provides that the Director of Home Affairs, after receiving a copy of the election petition, shall display it on the notice board at the relevant District Office. The HYK considers that as the results of a petition may affect the Rural Committee and the Village concerned, the Government should also display a copy of the petition in a conspicuous place at the Rural Committee office and in the Village concerned. After discussion, members agreed that a copy of the petition should be displayed in a conspicuous place on or near the outer door of the building in which the office of the relevant Rural Committee is situated.

I consider the views of the HYK and members reasonable and propose the amendment as per the motion.

Madam President, I beg to move.

The Secretary for Home Affairs moved the following motion:

"That the Village Representative (Election Petition) Rules, published in the Gazette as Legal Notice No. 151 of 2003 and laid on the table of the Legislative Council on 11 June 2003, be amended in section 5(4) by adding "and in a conspicuous place on or near the outer door of the building in which the office of the Rural Committee is situated" after "Ordinance".

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

MR ANDREW WONG (in Cantonese): Madam President, I rise to speak in my capacity as Chairman of the Subcommittee on subsidiary legislation relating to Village Representative elections (the Subcommittee).

The Village Representative (Election Petition) Rules (the Rules) are the last set of subsidiary legislation submitted by the Administration to this Council with respect to Village Representative (VR) elections for the purpose of, among other things, setting out election petition arrangements relevant to VR elections. Under the Rules, the Director of Home Affairs shall, after receiving a copy of the election petition, expeditiously display it on the notice board at the appropriate District Office (DO). In a letter sent by the HYK to the Subcommittee, the HYK expressed the view that since the result of an election petition regarding a VR election may affect the Rural Committee (RC) and the Village concerned, the Rules should be amended to the effect that the copy of the election petition shall be, in addition to being displayed on the notice board at the appropriate DO, displayed in a conspicuous place in the RC and village office concerned. If there is no village office in the Village concerned, the election petition shall be displayed on a notice board in that Village.

The Subcommittee supported the HYK's proposal of displaying the election petition copy at the office of the RC concerned. Members of the Subcommittee were of the view that such arrangements can, apart from ensuring the relevant villagers will be informed of the election petition, give the Home Affairs Department greater flexibility, for the petition copy can be displayed either inside the office of the RC concerned or in a conspicuous place outside the

office. This will prevent the Administration from being unable to fulfil its duty of displaying the petition copy in the office of the RC if it refuses to co-operate. Though members did not expect RCs would raise objection to the display of petition copies in their offices, we will not object to the Government's proposed amendment to enable the matter to be handled flexibly.

It was pointed out by members that since the Rules were modelled on the District Councils (Election Petition) Rules and the latter specifies that a copy of the election petition received with respect to District Council elections shall be displayed in a regular place of meeting of the District Council concerned, the Rules should similar specify that a copy of the election petition received with respect to VR elections shall be posted in the office of the RC concerned which is the regular place of meeting of the RC.

Members of the Subcommittee were of the view that the Administration may, in response to the proposal of the HYK, make other appropriate administrative arrangements with respect to the display of copies of election petitions in the offices of the village offices concerned or the notice boards of the Villages concerned, without the need to stipulate the relevant arrangements in the Rules.

At the request of the Subcommittee, the Administration agreed to amend section 5(4) of the Rules by stipulating that copies of the election petitions shall be displayed in a conspicuous place on or near the outer door of the office of the RC concerned.

Madam President, I urge Honourable Members to support this motion.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two proposed resolutions under the Interpretation and General Clauses Ordinance to amend the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

PRESIDENT (in Cantonese): The Secretary for Constitutional Affairs and Mr Andrew WONG have given notice to each move a motion under the Ordinance.

Council now proceeds to a joint debate. I shall first call upon Mr Andrew WONG to speak and move his motion.

MR ANDREW WONG (in Cantonese): Madam President, I move that the motion under my name, as printed on the Agenda, be passed. Let me first read out my motion: "That the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003, published in the Gazette as Legal Notice No. 125 of 2003 and laid on the table of the Legislative Council on 21 May 2003, be repealed."

Madam President, as indicated by the title of the Amendment Regulation, the resolution seeks to revise the existing rules made by the Electoral Affairs Commission (EAC) with respect to the District Council (DC) elections. There are two major objectives for this. First, to streamline certain procedures for invalidating the so-called questionable ballot papers, and to transfer the power of determining whether a questionable ballot paper is invalid from the Returning Officer (RO) to the Presiding Officer (PrO), as the latter will become a Counting

Supervisor. The second objective is related to the second part of the first objective. Under the Government's previous practice whereby all ballot papers were counted by the RO, the RO was naturally responsible for determining whether a ballot paper was questionable. As all polling stations will be converted into counting stations under the existing proposal, such power shall be transferred to the PrO.

I have some views on the handling of questionable ballot papers. I believe Mr IP Kwok-him, as convenor of the Subcommittee, will report later in the debate the views expressed by me. However, I will not insist too strongly on my personal views. In my opinion, the task should preferably be performed by a Counting Supervisor because his position is higher, and he is able to provide adequate legal advice too. There might not be enough government lawyers at individual polling stations to provide assistance in determining which ballot papers are questionable. Yet I will not insist on this too strongly. This is because, after the streamlining of the procedures, we can wait for the RO to make the final ruling should problems arise.

Yet there is one point I consider very important. I do appreciate that turning polling stations into counting stations can enhance efficiency and save a lot of resources in counting votes. However, there is a very important principle in the rules governing existing DC or Legislative Council elections. The principle is that, in the case of a constituency with more than one polling station, ballot papers collected from various polling stations should be mixed together before counting is conducted. This can prevent small communities situated near the polling station from being identified as supportive of a certain political party. I consider this principle very important. Of course, some Members even consider it essential for ballot papers to be read out at every polling station, for they believe transparency can be enhanced if all information contained in every ballot paper is made known to the public. However, I consider this extremely dangerous.

This rule, laid down in the past to pool ballot papers collected from different polling stations in the same constituency for collective counting, has sought to prevent the voting intention of the residents or electors near the polling stations from being known easily. It was argued by both the EAC and the Constitutional Affairs Bureau that secrecy or confidentiality will not be compromised even counting is conducted under such circumstances. I find this argument unacceptable. This is because, first, if the number of electors living

near the polling station is relatively small (problems will still exist even if the number of electors is relatively large) and the previous intention of these electors is already known, it might lead to even more incidents of bribing votes. Furthermore, if votes from electors in the vicinity of a polling station demonstrate an inclination towards a certain party or faction and the party or faction happens to win the elections, that is, the majority seats, it might probably lead to reprisal in that particular constituency.

For these reasons, I consider this a major policy change, though the change originated from the EAC instead of the Constitutional Affairs Bureau. Actually, a similar proposal was raised in the last DC elections. The proposal was subsequently withdrawn temporarily owing to strong views from the Panel on Constitutional Affairs. Now the old story is raked up again. This explains why I described this as a major policy change in the meeting on 9 June. It seems to me it is not at all proper for the EAC to hold discussions with us because it is presumably an independent organ. In my opinion, the Secretary for Constitutional Affairs, as the bureau head responsible for this policy, should hold meetings with us personally. However, he was reluctant to come, probably because he considered this merely a minor change.

Moreover, I note that the Secretary for Constitutional Affairs has proposed in the relevant Panel some amendments which are acceptable to Members, though unacceptable to me. These amendments are associated with the new arrangement whereby ballot papers collected at polling stations with less than 200 electors may be mixed with ballot papers collected from other stations for counting. I consider this a major policy change in principle, and a clear explanation is warranted. As such, I have no alternative but to make my views known here. Now the Amendment Regulation has sought to effect significant changes by converting all polling stations into counting stations. In the process, many provisions in the existing law considered by me to be matters of major principles have been deleted. I can surely sort out all the provisions if I am asked to. If Members can support me in repealing this Amendment Regulation, we will still have the existing Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation. Should it be necessary for questionable ballot papers to be categorized, we can always enact another Amendment Regulation to enable the relevant part to take effect.

Madam President, I hope Honourable Members can understand that I am discussing a matter of major principle now. I have no intention to make things

difficult for the Government with respect to minor details. The matter of principle is not about implementing the old system whereby all ballot papers collected were transported to a central station in the district for counting. If there is only one polling station in a constituency, that particular station can naturally be converted into a counting station. However, if there is more than one polling station in the constituency, ballot papers should be collected from different stations and transferred to a specified counting station. Only in doing so can the major principle of electoral secrecy can be adhered to and satisfied. For this reason, I implore Honourable Members to support my motion on repealing the subsidiary legislation. Thank you, Madam President.

Mr Andrew WONG moved the following motion:

"That the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003, published in the Gazette as Legal Notice No. 125 of 2003 and laid on the table of the Legislative Council on 21 May 2003, be repealed.

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): I now call upon the Secretary for Constitutional Affairs to speak on the motion moved by Mr Andrew WONG as well as his own motion. However, no motion may be moved by the Secretary at this stage.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 (the Amendment Regulation) was laid on the table of the Legislative Council on 21 May 2003. A Subcommittee was formed by this Council subsequently to collectively examine three pieces of subsidiary legislation relating to the District Council elections, including the Amendment Regulation. The Subcommittee has now completed its scrutiny. Here I would like to thank Honourable Members and Chairman of the Subcommittee, Mr IP Kwok-him, for their support for the Amendment Regulation and the views they expressed in various areas.

The Amendment Regulation, made by the Electoral Affairs Commission (EAC), has three main objectives as follows:

- (a) providing for the new arrangement of conducting vote counting at polling stations after the close of poll;
- (b) improving the existing provisions on the handling of questionable ballot papers; and
- (c) making other necessary amendments to streamline electoral arrangements.

Members of the Subcommittee generally had no objection to the amendments relating to the handling of questionable ballot papers and streamlining of electoral arrangements. I totally understand the arguments put forward by Mr Andrew WONG from different aspects in relation to the issue of conducting vote counting at polling stations. As a matter of fact, we were given a chance to exchange and communicate our ideas with respect to this issue in a meeting held by the Panel on Constitutional Affairs a couple of months ago. As such, I have not the slightest idea that Mr WONG was trying to make things difficult for the Government or other Members in support of this proposal. As discussions had been held at the meeting of the Panel on Constitutional Affairs a couple of months ago, I think the most important principle is that a consensus had basically been reached in this Council before this subsidiary legislation was proposed. Members were also generally in support of the proposed new arrangement of conducting vote counting at polling stations immediately after the close of poll. However, some Members expressed concern about the issue raised by Mr Andrew WONG earlier that the secrecy of votes might be compromised at polling stations where the number of voters was small and suggested that ballot papers from two or more such polling stations belonging to the same constituency should be mixed before counting.

The EAC is satisfied that the principle of secret balloting will not be compromised under the new arrangement. However, to meet members' concern, the new arrangement will be modified. A polling station with less than 200 registered electors will be designated as a "small polling station". The ballot papers cast at the small polling station will be delivered to another polling station within the same constituency for counting. The aggregate number of

registered electors of the polling station and the small polling station concerned will be at least 200. The proposed amendments to the Amendment Regulation aim at providing for the vote counting arrangements for small polling stations.

Conducting vote counting at polling stations will enhance the efficiency of the vote counting process so that election results could be announced earlier, and remove the risks associated with the need to transport the ballot papers from polling stations to counting stations. The proposed modification has addressed the concern raised by some members about the question of secrecy of votes at polling stations where the number of voters is small and has been endorsed by the majority of members of the Subcommittee.

Furthermore, I would like to respond to some of the issues raised by Mr WONG earlier. We totally agree to his view that elections must be conducted in a clean, fair and open manner in Hong Kong. In this respect, our starting point is identical with that of Mr WONG. We consider the concern expressed by Mr WONG about the possible consequence arising as a result of the new vote counting arrangement excessive.

Over the years, we have established in Hong Kong a healthy, fair and clean electoral culture. This culture is deeply rooted among electors, candidates and various political parties. There is absolutely no dispute of the importance of upholding the fairness and cleanliness of elections. Besides, our electoral system is reinforced by such impartial and powerful law enforcement agencies and watchdogs as the Independent Commission Against Corruption and the EAC, which can also ensure elections continue to be conducted in a clean and fair manner.

Even without the new vote counting arrangement, candidates and political parties can still grasp, through a number of channels such as exit polling, the polling inclination of the electors of the district to which the polling station belongs. Actually, it is not necessarily bad for relevant candidates and political parties to learn of the polling inclination of the electors of their district because, from a positive perspective, this can serve as a reminder and give impetus to candidates and political parties to serve the electors and residents living in the district they serve in a more active manner if they know the extent of support of the electors of a particular district.

From a practical angle, among the hundreds of constituencies, many do have only one polling station. It is simply impossible for us to mix the ballot papers in these constituencies before conducting vote counting. I understand this proposal raised by the EAC of conducting vote counting at polling stations mainly seeks to respond to the suggestions and requests made by the relevant political parties and candidates in the past. All the responses to the public consultation held by the EAC in April and May on the new vote counting arrangement are basically supportive of this proposal.

Madam President, for the reasons already cited, we are satisfied that it is worthwhile for us to experiment the proposal of counting votes at polling stations. This new arrangement will help enhance the efficiency of vote counting and enable the early announcement of election results.

Madam President, the last point I would like to make concerns the issue raised by Mr WONG in relation to the definition and handling of questionable ballot papers. This issue has indeed been discussed in detail in the Subcommittee. Actually, after accumulating electoral experience for so many years, we have collected samples for what ballot papers can be defined as questionable ballot papers. As such, I believe, in conducting vote counting in every polling station, the possibility of disputes caused by these questionable ballot papers is slim.

Madam President, I implore Honourable Members to support my amendments. Thank you, Madam President.

MR IP KWOK-HIM (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee on subsidiary legislation relating to District Council elections (the Subcommittee) gazetted on 16 May 2003, I would like to give a brief report on the deliberations of the Subcommittee.

The Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 (the Amendment Regulation) has two main objectives: First, to provide for the arrangements for counting of votes at individual polling stations; and second, to improve the existing provisions on the handling of questionable ballot papers.

Insofar as vote counting arrangements are concerned, the EAC proposes to adopt decentralized counting arrangements in the 2003 District Council (DC) elections. Immediately after the close of poll, a polling station will be converted into a counting station and the counting will be performed by the polling staff. For a constituency with only one polling station, counting will be conducted at the station. For a constituency with two or more polling stations, counting will be performed at individual polling stations. The polling station serving the largest number of registered electors will be designated by the Chief Electoral Officer as the dominant counting station. The proposed counting arrangements should enable election results to be declared earlier.

It was considered by a member that the arrangement for mixing ballot papers from two or more polling stations within a constituency is an important principle which should not be compromised for the efficiency of the vote counting process. Some members, however, held the view that a balance should be struck between protection of secrecy of votes and earlier declaration of election results. It was proposed that ballot papers from small polling stations within a constituency should be mixed before counting. The Subcommittee agreed that the proposal on vote counting arrangements would have policy implications and requested the Administration to reconsider the matter and take account of members' views.

After making reference to the views of members, the Administration agreed to modify its proposed vote counting arrangements. Under the modified proposal, where a polling station has less than 200 registered electors, the ballot papers cast at the polling station will be delivered to another polling station within the same constituency for counting. The aggregate number of registered electors of the polling stations concerned will be at least 200.

Although the majority of members considered the modified vote counting arrangements acceptable, Mr Andrew WONG did not accept the modified proposal. He maintained that the arrangement of mixing ballot papers from two or more polling stations within a constituency before counting could ensure the integrity of the electoral process and minimize the chances of bribery in elections. Mr WONG would move a motion to repeal the Amendment Regulation.

At present, 10 categories of ballot papers are considered questionable. The Returning Officer (RO) will decide whether a questionable ballot paper

should be counted. The decision of the RO on whether a ballot paper should be counted is final and may be questioned only by an election petition.

The EAC has come up with two proposals with respect to the handling of questionable ballot papers. Under the first proposal, six categories of ballot papers will be considered as invalid and not be counted. Such ballot papers include those which are unmarked, not marked by the stamp provided, given for more than one candidate, and so on. According to the information provided by the Administration, ballot papers under these categories constituted more than 86% of all questionable ballot papers. This proposal is expected to further enhance the efficiency of vote counting. The remaining four categories of ballot papers will continue to be treated as questionable and dealt with in accordance with the existing procedure. Ballot papers under these four categories include those with a stamp affixed but without a single "✓", with writing or a mark by which the elector can be identified, ballot papers which are substantially mutilated, and the elector's intention is uncertain.

Following the decentralization of vote counting to individual polling stations, the EAC has put forward another proposal under which the Presiding Officer (PrO) will assume the responsibility of determining questionable ballot papers, which in previous elections was a responsibility of the RO.

Some members have reservations about the proposal for the PrO to be responsible for making a decision on the validity of ballot papers under these four categories. Mr Andrew WONG has also expressed his views on this. Members were concerned about their experience as PrO and consistency in making decisions on the validity of questionable ballot papers.

The Administration stated that the whole vote counting process will continue to be open and transparent. As in the past, the number of ballot papers counted and not counted will be verified and there is a clear record of the number of different categories of ballot papers which have not been counted.

Madam President, the Subcommittee supports the Government's proposal for modifying the vote counting arrangements and introducing other minor amendments.

Madam President, may I speak in my personal capacity? Thank you, Madam President.

On behalf of the Democratic Alliance for Betterment of Hong Kong (DAB), I would like to express its support for the motion here. However, the DAB opposes Mr Andrew WONG's motion. As pointed out by Mr WONG just now, there are two reasons, mainly with the mixing of ballot papers, for his proposal of repealing the Amendment Regulation. The justification he held is two-fold. First, he believes electors will be punished as a result. The next one is concerned with secrecy of votes. Actually, I heard that the Secretary had already responded to this. The DAB's view is more consistent with that of the Secretary. We both share the view that the problem of secrecy is bound to arise before the original Amendment Regulation is amended. I recall Mr WONG Yung-kan pointed out during the discussion among us that some polling stations do have only dozens of electors. Under such circumstances, the problem of secrecy will arise during the vote counting process. Subsequent to the modification, however, the Administration has introduced the arrangement that if the number of registered electors of a certain polling station is less than 200, the ballot papers collected in that station will be mixed with those from other stations. The problem concerning the secrecy principle can thus be resolved. Nor will there be any chances of leakage of what votes are cast. As regards the view that electors might be punished, we cannot subscribe to this. This is because there is only one single polling station in most constituencies in the DC elections. According to this logic, a punitive effect will be produced if the polling result of a single polling station is made known. I consider this argument not fully justified.

Furthermore, we have had more than 10 years' experience in holding elections. Electors know it very well and hope to see that the elected candidates can represent them to reflect the views of the electors in the district. At the same time, electors can also act as a watchdog of the elects. As such, we cannot subscribe to the view that electors will be punished. With respect to these two motions today, the DAB will support the Government's motion. Thank you, Madam President.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance, I rise to speak in support of the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 (the Amendment Regulation). The Amendment Regulation provides for, among other things, vote counting to be conducted at polling

stations after the close of poll, so that ballot papers will no longer need to be transported to counting stations. This new arrangement is worth supporting because it can help save time and avoid unnecessary administrative expenses, as well as allowing candidates, their supporters and government staff who have toiled throughout the day to return home earlier.

Some people held the view that the new arrangement of counting ballot papers at polling stations might result in the secrecy of votes being compromised in polling stations where the number of voters was comparatively small. The secrecy of votes actually hinges on the perfection of the polling and counting procedures, rather than the number of ballot papers. In the light of the concerns expressed by some Members, the Government has now proposed that the ballot papers collected at polling stations with less than 200 electors shall be transported to another polling station within the same constituency for counting to be held jointly. This is after all a compromise.

In the last Legislative Council Session, the Constitutional Affairs Bureau introduced a number of policy initiatives for such purposes as improving electoral arrangements, providing the public with incentives to stand in elections, encouraging electors to cast their votes, and so on. I hope the Administration can continue to accept good advice readily, and formulate more effective measures to enable elections to be held in a fair, smooth and more efficient manner.

Madam President, I so submit.

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

DR YEUNG SUM (in Cantonese): Madam President, I rise to speak in support of the amendments moved by the Government to the ordinance related to the District Council (DC) elections. I also hope the Secretary can expeditiously move a bill on the election of the Chief Executive by universal suffrage, so that I can lend my full support.

Madam President, we visited Taiwan a couple of years ago to observe the conduct of elections, including presidential election, there. Although Taiwan

has a population of 20 million, the results of the presidential election could already be known by dusk. This is because vote counting was conducted at polling stations and the results were then sent to the main polling station by computer. The main polling station showed not only the progress of vote counting, but also the aggregate number of ballot papers and the winning candidate in each constituency and polling station. Election results were basically available by dusk. In addition, there was a cooling-off period on the polling day, a measure not yet adopted in Hong Kong. Now the Government has finally adopted our idea by proposing vote counting be conducted at polling stations. I hope the same measure can be adopted for the Legislative Council election too.

Our DC members of New Territories East and New Territories West have been consulted on the questions raised by Mr Andrew WONG. As pointed out by Mr WONG Yung-kan, the number of polling stations in some of the villages of the two constituencies is relatively small. It is therefore really possible to know which elector has voted for which candidate. After listening to our proposal in the course of deliberations, the Secretary indicated that ballot papers collected in constituencies with less than 200 electors could be transferred to a larger polling station for centralized counting to avoid the problem mentioned by Mr Andrew WONG just now. As regards the possibility of revealing the voting inclination of electors to the candidates should vote counting be conducted at the original polling station, we can look back at the DC elections in which many constituencies have basically only one polling station. However, we do not see any major problems. Furthermore, opinion polls were conducted outside polling stations. Though we lacked resources to do this, some political parties were seen carrying out exit polls throughout the day. Having a rough estimate of the number of people who had cast their votes, they would urge those who had not cast their votes to do so by knocking on their doors. This practice has existed for a long time. Although we do not have sufficient resources to do this, we have no intention to stop others from doing so.

Universities, as one of the polling organs, will also carry out exit polls. To avoid influencing the electors, their results can be made known only after the poll has come to a close for a certain period of time. In the light of the Government's proposal of allowing vote counting to be conducted at original polling stations, the counting authority must be delegated from ROs to polling stations. As this measure is newly introduced, the Government should carry

out a review after this measure has been implemented for a certain period of time, and introduce amendments should problems be identified. Thank you, Madam President.

PRESIDENT (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak again?

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

PRESIDENT (in Cantonese): I now call upon Mr Andrew WONG to reply. This debate will come to a close after Mr Andrew WONG has replied.

MR ANDREW WONG (in Cantonese): Madam President, I would like to speak briefly on a few points only. I know it is almost certain that it is impossible for this resolution that seeks to repeal the Amendment Regulation to be passed, as the intention of various parties is already known. Nevertheless, this has been my aspiration for years.

To start with, I would like to respond to the remarks made by the Secretary for Constitutional Affairs. It is right that elections have always been conducted in a clean manner in Hong Kong. This is the "effect". I wonder this "effect" is attributable to the "cause" that the Government has been trying so hard in the past to keep people from knowing too much. Without this major "cause", some serious consequences may arise. I have heard of numerous examples related to Taiwan. I really dread Taiwan's "money politics", as we are all aware of it. There are also the so-called "poles". In the days to come, this is likely to be a frequent phenomenon in Hong Kong.

Dr YEUNG Sum and Mr IP Kwok-him spoke in chorus that most constituencies might have only one counting station. Let me cite the year 1999 as an example. With a total of 314 constituencies, there were 430 polling stations. This means 230 constituencies had only one polling station, while the remaining 84 constituencies had two or more polling stations. I know this is a fact. However, we should note the difference between the past and present practices. The Government is now talking about speed and efficiency. Instead of conducting centralized vote counting at a specific place in each administrative

district, vote counting can now be conducted at each polling station. I am not asking for the retention of the past practice of counting votes in a single centralized station designated in each district. I agree vote counting can be conducted at polling stations. Furthermore, I cannot think of any better solutions should a constituency have only one polling station. This is because the outcome will be the same, even if vote counting is conducted at a centralized counting station. The existence of only one polling station in certain constituencies is not going to be changed. Since it is possible for the outcome to be known, the Government might as well save its time by abolishing its practice of transporting ballot papers. The proposal of turning a polling station into a counting station is thus acceptable to me.

However, if there is more than one polling station in a constituency, the principle we should promote is to prevent people from seeing too clearly. I teach elections and politics. A scholar, John Stuart MILL, interpreted democracy as encouraging people to make known their opinions, and secret voting is therefore undesirable. Secret voting is not allowed in this Council too. Every vote, for or against, must be publicized and recorded. However, why is it said that electoral systems should be governed by four major principles, namely popularity, equality, directness and anonymity? This is because in reality, electors can generally be bribed, intimidated or punished. It is very easy for such things to happen. As such, in terms of political arrangements, a balance must be struck between making known one's position and keeping one's voting intention secret. These four major principles are now internationally recognized. One of these principles, anonymity, means secrecy must be kept in the case of universal suffrage.

I really do not understand why it is so hard for my insignificant request to be met. It might be generally believed that the greater the transparency the better, and life will thus be easier for various parties. This is because they can ascertain how much force has been applied in a particular district or how much support secured in another. If the support secured in a particular district is not sufficiently strong, they can make further efforts to catch up with others. Actually, even if they are completely unaware of where they can secure support or the support is not sufficiently strong, they can obtain such information by way of surveys. On the other hand, it is impossible for someone who wish to obtain the results of the general survey on voting intention by questioning electors at individual polling stations in each constituency. This is because the person being asked might lie. Only a ballot paper represents the real intention of an

elector. A political party which has spent some money in a constituency can thus easily identify those who have not voted for it when it is eventually found there are not sufficient votes for it. Members should all understand what it is meant by coterie elections.

I hope Honourable Members can figure out where the crux of the problem lies. I do not mean to slow down the process of vote counting. However, if there is more than one polling station in one constituency, why is it impossible for the votes collected to be counted jointly and for one of the polling stations to be turned into a counting station? Why not choose one of the polling stations for this purpose? Given that 200 people can be identified easily and concession has been made to allow polling stations with more than 200 electors to switch to the new arrangement, why not change it to also cover polling stations with less than 500 electors? Why can the restriction not be relaxed to cover polling stations with less than 5 000 electors? If a certain community, instead of an individual, is identified, the so-called cleanliness of elections will still be subject to enormous impact.

I have made all my points, and I am almost certain that I stand no chances of winning this. Nevertheless, I hope to put all my points on record. Do not blame me for not telling Members this pessimistic prediction of mine if Hong Kong's electoral system should one day go downhill. I guess our electoral system is going to follow the footsteps of Taiwan. Thank you, Madam President.

PRESIDENT (in Cantonese): Before I put the question, I would like to remind Members that if Mr Andrew WONG's motion is passed, the Secretary for Constitutional Affairs may not move his motion; and if Mr Andrew WONG's motion is negated, I shall call upon the Secretary for Constitutional Affairs to move his motion.

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.

(Members raised their hands)

Mr Andrew WONG rose to claim a division.

PRESIDENT (in Cantonese): Mr Andrew WONG 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 Timothy Fok and Mr Henry WU voted for the motion.

Mr James TIEN, Dr Raymond HO, Dr Eric LI, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Dr LAW Chi-kwong, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Michael MAK and Mr IP Kwok-him voted against the motion.

Geographical Constituencies and Election Committee:

Mr Andrew WONG voted for the motion.

Ms Cyd HO, Mr Fred LI, Mr CHAN Kam-lam, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr WONG Sing-chi, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung 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, 17 were present, two were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 13 were present, one was 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): Secretary for Constitutional Affairs, you may move your motion.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I move that the motion under my name, as printed on the Agenda, be passed.

The Secretary for Constitutional Affairs moved the following motion:

"That the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003, published in the Gazette as Legal Notice No. 125 of 2003 and laid on the table of the Legislative Council on 21 May 2003, be amended -

(a) in section 1, by repealing "11" and substituting "21";

(b) in section 2(a), by adding -

"(iiia) in the definition of "verification of the ballot paper account", by repealing "(1)(b)";";

(c) in section 2(a)(iv), by adding -

" "main counting station" (大點票站) means a place designated as a main counting station under section 31;

"small polling station" (小投票站) means a place designated as a small polling station under section 31;"

(d) by repealing section 2(b) and substituting -

"(b) in subsection (3) -

(i) by repealing paragraph (a);

(ii) in paragraph (b), by repealing the full stop at the end and substituting a semicolon;

(iii) by adding -

"(c) references to the counting station are to be construed as including the main counting station and dominant counting station; and

(d) references to the polling station are to be construed as including the small polling station and special polling station."."

(e) in section 4, in the heading, by adding ", **small polling stations, main counting stations**" before "**and**";

(f) in section 4(a), by adding -

"(1C) The Chief Electoral Officer must designate each polling station (other than a special polling station) at which less than 200 electors are to vote as a small polling station.

(1D) If in relation to a constituency, 2 or more polling stations have been designated and at least one of them is a small polling station or a special polling station, the Chief

Electoral Officer must designate a polling station as a main counting station for the purpose of counting the votes of the small polling station or special polling station.

(1E) The Chief Electoral Officer may designate a polling station as a main counting station in respect of the small polling station only if the aggregate of the electors to vote at the polling station to be so designated and the electors to vote at the small polling station is not less than 200.";

- (g) in section 4(b), by adding ", small polling stations, main counting stations" before "and dominant";
- (h) in section 10, in the new section 56A(5)(b), by repealing "becomes" and substituting "has become";
- (i) in section 11, by repealing the heading and substituting "**Steps to be taken at the close of the poll: a polling station which is not a small polling station or a special polling station**";
- (j) in section 11, in the new section 63(1), by adding "(other than a small polling station or a special polling station)" before "which is";
- (k) by adding -

"11A. Section added

The following is added -

"63A. Steps to be taken at the close of the poll: a small polling station or a special polling station

(1) As soon as practicable after the close of the poll at a small polling station or a special polling station, the Presiding Officer of that polling station must, in the presence of the persons,

if any, who are present within the polling station, take the following steps -

- (a) place the ballot box or boxes where that Officer and other persons who are present within the polling station can see them;
- (b) cover each ballot box with a device provided for that purpose so that a ballot paper or any other material cannot be introduced into or withdrawn from the ballot box after it is covered;
- (c) use a padlock to keep the device secured in position;
- (d) seal each ballot box; and
- (e) make up into separate sealed packets -
 - (i) ballot papers which have not been issued;
 - (ii) the unused ballot papers;
 - (iii) the spoilt ballot papers; and
 - (iv) the marked copies of the final register.

(2) A candidate and an election agent and a polling agent of such candidate may stay in a

polling station referred to in subsection (1) while it is closed for taking the steps referred to in subsection (1)(a), (b), (c), (d) and (e).

(3) The Presiding Officer of the small polling station or special polling station must then deliver the ballot box or boxes and the sealed packets to the Presiding Officer of the main counting station."

**11B. Presiding Officer to prepare
a ballot paper account for
each packet of sealed
ballot papers**

Section 64(1) is amended, by adding "or 63A, as the case may be," after "63".";

- (l) in section 12, by repealing the heading and substituting "**Returning Officer and Presiding Officer to give notice of place and time of the counting of votes to candidates**";
- (m) by repealing section 12(b) and substituting -

"(b) by repealing subsections (3) and (4) and substituting -

"(3) The Returning Officer must give notice in writing to each candidate of the place or places at which counting is to take place for the constituency contested by the candidate.

(4) Notice under subsection (3) must be given at least 1 working day before polling day."";

- (n) in section 12(c), by adding -

"(9) In this section, "Presiding Officer" (投票站主任) does not include a Presiding Officer of a small polling station which is not designated as a main counting station or a special polling station which is not so designated.";

- (o) in section 19(b), by adding -

"(4) In this section, "Presiding Officer" (投票站主任) does not include a Presiding Officer of a small polling station which is not designated as a main counting station or a special polling station which is not so designated.";

- (p) in section 21(a), by adding "other than a Presiding Officer of a small polling station which is not designated as a main counting station or a special polling station which is not so designated" after "A Presiding Officer";

- (q) in section 22(a)(i), by adding "other than a Presiding Officer of a main counting station" after "Presiding Officer";

- (r) in section 22, by adding -

"(aa) by adding -

"(1A) A Presiding Officer in charge of a counting zone of a main counting station must -

- (a) count and record the number of ballot papers in each ballot box under his or her charge; and
- (b) verify the ballot paper account by comparing it with the number of ballot papers recorded under paragraph (a) and prepare a statement in writing as to

the result of the
verification.";"

- (s) in section 23(b), by adding after "subsection (2)" -

"and substituting -

"(2) The Presiding Officer of a main counting station must mix the ballot papers of the polling station designated as the main counting station together with the ballot papers that have been delivered from one or more small polling stations or special polling stations to the main counting station before counting the votes at the main counting station."";

- (t) in section 28, in the new section 80B(7), by adding "which is not the dominant counting station" after "each counting station";
- (u) in section 28, in the new section 80B(12), by repealing "including the dominant counting station";
- (v) in section 28, in the new section 80C(2), by adding "or any other place as determined by the Returning Officer" after "for the constituency";
- (w) by repealing section 29;
- (x) in section 31, by repealing everything after "amended" and substituting -

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- (a) by repealing "Returning Officer" wherever it appears and substituting "Presiding Officer";

- (b) by adding -

"(5) In this section, "Presiding Officer" (投票站主任) does not include a Presiding Officer of a small polling station which is not designated as a main counting station or a special polling station which is not so designated."."

(y) in section 32, in the new section 84, by adding -

"(3) In this section, "Presiding Officer" (投票站主任) does not include a Presiding Officer of a small polling station which is not designated as a main counting station or a special polling station which is not so designated."."

(z) by repealing section 36(b) and substituting -

"(b) in subsection (2)(j), by repealing "time and"."

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

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Honourable Members, according to the notice issued by the Secretariat as per my instruction, the lunch break should begin from 1.15 pm. However, I think it is now appropriate time for the meeting to be suspended to allow Members ample time to have their meal. The meeting will be continued in this Chamber at 2 pm.

12.48 pm

Meeting suspended.

2.05 pm

Council then resumed.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): My apologies. There was something wrong with my desk, so it took me a longer while to be seated.

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

Before the debate on this motion starts, I would like to make an announcement first. Originally, I had asked the Secretariat to issue a notice to inform Members of the time when this meeting would be suspended for a dinner break. I made this arrangement because I thought at the time that our meeting might be very long. But judging from the situation now, it seems that this arrangement is no longer necessary. Under the original arrangement, we will have to suspend the meeting when we come to the discussion on Dr YEUNG Sum's motion and continue with the meeting after dinner. That is not a satisfactory arrangement. Therefore, having consulted the view of Dr YEUNG

Sum and obtained the consent of some Members, I have decided that in this meeting today, debates will be conducted continuously in this Council without a dinner break. However, dinner will still be served in the Dining Hall.

First motion: Mainland/Hong Kong Closer Economic Partnership Arrangement.

MAINLAND/HONG KONG CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT

MR CHAN KAM-LAM (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, at a time when the Hong Kong economy has continued to be at a low ebb and the unemployment rate has consistently reached new heights, the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) was signed in Hong Kong on 30 June with the full support of the Central Government. The Democratic Alliance for Betterment of Hong Kong (DAB) considers that CEPA is no doubt a "big gift" bestowed on Hong Kong by the Central Government, which embodies its care and support for Hong Kong. The openings to Hong Kong under the relevant provisions will precede those to the World Trade Organization (WTO), and we also enjoy more favourable terms than the WTO, signifying our edges under "one country, two systems". CEPA has taken full account of Hong Kong's status as an international metropolis by providing a level playing field for investors in Hong Kong. This is also a manifestation of its openness which has commanded favourable comments from international investors. The DAB welcomes the signing of CEPA and hopes that CEPA can further facilitate economic and trade co-operation between Hong Kong and the Mainland, expedite the economic integration between Guangdong Province and the territory, and open up new opportunities for the development of Hong Kong's manufacturing and service industries.

The DAB considers that the signing of CEPA within a time as short as one year or so not only embodies the care and support of the Central People's Government to Hong Kong, but also demonstrates that the Government of the Hong Kong Special Administrative Region (SAR) deserves recognition for effectively making great efforts to this end. Yet, we must point out that after

the signing of CEPA, both Governments, particularly the SAR Government, are still required to follow up many areas of work and must not slacken in its effort.

On the one hand, the relevant provisions in CEPA need to be made more specific and further developed. The definition of the place of origin, for instance, will require further discussion by both sides in order to reach a consensus. In respect of co-operation in financial services, the SAR Government will still need to conduct further studies of and facilitate the development of "Qualified Domestic Institutional Investor", or QDII in short, and the setting up of an offshore Renminbi centre in Hong Kong, issues which are of great concern to the business sector. On the tourism front, CEPA and the ensuing discussions between both sides have allowed residents in four cities of Guangdong Province, namely, Dongguan, Zhongshan, Jiangmen and Foshan, to visit Hong Kong on an individual basis as a trial. This will be extended to all the other cities of Guangdong no later than 1 July 2004. The SAR Government has to further facilitate the early implementation of this policy. We also hope to see gradual implementation of this policy in major coastal cities such as Shanghai, Tianjin, Dalian, and so on, and in other major cities such as Beijing, Wuhan, Xian, Chongqing, and so on.

With regard to mutual recognition of professional qualifications, the SAR Government has to promote exchanges between professionals in both places and efforts are also required to make the relevant provisions in CEPA more specific. As pointed out by the DAB in its "Policy obstacles faced by Hong Kong professionals practising in Guangdong Province and suggested solutions" (《香港專業人士到粵執業的政策障礙及對策建議》) published recently, the SAR Government should proactively facilitate the early establishment of a mechanism for mutual recognition between the two places, proactively adjust its policies to facilitate mutual permission for the setting up of professional service agencies by the other side and to foster business exchanges, relax restrictions on the scope of business of professional service agencies by, for instance, promoting the adoption of "one office, two practices" in the Mainland, and expeditiously formulate policies to encourage Hong Kong professionals to start businesses in the Mainland. Moreover, in respect of trade and investment facilitation, it is also necessary to study ways to further promote the smooth flow of goods, capital, information and talents.

On the other hand, both Governments have to consider taking corresponding measures and even formulating the necessary rules and

regulations to promote and protect the contents of CEPA. For example, some Hong Kong businessmen have expressed the view that it is still difficult to apply for licences in respect of the logistics industry; some local businessmen only have limited knowledge of products for domestic sales and therefore asked for more information from the Government in the context of CEPA; some have requested the Government to co-operate with the mainland Government for upgraded disclosure of financial and operational information of mainland companies. In this connection, the Government absolutely must not think that everything has been satisfactorily achieved after the signing of CEPA. Earlier on, Secretary Henry TANG pointed out that the Government has already assisted the business sector to "catch the stag" and it is now for the sector itself to "remove the horn from it". The DAB hopes that the Secretary was not referring to the signing of CEPA as "catching the stag".

We consider that to make full use of the business opportunities offered, the SAR Government should endeavour to carry out work both internally and externally.

Firstly, in respect of internal work, efforts must be directed mainly to improving the investment environment in order to attract foreign businessmen to invest in Hong Kong. The signing of CEPA has given the local service industry an early opportunity of access to the Mainland, and many products of the manufacturing industry can enter the mainland market at zero tariff. This will certainly make investments in Hong Kong more attractive to overseas businessmen. In the light of this development, the Government must continue to make improvement to our business environment, so as to make Hong Kong more attractive both to foreign capital and local capital.

As reflected by the industries, some rather cumbersome and time-consuming formalities are still involved in the application for licences in order to start a business in Hong Kong, particularly a business in the service industry. For example, to open a restaurant, one will be required to apply for catering and hygiene licences and go through such procedures as fire safety, water and electricity inspections. One will also have to deal with many departments, and this has caused a lot of troubles to the industry. In order to cope with the new development, it is necessary for the Government to conduct a comprehensive review of the procedures for licence applications and the various formalities. If the formalities can be combined, combine them by all means; if the time required can be shortened, shorten it by all means; and if the formalities can be handled

by one department, do not ever involve a second department. The objective is to make it as convenient as possible for investors to start businesses here. To attract foreign investors, many countries and territories have provided "one-stop" services for business registration. That is, the vetting and approval procedures together with the relevant formalities relating to business start-up are handled by one department, or the various departments handling different formalities are co-located in the same office building for the convenience of investors. Some municipal governments in the Pearl River Delta (PRD) have very good experiences in this regard. We hope that the SAR Government can borrow from their experiences.

We believe after the signing of CEPA, some factory owners may tend to increase their investment in the local manufacturing industry and hence there will be a greater manpower demand in the relevant industry. But since the local manufacturing industry has mostly relocated northwards in recent years, qualified local manufacturing workers have become fewer and fewer in number. The Government must address this squarely. In the light of this new trend of development and to learn from the past lesson in neglecting market demand in vocational training, we consider that the Government should adhere to market-oriented principles and provide additional resources to improve the training programmes for local workers in co-operation with the users in the business community.

The place of origin mechanism as laid down in CEPA enables Hong Kong products bearing Hong Kong brand names to be exported for sale in the Mainland at zero tariff. Given that Hong Kong brand names have a very large market in the Mainland, counterfeit products of poor quality will certainly emerge. This will not only disrupt the local market, but also tarnish the reputation of local products in mainland and overseas markets. Therefore, the Government must take necessary measures in the light of the new situation and development and step up inspection against the production and sale of counterfeit products in Hong Kong, with a view to protecting intellectual property. Only in this way can we attract more enterprises to invest in Hong Kong, address the concern of mainland manufacturers, preserve the reputation of Hong Kong products and maintain the confidence of mainland consumers in Hong Kong products.

Secondly, in view of the trend of Hong Kong people pursuing development northwards after the signing of CEPA, the Government should

strengthen its support for Hong Kong businessmen in their investment and employment in the Mainland.

In our view, the signing of CEPA will open up more opportunities for Hong Kong people to start businesses and seek employment northwards. On the one hand, the Government will have to carry out increasingly more work to facilitate their business expansion and for the provision of services to them, and on the other, cases of business and labour disputes in the Mainland involving Hong Kong businessmen are set to increase significantly. Consequently, the demand for legal advice and other support services by the Government will naturally increase. At present, the SAR Government has only set up an office each in Beijing and Guangzhou, and the services provided are confined to general advisory and promotional services. The Government should consider expanding its support network in the Mainland and gradually set up an office in major mainland cities such as Shanghai, Dalian and Chongqing, and extend the scope of service to other types of services, such as assisting Hong Kong businessmen to promote their products in the Mainland, providing services in the area of insurance and for the protection of investment by Hong Kong businessmen as well as the legitimate interest of Hong Kong products. Quasi-government organizations, such as the Trade Development Council and the Hong Kong Productivity Council, should also expand their services in the light of demand.

We believe that through the vigorous assistance of the Government and the concerted efforts of the industries and the people, Hong Kong can certainly capitalize on the business opportunities offered by CEPA, thereby promoting the development of various trades and industries in Hong Kong, creating more employment opportunities and improving the Hong Kong economy.

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

Mr CHAN Kam-lam moved the following motion: (Translation)

"That, as the Hong Kong Special Administrative Region Government and the Central Government have signed the "Mainland/Hong Kong Closer Economic Partnership Arrangement", which provides market development opportunities for Hong Kong's manufacturing and service industries, this Council urges the Government to expeditiously formulate relevant

measures, such as streamlining various licensing procedures and enhancing intellectual property protection, in order to improve the business environment and attract more enterprises to invest in Hong Kong; this Council also urges the Government to expand its support network in the Mainland for Hong Kong enterprises and assist Hong Kong businessmen in strengthening their promotion and publicity efforts in mainland cities, so as to enable Hong Kong enterprises to make full use of the business opportunities brought about by the above Arrangement, thereby creating more employment opportunities and improving the economy."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr CHAN Kam-lam be passed.

MR SIN CHUNG-KAI (in Cantonese): Madam President, the Democratic Party agrees that the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) has provided some new opportunities for us at a time when Hong Kong is facing great economic difficulties. So it helps the ailing industries of Hong Kong to find opportunities of renewed development. However, in the meantime, in order to achieve synergy, the Government should also formulate a series of matching measures in the context of CEPA. Presently, the industries of Hong Kong only account for 5% of the Gross Domestic Product. In comparison, the corresponding figures of other territories are, for example, 30% in Singapore, and even over 40% in Taiwan and South Korea. Obviously, our structure is not at all balanced.

Therefore, the Democratic Party is of the opinion that, we should capitalize on the opportunities offered by CEPA to reverse the imbalance in our economy, and we should revive our industries in three ways. On the issue of investments by enterprises, the major factors of consideration are operating costs and the business environment, among which is the issue of taxation. There are a great many tax items in the Mainland. Regarding those already promulgated, there are at least 14 tax items applicable to enterprises financed by foreign investment. In contrast, Hong Kong has a much simpler tax regime.

The Democratic Party proposes that the Government should boldly consider studying the possibility of introducing tax concessions, which have

seldom been mentioned. Of course, we did not support the provision of some general tax concessions in the past. However, because of CEPA, will the Government, for the sake of CEPA, provide some tax concessions for businessmen who ride on the opportunities provided by CEPA in establishing factories in Hong Kong and use Hong Kong as their production base?

I personally feel that, as the Government has already done so much for CEPA, it could accomplish this part of the unfinished work to make it even more effective.

In the past, the Government had always been very stringent in providing tax concessions. Such concessions are not easily granted. We also feel that we should be very prudent if such measures have to be implemented. Such tax concessions would apply only if many relevant conditions are met. For example, a certain number of workers have to be employed in Hong Kong for the purpose, and certain conditions have to be met before a production line is allowed to be set up here. There must be certain restrictions in such areas.

Of course, we hope that such measures can actively promote the reconstruction and return of the local industries, thereby speeding up the revival of Hong Kong industries and the economic recovery of Hong Kong. Moreover, the Government should take the active moves of assisting local manufacturers in accessing the mainland market with the label of "Made in Hong Kong". At the moment, we feel that European and American products are geared mainly for the upmarket in the Mainland, whereas mainland products are mainly for the primary or low-end market. Under such circumstances, would it be possible for Hong Kong to target its products at the medium-sector market, so as to secure that portion of the market?

After the implementation of the zero-tariff policy, Hong Kong products will entail lower costs in entering the mainland market. Therefore, our products may be marketed with the image of being "premium products sold at inexpensive prices". This would be greatly helpful to Hong Kong manufacturers in their competition for the medium-sector market with foreign or mainland enterprises. However, we must understand that, at the moment, "Made in Hong Kong" products are still facing certain difficulties in entry to the mainland market. For example, the manufacturers lack market information, and they are still unable to grasp fully the product certification standards, and so on. These problems could lead to investment losses. Therefore, the

Democratic Party thinks that, apart from organizing exhibitions and seminars to promote CEPA, the Government should also do some practical and concrete work for officials deployed to the Offices of the SAR Government in Beijing and Guangdong. For example, they should collect market information, conduct data analysis, establish people networks and provide information on the relevant legislation, and so on.

In fact, there are several categories of Hong Kong government organizations or government-subsented organizations in the Mainland. Apart from establishing one or two ETO offices (the Office in Beijing may not be an ETO office, but the one in Guangdong is surely an ETO office), I think the Government should also undertake the different types of work mentioned above. However, in addition to these offices, the TDC and HKPC have also established their representative offices in the Mainland. The Government should consider how to co-ordinate these three organizations, so as to enable them to do well in their respective work such as collecting market information and conducting data analysis, which is some so-called market intelligence work. In fact, many small manufacturers say many a time they will lack such information.

Besides, if the promotion programmes should run smoothly and if the resources should permit, the Government may consider setting up support centres in various provinces and cities to provide support services for people doing business in the Mainland. For example, the Government may provide legal advice service, or conduct negotiations with local government authorities on their behalf and fight for the interest of Hong Kong businesses.

In fact, the Government should really consider providing such services. It should not rule out the consideration of such. The Government may also consider providing such services on a cost-recovery basis. Of course, we hope that, apart from CEPA, the Government should make examining the relationship between Hong Kong and Taiwan as its next target. The bilateral trading volume between Hong Kong and Taiwan amounts to over US\$20 billion. There are more than 20 000 formally registered Taiwanese companies trading in Hong Kong. I feel that the Government should further study the possibility of negotiating with Taiwan for a similar trading agreement in the wake of CEPA. The Democratic Party hopes that the Government could eventually escalate the level of co-operation of CEPA to make it cover mainland China, Hong Kong, Taiwan and Macao, thereby forming the Greater China Trading Zone that embraces the four places on the two sides of the Strait. In the long run, Hong

Kong should also negotiate for similar free trade zone agreements with other territories such as Singapore, Japan, the United States and the European countries.

Next, I would like to mention the GIT issues. CEPA has liberalized 17 service industries. But unfortunately, telecommunications and the information and technology professions are missing from the list. According to the liberalization timetable of service industries as promised by China upon its accession to the World Trade Organization, there are still certain restrictions on the rights of foreign companies to provide services in the telecommunications market in the Mainland. Therefore, there is still room for opening up this industry to Hong Kong, such as the provision of value-added services, paging services, wireless telecommunications services, and domestic and international roaming services. For this reason, I urge the Commerce, Industry and Technology Bureau, especially the Commerce and Industry Branch, which is in charge of the work in relation to CEPA, to call meetings with the various trade organizations of the telecommunications industry, such as the Hong Kong Internet Service Providers Association, Internet & Telecom Association of Hong Kong and Hong Kong Wireless Technology Industry Association, for discussions on how best to make use of the present CEPA framework and see if there is still room. They may discuss issues related to the development of the telecommunications market, so as to enable the industry to acquire new vitality in their business development in the Mainland.

Moreover, CEPA also covers a series of measures that will facilitate trading investments by both sides, such as co-operation in e-commerce. I think e-commerce will be a significant tool in promoting the development of economic and trading activities, for the benefit of both sides. However, regarding the practical work, I feel that the CEPA dimension is relatively simple. I hope that the Government can find more opportunities later to explain such work to the information and technology sector and exchange opinions with the industry in this regard.

Thank you, Madam President.

MS MIRIAM LAU (in Cantonese): Madam President, the transport sector welcomes the signing of Mainland/Hong Kong Closer Economic Partnership

Arrangement (CEPA) between the Central Government and the Government of the Hong Kong Special Administrative Region (SAR). The smooth implementation of CEPA shows that the SAR Government has been very proactive in striving for the best interest of Hong Kong, whereas the Central Government has also been very concerned about the economic development of Hong Kong.

In such areas as logistics, transport and trade in related services, I particularly note that, with the accession of our country to the World Trade Organization (WTO), its commitments have not covered logistics service and shipping service. However, these two services are now included in CEPA. Therefore, in comparison, the logistics and shipping companies of Hong Kong should enjoy a unique advantage over other foreign companies in the Mainland.

In shipping business, apart from helping the business development of Hong Kong shipping companies in the Mainland, CEPA will also attract more vessels, especially those coastal vessels in Southeast Asia, to choose to hang the flag of Hong Kong and then use Hong Kong as a base for access to the mainland market. In other words, CEPA will help consolidate the status of Hong Kong as a shipping centre.

In logistics business, the opening up of freight forwarding service, storage services and land freight transport to Hong Kong is one or two years earlier than it is the case with our country's undertaking with the WTO. As a matter of fact, the Pearl River Delta (PRD) provides the majority of customers for the logistics industry, whereas Hong Kong is the premium logistics service provider for PRD. Under the new arrangement, Hong Kong companies may operate as sole proprietorships logistics services, freight transport agency services, storage services, land freight transport and shipping services, providing one-stop services for its mainland customers. This would help Hong Kong companies control costs and enhance competitiveness. In other words, CEPA will help consolidate the status of Hong Kong as a logistics hub.

CEPA does not just bring business opportunities to logistics, shipping, transport and related services companies in Hong Kong, it would also create a win-win situation which is mutually beneficial for both Hong Kong and the Mainland. This is because the freight transport and logistics industries of Hong Kong could bring knowledge, experience and talents to the Mainland, thereby

promoting the development of related industries of the Mainland and will add value to the supply chain services of the Mainland.

Madam President, regarding land freight transport, I note that Hong Kong companies may now operate land freight transport services in the Mainland as sole proprietorships, and they may also conduct "through train" freight services between Hong Kong and the various provinces in the Mainland. However, people in the industries may not know the exact meaning of "through train" services. It is necessary for the Government to clarify this. Meanwhile, the industry may find the definition of "Hong Kong companies" unclear. For example, the parent company of a certain company may be operating in overseas countries. But its subsidiary company is registered in Hong Kong and has been operating in Hong Kong for many years. Do such companies qualify as "Hong Kong companies" as far as the definition is concerned?

Besides, at the moment, mainland vessels may move freely in and out of Hong Kong waters. However, Hong Kong vessels are not allowed to move freely in and out of ports in the PRD because only a minority of such ports are Category I ports which are open to all vessels for berthing, whereas the majority of ports in the Mainland are Category II ports open only to mainland vessels for berthing. Therefore, Hong Kong shipping companies often have to hire mainland river vessels, and this has frequently caused great inconvenience in their operation. The SAR Government may find it necessary to negotiate with the mainland authorities for the same rights, so as to enable Hong Kong vessels to move in and out of PRD ports freely.

Only less than half a year is left now before the official implementation of CEPA. I hope that the Government can explain the relevant definitions clearly to the industries as soon as possible, and expedite the formulation of the concrete details with the Central Government for early announcement. This will enable the industry to make early preparations for northward business development as early as 1 January next year, thereby enjoying the business opportunities brought about by CEPA as soon as practicable.

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

DR RAYMOND HO (in Cantonese): Madam President, the "Mainland/Hong Kong Closer Economic Partnership Arrangement" (CEPA) is a milestone in the

economic development of Hong Kong. Apart from providing zero-tariff benefit for many Hong Kong products, it also offers a lot of business opportunities to Hong Kong enterprises. In short, it injects a new impetus into the economy of Hong Kong. Hong Kong has been affected by the economic downturn for a long time. We must grasp this opportunity brought about by CEPA, and strive hard to contribute to the well-being of our economy with united efforts. Meanwhile, I hope the Government can make special efforts to cope with needs arising from different areas, so that we can speed up the recovery of the economy of Hong Kong.

Ever since the reunification, the economic and trade relationship between Hong Kong and the Mainland has been becoming increasingly close. This is a blessing both for Hong Kong and the Mainland. From the perspective of Hong Kong, CEPA will bring us business opportunities, development and employment opportunities. From the perspective of the Mainland, CEPA will bring them information, professional expertise, international experience and vision. For this reason, I led a group of Hong Kong engineers to visit Beijing last April, and we made four proposals: (1) Allowing Hong Kong professionals to provide professional services in the Mainland, and sit for examinations to acquire mainland professional qualifications; that is, we hope that the mainland authorities can recognize the qualifications of registered engineers in Hong Kong, so as to enable them to acquire directly the qualifications to work as works supervisors and project managers in the Mainland; (2) Allowing Hong Kong engineering consultancy firms to start businesses in the Mainland to provide services to mainland and foreign companies direct; (3) Allowing sizeable Hong Kong contractors to bid directly for engineering projects in the Mainland; such contractors should hold grade C licences issued by the Works Bureau of the SAR Government; and (4) Actively promoting exchanges between young engineers from the Mainland and Hong Kong. I believe these four proposals could provide mutually beneficial opportunities for enterprises and professionals from both Hong Kong and the Mainland, and they would also bring a new momentum for the economic development of both Hong Kong and the Mainland. Now, we may say that the fourth proposal has already been implemented smoothly because I have successfully made arrangements for about 30 second-year students from the School of Engineering of the University of Hong Kong to visit Beijing this month to work in the design institutes and construction sites there for several weeks.

Hong Kong is a small market. Our future economic development will rely on our connection with the Mainland. CEPA has just arrived in good time to strengthen this connection, thereby benefiting the economies of both Hong Kong and the Mainland. I believe that, after the implementation of CEPA, the economic and business exchanges between Hong Kong and the Mainland will become more frequent. For this reason, I hope the Government can formulate relevant measures to cope with the needs, such as working jointly with the relevant mainland departments to strengthen the security and business support in both places.

Presently, the world is suffering from an economic concession, and Hong Kong is no exception. I hope that the business sector and the Government can co-operate fully and make good use of the opportunities offered by CEPA, so as to expeditiously lead Hong Kong out of its present predicaments.

Madam President, I so submit. Thank you.

MR HENRY WU (in Cantonese): Madam President, on the whole, I welcome the various measures contained in the "Mainland/Hong Kong Closer Economic Partnership Arrangement" (CEPA) signed between Hong Kong and the Mainland because, apart from speeding up the economic recovery of Hong Kong, CEPA also further embodies the support of the Central Government for Hong Kong.

As the representative of the Financial Services Constituency, though not much of the details of CEPA involves the financial services industry (the most significant detail is the permission for the Hong Kong Exchanges and Clearing Limited to establish an office in Beijing), I believe that CEPA will help motivating more mainland companies to seek listings on the stock exchange of Hong Kong. Besides, CEPA also mentions the arrangements of allowing Hong Kong securities professionals to apply for the qualifications to work as practitioners in the Mainland. Therefore, I support those measures in CEPA that will enhance the financial services industry in the two places.

However, I hope the authorities concerned can strengthen the ties and communication with the industry shortly, so as to conduct sincere and adequate consultation with the industry and respect the professional opinions of the

practitioners, thereby enabling the relevant measures to be implemented smoothly and more in keeping with the practical circumstances. If such measures can be implemented effectively, then the small and medium enterprises (SMEs) will be able to enjoy the same benefits as the major enterprises, thereby enabling them to participate in and derive benefits from CEPA.

Madam President, at the moment, the part of CEPA related to the securities industry has only marked a starting point, and there is still a long way ahead before a full-scale liberalization would really take place there. And this part has just covered two of the many proposals I have put forward to the mainland authorities on numerous occasions during the past two years.

The present CEPA still has not made any relevant proposals on matching measures of promoting the flow of mainland capital into the Hong Kong securities industry, relaxing the threshold requirements for entry to the mainland market, and allowing Hong Kong licensed securities professionals to work in the Mainland without taking any qualifying examinations again. However, I firmly believe that CEPA, once implemented, will further speed up the exchange and co-operation between practitioners of the securities industry of the two places and will have a beneficial bearing on the securities markets of the two places.

Regarding the fact that the development of the local gold industry is not taken care of under the measures on the financial services in CEPA already signed, I am really disappointed. In fact, the gold market of Hong Kong is one of the four major gold markets in the world. While the gold market of Hong Kong possesses a powerful international network, the development of the gold industry of the Mainland has also begun to take shape. As such, if the status of Hong Kong as an international gold market, together with its advantages, can be fully utilized and brought into play, and if there can be integration and co-operation between the two places, then it may be possible to promote the healthy development of the gold markets of both Hong Kong and the Mainland. I very much hope that the authorities concerned can conduct in-depth studies and detailed considerations on this subject, so as to turn a new page in the development of the financial services industry of the two places.

Today, we only have the Secretary for Commerce, Industry and Technology in this Chamber. However, since the financial services industry

comes under the purview of the Financial Services and the Treasury Bureau, so, in line with past practices, I hope Secretary Henry TANG can relay today's message to Secretary Frederick MA.

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

DR LUI MING-WAH (in Cantonese): Madam President, after brewing for several years, and with the efforts of the Government of the Hong Kong Special Administrative Region (SAR), the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA), much longed for by the commercial and industrial sectors of Hong Kong, was finally signed on 29 June in Hong Kong. CEPA will bring a lot of business opportunities to the commercial and industrial sectors of Hong Kong, and has shed a ray of hope for the recovery of the local economy of Hong Kong.

As the representative of the industrial sector, I would like to focus on analysing the impact of CEPA on the industrial sector as well as the overall economy of Hong Kong. The prosperity of Hong Kong during the past few decades was attributable to the manufacturing industries. However, as the costs escalated, our industries had lost their competitive edges gradually. The outward relocation of the local manufacturing industries had led to the hollowing-out of the industries of Hong Kong, making our economy highly fragile. After suffering a major blow from the financial turmoil, the economy of Hong Kong was severely weakened with no signs of a rebound. The recent SARS outbreak further dragged down the local economy, resulting in widespread grievances among the people. This was exactly the fundamental factor triggering the mass march on 1 July.

The significance of CEPA to the economy of Hong Kong lies in its role as a catalyst to the rebuilding of the manufacturing industries of Hong Kong, thereby providing us with a golden opportunity to reorganize the economic structure of Hong Kong. Certainly, China will become the single largest market in the world with unlimited potentials of development. The fact that Hong Kong products will be able to enter the mainland market on zero tariff has substantially enhanced the competitiveness of our products, and this has created a whole new world for our products.

Of course, for labour-intensive industries, the zero-tariff treatment could not offset the high production costs in Hong Kong. However, for industries with high added-value, high technology content and high cost-effectiveness, the zero-tariff policy will become the largest incentive to attract manufacturers to come and invest in Hong Kong. As for Hong Kong products, such as electronic products, garments, clocks and watches, jewellery and cosmetics, which were levied tariffs as high as 20% to 30% in the past, the zero-tariff policy alone is sufficient to offset the production costs. Furthermore, products with the "Made in Hong Kong" label will enjoy the benefit of a higher brand-name value in the international market. If manufacturers set up factories in Hong Kong, then their products can carry the "Made in Hong Kong" label, which will substantially enhance the competitiveness and marketability of such products. This will be an important factor in luring overseas manufacturers to set up factories in Hong Kong.

As only industries with high added-value, high cost-effectiveness and high technology content can benefit from the zero-tariff policy, therefore, CEPA will help to stimulate Hong Kong industries to develop in the direction of high added-value and high technology content. It will help to propel Hong Kong industries to upgrade and undergo restructuring, thereby inspiring the atmosphere of scientific research in Hong Kong as well as opening up new horizons for the manufacturing industries of Hong Kong. Obviously, if the local manufacturing industries can successfully undergo restructuring and find further development, they will surely bring about an upward surge of the economy of Hong Kong as a whole. As illustrated by past experience, the booming of the local manufacturing industries could provide twice as much employment opportunities for the service industries, bringing about a general revival of the entire local labour market.

However, whether CEPA can eventually give Hong Kong economy a new lease of life will hinge on whether or not the SAR Government can introduce suitable matching policies. Hong Kong possesses the right hardware for development of industries, such as the availability of clear and explicit economic and trade legislation, good international information, financial services, logistic systems, rich trading experience, and so on. If we want to make full use of the opportunities provided by CEPA, the Government should not stick to the rut. Instead, it must further improve the business environment and reduce production costs. The wages in Hong Kong are several times of that in other major mainland cities. The "one plus three" importation of labour scheme is a

feasible proposal for reducing labour costs. In the meantime, the Government should provide preferential policies in land supply and taxation, so as to enhance the competitiveness of Hong Kong industries. I believe that, with the combination of a variety of favourable factors, many Hong Kong manufacturers will choose to relocate some of the production processes back to Hong Kong. Meanwhile, some overseas businesses and mainland enterprises will be attracted to develop manufacturing industries in Hong Kong.

CEPA has offered new opportunities for Hong Kong to get out of its present predicament. I hope the SAR Government can have a clear understanding of the strategic position of the local manufacturing industries and their significance in the overall economy, grasp and make good use of this rare and precious opportunity, and formulate comprehensive industrial policies and corresponding measures, so as to make the manufacturing industries a pillar in pushing a renewed take-off of Hong Kong economy, thereby benefiting all in Hong Kong. Thank you.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, after a year and a half's negotiations, Hong Kong and the Mainland have finally reached the major agreements under the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA). Against the backdrop of China's accession to the World Trade Organization (WTO), the rapid rise of mainland cities and the diminishing role of Hong Kong as an intermediary, CEPA has finally managed to inject new momentum into Hong Kong's role as a two-way platform in linking with the mainland and global markets. It will also help consolidate Hong Kong's unique position in the Mainland as the latter undergoes further reform and liberalization. However, it must be noted that CEPA is also meant to be an advanced alarm for the SAR Government and the territory that the early opportunities for Hong Kong to enter the mainland market will soon expire. Hong Kong must do its best to strive to build strongholds on the Mainland before the expiry of the deadline. Otherwise, CEPA will become nothing but empty talks, albeit written in such an attractive manner. Let me cite import and export as an example. The permission for Hong Kong companies to operate freight transport agency service or storage services on the Mainland as sole proprietorships has come only two years earlier than the undertaking given by China for the purpose of entering the WTO. And the permission for Hong Kong companies to operate land freight transport as sole proprietorships has come only a year earlier than what was promised by China in its accession to the WTO. The SAR Government

must not think that its mission is completed upon the signing of CEPA. More importantly, it should turn the agreement from a sheet of paper into concrete business opportunities by assisting Hong Kong businessmen in establishing their leading role in the mainland market and hoarding more capital in luring foreign investments.

Actually, allowing Hong Kong businesses to operate on the Mainland as sole proprietorships can enable them to exercise greater freedom in transplanting their management culture and *modus operandi* to the Mainland. However, the SAR Government must not underestimate such problems as regional protectionism, protectionism among departments, existence of different policies, laws, rules and tax regimes in different provinces and cities, and the relatively low transparency of the legal system and its vulnerability to human interference. All this can seriously injure investors. Furthermore, it is impossible for Hong Kong businessmen to resolve these problems on their own. I welcome the recent move by the Hong Kong/Guangdong joint conference by having the Chief Executive and the head of Guangdong Province to personally lead the conference, with a view to bridging the policy gap between the two places in a more effective manner. The SAR Government should further step out of the Pearl River Delta (PRD) and establish high-level co-ordination mechanisms of a similar nature with other provinces and cities where Hong Kong businessmen have made substantial investments. Of course, strengthening the daily liaison between Hong Kong's principal civil servants and their opposite numbers in the Mainland will help the formulation of policies that can meet the actual needs of Hong Kong businesses. As the Government has claimed that it has established such ties as hotlines with more than 100 mainland provinces and cities, it should optimize these means of communication by maintaining liaison with the relevant provinces and cities on a daily basis to obtain the latest business information and upload it on-line for the information of Hong Kong businessmen.

Meanwhile, I also hope that the Hong Kong Economic and Trade Office in Guangzhou and the Beijing Office of the SAR Government can tie in with the relaxed investment concessions offered by CEPA to 17 industries by expanding their support for cross-boundary industries. The two offices must avoid by all means strengthening economic and trade liaison or focusing on public relations and publicity in a vague manner. Instead, they should assist Hong Kong businessmen in exploring investment opportunities and resolving their investment difficulties in a pragmatic manner to enable them (particularly small

and medium enterprises) to be more at ease in operating their businesses and developing the market.

Moreover, given the vastness of the mainland market and the countless variety of raw materials, the SAR Government should examine the possibility of attracting mainland and overseas businessmen to set up factories in Hong Kong by taking advantage of Hong Kong's strengths, given that China is adopting a zero-tariff or low-tariff policy towards goods imported into China from Hong Kong. For one thing, as Hong Kong is a free port where no duty is imposed, raw materials can be imported from the Mainland or overseas countries at any time. As Hong Kong is very high on the global chart in terms of business reputation and brand reliability, coupled with its relatively stringent protection of intellectual property, simple and convenient investment procedures, as well as a low and simple tax regime, raw materials can be processed in Hong Kong factories for added value before exporting to the Mainland. This *modus operandi* is believed to be highly feasible for high-class fashion products, jewellery, medicine, food, high- and middle-end cosmetics, perfume and relatively high-end consumer goods. It will of course depend on the outcome of discussions between the Government and the Mainland on the definition of "Made in Hong Kong" and the possibility of enjoying further concessions should raw materials from the Mainland be used. The Government may also make reference to the trade co-operation arrangement between the United States and Mexico. For instance, Mexico can enjoy full tariff exemption when clothes made from American textile are exported back to the United States for retail.

It is equally important that, as I have repeatedly stressed, the SAR Government must speed up cross-boundary infrastructure construction including the bridge linking Hong Kong, Macao, Zhuhai and Shenzhen, provide more border crossings, strive to break the geographical boundaries, and promote one-stop logistics services as a new mode of joint operation. At the same time, the Chek Lap Kok, Shenzhen, Macao, Guangzhou and Zhuhai airports should be integrated into one system to enable Hong Kong and the PRD to develop into an air and sea logistics hub in Asia. Only in doing so can the existing problems of poor efficiency and high costs facing freight transport at cross-boundary checkpoints be rectified. Only in doing so can the two places better bring their own strengths into play and make use of the strengths of the other party, remove regional divides, and join efforts to create a brighter future.

Madam President, I so submit.

MRS SELINA CHOW (in Cantonese): Madam President, the signing of the "Mainland/Hong Kong Closer Economic Partnership Arrangement" (CEPA) is undoubtedly good news to Hong Kong. Recently, I have talked with many people from my constituency — I am not sure which constituency to which Mr CHAN Kam-lam belongs — they all think that CEPA will help the wholesale and retail trades and many manufacturing industries in some measure.

Under CEPA, first, the threshold of average annual sales volume during the three years prior to the application of a Hong Kong company for the right to operate as a retail enterprise in the Mainland has been reduced from not less than US\$2 billion to US\$100 million; and second, Hong Kong companies are now allowed to operate as sole proprietorships in the Mainland, different from the past practice of requiring all Hong Kong businesses to look for mainland partners to form joint ventures. Insofar as operational policies are concerned, the move has undoubtedly removed many obstacles. Besides, CEPA also allows Hong Kong businessmen to operate as individual enterprises, running retail shops with business area of less than 300 sq m. This has also provided SMEs with opportunities of development.

Many Hong Kong businesses have already set up manufacturing factories in the Mainland, and they may not relocate their factories back to Hong Kong, even if we have CEPA now. However, in the case of the jewellery industry, I have conducted a study. I discover that, under CEPA, jewellery imported from Hong Kong can enjoy the zero-tariff benefit. This may prove to be a major incentive for internationally famous brand names, and they may be attracted to set up manufacturing facilities in Hong Kong. Be they European, American or Hong Kong brand names, as long as the products are manufactured in Hong Kong, even on materials from overseas countries, CEPA will provide favourable conditions for such internationally famous brand products in access to the mainland market.

However, even if these products can enjoy zero tariff under CEPA, according to some jewellers, they still have to pay 17% value-added tax and 5% consumption tax. This combined 22% tax has to be factored into the costs of the products. Furthermore, there are also some other ambiguities in taxation. They have asked some questions which I cannot answer. So I have to ask the Secretary, but I am not sure if he can furnish me with a full reply at the present stage. For example, if a Hong Kong businessman has made a profit, how is the

profits tax calculated? Can such profits be freely converted into Hong Kong dollar? If yes, would there be foreign exchange control? We hope such issues can be resolved as soon as possible. Although the retail trade now enjoys the benefit of being allowed to operate sole proprietorships, the operators worry that they still have to tackle certain administrative barriers, even though some of them have already been removed by CEPA. For example, if they want to start a shop, they will have to apply for a licence. So, even if the past problems have been removed as the operators are allowed to run their businesses as sole proprietorships, they still have to apply for a licence. In that case, are there certain administrative barriers still not yet removed? Although CEPA has made certain relaxations, there are still a whole lot of tedious formalities to handle. Such formalities have to be streamlined and well co-ordinated, so as to enable them to make good use of the benefits offered by CEPA, and be able to start their businesses as soon as possible.

Many industries of Hong Kong will benefit from CEPA. This is of course a blessing to us. However, certain industries have been left out. I believe the Secretary must have noted that I have frequently spoken for the design industry, and the Secretary is also very much concerned with them. The design industry is very successful in many different fields, including graphic design, product design, interior design, and so on. Their works have won the admiration of many enterprises in the Mainland. However, it is most disappointing to us that the three words of "the design industry" are nowhere to be found in CEPA. I think the Government and the Secretary should pay greater attention to this matter. CEPA does mention advertising, but there is no mention of "the design industry". As I have just mentioned, the design talents of Hong Kong in different fields have won praises by people in the Mainland. Prior to CEPA, they took orders on a contract basis, and they could receive their remuneration in Hong Kong dollar. However, mainland enterprises do not like this approach because they will have to pay in foreign currency. If they do not adopt the above approach, they will have to work by way of a joint venture. They strongly hope that the Secretary can negotiate for the arrangement of enabling them to set up sub-offices in the Mainland for their parent companies in Hong Kong. This would be the best arrangement for them.

The industry that has received the similar treatment as the design industry is the leather and fur industry. Not only does the leather and fur industry does well in Hong Kong, but it also occupies a prominent position in the international

leather and fur market. We have very good international visions in such aspects as the purchase, professional expertise, packaging, fashion design, distributor network, and so on. We are also leaders of the latest trend, with many of our products featuring the most trendy designs. In March, I joined the Secretary in attending a major design exhibition entitled "Style Hong Kong" organized in Beijing by the TDC. I could see that, not only did many mainland businessmen like our fashion designs, but they also welcomed the leather and fur products of Hong Kong. Now, it is most disappointing to us that CEPA has left out such products.

In fact, as I have just mentioned, many industries in Hong Kong such as the leather and fur industry, shoe-making industry, and so on, enjoy certain edges. I hope the Secretary can listen more to the views expressed by the industries in the next few months, so as to find out the items that have been left out and then include them in CEPA as soon as possible.

Thank you, Madam President.

MR KENNETH TING (in Cantonese): Madam President, a week or so ago, Premier WEN Jiabao came to Hong Kong to witness the signing of the "Mainland/Hong Kong Closer Economic Partnership Arrangement" (CEPA), and promised to provide Hong Kong with concrete preferential treatment in three areas, namely, trade in goods, trade in services and trade and investment facilitation. It gave a special impetus to the economy of Hong Kong, and it could be described as a big gift to Hong Kong to mark the anniversary of its reunification. It is believed that, the industries, tourism, retail trade and even the professional sectors will be benefited, as CEPA will enhance their future development in the Mainland.

First of all, on trade in goods, in the first phase of CEPA to be implemented in the beginning of next year, 273 product codes of imports Hong Kong will enjoy zero tariff treatment. As a result, goods that used to be levied high tariffs in the past, such as textiles and clothing, clocks and watches, jewellery, cosmetics and even hi-tech products will now enjoy the early business opportunities, making it much easier for them to enter the mainland market. It is like a newly opened platform which hopefully will lead to the introduction of more new industries into Hong Kong, and even foreign enterprises might be

lured into Hong Kong to develop hi-tech or even high value-added industries and they will eventually access the Mainland. This will facilitate the economic restructuring of Hong Kong.

Secondly, on trade in services, the threshold requirements for entry to the mainland market have been substantially lowered for many of the robust industries in Hong Kong, such as tourism, logistics, transport, advertising, and so on; whereas professional services such as banking, accounting, legal and medical services may now freely set up companies in the Mainland and operate as sole proprietorships, thereby providing additional room of development for Hong Kong enterprises. According to the estimation of the Federation of Hong Kong Industries, it is anticipated that CEPA will benefit about 20 000 factories. As most of the beneficiary enterprises are small and medium enterprises, which account for over 90% of the local enterprises, it is believed that CEPA will directly push the economic development of Hong Kong.

Besides, as far as I know, though there is still half a year before CEPA officially comes into effect, several sizeable retail operators had submitted their applications to start businesses in the Mainland no sooner than the pens for signing CEPA were just put down. As soon as details such as the definition of "Hong Kong companies" have been agreed after negotiations, and the relevant provisions officially come into effect and approval obtained from mainland authorities, such operators will launch their business ventures in the Mainland in full swing. From this, we can see that CEPA does offer very strong attraction and highly prosperous business opportunities. On the other hand, CEPA will also create more job opportunities for Hong Kong people to work in the Mainland.

However, CEPA has only opened a door of business convenience for Hong Kong people in the Mainland. Hong Kong businessmen may now operate sole proprietorships in the Mainland, or foreign companies may team up with Hong Kong enterprises in exploring the mainland market. However, many Hong Kong businessmen without mainland experience or people network there may be deterred from exploring the mainland market. Therefore, it is necessary for the SAR Government to identify more opportunities for Hong Kong businessmen, so as to enable the aspiring operators to exploit the mainland opportunities as fully as possible and fight for their future prospects. Therefore, the Liberal Party supports the proposal advocated by the Secretary for

Commerce, Industry and Technology, Mr Henry TANG, in providing "one-stop services", which suggests that the Government should make good use of the Offices of the SAR Government in Beijing and Guangdong, and the offices of the Trade Development Council in the Mainland to provide comprehensive support services for Hong Kong businesses. Such offices should be co-ordinated to provide Hong Kong businesses with mainland information on the latest policies, economic and trade news, legislation and regulations, market data and even ways of resolving disputes. They should also strengthen the communication network of Hong Kong businessmen in the Mainland.

Apart from the matching measures in this regard, I would like to reiterate some viewpoints expressed in my speech made in the motion debate moved by Mrs Sophie LEUNG in the last meeting, that is, the SAR Government should actively consider establishing a border industrial zone. Under this scheme, the land should be granted at a concessionary premium and mainland workers are imported, especially the "One Plus Three" Importation of Labour Scheme proposed by the industries should be reconsidered, so as to attract more industries into relocating back to Hong Kong, thereby creating more job opportunities.

Madam President, the Liberal Party has always attached great significance to the improvement of the business environment in Hong Kong. This is especially significant as some improvements have been made since the Chief Executive made an undertaking to establish a committee to improve the business environment about a year ago. We are heading in the right direction. But I believe there is still a lot of room for improvement. We hope the Government can continue to strive for more progress and make active responses to the requests made by the industries. As the business environment keeps on improving, I believe more foreign companies will be attracted to make investments in Hong Kong, thereby benefiting the economy of Hong Kong.

Lastly, I would like to raise one more point, that is, the signing of CEPA will benefit Hong Kong enterprises more, but it will also benefit the Mainland as well for it will help the integration with the Pearl River Delta (PRD) Region mature. It will also enhance the economic status of the two places in global economy, for they may even join hands in developing hi-tech industries and promoting the brand name of the Greater PRD to overseas markets. For this reason, we should grab the opportunities and work hard to take full advantage of

the preferential treatment provided by the Central Authorities and strive to explore more business opportunities.

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

MISS CHOY SO-YUK (in Cantonese): Madam President, Hong Kong has signed the "Mainland/Hong Kong Closer Economic Partnership Arrangement" (CEPA) with the Mainland. Does this imply unlimited business opportunities for Hong Kong from now on with bright hopes lie in our way forward? Or instead, does it simply mean that the radiance of the Pearl of the Orient has now faded and it has to rely on the support of the Mainland before it could continue to glow with brilliance? We do not know what lies ahead of us, and we have the mixed feelings of both optimism and pessimism. The only certainty is that, if we want to maintain the same prosperity of Hong Kong in the past, then we must understand clearly our own strengths and weaknesses, so that we can make good use of our own strengths to compensate for our weaknesses. Only in this way can we maintain our competitive edges.

The new arrangement will surely bring about a ray of hope and a lot of expectations to our weak economy. Several thousands of Hong Kong products will enjoy the zero-tariff treatment. It is expected that it will attract some industries, which are now not present here, to come to Hong Kong for development. This is especially so for those high value-added industries, those that manufacture famous brand-name products and those that require intellectual property protection. This will make the industrial structure of Hong Kong more versatile, and it is believed that it will be conducive to the economic restructuring of Hong Kong. In the meantime, the threshold for the entry of service industries into the Mainland has been lowered substantially. This will attract some enterprises to use Hong Kong as a springboard to the Mainland, so that they capitalize on the early opportunities in accessing the market at a time when there are less foreign competitors.

The service industries of Hong Kong enjoy an obvious advantage especially in Guangdong. On the one hand, Guangdong is more advanced than other provinces, and on the other, Hong Kong knows the mainland situation better than the foreign countries. Besides, we also enjoy the advantage that there is basically no barrier between Hong Kong and Guangdong in such aspects as culture, language and habits of living, and so on. All these are particularly

suitable for the medium and small service enterprises to develop their business there.

Ultimately, the signing of CEPA is just a good starting point. After its implementation, we still have to see for ourselves how much specific assistance is actually provided to the industries. This will depend on the specific details to be finalized through negotiation in future, and such details will be most crucial. Therefore, I hope the Government can conduct consultation with the industries relevant to CEPA as soon as possible, so as to understand their concern as well as their future aspirations and worries. After that, the Government may proceed to negotiate with the mainland Government on details of the new arrangement so as to exploit the full benefits of CEPA. We cannot just sit back and dream up all the details and put forward all kinds of unrealistic requests. If we do that, despite all the efforts expended, the outcome would please no one. I would like to take this opportunity to point out some specific grey areas which require clarifications in the exhibition industry with which I am familiar.

Madam President, first of all, I would like to make a declaration of interest. All along, I have been working in the exhibition services industry. There is a section in CEPA which mentions the exhibition business. It is still too early to say whether it will really benefit the industry, or whether it will just bring us some nominal benefits.

Madam President, if a Hong Kong businessman wishes to hold an exhibition in the Mainland, the basic prerequisite is that he must first identify a reliable mainland partner, and then he will have to seek the approvals from the relevant departments before his exhibition business could commence. With CEPA, Hong Kong businessmen could undoubtedly skip the first hurdle of finding a mainland partner now. However, if the requirement of getting approvals from the Government is not relaxed at the same time, that is, if Hong Kong businessmen still have to secure numerous approvals before they could hold any exhibitions in the Mainland, then the benefit is very limited to Hong Kong exhibition operators.

On the other hand, in the case of mainland enterprises coming to Hong Kong to participate in exhibitions, if they could enjoy the same benefit of not having to secure government approvals before participating in exhibitions in Hong Kong, it would not just help bring such enterprises to Hong Kong with the

purpose of attracting overseas investment, but it would at the same time bring specific benefits to the economy of Hong Kong. It would help a long way in making Hong Kong an international conference and exhibition centre, and eventually the exhibition industry of Hong Kong will enjoy very good prospects, and it will create a lot of additional job opportunities. Therefore, the specific details of CEPA would have to be worked out through negotiations between Hong Kong and the Mainland in the light of the specific needs of Hong Kong. Some people say that CEPA is a big gift given to Hong Kong by the Central Authorities to stimulate the revival of the long-term development of Hong Kong. I could not agree more. But, meanwhile, I do not think that it should be a one-sided game with Hong Kong getting the exclusive advantages. I also believe that Hong Kong people have no intention of snapping up all the benefits. Instead, through CEPA, Hong Kong and the Mainland will get closer together in our trade and economic relations, and we can complement each other, thereby creating a win-win situation.

Moreover, in the face of such a rare and precious opportunity, we must work hard to seek self-enhancement and improve the business environment. Only in this way can we bring the merits of CEPA into full play for Hong Kong, so as to enable our large, medium and small enterprises to maintain their competitiveness despite the tough environment, and in this way, they may avoid the dismal fate of being eliminated out of the race by adverse circumstances.

Earlier on, the Secretary for Commerce, Industry and Technology said that the Government would consider providing one-stop services to small and medium enterprises (SMEs) and service industries, especially those Hong Kong companies intending to start businesses in Guangdong as sole proprietors. However, apart from having to step up their effort substantially in assisting the SMEs in getting a clear understanding of the needs of the market in the Mainland, and the relevant legislation, the taxation and licensing arrangements, which are even more important, I think the Government, if it really wishes to improve the business environment in Hong Kong, must seek self-improvement first. It should change its own attitude and should not just sit back and do nothing on the pretext of adopting the non-intervention policy, despite the difficulties faced by the business sector. This is especially so after the signing of CEPA. The Government should first understand that our strengths lie in our good knowledge in such aspects as trade financing, transport, insurance, logistics, and so on, and then should put forward practical improvement measures to assist the enterprises

in grasping the opportunities offered by CEPA, in the light of the relevant hardware and software of Hong Kong, such as the airport, highways, the airport railway, container terminals, the training of local talents and the pooling of international talents in Hong Kong, and so on.

Madam President, I hope the Government can bear this in mind: You can have the sincere support of the people only if you can premise all your considerations on their needs and act in response to their aspirations.

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

MR NG LEUNG-SING (in Cantonese): Madam President, the "Mainland/Hong Kong Closer Economic Partnership Arrangement" (CEPA) has given a boost to the economic recovery of Hong Kong after the painful experience of the SARS outbreak. It demonstrates the long-standing strong support of the Central People's Government for Hong Kong. I have also moved a motion of thanks to the Central Authorities in this Council. Meanwhile, CEPA is undoubtedly the best achievement of the Government of the Hong Kong Special Administrative Region (SAR) personally led by the Chief Executive in the work of promoting the economic development of Hong Kong. It serves to illustrate the good strategic vision and the proactive attitude of the Chief Executive and the relevant accountability officials (of course including Secretary Henry TANG) in the administration of Hong Kong. It shows that they are able to keep abreast of the times, and at the same time, it also highlights the significance of good co-operation and the mutually beneficial relationship between Hong Kong and the Mainland. To be fair, this Council should acknowledge the credit due to the Chief Executive and the relevant government officials in the initialling of CEPA.

CEPA involves a wide range of goods and services in trade, covering a wide range of industries. The impact would be enormous. It is believed that it would help to consolidate and strengthen the existing advantages of Hong Kong as an international business city, and the financial industries as well as the banking industry, in which I am working, would also be benefited. In order to make full use of the benefits of CEPA, it is important that operators of the various trades in the commercial and industrial sectors should be more proactive in their business activities. The Government may also provide further guidance and assistance for the industries in the context of CEPA. The Government

should maintain good communication with the various industries likely to be benefited by releasing information and making promotional efforts, so as to assist the industries in understanding the specific details of CEPA and make good use of them. The Government should also continue conducting active negotiations with mainland authorities on certain details in CEPA pending further confirmation, such as the mutual recognition of professional qualifications, as well as the co-operation that would help to increase trade and investment facilitation. For the domestic environment of Hong Kong, it is also absolutely necessary for the Government to provide a more business-friendly environment, minimize cumbersome procedures and amend outdated regulations and legislation that are incompatible with a business-friendly environment. The Government should also take concrete actions to implement the principle of "small government, big market", and it should exercise the indispensable but minimum supervision, thereby preventing the occurrence of administrative or political intervention of market operations. Only by implementing a combination of such external and internal measures will the economic potentials and advantages under CEPA be realized to the greatest extent.

Madam President, I so submit.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, Hong Kong and the Mainland have signed the "Mainland/Hong Kong Closer Economic Partnership Arrangement" (CEPA), which will be implemented before China's commitments upon its accession to the WTO actually coming into effect. It will bring opportunities to both businessmen and professionals of Hong Kong. In fact, CEPA really has raised a lot of expectations among Hong Kong people who are presently beset with economic problems. After negotiations for over a year, the Government has successfully reached a deal with the Mainland. Hong Kong people have some expectations on CEPA; I feel that this is a positive mentality. We can see that some service industries and various types of professionals are now hoping that, with the signing of CEPA, they can find good development opportunities in the Mainland. Besides, for some small and medium enterprises (SMEs), according to CEPA, if operators of such SMEs are Chinese nationals with the status of permanent Hong Kong residents, they may operate their business in the Mainland as sole proprietors. Of course, the area each of them can occupy as a shop is rather limited (only about 3 000 ft). Anyway, this is still an opportunity.

Besides, 273 types of products could be exported to the Mainland on zero tariff; this is also very important. On the whole, from these several points of details of CEPA, we can see its influence on Hong Kong should be positive. However, I wish to point out that, when we feel that the influence is positive, what kind of worries will the whole Government think we may still have after the signing of CEPA? I hope later the Secretary will say something on this, including whether we should worry that such an arrangement would make a large number of local professionals flock across the border to the Mainland? This is our worry.

Second, on the 273 types of products on the zero-tariff list, what actually has the Government done in order to make some of the activities and capital to be relocated back to Hong Kong? This is because we have strong worries that some people who eventually make a fortune in this process may not be able to return to Hong Kong. To us, of course, we hope the signing of CEPA will bring about more economic activities and job opportunities for Hong Kong. Judging from the present circumstances, I have talked to some manufacturers (including some SMEs) who also feel that if we really want Hong Kong to benefit from CEPA and achieve some major development, it is necessary for the Government to consider the issue from many different perspectives. Last time, when I asked the Secretary a question in a panel meeting, he said that, regarding arrangements similar to the zero-tariff treatment, some manufacturers might have more focused activities, whereas others might adopt other approaches, or even "one-stop service"; some might not require the use of land, some other SMEs might hope that they could use some land, build some factory premises, and so on. Personally, from an idealistic point of view, I can see that a lot of people have become unemployed in the past few years, and the economy has undergone a hard time. In conjunction with some SMEs and scholars, I have been studying whether it is possible for our industries to be relocated back to Hong Kong.

Madam President, during the past two years before the signing of CEPA, we have been keeping in touch with some people who had returned to the Mainland for development in the wake of the reform and opening of China. However, as China has introduced a lot of new tax items in recent years, together with the fact that many parts of the Mainland have achieved considerable development, certain regions have cancelled the preferential treatment for Hong Kong businesses. Besides, different parts of the Mainland may enforce

different laws. As a result, a lot of people want to relocate their operations back to Hong Kong. The Government may say that these people have a greedy mind for "advantages". But I do not think so. Regardless of whether require land or not, under CEPA, they should be treated equally and be able to get the "advantages". The Government should treat them equally, and should not neglect businessmen who wish to own factory premises or land or have put forward other requests.

Madam President, Hong Kong is now caught in an economic downturn. Several years ago, we shoved away lightly the Hambrecht & Quist Group, letting it slip away to Shanghai. We have also shoved away some other projects, making them turn to other places. As a result, the economic activities of Hong Kong have been diminishing, thus reducing the job opportunities. The Secretary may sometimes think that the scales of certain activities are too small, or he may suspect whether certain project are what Hong Kong needs. However, I think that certain small economic activities, or some small handicraft industries may have already saved many families, and provided jobs to many people. Therefore, I really hope that the Government can listen more to the people.

Madam President, since 1 July, the mass march of 500 000 people had occurred, and yesterday a rally of 50 000 took place. In these incidents, apart from the controversy related to the enactment of laws to implement Article 23 of the Basic Law, the people have also voiced some other significant aspirations in respect of, for example, the deteriorated economic and employment situations. The people had encountered many difficulties and they had some opinions. They had proposed a lot of opinions to the Government. However, we found that the Government had failed to hear their voices. For example, I had held numerous meetings with SMEs, and I, together with them, had met with government officials for discussion on certain issues. They had put forward a lot of opinions, and strongly hoped that the Government could listen to them. But we found that, in the past few years, whenever we come to the issue of relocating the industries back to Hong Kong, they would invariably bring up some conditions like "one plus three", "one plus several", importation of foreign labour, and so on. Insofar as many of the SMEs with which we have kept in touch are concerned, they do not treat labour as their first priority. Even if they have the need for labour, it would only be their fifth or sixth priority. What they want to get are those professionals. They are pragmatic. They think that, as Hong Kong industries had stopped operating in the past, there is a gap of a

whole generation of middle-level technicians. I hope the Government can help them in this aspect.

I feel that whenever I discuss these issues with the Secretary in the Council, I will find that the voices heard by me and the Government are completely different. I feel that it does not matter, even the voices we have heard are different. However, I hope the Government will not listen to these voices selectively. It should not just listen to the voices of the major manufacturers, always the same several voices. Many people have a lot of opinions on the issue of importing mainland labour, and on the requirements of jobs, and so on. I feel that if the Government continue to act in that way, many Hong Kong people would feel frustrated. The Secretary may say that certain issues actually are not like what have been perceived. I think it does not matter. Maybe my viewpoints are biased, or maybe those of the Secretary are biased. But should the Secretary not examine why some policies formulated by the Government are perceived as unnecessary in our eyes? Or why do we always say that some people have certain needs, but the Government just thinks exactly the contrary and says that they do not have such needs?

Madam President, under the present circumstances in Hong Kong, the Government must face the reality and be pragmatic on certain issues. Hong Kong is now facing a very good opportunity. Some people think that the Mainland has given us a big gift. Frankly speaking, I feel that the Mainland is taking care of us this time. For a long time in the past, in the process of reform and opening of China, Hong Kong has played a significant role and helped the Motherland. However, as the economy of Hong Kong is in a tough time now, the reverse is happening. Given this opportunity, we should contemplate how we can listen extensively to opinions from the industries on measures related to CEPA and zero tariff, and so on. Then we should examine whether it is possible to offer assistance to the SMEs apart from helping the major manufacturers? Is it necessary to discuss with the SMEs? Or whether it is necessary to invite non-government organizations to join in the discussions on the relevant details?

Madam President, we do not have too much time left now. Two years later, owing to the WTO commitments, China will have to open up the market to the world. During this period of about two years, I hope that the Government will refrain from adhering to its so-called high degree of non-intervention. I

hope the Government can learn from its painful lessons in the past. I do not like to see Hong Kong continue to uphold the so-called free economy. I feel upset because both the economic and unemployment situations are very critical now.

Madam President, I so submit.

MR ABRAHAM SHEK: Madam President, for any business community, zero tariffs and exclusive access to the up-and-coming mainland market are trade concessions too good to be true. To Hong Kong, however, the focus has been initially centred much on the political significance of CEPA — a symbol of the Central Government's unfailing support for Hong Kong's struggle to recover from our ailing economy under restructuring. Then came a gradual awareness that, despite its generous terms, CEPA is no magic cure for the current problems of Hong Kong's service-based economy. It is nothing like waving the magic wand and Hong Kong's fortune will return overnight. CEPA is comparable to an entry ticket to a promising gold mine. If Hong Kong is to mine any gold out of it, the local private sector needs to aggressively seize any business opportunity arising, and the Government also needs to put forward the right policies to improve the local investment environment. Mr Henry TANG has made the first and most important move, and he is to be congratulated.

CEPA would create jobs here and facilitate our economic restructuring, according to the Chief Executive. It is now clear, however, that Hong Kong's labour market will benefit little from the arrangement — at least in the short term.

For one, it seems unlikely the tariff concessions would provide strong enough incentive to Mainland-based Hong Kong manufacturers. The chance that they would relocate their established business to Hong Kong and create new jobs here is slim. The deal is also expected to open new opportunities for high value-added businesses, but it would take a considerable period of time before these industries can build up a significant cluster and create a sizeable employment market in Hong Kong. A favourable investment environment for innovative and hi-tech industries needs to be nurtured by the right government policies, such as tax concessions or exemptions. Our Government has lagged behind our competitors in the region in terms of attracting sector-specific investors.

Further, the concessions on services — such as the lowering of asset thresholds and the lifting of financing restrictions — may enable our service sectors to get a headstart over others who are trying to expand into the mainland market. The mainland service sectors — especially those within Guangdong Province — would benefit as well, since the advanced opening of market would speed up their reform and bring service quality closer to world-class standards. But, again, the northbound expansion will bring little relief to local unemployment problems. The way that would enable local labour to share the benefits is to encourage more foreign companies to set up offices here so as to explore the advantageous position of Hong Kong-based companies in the mainland market. We have to strengthen Hong Kong's role as a regional centre for business operations.

The real significance of CEPA lies in its provision of a scaffolding for facilitating closer economic integration with the Pearl River Delta (PRD).

Hong Kong has forged to develop closer economic ties with other mainland cities for quite some time. The removal of more trade barriers will further reduce the existing economic borders between the two sides. The process of integration has entered into a new stage and is now ready to proceed to a deeper and more profound level.

CEPA will give the two sides a framework for discussing and guiding the process. Hong Kong and other cities in the PRD are interdependent, yet it is no secret that they are also under intense competition. The presence of seven airports in the region, all of which compete for the same cargo market, provides hard evidence of poor co-ordination. CEPA, then, provides for regular meetings and the establishment of liaison offices. It is hoped inter-city and inter-government communication in the PRD will improve. In fact, much of CEPA's details — such as the definition of a Hong Kong-based company and the origin of product — are yet to be worked out and agreed on by both sides. CEPA's success hinges on whether the two sides can establish trust and reach consensus with each other.

Madam President, CEPA will certainly enhance the flow of goods, capital and people between Hong Kong and the Mainland. We need to get ready for integration at all fronts. We need more than ever to improve our cross-border transportation network. The building of a cross-border bridge to Zhuhai, which

is expected to be announced very soon, is a positive step towards that goal. Also, we need to speed up the lifting of the travel restrictions currently placed on Guangdong citizens. CEPA is not meant to be an unconditional gift. We have to take our share in the rebuilding of Hong Kong economy.

With these words, I support today's motion.

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

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, in their speeches earlier, a number of Members affirmed the enormous economic benefit brought by the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) to Hong Kong. To what extent can CEPA bring Hong Kong new business opportunities in the mainland market? To what extent will CEPA bring direct and indirect economic benefits to Hong Kong? And how many job opportunities can be created in Hong Kong? All this will all depend on how the business sectors and professionals in Hong Kong and other parts of the world take advantage of CEPA to strive for greater vitality in the mainland market.

The Government will certainly try every possible means to encourage and help various sectors to take full advantage of the opportunities brought about by CEPA. Actually, we are committed to the work in this area. As mentioned in Mr CHAN Kam-lam's motion, the Government will, among other things, improve the business environment, protect intellectual property, promote investment activities, and help local enterprises develop the mainland market. Relevant knowledge and understanding of the contents of CEPA are indispensable to enabling the business sector and relevant professional service providers to take full advantage of the business opportunities brought about by CEPA. On the one hand, we have embarked on extensive and focused exchange programmes. Both the Financial Secretary and I have held press conferences on the day CEPA was signed to make the contents of CEPA known and answer questions put by the media. The text of CEPA was also simultaneously published on the website of the Trade and Industry Department (TID). My colleagues and I have, on every occasion over the last couple of

days, including briefings, seminars, luncheons and radio programmes, given Members of this Council, major chambers of commerce in Hong Kong, foreign chambers of commerce, trade and industrial associations, practitioners in professional and trade services, as well as foreign consuls and trade commissioners from a number of overseas countries an introduction on the details of CEPA. Furthermore, a pamphlet featuring the key points of CEPA has been published. Copies of the pamphlet have been distributed to Members of the Executive Council, Members of this Council, the media, major chambers of commerce, foreign consuls, trade and industrial and professional associations, institutions of higher education and libraries. Some copies are also distributed through the TID, offices of the Home Affairs Department (HAD) and other government departments to the public for information. I believe these channels can enable the business sector and the general public to gain a fuller understanding of the contents of CEPA.

Negotiations with the Mainland with respect to the implementation of CEPA in concrete terms are underway. Insofar as trade in goods is concerned, discussions are being held between both parties with respect to the initial 273 tariff-free commodities in relation to rules of origin, the licensing and regulation of certificate of origin, and so on. We seek to reach a consensus in three months and announce the details to give businessmen adequate time to implement corresponding measures and enable goods meeting CEPA rules of origin to enjoy zero-tariff concessions from 1 January 2004 onwards.

We greatly welcome suggestions from the relevant industries and bodies in the course of formulating rules of origin. An excellent suggestion was raised by Mr HUI Cheung-ching just now. Regarding the question of whether our commodity trade should follow the North American Free Trade Agreement, I believe CEPA is even less stringent than the North American Free Trade Agreement. Furthermore, we will expeditiously publish details on ways for factory operators to apply to the Government of the Hong Kong Special Administrative Region (SAR) for the second phase zero-tariff concessions for their products. In doing so, all goods with Hong Kong as the place of origin can enter the Mainland at zero tariff. This will in turn lure investors to set up new industries in Hong Kong, develop the mainland market, and at the same time create more local job opportunities.

In fact, many people who are not familiar with trade and commerce believe that CEPA will only give Hong Kong goods extra advantages for the next

few years. This is actually wrong because the Mainland did not undertake to fully implement zero tariff upon its accession to the WTO. Therefore, the zero-tariff concession granted to us is far much better than what the Mainland's undertaking to the WTO. This advantage is going to last more than a couple of years.

On trade in services, we will liaise with the relevant units in the Mainland with a view to following up the implementation of various measures under CEPA. Individual Policy Bureaux will also maintain close liaison with the industries to explain to them the contents, specific details and methods of implementation of CEPA. To further expand the opportunities for Hong Kong professionals to practise on the Mainland, the relevant Policy Bureaux will encourage and mobilize the relevant professional bodies to conduct joint studies and consultation with their mainland counterparts with respect to mutual recognition of professional qualifications by the two places with a view to enhancing the development opportunities for local professionals in the Mainland.

Madam President, a number of Honourable Members raised the point that the scope of CEPA should be expanded. I would like to emphasize that the signing of CEPA is just the beginning of the entire process. We will continue to liaise with various trades and industries and fully listen to their views. We will also continue with our negotiations with the Mainland with a view to further expanding CEPA in both depth and width, so as to incorporate into CEPA more service industries in a progressive manner.

To complement the new business opportunities brought about by CEPA, our immediate task is to improve the local business environment. Actually, the Chief Executive stated in his policy address delivered early this year clearly that one of the major tasks for the Government was to improve the business environment. In this respect, the efforts made by the Government in the past have started to pay off. To start with, we understand that eliminating excessive regulation and reducing cumbersome rules and regulations are of great importance to business operation. Under our plan to facilitate business, we constantly examine and review ways to reduce the impact of existing laws and administrative measures on business operation. Discussions are also held with various Policy Bureaux and government departments with respect to the joint formulation of specific measures to facilitate business operation. Progress reports of the relevant exercises will also be examined on a regular basis.

Since the commencement of the plan, more than 100 work items aimed at improving the business environment have been undertaken. A number of specific proposals have also been raised and implemented. Among them are streamlining business registration procedures, simplifying customs clearance, improving the licensing mechanism, and simplifying the application procedures for licences. Nevertheless, we are aware that improvement can still be made.

We will continue to require various Policy Bureaux and administrative departments to pay close attention to the impact of their routine regulatory procedures on the business sector, and to take every possible step to minimize such impact to further improve the local business environment.

In view of the economic transformation, industries based on knowledge, technology and innovative ideas are increasingly important to the development of Hong Kong. For this reason, the protection of intellectual property has become indispensable to creating an environment conducive to business. To this end, a lot of work has been done in terms of legislation, law enforcement and education. Insofar as legislation is concerned, we have a healthy and modern body of law on intellectual property which is entirely consistent with international standards. Over the past few years, a number of legislative measures have been implemented to further strengthen protection for such creative industrial products as computer software and audio-visual works. In the Copyright (Amendment) Bill 2003 recently submitted to this Council, it is proposed that criminal sanction against illegal photocopying shops be tightened. The Customs and Excise Department has spared no efforts in enforcement. Thanks to the active complementary efforts of owners of the relevant intellectual property, infringement activities have been brought under strict control. Last year, the Customs succeeded in cracking a total of 11 000 cases involving copyright infringement, with the seized goods valued in excess of \$330 million in total. In the first four months of this year, 3 200 or so cases were cracked and goods worth some \$64 million were seized. Besides, the Intellectual Property Department has continued with its efforts to promote to the public messages relating to respecting intellectual property. According to the annual survey conducted by the Department, the awareness of intellectual property among members of the public is steadily on the rise.

Insofar as external publicity and attracting investment are concerned, Invest Hong Kong has been actively introducing to overseas and mainland companies the advantages of operating businesses in Hong Kong. Through the

provision of massive information and analysing reports, it also assists foreign businesses and mainland enterprises in making investment choices in Hong Kong. By way of helping investors to liaise with suitable business partners and making arrangements for them to meet each other, Invest Hong Kong enables investors to build up a good network before making actual investments. It will also help investors to liaise with relevant government departments to ensure their smooth operation of business in Hong Kong.

After the signing of CEPA, Hong Kong's appeal to overseas investors interested in exploring the mainland market will greatly increase. Invest Hong Kong will enhance its promotion to overseas businessmen of Hong Kong's important position as the gateway to the Mainland. We will also strengthen co-operation with major cities in the Pearl River Delta (PRD) in staging seminars in overseas countries. In fact, Invest Hong Kong has had the experience of working in conjunction with government organs in the PRD in staging several investment promotion programmes in overseas countries, and the programmes have proved to be very successful. As such, we will continue to co-operate with various government organs in the PRD in organizing investment promotion projects in overseas countries. Our next activity will be a seminar on the investment environment of Hong Kong and Guangzhou in Frankfurt, Germany in September this year, which is organized in conjunction with the Bureau of Foreign Trade and Economic Co-operation in Guangzhou.

The SAR Government has all along appreciated the enormous potential of the mainland market and initiatives are taken to help local enterprises develop the mainland market. Active efforts are made by the Commerce, Industry and Technology Bureau, the TID, the SAR Government's Beijing Office, the Hong Kong Economic and Trade Office in Guangdong (GDETO), and the Hong Kong Trade Development Council (TDC) at both official and enterprise levels. The relevant work can be divided into four major spheres. In one sphere, the latest trade and economic rules and regulations and commercial information related to the Mainland are collected for dissemination to Hong Kong businesses through the GDETO Newsletter on the Internet, the Commercial Information Circular issued by the TID and the TDC's website, research reports and such newsletters as China Business Alert - Insider PRD. All this will enable Hong Kong businesses to grasp the policies and commercial developments of the Mainland more fully in formulating their business strategies. The second sphere seeks to promote ties and exchanges between businessmen and trade associations of Hong Kong and the economic and trade departments of the Mainland. To

enable Hong Kong businessmen to forge ties with mainland officials in charge of economic and trade matters and mainland enterprises, large-scale activities such as exchange seminars on the promotion of Hong Kong, commercial and trade study tours, and so on, are organized with a view to developing opportunities of co-operation. The Beijing Office has, in the past, organized activities to promote Hong Kong in such provinces as Tianjin, Hebei, Shandong, Inner Mongolia and Jiangsu. On the other hand, the focus of work of the GDETO is in Guangdong Province. The TDC focuses on assisting Hong Kong businesses to form production partnerships with mainland enterprises. In 2002-03, more than 80 trade exploration and visit activities have been organized on the Mainland by the TDC.

Promoting exchanges between Hong Kong businessmen and strengthening solidarity among Hong Kong businessmen in the Mainland are a key area of work of the third sphere. The Beijing Office, the GDETO and the TDC have been maintaining close ties and providing support to Hong Kong business associations on the Mainland in such places as Beijing, Shanghai and Guangdong Province. As a latest example, the GDETO will, from this month onwards, that is, between July and September, organize three meetings on special topics. Hong Kong businessmen can make use of the opportunities to exchange their experience in operating businesses in Guangdong Province and exchange their views on the business opportunities brought about by CEPA for the reference of the authorities concerned.

Another key area of work is to help Hong Kong businessmen to reflect the problems generally encountered by them in operating businesses on the Mainland. Such problems may include the methods of calculating basic wage levels or social insurance premium, policies relating to working hours, and the operational needs arising from order delays caused by the recent outbreak of atypical pneumonia. The Beijing Office and the GDETO will refer the views of Hong Kong businessmen, trade and investment enquiries and help-seeking cases to the relevant mainland departments.

For the purpose of assisting the business sector in taking full advantage of the business opportunities brought about by CEPA, we will, building on our key work areas, further strengthen support for local enterprises in developing the mainland market. For instance, the TDC has announced the tasks to be undertaken in the light of the formulation of CEPA early this week. In addition to enriching its publications and website in relation to the contents of CEPA and

analysing the business opportunities brought about by CEPA, the TDC will plan a series of promotional activities. With a promotional budget reaching \$70 million, the activities will, among other things, organize expos and overseas promotional tours in mainland cities for a wide range of service industries.

Through the Hong Kong Productivity Council (HKPC), we will also offer full assistance to local enterprises in upgrading their productivity and competitive edge. For the purpose of strengthening support for Hong Kong businesses in the PRD, the HKPC is preparing to set up offices in Guangzhou, Dongguan, Shenzhen and Zhuhai to provide Hong Kong businesses with consultancy and training services so as to upgrade their competitive edge on the Mainland.

On the infrastructure construction front, we will continue to, through such facilities as industrial estates, Science Park and Cyberport, provide Hong Kong industries with land meeting their development needs as well as complementary facilities. We will continue to, through the Applied Science and Technology Research Institute and the Innovation and Technology Fund, assist the industry to move towards its high value-added and technology-based goals and further upgrade its competitive edge.

In addition, four funds specially designed for small and medium enterprises (SMEs), namely the Loan Guarantee Scheme, the Export Marketing Fund, the Training Fund and the Development Fund, and the Professional Services Development Assistance Scheme will continue to provide Hong Kong's SMEs and professional services industries with support, assisting SMEs in expanding their businesses, strengthening promotion in cross-boundary markets, including promotion in the mainland market, as well as upgrading the quality of manpower resources.

It is believed zero tariff can give incentive to manufacturers of some brand-name products, high value-added goods and goods taking intellectual property very seriously to choose Hong Kong as their production base. Insofar as service industries are concerned, local companies are enjoying a head start. Nevertheless, it is most important for the business sector to strive for self-improvement to upgrade its own conditions of production and standard of service in order to fully materialize the benefits brought about by CEPA. This may involve strengthening staff training, adjusting internal operation, changing production procedures, and exploring new scopes of business for the purpose of coping with the needs of the mainland market and Hong Kong's economic

structure. In respect of all these tasks, the Government can only play the role of an assistant and facilitator. As such, Mr CHAN Kam-lam raised a point earlier that "we have to get the horns of the deer". I do agree that we may join efforts in catching the deer. We will keep on driving more deer into the woods for the hunt to continue. However, it is still up to the business sector itself to get the horns.

Mr CHAN Kam-lam has also raised the point that a mechanism should be established to monitor the economic benefits brought about by CEPA and formulate the complementary measures required. We will actively consider these suggestions. However, I have to point out that the existing mechanism and channels have been operating smoothly in promoting local investments, upgrading the overall competitive edge of Hong Kong's manufacturing and service industries, and assisting local enterprises in entering the mainland market. Before considering setting up a new mechanism for CEPA, we will further evaluate the inadequacies of the existing mechanism with a view to perfecting the services we provide in future.

Madam President, I am very pleased to see that CEPA has given rise to very extensive discussions, including the motion debate in this Council today. This will help the general public and the business sector in terms of their cognition and affirmation of CEPA. I believe the Mainland will, in the next couple of months, amend some laws and regulations for the implementation of CEPA. The SAR Government will pay close attention to the latest information concerning the mainland laws and legal system. We will also release the relevant information in due course to help Hong Kong businesses to grasp the opportunities brought about by CEPA.

In the course of implementing CEPA, my colleagues and I will actively consult members of the industry and listen to their views on the details of implementation and relevant complementary measures. We deeply understand that CEPA is intended for building a platform for the entry of industries into the mainland market. As such, we must ensure that the relevant arrangements can cope with the needs of the industries.

In the meantime, we will continue to promote various initiatives to improve the business environment and promote investment and the support measures for local enterprises to enable them to maintain their competitive edge and, in exploring the mainland market, make full use of the opportunities brought about by CEPA. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, you may now reply and you have five minutes five seconds.

MR CHAN KAM-LAM (in Cantonese): Madam President, the day before yesterday, the Cato Institute of the United States and the Fraser Institute of Canada, in conjunction with some 50 other institutions including the Hong Kong Centre for Political Research, published a report on economic freedom of the world. Hong Kong was ranked the freest economy in the world for seven years in a row by the report. That the report has drawn such a conclusion on the basis of numerous objective data illustrates that the competitiveness and unique advantage of Hong Kong are well recognized the world over.

Hong Kong has all along relied too much on the European and American markets, so even when there is just a small downturn of the economies of Europe and America, Hong Kong will be affected immediately. For instance, the effects of the continuous downturn of the United States economy since President George W. BUSH's assumption of office has been felt immediately by the Hong Kong economy; the September 11 incident and also the oil crisis and soaring oil prices resulting from the invasion of Iraq by the coalition forces of the United States and the United Kingdom have adversely affected the export trade of Hong Kong. Therefore, Hong Kong really needs to open up more markets and identify a greater number of trade partners. In this particular respect, we must never allow any complacency.

The Mainland/Hong Kong Closer Economic Partnership Arrangement will certainly offer more room for development and business opportunities to the economy of Hong Kong. Premier WEN Jiabao even said a couple of days ago that all the trade agreements reached between the State and other countries in the future would also be applied to Hong Kong, meaning that Hong Kong will be included in the Southeast Asian free trade zone which may be established in the future, in apt reflection of the State's care for the Hong Kong Special Administrative Region (SAR).

Over the past six years since the reunification, Hong Kong has been undergoing a painful economic restructuring. And, although various economic data early this year had shown signs of an economic recovery, the various trades and industries were subsequently hit ruthlessly by the onslaught of atypical

pneumonia. The sudden attack of the epidemic highlighted the very rickety structure of the Hong Kong economy. The Democratic Alliance for Betterment of Hong Kong (DAB) maintains that apart from focusing on the development of logistics, financial services, tourism and business support services, efforts should also be made to explore the possibility of redeveloping locally based manufacturing industries, and flexible policies and measures should be put in place to assist the development of the relevant industries in Hong Kong.

As for infrastructure construction, which can speed up the integration of Hong Kong with the Pearl River Delta (PRD), the DAB naturally hopes that the SAR Government can launch full-scale co-operation with governments in the PRD as soon as possible. It is hoped that a joint conference on PRD planning and development can be established as soon as possible for the purpose of conducting concrete negotiations on joint development and on infrastructure co-ordination under the principle of mutual benefit and complementing each other's strengths. The DAB certainly very much hopes that the Central Government can announce as soon as possible the finalization of a crossing linking Hong Kong, Zhuhai and Macao, so that the eastern and western shores of the PRD can be better linked up to reduce the physical distance and difference in development progress between the two places. This will facilitate the integrated development of the PRD Region.

The DAB has always attached great importance to the economic development of Hong Kong, and it has been working actively to promote the economic and trade development of the two sides. Recently, we have conducted a number of studies on economic and trade interaction between the Mainland and Hong Kong. It has also held several seminars on the economic development of the two places and listened extensively to the views of various trades and industries, chambers of commerce and academics. We also organize frequent visits to the major cities of the Mainland, so as to understand the latest progress of economic and trade development in the Mainland and the planning prospects there. We are of the view that only a deep understanding of China's economic development can enable us to formulate an integrated plan for the economic development of Hong Kong.

Madam President, presented before the people of Hong Kong now is a new dimension that will enable them to break away from the economic predicament. We need the concerted efforts of all Hong Kong people. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr CHAN Kam-lam 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): Second motion: Accountability system for principal officials.

ACCOUNTABILITY SYSTEM FOR PRINCIPAL OFFICIALS

DR YEUNG SUM (in Cantonese): Madam President, on 1 July half a million people took to the streets to demand the stepping down of Chief Executive TUNG Chee-hwa. This shows that the people's discontent has been driven beyond the limits of forbearance. Spelt out by the people are their frustration with the administration of the Government of the Hong Kong Special Administrative Region (SAR) over the past six years, their discontent with the improper discharge of duties by accountability officials, and their objection to the government attempt to bulldoze legislation. All in all, it is frustration with TUNG Chee-hwa's Accountability System for Principal Officials (the Accountability System). Mr TUNG was not returned by universal suffrage, and the Accountability System introduced by Mr TUNG is undemocratic and accountable only to himself. So, no matter how the people object to government policies, the Government can still go its own way. The Government's administration has been smeared with misdeeds. In the end,

however, not a single official has been held responsible. Ultimately, half a million people took to the streets to express their discontent with the Government, and to cast a vote of no confidence against TUNG Chee-hwa and his ruling team.

Unfortunately, Mr TUNG refused to come to his senses, and remained absolutely unrepentant. Even after half a million people had taken to the streets, he still only introduced three amendments to the National Security (Legislative Provisions) Bill, confident of public acceptance. He was really divorced from the masses. Not until Mr James TIEN, Chairman of the Liberal Party, resigned from the Executive Council on Sunday did the Executive Council, left with no option, decide to postpone resuming the Second Reading debate on the Bill. Apparently, Mr TUNG still chose to antagonize the people even after the march of half a million people. When meeting members of the mass media on Monday afternoon, he still said, "This also shows that the Government is paying attention as well as response to people's opinions.", so to such effect. Obviously, the government mechanism for interpreting and responding to public opinions has totally failed.

Now the SAR Government is left with no prestige in governance. People who took to the streets loudly called for the stepping down of accountability officials. The people are not satisfied with patchy amendments. The march of 1 July well shows that Hong Kong citizens are sensible and calm, and that they are going after justice and human rights. The message from the people is that officials who have blundered should be held accountable. The people have so informed the Government with their actions. Do not harbour the illusion that it is possible to muddle through and get the people to "okay it" by saying "good morning" a few times and introducing three patchy amendments. Mr TUNG, please take a look at the outcome of the public opinion poll conducted by the University of Hong Kong after 1 July. Compared with that of June, the score accorded to Mr TUNG by the people went down by 10 points. Take another look at the size of the rally outside the Legislative Council. You should realize that the people cannot stand repeated blunders by the Government, and that they are upset by Mr TUNG's failure to make timely responses to their aspirations after the march of 1 July. Over the last few days, Mr TUNG and the SAR Government have been very slow in responding to the aspirations voiced in the march of 1 July, driving people from a state of disappointment down to a state of despair. Apparently, Mr TUNG still pays scant notice to public opinions and remains out of touch with the masses even after the experience of 1 July.

Now, the only way out is to really realize the spirit of the Accountability System. Officials who have blundered must be held accountable. The Democratic Party is of the view that the ones who must go are Financial Secretary Antony LEUNG, Secretary for Security Regina IP, and Secretary for Health, Welfare and Food Dr YEOH Eng-kiong. Antony LEUNG "jumped the gun" in buying his car before the introduction of tax increase, thus calling into question his integrity. In the end, however, Mr TUNG still asked him to stay on, thereby giving people the impression that the Accountability System is a sham, one in name but not in reality. Regarding the legislation for Article 23 of the Basic Law, the Government tries to bulldoze the legislation, distorts public opinions, and treats the Legislative Council as a rubber stamp. In the fight against SARS, Dr YEOH Eng-kiong was slow in making responses, leading to its spread in the community and thus costing the community a dear price. The Democratic Party is of the view that in order to implement the Accountability System, it is necessary to remove these officials. However, following the march of half a million people, Mr TUNG is still adamant that there is no need to replace any accountability officials. An accountability system which is not accountable to the people is merely Mr TUNG's system of cronyism. The fact that officials who have defaulted or blundered in discharging their duties and shown no integrity are still allowed to stay on may render an accountability system even more nominal than real.

Among the aspirations of the half a million people who took to the streets is yet another major focus, namely, the demand for the stepping down of Chief Executive TUNG Chee-hwa. Behind the people's call for the removal of TUNG Chee-hwa is the people's despair regarding the policy blunders of TUNG Chee-hwa over the past six years. The one ultimately responsible for all the misdeeds of government operation and the total failure of the Accountability System is Chief Executive TUNG Chee-hwa. There have been misdeeds after misdeeds by the Government over the past six years. The people have in fact given the Government a lot of opportunities. Mr TUNG made no timely response to the people's aspirations after 1 July. Furthermore, not until there were in the Legislative Council insufficient votes supporting the resumption of the Second Reading of the National Security (Legislative Provisions) Bill was it announced that the resumption of the Second Reading was to be postponed. This again proves that Mr TUNG and the team under his leadership have learned absolutely nothing from the political crisis. They are not even aware of the crisis, just like people unable to react on hearing a fire alarm and to run away from a spreading fire. What is left behind now is a government devoid of

mandate and prestige in governance. Such a government is likely to be dumped by the people.

Now, with the departure from the Executive Council of James TIEN, Chairman of the Liberal Party, Mr TUNG is faced with a tall challenge, which provides further proof that Mr TUNG tends to stand still and refuse to make progress. Even though half a million people have taken to the streets to cry out for the stepping down of TUNG Chee-hwa, a symbol of fury and despair, the alarm system of Mr TUNG and his team is still not working at all, hearing nothing from the people. In essence, the composition of the Executive Council is not widely representative. With the resignation of James TIEN, the team headed by Mr TUNG is only left with persons who think and act very much like him. In future, the SAR Government is going to be even worse off with regard to its grasp on public sentiments and policy environment unless there is a complete overhaul.

Here is Mr TUNG's last chance. First of all, the Executive Council should be reshuffled as soon as possible so as to get rid of defaulting accountability officials and realize the spirit of the Accountability System. Second, with regard to the legislation on Article 23 of the Basic Law, a fresh round of *bona fide* and honest consultation should be launched as soon as possible — I mean as soon as possible. Third, with regard to the political system, fundamental changes in the direction of democracy should be initiated so as to return political power to the people for them to elect the Chief Executive and Legislative Council Members by universal suffrage as soon as possible. The people are keenly aware that a Chief Executive selected by a coterie election and an Accountability System devoid of public mandate will give scant notice to public opinions and remain out of touch with the masses and that the policies formulated by such a government are also likely to encroach upon human rights and freedom. So the Government must immediately launch a review of the political system to bring in universal suffrage for the election of the Chief Executive and the whole Legislative Council. Only a Chief Executive elected by universal suffrage and removable by the people is the people's real protection.

On 1 July, the people already expressed their despair and discontent regarding the Government. The level of discontent consequent upon Mr TUNG's failure to make timely responses to public aspirations after 1 July has now reached a breaking point. If Mr TUNG does not grasp this last chance, the instability in the community is likely to deteriorate, and lead to more serious

social crises with the consequence of removing Mr TUNG from office with greater compulsion.

Madam President, I so submit.

Dr YEUNG Sum moved the following motion: (Translation)

"That this Council considers that the Accountability System for Principal Officials introduced by the Chief Executive Mr TUNG Chee-hwa, is neither democratic nor accountable, and is a failed system."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr YEUNG Sum be passed.

Does any Member wish to speak?

DR ERIC LI (in Cantonese): Madam President, Members well-acquainted with me all know that I very much disdain making comments on an issue with an attitude "to square accounts after the harvest" or "to display hindsight wisdom". However, there are words spoken by me well in advance. Although I have not spoken much on the Accountability System for Principal Officials (the Accountability System), in April 2002 I wrote an article to the Hong Kong Society of Accountants. I want to refer to that article again. I am of the view that quite a few problems then existing still remain not solved now. As I wrote that article in English, I am going to speak in English now.

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

"We heard the trumpet blowing that our government is going to reform. Rumour has it that there will be a chosen team of wise men and women loyal to the Chief Executive taking charge. The group of 'Super Secretaries' will be politically adept, highly responsive to the calls of the people and friendly with the Legislature. Each 'Super Secretary' will be given a well-defined remit and be given a high degree of autonomy for its implementation.

"The public is rightly curious to know what benefits this new structure of government will bring. Will it introduce a more efficient and accountable government? Will this mean a more stable and effective leadership? Or will the new design be tailored to help only the Chief Executive tighten his grip on civil servants and further insulate himself from attacks by hostile critics and political rivals? Top civil servants want to know how the new structure affects their future career. To be sure, senior politicians and political parties will be weighing their chance of forming a power sharing arrangement with the coming executives.

"In an 'executive-lead' government, the most desirable outcome of this change is more effectual leadership. In the context of public governance, this does not necessarily mean allowing a one-man dictatorship. I would hope to see a better balance of power that would minimize internal conflict between executives, civil servants and the Legislature.

"This level of harmony cannot possibly be achieved by a randomly selected and hastily put together pool of good people. The executive team must share a common vision for Hong Kong. They must remain closely knit and be loyal enough to defend one another in public. These wise men and women are also expected to endure considerable sacrifices on a personal level for the privilege to serve. They will probably need time to prepare for the new political roles ahead and to build up rapport with the others to function as a team. They should not be simply treated as dispensable tools or political foot soldiers appointed to carry out some predetermined plans. They must be given reasonable powers to 'hire and fire' their own staff and be guaranteed a minimum level of financial resources covering the entire period of their appointment. Otherwise, the lack of political chips and bargaining power will leave them totally vulnerable on the frontline with predatory politicians and possibly a grudging staff.

"In order for this change to succeed, there is simply no room for last minute expediency. The selected cabinet team must be more than a fortuitous collection of administrators with a summation of individual agendas.

"The more ambitious political thinkers have even suggested that the Chief Executive might kill two birds with one stone by appointing into his inner

cabinet a desired number of influential like-minded political leaders. This would undoubtedly create a formidable political alliance. (現在稱之為'執政聯盟') Desirable as this goal might be, the difficulties in making it work cannot be underestimated.

"Our government must recognize the fact that the recent development of political parties will require a more refined definition of an 'executive-led' government. It can no longer be the case that top executives make a decision 'corporate-style' behind closed doors and then send their managers out to do battle with detailed instructions. Good politicians, unlike civil servants and corporate managers, will follow a leader only if he leads the charge, with integrity and charisma.

"The Chief Executive must be a good listener with an open mind. A fair mediator who is able to balance complex and often conflicting interests. A decisive commander-in-chief who calls for immediate action when action is needed. He must be a true moral — even a spiritual — leader who can win over the hearts and minds of his appointees rather than just be seen as exploiting their bodies and political goodwill. Otherwise, the moment he loses popularity with his policies, this fragile alliance will begin to crumble beneath his feet. Even if his chosen appointees do not abandon him, there is always the risk that the political party that the appointee seeks to represent might wish to disassociate with the unpopular government. This type of fragile coalition will only work with the most sensitive and creative of leadership — one that has a clear understanding with all political parties concerned. Given that consensus politics can be a lengthy evolutionary process, it is almost inconceivable that a lasting alliance can be built within such a short space of time.

"Hong Kong has an abundant supply of talent ready to serve every role in society. They just need the right environment and chance to prove themselves. However, we must allow sufficient time for the community to understand and embrace a change of this significant magnitude. We need to spell out clearly the terms and conditions of service early so that the best candidates might come forward. In order to prevent unrealistic expectations, the government must also allow sufficient time for open discussions so that the merits and limitations of the scheme can be more widely understood."

DR ERIC LI (in Cantonese): Madam Deputy, at the time of the launch of the Accountability System, I already stated that the path ahead was going to be very tough. Many problems pointed out by me last year remain not resolved. According to Dr YEUNG Sum, the system is not democratic. This is a problem with the design, indisputably. All can see that there is neither accountability nor implementation. This is most disappointing to the professionals. We well understand that it takes time for the system to operate and that we have to be tolerant. However, the professionals have waited for one year. By now, the waiting has already exhausted our tolerance. It is no longer bearable.

Recently, I conducted a survey on the legislation on Article 23 of the Basic Law, and got replies from some 5 000 accountants, of whom 90% were against the legislation on Article 23 of the Basic Law and expressed frustration over the Accountability System. We can wait no further for the small group to unite itself. Nor can we wait further for them not to face up to the people openly and frankly to reflect upon the issue. Why can we not review the system, one that "doesn't fit the promised descriptions" and has proved to be ineffective?

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

MR LAU CHIN-SHEK (in Cantonese): Madam Deputy, how can there be accountability when there is no democracy? It sounds a little hackneyed, but there is still truth in it. People who support the Accountability System for Principal Officials (the Accountability System) want to know why Mr TUNG Chee-hwa should not choose his own cabinet while the chief executive of any place is empowered to do so. When we were scrutinizing the Nationality Security (Legislative Provisions) Bill, we heard similar arguments. Why can Hong Kong not so legislate as many countries also have laws protecting national security? It is as simple as ABC. The key factor is that Hong Kong has yet to bring in full-scale universal suffrage. Given the present mechanism, accountability officials, including Mr TUNG, need not be accountable to the people. The reason is that they need not heed or worry about votes of the electorate. As a result, during the past year, officials were seen to be holding responsibility but not being held accountable. In the eyes of the people, the so-called Accountability System has come to naught.

In last year's debate, I spoke at some length to point out that the Accountability System proposed by the Government not only would not help civil servants maintain political neutrality, but would also impose an immeasurable impact upon the civilian system, which had been in use for more than a century, and that the community had not yet fully discussed such effects. One year has passed. It has come to our notice that many Permanent Secretaries, those who ought to have remained politically neutral under the Accountability System, or their deputies are still required to go to the forefront without any armour to sell government policies, thus giving rise to confusion about their roles. It can be said that the division of labour between Bureau Directors and their Permanent Secretaries varies from bureau to bureau, with every bureau going its own way.

One year ago, many senior Administrative Officers did not know what Mr TUNG was "up to". Up to now, they still do not know what Mr TUNG is "going after". It is an open secret that senior members of the Civil Service are at a loss as to what to do and are showing very low morale.

In appointing members of his cabinet, Mr TUNG said that it was his hope to build up a team with shared vision, and that power would be delegated to every accountability official to let him or her better serve the people. One year has gone by. What the people see is a lack of co-ordination among the three Secretaries and 11 Directors of Bureaux. There is team work to speak of. With Mr TUNG still putting his hands on all matters, the heads of those bureaux often find their words contradicted. Words spoken by one the day before or just a few hours earlier can all be contradicted.

It is said that the current situation is like one in which Mr TUNG is playing a game of mahjong. He must be the banker casting the dices at every round, no matter whether he is the winner or not. How the two players on his two sides should pick the tiles and which tiles they are to cast out are also to be directed by him. Given all these, who else dares to play mahjong with him? Among those already in the game, who still has the heart to stay on to play with him?

Madam Deputy, on 1 July, despite the sizzling hot weather, more than half a million people took to the streets to voice their aspirations to "say 'no' to Article 23 and ask for return of power to the people". The fundamental reason was that the people, driven beyond limits of tolerance, had to take action to

express their lack of confidence in the Government. All along the Government had believed that it could win the heart of the people by "handing out candies" through the passing of benefits. This is totally wrong. In order to secure confidence, there must be a process of interaction. If the people think that their opinions are in fact not being heeded by the Government, and that they are unable to change government measures, then they will not feel that they have a share in the Government. The gap between the Government and the people can only grow bigger and bigger, even leading to a confrontation.

Apparently, the Government has not learned from the march of half a million people. With regard to the people's call for shelving the legislation on Article 23 of the Basic Law, reshuffling the leadership and introducing universal suffrage as soon as possible, the Government still adopts the tactics of "dragging on" and even total silence. Up to this moment, the Chief Executive still has not entered into dialogue with individuals and groups that oppose the National Security (Legislative Provisions) Bill. According to a line of thinking in the Government, any first concession to the people's aspirations will lead to a second and a third concession, with the Government finally being driven to the wall as the aspirations may grow in magnitude. Some people in the Government have so little trust in the people that they look upon the people as contenders, putting up defence everywhere and refusing to yield. Such a line of thinking is by itself quite outlandish. It is even more tragic when it is the mainstream line of thinking in the ruling team. As such, how could this messy situation today be avoided?

On the eve of his departure from Hong Kong, Premier WEN Jiabao left behind six words, namely, "understanding," "unity," "trust," "courage," "determination," and "action." The Premier stressed that these six words were specially meant for the Hong Kong leadership as a group. Has the Government under TUNG Chee-hwa properly reflected upon that? The Premier reminded us of the need to value the chance to be the masters of our own home. If the Government does not understand the people's aspirations, refuses to rally the people, or even places no trust in the people, then how can it be possible for the people to be masters of their own home?

Madam Deputy, it has been pointed out by me repeatedly that for Mr TUNG to maintain effective governance under the prevailing political system, he must rally all the forces that he can rally, including the voices of opposition

parties as well as the voices of the democrats, the ones considered by Mr TUNG to be against both China and Hong Kong. No matter whether Mr TUNG accepts this or not, the objective reality is that the democrats still enjoy considerable support in the community. If Mr TUNG wants to have his discord with the democrats branded as contradiction between him and his enemy, and resort to every means to persecute and exclude them, then he is also subjecting his people to persecution and exclusion.

Madam Deputy, I am saying all this to both Mr TUNG and all those likely to fill his post. Mr TUNG should consider seriously whether or not he can, for the well-being of Hong Kong, cast aside his personal likes and dislikes, broaden as much as possible the base of unity, and sincerely listen to and take on board the views of those in the opposition. If Mr TUNG considers that to be beyond him, then there is an unavoidable moral duty for him to think about if he is still suitable for the post.

Thank you, Madam Deputy.

DR LUI MING-WAH (in Cantonese): Madam Deputy, in April last year, Chief Executive TUNG Chee-hwa announced the implementation of the Accountability System for Principal Officials (the Accountability System), which formally went into effect on 1 July. At that time the community pinned high expectations on the Accountability System, cherishing the hope that with the measure the Chief Executive might initiate reforms to turn the tides in his favour, establish a strong mechanism of leadership, and improve his governance. However, over the year, the Accountability System has been struggling in the midst of a raging storm, with criticisms resounding continuously. For such an important system, upon which the fate of Hong Kong hinges, we have to review and sum up pragmatically so as to issue the Accountability System with a physical examination report in order that it can progress healthily and serve Hong Kong better.

As a matter of fact, the people's criticism against the Accountability System was mainly provoked by several unexpected incidents. First came the penny stocks incident shortly after the "staging" of the Accountability System. After that came the car-gate incident, the SARS epidemic, and the opposition to the legislation on Article 23 of the Basic Law. Some people are not happy with

the performance of certain officials in these incidents, and believe that someone should be held accountable or even ought to resign. However, so far not a single official has "stepped down". Because of this, public opinions hold that the Accountability System has not lived up to its desired functions and goals, and is unable to respond to the people's aspirations. On account of this, their initial dissatisfaction with individual officials has gradually grown into criticism against the whole Accountability System.

In all fairness, when the Accountability System first went into effect, it enjoyed extensive support in the community. The belief was that the Chief Executive would be able to hand-pick talented persons for posts of principal officials, build up his own team, enhance the efficiency of governance, and improve policies in terms of quantity and quality. Now, the performance of certain officials is not satisfactory, falling short of people's expectations. Thus they are under strong criticism. However, in my opinion, these problems of the Accountability System during its inception were merely "loss of balance" by the newly-appointed officials before they could enter their roles. It is not problem of personal integrity. Also the Accountability System itself has no inherent defects. So, the people of Hong Kong ought to be broad-minded enough to give new accountability officials time to get used to it so that they can enter their roles, take up their posts and serve Hong Kong wholeheartedly.

Obviously, whether or not the Accountability System can succeed and whether or not the administration of the Government can measure up to the people's expectations and be in line with the needs of the community depend on the qualifications, experience, vision and abilities of the accountability officials. Ancient wisdom holds that "Kingship goes to the one good at identifying talents." As Mr TUNG holds the power to pick accountability officials, his ability to "identify talents" is pivotal. Hong Kong is a place of crouching tigers and hidden dragons. It is hoped that Mr TUNG is blessed with BO Le's ability so that he can pick the real steeds to serve Hong Kong.

In the second place, the Accountability System is a new attempt by Hong Kong to replace the civilian system used for more than a century. The implementation of any system requires the setting of standards of work as well as "rules" and "norms" for personal conduct. The reason is that if there is no goal, there can be no driving force for work, and if there are no requirements, there is going to be deviation in conduct. Has the Chief Executive foreseen that?

Turning now to some realistic consideration, many of those new accountability officials are elites from the industrial, commercial, academic and professional sectors. To let these individuals take up their posts in a hurry and get into such an extensively interwoven and closely interlocked bureaucratic structure without preparation is just like placing them on a cobweb. Those who are less skilled will instantly drop into the deep hole below the web. So I suggest that henceforth there must be a familiarization phase for newly-appointed accountability officials to go through before taking up their posts so that they can familiarize themselves with government operations and the requirements for personal conduct. Such pre-service training may be brief, but it can be immensely useful.

Finally, I wish to stress that the discontent among the people is quite serious as Hong Kong is now deep in economic depression. Hong Kong needs a strong and powerful leadership to lead the people out of the quandary. It is hoped that the Chief Executive and every accountability Bureau Director can learn from the past year's experience and lessons, and really "think in the way the people think, and sense their urgency" so as to measure up to the top standards required of the Accountability System. The reason is that Hong Kong people's magnifying glasses will not let any flaw undetected. Can the Bureau Directors afford to be imprudent?

I so submit.

MR ANDREW CHENG (in Cantonese): Madam Deputy, last July the Government launched the Accountability System for Principal Officials (the Accountability System). By now, one year has passed. It is time to sum up and settle accounts. The Accountability System, being made by Mr TUNG Chee-hwa behind closed doors with no blessing from the public, is destined to be a system not ready and not able to be accountable to the people. Furthermore, given Mr TUNG's inclination to defend wrongdoings and listen only to one side, blundering accountability officials could brazen their blunders out as if nothing had happened.

The Accountability System has been implemented for one year only. However, the social storms induced by those accountability officials have been growing in magnitude one after another. First came the penny stocks incident, which was followed by the car-gate scandal. Hot on the heels of the SARS

epidemic was the ludicrous case involving the Director of a Bureau investigating his own affairs. The most recent case is the one in which the Director of a Bureau set herself against public opinions while trying to bulldoze the enactment of the National Security (Legislative Provisions) Bill. Her attitude brought half a million people to the streets. In view of all these, people tend to have the feeling that the Directors of our Bureaux only care for their own benefits, know not the need to avoid implication, and are unable to grasp the people's sentiments and feelings. Unfortunately, these Bureau Directors are still very successful career-wise. The reason is that their boss, Mr TUNG, only lashes out at the democrats. When confronting those Directors of Bureaux, he even praises them for being "honourable".

The Government has been making mistakes again and again. However, no official has been held responsible. It seems that this has become the administrative norm of the Government of the Hong Kong Special Administrative Region (SAR) over the past year. The march of 1 July already demonstrated that the people are very disappointed with the SAR Government and have no trust in our accountability officials. Mr Antony LEUNG and Mrs Regina IP, in particular, are figures distrusted by the people. The two of them should consider giving up their posts in favour of better persons so as to let the people of Hong Kong regain confidence in the Government.

Mr TUNG has not changed a bit for six years, with him just repeating his words again and again. His mind and actions are out of step with public feelings. Mr TUNG's words appear to be the best teaching material for learning antonyms. In face of the current government crisis, Mr TUNG promised to respond as soon as possible. Nine days have already gone by. Apart from the impressive greeting of "Good morning", all the other responses were very slow. Mr TUNG appealed to Hong Kong people for unity. Yet his scheduled meeting with Members of the pro-democracy camp was hurriedly cancelled three hours before it was due. How can different views be rallied in this way? According to Mr TUNG, the Government is going to be more accountable, and will think in the way the people think and sense their urgency. These, however, are all antonyms. "Accountability" means "evading accountability"; "urgency" means "not urgent at all".

With regard to the issue of legislation on Article 23 of the Basic Law, Mr TUNG said that if the legislative work could be completed, then full attention could be directed to economic rejuvenation. However, after he made the

announcement postponing the resumption of the Second Reading of the Bill, the Hang Seng Index immediately gained more than 200 points, with the economy showing promise signs rightaway. This is the best proof that investors gave Mr TUNG a vote of no confidence.

Madam Deputy, according to various opinion polls, of all the Directors of Bureaux, Dr Sarah LIAO is most popular. When she first "took the stage", she said that fares in Hong Kong were too high, leaving me and many Hong Kong people in high expectation. Last year, she also promised to introduce an adjustable pricing mechanism for fares. As a result, many Hong Kong people are anxiously looking forward to that. One year has already gone by. Yet her ideas remain castles in the air. When will the public be consulted? Madam Deputy, of all the accountability officials, she is the one in whom the people place most hope. If her cheque also goes dishonoured year after year, the people will be very disappointed.

Let me offer Dr LIAO a piece of advice. She should listen more to public opinions and meet with the people more. When a fare cut for the New Territories taxis was brewing, it was very difficult for representatives of interest groups to get to see her. Ultimately, the incident of fare cut became a farce. If the most popular Bureau Director also builds a wall around herself and refuses to meet with interest groups or communicate with dissenting groups, it is believed that considerable difficulty may arise in the administration in the days to come.

With regard to the issue of SARS, Mr TUNG let the farce of "YEOH Eng-kiong investigating YEOH Eng-kiong" happen. Also allowed to happen is the long delay in the materialization of the plan to build a central hospital for infectious diseases. It seems that the Accountability System only gives people the impression that officials are passing the buck. If this Accountability System is accountable to the people, then why can the Financial Secretary, the person responsible for economic policies, and those Bureau Directors responsible for labour policies just turn a blind eye to the high unemployment rate and all the unemployment problems that are right under their noses?

Madam Deputy, an accountability system not based on popular election is just an accountability system built on sand, founded not on a solid foundation. It is especially so as it was Mr TUNG who built the Accountability System. Given the lack of skill on the part of the builder, it is naturally destined to

collapse even sooner. With regard to the march of 1 July and the rally outside the Legislative Council on 9 July, Mr TUNG has, so far, made no response to the people. Even Standard & Poor, acting like the half a million people who took to the streets on 1 July and the 50 000 people who joined the rally on 9 July, asked Mr TUNG, in a rare statement, to consider, for his own interest as well as that of Hong Kong people, the question as to whether or not he is still the best leader for the SAR.

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

MISS MARGARET NG: Madam Deputy, it is all too evident that the so-called "accountability system" so hastily introduced by Mr TUNG last July has failed. There is now a general recognition that Mr TUNG has to do a major so-called "cabinet reshuffle" in order to regain the confidence of the public and the international community. I want to concentrate on outlining a blueprint of what should be, and can be done, now, and in the next 12 months.

The most pressing problem is that the so-called "ruling coalition" has failed. The aim of the incorporating of the Chairman of the two main pro-government political parties into the Executive Council was to ensure that government proposals will have enough votes in this Council to be passed. That has failed, dramatically, on a bill of the utmost importance to the Government. At the last minute, Mr TUNG was then forced to postpone the bill because he lost the support of the Liberal Party whose Chairman chose to resign.

The congenital defect of this "ruling coalition" is that party leaders are forced to choose between loyalty to Mr TUNG and listening to the clear and direct expression of the will of the people. Denied institutional democracy, Hong Kong had resorted to primitive democracy on 1 July: The people voted against the Government by personally standing up and insisting on being counted. This insistence on being counted is of crucial importance: The march is no ordinary protest. The people wanted to be counted. On Thursday, 26 June, in this Chamber, I asked Mr TUNG: How many people will have to march on 1 July before the Government listens? Mr TUNG dodged the question. The march was the people's answer: They said, effectively, "as many as it takes to make this Government change its position." The resounding call "TUNG Chee-hwa, step down!" was a voice vote: change your policy or change the Government.

No political party which cares at all about credibility can afford to go against this clear and direct expression of the will of the people. The Chairman of the Liberal Party really had no choice. I do not say this to discount the courage of my colleague the Honourable James TIEN. The immediate and public acclaim for his decision says it all. I merely point out a political fact. A "ruling coalition" which requires putting loyalty to Mr TUNG above the clear will of the people will either fail or force a revolution. This is the stark dilemma Mr TUNG faces. Any "cabinet reshuffle" is meaningless unless it goes to the core of the problem. Replacing one or more "ministers" will work only if it is the first move of a plan for extensive and fundamental reform.

Mr TUNG must introduce reforms which build into the composition, practice and procedure of the Executive Council a measure of democracy, so that the Government can be truly responsive and accountable to the community through the legislature. The contribution of a professional and politically neutral Civil Service must be reaffirmed.

In the editorial of the *South China Morning Post* this morning, it is suggested that Mr TUNG should assume a more lofty constitutional role and devote himself to the task of liaising with Mainland and Central Government authorities, particularly in furthering economic co-operation and integration. As a transitional measure, the Chief Secretary for Administration can take up the role of co-ordinating internal Hong Kong Special Administrative Region policies each of which remains the direct responsibility of a principal official. The right choice for a principal official must be a person who can work with the Civil Service in his or her department, and who has the confidence of this Council. In addition, appointments should be made from among distinguished members of the community whose quality, integrity and commitment to Hong Kong are trusted by the public. The Executive Council, as a whole, should make the direct election of the Chief Executive in 2007 a top priority on its agenda.

Let me conclude with a warning to the Government and a direct appeal to the people. This Government has no choice but to open up. It is not in its power even to delay it very long. In 2004, 30 of the 60 seats in this Council will be directly elected. I appeal now to everyone who is eligible to register as a voter before the deadline on 16 July, to exercise his or her right to vote in the 2004 Legislative Council election. If the electorate puts 30 democrats into this Council as directly elected members, then with as few as just one democrat in the functional constituencies, the Government will never again be able to push

through any proposal which is against the will of the people. You will then have either a permanent stalemate, or the Government must negotiate. Nothing can stop this development now. The Government must negotiate or perish. We will then have an accountability system which is worthy of its name.

Thank you, Madam Deputy.

MR FREDERICK FUNG (in Cantonese): Madam Deputy, when China recovered Hong Kong in 1997, the Hong Kong Association for Democracy and People's Livelihood (ADPL) discussed among ourselves Hong Kong's future system of governance. We noticed that the civil service-led governmental system (the term by which we called the system of that era) under the British rule was not practicable for the following three reasons:

Firstly, there is contradiction between the civil service-led governmental system and the electoral system for the post of Chief Executive. It can be noticed that in the election of the Chief Executive of the first term, all three candidates in fact had three different political platforms. Civil servants should carry out the successful candidate's political platform. Each term of Chief Executive is for five years. So the person holding the post of Chief Executive may change. It is possible for a succeeding Chief Executive to have a political platform different from that of his predecessor. If ministers helping the Chief Executive to enforce his policies are civil servants, it may easily lead to contradiction and embarrassment.

An example is Mr Michael SUEN, the Secretary for Constitutional Affairs under the British rule. At that time he had to enforce Governor Chris PATTEN's policy of introducing popular election for every district board seat and abolishing the appointment system. So he went everywhere to promote the merits of direct elections. However, after 1997, the Chief Executive, Mr TUNG Chee-hwa restored the appointment system. Again it was Mr Michael SUEN, the Secretary for Constitutional Affairs, who had to go everywhere to persuade others that the appointment system also had its merits. For the same person to present two sets of views that are contradictory is both embarrassing and unconvincing. Because of the electoral system for the post of Chief Executive, the civil service-led governmental system must discontinue.

Secondly, the civil service-led governmental system is not democratic. As we all know, the whole civil service system is not elected. All officers join the service by examination or promotion. Let us speak of it more honestly. The system is like the imperial examination system of feudal China rather than a system by democratic election. This contradicts with the principle and value of democracy.

Thirdly, a civil service-led governmental system is not a system for political responsibility because civil servants are only subject to two sets of restrictions, namely, the law and the Civil Service Regulations. Only violations in these two areas will result in punishment or dismissal. Otherwise, they will not get into trouble even if they blunder politically. We are not able to touch them at all.

Under such circumstances, in my opinion, there must be changes to the civil service-led governmental system adopted under the British rule. Into what system should it be converted? Should it be a cabinet system, or ministerial system or some other systems? Those objecting to the ministerial system in fact ought to put forward proposals to state clearly whether they were in favour of maintaining the rule by civil servants or whether they favoured the implementation of another new system. The ADPL recommended the ministerial system. In early 1998, we had a meeting with Mr TUNG Chee-hwa, the Chief Executive of the first term, and expressed the wish that a ministerial system be introduced. At that time, he replied that a ministerial system was not practicable as it might violate the Basic Law. Last year, when he put forward the idea of launching it, we surely offered our welcome and support as the Accountability System for Principal Officials (the Accountability System) was in fact similar to the ministerial system.

As a matter of fact, many countries, both democratic and non-democratic, are using a ministerial system or a form of ministerial system that resembles our so-called "Accountability System for Principal Officials". This is a system that is simple and easy to understand. Every minister is held totally accountable for the success and failure as well as the ups and downs with regard to the policy area for which he is responsible. The minister concerned alone is held accountable for a policy from its formulation to its publicity, implementation and, finally, outcome. The essence of this system is "attribution of both success and failure to the minister". There must be appropriate punishment for the minister

in the event of policy blunders. The severity of the punishment surely depends on the seriousness of the matter.

On the other hand, the ADPL and I think that an ideal and viable system of political accountability has three features. Firstly, the Chief Executive should form a governing team consisting of like-minded members. It is a political party in a democratic nation. Secondly, accountability officials must be able to set a clear division between powers and responsibilities, brave enough to shoulder responsibility, ready to admit mistakes committed and serious with punishment. Thirdly, in order that the people can see for themselves whether the officials are right or wrong, it is necessary to establish highly transparent processes for the formulation and implementation of policies. Only so doing is perfect impartiality. There must be no protection for "cronies".

Unfortunately, the ADPL and I are disappointed with the Accountability System that has been in play for one year. With regard to several mistakes in government policies over the past year, members of the public, applying the above criteria, have come to an extensive consensus, namely, that Mr TUNG, unable to punish defaulting officials, has been incapable of realizing the spirit of the Accountability System. Mr TUNG, it seems, just shuts his eyes and closes his ears to those problems, thus turning a political system that is well-intentioned and consistent with the world trend into a scam.

Here come actual examples, namely, the penny stocks incident of the Secretary for Financial Services and the Treasury, the car-gate scandal of the Financial Secretary, the committee for "self-investigation" set up by the Secretary for Health, Welfare and Food in connection with the SARS epidemic, and the consultation carried out by the Secretary for Security over the greater part of the past year in connection with the legislation on Article 23 of the Basic Law. Over the past year, there have been one after another apparent cases of policy blunders, political bungling, misconduct, ineptness, and serious ineffectiveness in making responses to public opinions on the part of accountability officials. None of the officials have ever been held accountable. They just go unpunished. What is more, our Chief Executive even remarked that it was an "honourable act" on the part of the blundering official, as a result of which the whole system actually ceases to exist except in name. Moreover, gone is the SAR Government's prestige in governance. Eventually, the people's discontent exploded, resulting in a march by half a million people. The ADLP and I call upon Mr TUNG to realize clearly that the Accountability

System does not merely govern officials' personal moral conduct. There must also be punishment for defaulting officials. In Western nations, they are also held accountable for natural and man-made calamities related to their portfolios.

By this time, people cannot help suspecting that the Accountability System is not the system that Mr TUNG believes in. It is probably something handed down to Mr TUNG from above. It can also be a case of a junior tackling a policy set by his senior. So he is merely being forced to implement the Accountability System. Consequently, accountability for principal officials only exists in name. In reality, the Accountability System has never been seriously implemented. In fact, Mr TUNG does not believe in the Accountability System. In my opinion, Mr TUNG should seriously review the events of the year. It is also hoped that he can follow the example set by ZHUGE Liang during the Era of the Three Kingdoms who tearfully ordered the execution of MA Su, as a token of determination in drastically replacing defaulting officials, and putting in real efforts to establish the Accountability System. Do not just make empty talks.

With these remarks, I support the motion.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, it was pointed out by the Democratic Party one year ago that TUNG Chee-hwa's accountability system was, by nature, not accountable to the people, but to him alone, and that there would be endless troubles for in essence there was neither democracy nor accountability.

One year has passed. When we scrutinize the Accountability System for Principal Officials (the Accountability System) now, we find that the Accountability System has become evasion of accountability, or the harbouring of "cronies". Coming under TUNG Chee-hwa's umbrella are Antony LEUNG's car-gate scandal, and the spread of SARS by Dr YEOH Eng-kiong. Now his harbouring extends to the haughtiness and imperiousness demonstrated by Mrs Regina IP in the legislation on Article 23 of the Basic Law. Having appointed some officials accountable to him only, and enjoying the unreserved escort of royalist parties in an undemocratic legislature, the Chief Executive, who is not blessed with a popular mandate, is practising despotic rule in the belief that things would be nice and quiet in the world. Instead he has dug his own grave.

The legislation on Article 23 of the Basic Law is the grave of TUNG Chee-hwa's Accountability System. Mrs Regina IP triggered the real wrath of the people, sending half a million people on a march in the streets and 50 000 on a sit-in, all fervently demanding TUNG Chee-hwa's stepping down. That is the strongest repudiation of TUNG Chee-hwa's Accountability System. Starting off with the legislation on Article 23 of the Basic Law, the next request is the return of power to the people. This is a fundamental repudiation of the lack of a democracy base on the part of TUNG Chee-hwa's Accountability System.

When introducing the Accountability System, Mr Michael SUEN once jeered at the democrats for "fighting for one day of democracy in a year", displaying the scorn and conceit on the part of the Government of the Hong Kong Special Administrative Region (SAR) towards the power of people not in power. Some days ago, TUNG Chee-hwa even told Ms Audrey EU that Hong Kong people accorded very low priority to democracy, thus revealing the fact that TUNG Chee-hwa is totally deaf to democracy, heeds and trusts only one side, and underestimates the people's concern for democracy and freedom. Efforts were made to bulldoze the legislation on Article 23 of the Basic Law. The manner adopted was arbitrary. The masses were held in contempt. Only one side was heeded and trusted. All these eventually got him into great trouble. The reason is that TUNG Chee-hwa has too much confidence in his authority, and has developed a fat ego, thus coming to the belief that the Accountability System means despotism for him, and that he can dictate the passage of the Bill on the enactment of laws to implement Article 23 of the Basic Law. As a result, the people became really angry. They dressed in black to demand him to step down. They dressed in white to bid him "Good night".

In the end, it is people's power that changed Hong Kong. There was no celebration on 1 July. There was an uprising instead. It had never occurred to the people minds that the six-year-long disgruntlement of Hong Kong would have gone off like a bolt from the blue. Nor had it ever entered any person's mind that the lofty Executive Council would have crumbled to pieces overnight. All of a sudden, the royalists in the Legislative Council have become abandoned souls. Nobody has thought of that. Also, it has never dawned upon anyone that TUNG Chee-hwa's regime is coming to a dead end.

Mr LU Xun once wrote a famous poem known as "No Title", which reads "The folks come in huge numbers, treading down all the wild grass. Dare they

sing, their songs of sorrow will shake the Earth. What they have on their minds abounds the boundless universe. Suddenly breaking the silence is this bolt from the blue". The two best-known lines read "Dare they sing, their songs of sorrow will shake the Earth" and "Suddenly breaking the silence is this bolt from the blue". The people of Hong Kong in July were like the folks mentioned in the poem "No Title". Disgruntled and suffering in silence, they used footprints and sweat to send TUNG Chee-hwa a bolt from the blue. The songs of democracy came with a huge bang, shaking the whole world out of its slumber. Dressed in black, half a million people took to the streets. Dressed in white, 50 000 people staged a sit-in. This symbolizes Hong Kong people's exit from the dark age and their march towards the land of hope. Heroic and touching are their deeds, deeply moving Heaven and Earth too.

People's power having stood up, TUNG Chee-hwa should choose to quit. It is because people's power will not sound retreat easily, nor will it let TUNG Chee-hwa's one-man Accountability System stay on to do harm to Hong Kong. A regime's downfall is sometimes not due to the people's resistance. It is more on account of the government's utter isolation. The departure of Mr James TIEN is just the tip of the iceberg. The disintegration in the days to come is going to be endless. According to some people, TUNG Chee-hwa should reshuffle his cabinet so as to restore the people's faith. However, when a tree falls, the monkeys flee. Who is prepared to "jump onto the bandwagon"? Who is willing to join the cabinet? Who is willing to stand below a crumbling wall?

Thus the accountability government of TUNG Chee-hwa is bound to be stranded in a situation of "six noes", namely, no up, no down, no exit, no departure, no advance and no retreat. It makes a delightful contrast with the "six noes" of YE Mingshen, a muddle-headed general of the Qing Dynasty who "didn't fight, didn't end belligerence, didn't die, didn't defend, didn't surrender, and didn't run away". The SAR Government is really stranded on the horns of a dilemma, a situation allowing neither death nor life. He is to go down in history as a sinner.

Is there a way out for the Accountability System? The only way out is accountability to the people by means of democratic elections. This is the ultimate aspiration of the half a million people who took to the streets. It is also the ultimate desire of all the people in Hong Kong. TUNG Chee-hwa has

repeatedly said that he is willing to listen to the people's voices, and that it is very important to listen to the people's voices. By now, the people, with their actions, footprints, and shouts, have resolutely spoken out in a voice echoing bitter experience, and the words are "Return political power to the people".

To return political power to the people means election of the Chief Executive and the Legislative Council by universal suffrage in the nearest future. With this, the people's voices can be sounded through the legislature, through the ballots, instead of staging peaceful sit-ins or processions to put up resistance in a bid to fight back in despair. Has TUNG Chee-hwa heard their voices? Has he heard the voices calling upon him to return political power to the people? If the voices of half a million people are still not enough, how many more does Mr TUNG Chee-hwa want?

Thank you, Madam Deputy.

MR IP KWOK-HIM (in Cantonese): Madam Deputy, over a brief period of half a year, Hong Kong has had far more than its due share of troubles. First came the plague of atypical pneumonia, bringing Hong Kong people three months of great sufferings. Then came the recent storm, in which many people took to the streets to express their expectations of the administration of the Government. At the same time, many people hold the view that, given the people's prevalent expectations of the Government, it is time the Chief Executive and the Government of the Hong Kong Special Administrative Region (SAR) seriously reviewed the Accountability System for Principal Officials (the Accountability System) that has been implemented for one year to evaluate its effectiveness and success or otherwise.

The people's confidence in the Government hinges on the effectiveness of its governance, that is, the implementation of policies and the quality of services. It is inevitable for the ability and performance of a Bureau Director to attract much attention. One year ago, Mr TUNG Chee-hwa started his second term of office as Chief Executive. At the same time, he also introduced the Accountability System. The Chief Executive launched the said system for the purpose of reforming the decision-making echelon, hoping that both the governance and the administration could answer public sentiments better. This is a major event with far-reaching impact on the political reform of the SAR. It

is also a new attempt in our constitutional development. Experience and outcome so gained will not only determine the quality of future administration but also provide important reference to the Central Authorities in assessing the development of our political system.

Madam Deputy, under the Accountability System, offices of Secretaries of Departments and Directors of Bureaux are all non-civil service posts. In this way, the Chief Executive may bring in talents of different background and experience from all sectors of the community, and handpick people sharing his political vision. This is very conducive to the new team's *esprit de corps*, which is exactly the original purpose of the Accountability System. The Accountability System is our governmental system, a turning point in keeping with the development of electoral politics and liberalization of political participation. To make the offices of Secretaries of Departments and Directors of Bureaux non-civil service posts, thus enabling the bearers to shoulder political accountability by tendering resignations, is a key ingredient of the Accountability System. However, this does not mean that they must step down when something goes wrong. To cause someone step down or to get someone replaced so as to relieve political pressure is one of the many mechanisms under the Accountability System. It, however, is not the only mechanism.

Certainly, it is necessary to define more clearly and specifically the roles of civil servants and Administrative Officers under the Accountability System. They are duty-bound to help the Secretaries of Departments and Directors of Bureaux formulate and enforce policies, yet they are under no obligation to be held accountable for the political consequences of policies. Such a change should be welcomed.

Since the implementation of the Accountability System, the proactiveness, initiative, and responsiveness to the community demonstrated by accountability officials have been better and quicker than it used to be the case during the era of the civil service system. This is indisputable. Surely, there may be some confusion arising from such a new work culture. For instance, comments made by heads of different bureaux might be contradictory or incompatible. Things done by Secretaries of Departments or Directors of Bureaux were not necessarily all correct, which naturally brought grumbles or criticisms from the people. However, such a new work culture is really necessary. As a result, there may be some side effects that we have to pay for. This is inevitable as well as foreseeable.

The SAR Government has been criticized for "always discussing without decisions, and making decisions without execution". One of the reasons for this is that there is insufficient co-ordination within the Government. In introducing the Accountability System, the Chief Executive wanted to strengthen the leadership on the one hand, and to make those accountability officials to respond more readily to public opinions on the other so as to be really able to "sense the urgency of the people". However, in view of the people's aspirations, the Government must acknowledge that the Accountability System really has been falling short of public expectations since its implementation. So, before they are able to get to grips with the formulation of policies, accountability officials should listen more to public opinions and be receptive to criticisms. They should also visit the districts to learn about public sentiments so as to gain a firm hold on both public sentiments and public opinions.

Madam Deputy, many of the problems now confronting the SAR Government are deep-rooted and long-standing practices. It is not at all realistic to expect an instant overhaul. However, let us look at it from another angle. A few years ago, we managed to get Disneyland to settle here. This year, we have been able to get the Mainland to further relax the control on tourism and forge a closer economic partnership with Hong Kong. In a couple of years, these measures will be able to gradually turn around the poor economy. So, the most important thing for the entire community now is to buy time with a consensus. All should walk in the same direction. As encouragement, let us at this critical moment quote the six words cited by Premier WEN, namely, "understanding, unity, trust, courage, determination, and action". At present, the most important duty of the Government is, of course, to maintain overall stability. Only in this way can we hope to break away from the predicament that has been prevailing in Hong Kong since the reunification and restore lustre to Hong Kong.

Madam Deputy, I so submit

MS AUDREY EU (in Cantonese): Madam Deputy, the Accountability System for Principal Officials (the Accountability System) has been implemented for one year. I believe even Mr TUNG's loyal supporters have to admit that the said system is a failure. Dr LUI Ming-wah just said in his speech that some Bureau Directors would require some time for practice. That is a very good example.

As a matter of fact, in mid-April last year, the Chief Executive, after working behind closed doors for some time, announced the Accountability System, giving the Legislative Council just a few weeks' time for consideration in a bid to compel us to let the said system come into effect on July 1 last year. Such hastily-made reforms sowed the seeds of trouble right from the very beginning. Over the year, crises have been popping up one after another with ascending magnitude.

I can recall that when Mr TUNG introduced the Accountability System last year, he stressed that the new leadership team would be quicker in grasping and responding to public opinions, and he even said that Bureau Directors would show greater diligence in "visiting the districts" and come into contact more with the people than Members would. However, in the past year, the people just saw those accountability officials "sweep the streets", "collect garbage", "drink tea", and "buy ties". They thought that staging some public relations shows was equivalent to heeding public opinions. This is indeed a big mistake. In his speech, Dr Eric LI just pointed out that the System did not fit the promised descriptions. I agree with this.

Regarding actual administration by the Government, the legislation on Article 23 of the Basic Law (Article 23) made the people realize that the Government in fact did not respect, or even looked down upon, public opinions. Other instances, such as Financial Secretary Antony LEUNG jumping the gun in buying his car, have really provoked public wrath. Not only did Mr TUNG stubbornly retain the Financial Secretary, by saying "an honourable act on his part", he also upset many people, including members of the business, financial and professional sectors. However, it seemed that the Chief Executive had not felt that way. With regard to the SARS epidemic, the general public believed that it was necessary to set up an independent commission of inquiry to see whether or not there was dereliction of duty on the part of those leading the Government and the Hospital Authority. However, the Government insisted on Dr YEOH Eng-kiong, the Secretary, conducting "a self-investigation". Public opinions clearly demand speeding up the review of the political system with a view to holding as soon as possible full-scale election of the Chief Executive and Members of the Legislative Council by universal suffrage. The Government, however, holds that it is necessary to first conduct an internal study, and even to see if it is consistent with the Basic Law. It is also alleged that the people are only concerned with economic issues. Furthermore, members of the education

sector generally advocate the adoption of small-class teaching for both primary and secondary schools. The Government, however, is only prepared to conduct a pilot scheme.

I recently read an article pointing out that the Government's antenna was down. Before the march of 1 July, Prof LAU Siu-kai, Head of the Central Policy Unit, estimated that some 30 000 people would take to the streets. Feeling secured with enough backing, the Government refused to yield an inch over the legislation on Article 23 of the Basic Law. Though half a million people had turned out for the march on 1 July, after several days of "Good morning", on 5 July the Government still refused to postpone the Second Reading for fresh consultation. The process of legislation had been too hasty and undemocratic, thus provoking the people's discontent. It seems that the Government was not aware of this, nor was it willing to acknowledge it. The Government seemingly thought that it could muddle through with partial concessions. In the end, it was not until the resignation of a Member of the Executive Council, Mr James TIEN, that the Government was forced to postpone the Second Reading. In fact, the statement issued by the Government early in the morning on 6 July is most revealing. According to the Government then, postponement of the Second Reading was due to the decision of the Liberal Party. In the afternoon of the same day, there came a correction claiming that it was in response to public opinions.

Some comments say that we have been unfair to Mr TUNG. However, Mr TUNG's style of governance has much to do with the SAR Government's failure to respond to public opinions. Mr TUNG gives people the impression that he is living in a self-built ivory tower. He thinks that all his deeds are well-intentioned, but the trouble is that the people do not feel so; or that the people are worse off than before because of the economic depression; or that there are a few democrats incessantly discrediting the Government by misleading others or by "bad-mouthing". However, I call upon the Government and Mr TUNG to take a closer look at the background of those participants in the march of 1 July and the sit-in of 9 July. According to surveys, most of the marchers are persons with higher education, being members of the middle and upper classes as well as students. Workers, retirees and the unemployed only constituted a small proportion. While believing that "all people are drunk, only I am awake", and being so reluctant to conduct a self-reflection, Mr TUNG gets totally out of touch with the people. As late as last evening, when there was a sit-in outside the Legislative Council, Mr TUNG still said that the entire team

was very united, and full of confidence and could thus weather the test and face up to challenges. We can listen to his speech again if we like. I believe when people listen to him, they are likely to have the feeling of listening to a broken record.

Mr IP Kwok-him stated in his speech just now that even though resignation is an important ingredient of the Accountability System, it does not so require on every occasion. Madam Deputy, I absolutely agree with this. We do not invariably press for blood or an execution whenever someone blunders. The people only want Mr TUNG to deal with officials' mistakes or accountability with fairness and impartiality, and mete out punishment commensurate with the seriousness and situations. Take the penny stocks incident as an example. It should be considered to be appropriate for Secretary Frederick MA to apologize with a bow then. However, with regard to Financial Secretary Antony LEUNG's car-gate scandal and Secretary Regina IP's handling of the legislation on Article 23, Mr TUNG's improper handling really could stir up extensive public fury.

In fact, the Accountability System, not being based on democratic popular elections, is congenitally defective. It is because the Chief Executive did not get his votes from the people. From the incident of Andrew LO to the present case of legislation on Article 23, people got the impression that accountability officials can feel secured with enough backing so long as they remain accountable and loyal only to the Chief Executive. I hope that the development of events in recent days can wake Mr TUNG up. Yesterday I heard Mr Gordon WU say that Mr TUNG should, like a coach, "bring in new blood". However, I totally agree with some of the articles that I read today. For instance, according to Mr Jasper TSANG, even if there is a reshuffle, it is not certain that the people's confidence can be won over. And Ms Cyd HO pointed out that it is still very difficult to solve the problem with "a change in form but not in content". In fact, there is only one way for Mr TUNG to secure a permanent place in history, and that is, to carry out immediately a review of the political system, implement democratic reforms, and return political power to the people. Thank you, Madam Deputy. I support the motion.

DR DAVID CHU (in Cantonese): Madam Deputy, the Accountability System for Principal Officials (the Accountability System) has been implemented for one year. According to the Hong Kong Progressive Alliance (HKPA), it is

absolutely necessary to conduct a sensible and constructive review now to improve the said system. Madam Deputy, the adoption of the Accountability System was a major change in the administrative structure of Hong Kong, with the general public expecting very much of it. The reform that brought in the Accountability System was meant to break up the previous practice in respect of top officials so as to make it possible for them to go up or down, to quit or stay. Accountability officials are required to shoulder political and administrative responsibility. However, there have been some unhappy incidents since the Accountability System was implemented more than one year ago, with issues ranging from the penny stocks incident to the car-gate saga and the fight against the SARS epidemic all drawing public criticisms.

Here are the HKPA's views on this. It is impossible for the Accountability System to be 100% perfect as a new system. Furthermore, the Accountability System demands a lot from those officials. Ranking among the accountability officials now are elites from both the Civil Service and the community. However, in the face of our economic quandary and a political environment of increasing complexity, accountability officials are finding their tasks beyond their abilities and that there are far too many problems for them to tackle. This is understandable. Who can guarantee that our current predicament can be resolved by dissolving the existing cabinet and bringing in a batch of new hands?

The HKPA is of the view that, objectively speaking, over the year since the implementation of the Accountability System, there have been both gains and deficiencies. As for the gains, basically there is a clear division of labour among principal officials, with efforts being put in to promote the economy and improve the people's livelihood. Regarding deficiencies, given the economic predicament and challenges confronting Hong Kong, the performance of the Accountability System is still quite a far cry from the people's expectations. There is not enough co-ordination among accountability officials. Accountability has yet to be advanced. The determination to reform has got to be strengthened.

Madam Deputy, at the reception marking the 6th anniversary of the reunification, Premier WEN Jiabao pointed out that what Hong Kong most needs now are understanding, trust and unity as well as determination, courage and action. According to the HKPA, for the review and evaluation of the Accountability System, these words are quite suitable. The HKPA calls upon

principal officials to show "determination, courage and action" and grasp the changes in social development and public sentiments so as to put in more efforts to rejuvenate the economy and improve the people's livelihood. On the other hand, this Council should uphold "understanding, trust and unity" so as to understand that it is not possible for the Accountability System to achieve full perfection as a new system in one year. We should have confidence in the accountability officials that they will improve their deficiencies and get on with their efforts to serve the people. The HKPA holds that the people of Hong Kong should strengthen their unity so as to pool their resources to jointly relaunch the economy.

(THE PRESIDENT resumed the Chair)

Next, I am going to present my personal views on the Accountability System for consideration by the Government of the Hong Kong Special Administrative Region (SAR). I am of the view that at present the Accountability System lacks an administration-led ideology. If I were the Secretary-General of Hong Kong and if I were to give a major speech, I would suggest that it is imperative for the "Accountability System for Principal Officials" to have a guiding ideology of three representations. I trust all parties in the Legislative Council will support the "three representations" to be outlined by me. My "three representations" are based on the three important statements made by Premier WEN Jiabao during his recent visit to Hong Kong. The three statements are: Hong Kong is a Hong Kong for China; Hong Kong is a Hong Kong for the people of Hong Kong; and Hong Kong is a Hong Kong facing the world. I am going to state, fully and systematically, the scientific content, the spiritual essence and the historic role of the "three representations", which is a set of important ideology.

The first representation: The Hong Kong Government must, for ever, represent the needs of China in respect of sophisticated business and economic growth.

The second representation: The Hong Kong Government represents the fundamental interests of Hong Kong people in terms of freedom, human rights, politics and economy.

The third representation: The Hong Kong Government represents the direction to proceed for international investors to develop business and economy in Hong Kong.

I, a bogus Secretary-General CHU, here call upon the SAR Government to learn and put into effect this important ideology of the "three representations", and to determine our current historic role by keeping an accurate tab on the characteristics of the time so as to make use of such an important ideology to provide direction for Hong Kong to take off again.

Madam President, I so submit.

DR LO WING-LOK: Madam President, eight days after the name of Hong Kong was taken off the World Health Organization's list of SARS infected areas, Hong Kong witnessed the biggest protest march since 1989. Half a million people took to the streets on 1 July 2003.

On the early morning of 7 July 2003, the Government announced the postponement of the Second Reading of the National Security (Legislative Provisions) Bill (the Bill), in face of an almost certain defeat of the Bill at the Legislative Council. A growing majority of legislators including myself has declared that they will vote "NO" on the resumption of Second Reading of the Bill.

The question Hong Kong asks now is: "What after the postponement of the reading of the Bill?" Our experience in the past six years has shown that Hong Kong has been managed by people who do not have the political training and experience to take up these important positions at such a critical time for the Hong Kong Special Administrative Region (SAR). The Government seems to be out of touch with the needs and aspiration of its people.

The present state of Hong Kong is not caused by a lack of high quality citizens; SARS has convincingly brought out the very high quality of the Hong Kong people; nor is it caused by a lack of support of the Central Government.

The Government might have turned the blessing of the Central Government into a curse. Being out-of-touch with the reality, our Government has failed in its duty to impress on the Central Government as to what really is

happening in Hong Kong, and what Hong Kong can do for the Central Government and *vice versa*.

Take for instance, during the SARS outbreak, the Central Government extended its good wishes to Hong Kong by giving "Barrier Man", a kind of protective garment to the health care workers in Hong Kong. But long before this gift was delivered to Hong Kong, the medical profession has already been discussing that the "Barrier Man" is not the most suitable type of protective garment for the hospital environment. Its design of zipping and unzipping at the front will actually increase the risk of infection of the health care workers using it. The result is that thousands of boxes of "Barrier Man" are now lying unused in the warehouse. The Government has not been able to articulate what Hong Kong really needs to the Central Government.

What Hong Kong really needs from the Central Government as far as infectious diseases are concerned is an up-to-date, frank and accurate exchange of information, not only with the Central Authorities, but also with the regional authorities, in particular, Guangdong. This, however, has not been forthcoming until late in the outbreak, and only to a limited extent.

Hong Kong has no need to distract the attention of the Central Government by bothering it with the nitty-gritty, such as protective garments. By wasting the time and effort of the Central Government, Hong Kong might have already become a liability to the Central Government and the laughing stalk of the Country.

For Hong Kong to remain an asset to the Central Government, the Government of the SAR must at least demonstrate that it has the capacity to rule Hong Kong.

The introduction of the Accountability System for Principal Officials a year ago has not improved the performance of the Government.

With the introduction of the accountability system, the principal officials were no longer civil servants; they became political appointees. A political appointee can be replaced because of misconduct, or because of poor performance, or because of the need to strengthen the popularity or credibility of the government. There is no need to go through the tedious and long drawn process of the civil service in replacing a political appointee.

The Government has not taken advantage of the new flexibility of the accountability system to overcome the many crises it has faced. To the contrary, the Government has become defensive and over-protective of some of its principal officials who are seen as either incompetent or incredible or both.

The Government's insistence on retaining these officials has been cited as one of the important reasons for the people to take to the street on 1 July.

The formation of the "ruling coalition" by the Democratic Alliance for Betterment of Hong Kong, the Federation of Trade Unions, and the Liberal Party has not helped either.

On the surface, the coalition has given the Government sufficient votes to enact almost any law, but in effect it has caused the Government to be even more out of touch with the people. They fail to understand that governance can only be achieved through winning the heart and mind of the governed. Governance cannot be achieved through steam-rolling unpopular laws through the legislature.

By ignoring the basics of ruling by the consent of its people, the Government has not only driven itself into a corner, but has also put its allies and supporters into an impossible position. It has also ignited the demand of the people for a directly elected legislature and a directly elected Chief Executive. A previously politically inert city is now burning with an intense political flame.

To get Hong Kong out of its trouble, the least the Chief Executive can do now is to carry out a drastic reshuffle and renewal of his cabinet, the Executive Council, so that his Government can start communicating properly with the people and with the Central Government again.

The wounds of the community have to be properly treated, and hopefully healed, as a matter of the greatest urgency. Hong Kong can afford to wait no more.

Madam President, the consequence, if the Government fails to do so, is too obvious to deserve mentioning. I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, if the saying that "had the outcome been known in advance, one would not have done so" is to be used to describe the implementation of the Accountability System for Principal Officials (the Accountability System) by Mr TUNG, then only the first half of the saying is correct. Mr TUNG knew the outcome well in advance. Last year, all sectors of the community, especially Legislative Council Members from the pro-democracy camp, had already pointed out what was wrong with the Accountability System. Regrettably, Mr TUNG did not heed our advice. Instead he single-mindedly pressed on to implement it hastily. Today, the Accountability System comes under fire from different quarters, and is even collapsing. Mr TUNG's bigoted style should be the crux of the matter.

Last year, when this Council debated the Accountability System, the Secretary for Constitutional Affairs pointed out that the prime objective of the Accountability System was to render officials accountable for their policies. The said objective was a move in response to the chaos seen during the first term of the SAR Government, which, including the short piling scandal, cost the community a high price but for which no officials were held accountable or removed from office. In fact, we believe no one would disagree with the objective mentioned by the Secretary for Constitutional Affairs. The problem, however, is whether or not it has been achieved by the so-called Accountability System. At that time, it was unanimously pointed out by Members from the pro-democracy camp that as the Chief Executive had yet to be elected by universal suffrage and accountability officials were accountable to him only, the so-called accountability existed in name only. The original idea was for the officials to be accountable to the people through their accountability to the Chief Executive. However, the Chief Executive is not elected by universal suffrage. The people cannot use their votes to kick him out of office. So covertly, the Chief Executive can always have his own way, and is in a position to harbour any defaulting officials. Consequently, there have been cases like the car-gate scandal and the penny stocks incident. As pointed out by us again and again, the fundamental problem with the Accountability System is that it only assumes the frame of the cabinet system of the West sans the spirit of a democratic political system.

Furthermore, it was then suggested by the Government that the objective of implementing the Accountability System was to effect even better responses to public aspirations. This objective, heard again today, can actually be included in the grand collection of jokes. As we all know, the biggest problem with the

SAR Government is its inability to respond to public aspirations. There has been no improvement since the implementation of the Accountability System. What is more, due to TUNG Chee-hwa's so-called careful consideration, every matter has been slowed down by half a beat. Take the legislation on Article 23 of the Basic Law (Article 23) as an example. The people's call for its postponement has been very clear. However, even after the march by half a million people, the people still had to wait three days for a response, which just turned out to be merely that legislation should proceed as scheduled. The democracy issue just mentioned by me again accounts for such a state of affairs. The Chief Executive and his team of senior officials do not derive their power from the people. They, naturally, will not hold themselves accountable to the people; nor will they attach weight to the people's demands and respond to them.

It was also mentioned by Mr Michael SUEN at that time that the Accountability System was designed to bring in from the community the choicest and most suitable talents. However, as repeatedly pointed out by us before, a major problem with Mr TUNG is cronyism. Only those who "kiss his boots" or "obey his words" are talents worthy of appointment to important offices. Let us put aside the question as to whether or not these persons are the best or not. Cronyism already means the exclusion of some even better choices. How the choicest talents can be picked in this way?

Another objective of the Accountability System was the strengthening of the relations between the executive and the legislature. Mr TUNG was to form a so-called ruling coalition in a bid to enhance the executive authorities' role in the Legislative Council, where it had no votes. Today, this concept can be said to be in total ruin. We have learned from the incident regarding the legislation on Article 23 that so long as a policy is against public opinions, and so long as the executive is set against the people, members of a ruling coalition ultimately will have to bow to the pressure of public opinions, no matter how strong the coalition is. As a matter of fact, to elect the Legislative Council by full-scale universal suffrage is essential to strengthening the co-operation between the Government and the legislature. Only by bringing in representatives of the majority party in the legislature and by formulating policies according to their opinions can the Government realize the effects desired of the ruling coalition.

It was also hoped that the Accountability System could ensure better co-ordination among different departments. However, as far as we know, the portfolios of some Bureaux are too broad, making it practically difficult for each

Bureau Director to attend to all matters at the same time. Take the Health, Welfare and Food Bureau and the Environment, Transport and Works Bureau as examples. We seldom see Dr YEOH make suggestions on welfare matters; nor do we often see Dr LIAO speak on public works matters. Due to the vast coverage of the portfolios, they have not got time to deal with all matters. Inevitably, development in certain areas of their portfolios will become stagnant. While there are problems within each Policy Bureau, every Bureau is seen to be going its own way and vying for the limelight. They have not been able to effectively work out an overall policy direction capable of providing the community with a clear direction of development by co-ordinating among themselves.

Finally, the Accountability System was supposed to keep the Civil Service clean and neutral. It is questionable whether such a objective has been achieved. As we all know, the biggest scandal over the year since the implementation of the Accountability System is the car-gate scandal. Thanks to Mr TUNG's harbouring, no one needs to be sacked. In fact, as early as last year, when the relevant bill was being scrutinized, we already sought to know why there was no mechanism for removal, and how a defaulting official can be sacked when something went wrong. Finally, we know the answer. So long as Mr TUNG provides the shelter, all problems can be sorted out. Members of the Civil Service might wonder why they are subject to dismissal when they blunder whilst it is not so in the case of high-ranking officials supposed to be accountable. This is bound to adversely affect civil servants' morale. Next comes the question of the so-called neutrality. As repeatedly pointed out by us last year, it is necessary to clearly define the roles and duties of Permanent Secretaries; otherwise, it is difficult for them to remain politically neutral. The result is that many Permanent Secretaries, according to our observation, are still required to explain and promote government policies. The case of the Security Bureau is the most obvious example. In this way, the so-called neutrality exists only in name.

Madam President, when judged by all the objectives, the performance of the Accountability System over the year can be said to be "all in red", scoring "Grade H" in every respect. It is no wonder that the people's assessment of Mr TUNG's administration has reached an all-time low of just 35 points. The outcome, in fact, should have been foreseen well in advance. It is a pity that Mr TUNG has been paying no notice to public opinions, and just presses on

single-mindedly. This precisely is the fundamental problem affecting Mr TUNG's administration over the past six years.

In last year's debate on the Accountability System, I compared Mr TUNG's Accountability System to YUAN Shikai's constitutional monarchy and self coronation. At that time, I pointed out that YUAN Shikai's monarchist dream lasted just 83 days, and that I believed although the Accountability System would nominally last longer than 83 days, in reality it lasted shorter than 83 days. Madam President, I so submit.

MS CYD HO (in Cantonese): Madam President, Hong Kong recently hit the cover of *Times* magazine again. On this occasion, the cover story is about the 1 July march of some half a million Hong Kong people. Massive though the march was, it was in good order. Every person tolerated the unpleasant circumstances. Among the marchers were numerous moving little tales too. Hong Kong people ought to be very proud of that. The theme of the march was "Say 'no' to Article 23. Power back to the people." I gave it a deeper look. Had there been no bulldozing of the legislation on Article 23 of the Basic Law (Article 23), and all the cases of policy blunders since the recovery of sovereignty in 1997, the march would not have taken place. If we had a democratic system, these problems could have been solved within the system — we could cast our votes on polling day to solve problems by counting votes, thus obviating the need to march out on foot in a temperature of more than 30 degrees Celsius to get counted. So, there would have been no need for the said massive march to take place had there been a democratic political system.

In the Legislative Council papers on the Accountability System for Principal Officials (the Accountability System) presented to Legislative Council Members by the Constitutional Affairs Bureau on 17 April 2002, it was made clear at the very beginning that principal officials appointed under the new system would be different from civil servants appointed on civil service terms of employment. These officials are required to be accountable to the Chief Executive for the success or failure of policies in the portfolios assigned to them by the Chief Executive, and to assume full personal responsibility. They may be required to step down for major policy failures, including serious policy failures and significant mistakes in the course of policy implementation. They may also be required to step down for serious personal misconduct.

Following the implementation of the Accountability System, there first came Secretary Frederick MA's penny stocks incident. Next came the case of Dr YEOH Eng-kiong investigating himself while looking into the Hospital Authority's handling of the SARS epidemic. Then there was the public reprimand of Secretary for Security Regina IP for bulldozing legislation. Financial Secretary Antony LEUNG had problem with his integrity, being suspected of having abused his public office for personal gains. However, so far nobody has been required to step down or shoulder responsibility, or punished. We really wonder what yardstick is being used by the Chief Executive, and what a fiasco is. In fact, we have been so wondering since June last year. However, to date, there is still no answer. The Chief Executive did reply once, saying that he demanded very much of the officials, especially in terms of moral character and personal integrity. Given all the examples just cited by me, there have been cases involving personal integrity, probable abuse of power for personal gains, and the triggering of a march of half a million people. Are all these still not serious enough? What should be counted as serious then? We have the feeling that our Accountability System has ceased to exist except in name.

The Chief Executive, three Secretaries of Departments and 11 Directors of Bureaux add up to a total of just 15 persons. However, six of them, representing more than one third of the total, are being demanded by the people to step down. It is difficult for such a cabinet, when placed before the people, to profess credibility. The Chief Executive's popularity has taken a nose dive, reaching, as we can note from public opinion polls after 1 July, just 35 points. On the contrary, the scene of Hong Kong people displaying excellent self-discipline, peacefulness and unity on 1 July is something we should be proud of, and this is going to remain in our collective memory for ever and ever. I believe that during the remainder of his term of office, it is going to be impossible for Mr TUNG to counter this spontaneous moral force. It is going to be very hard for members of Mr TUNG's ruling team to hold up their heads in front of the people.

With regard to the postponement of the Second Reading of the National Security (Legislative Provisions) Bill, it can also be noted that, with the eight supporting votes from the Liberal Party gone, and in the face of a very pressing situation, the Government really had to call a halt to it. We also notice that in addition to being unable to rally the majority of the public, the Chief Executive cannot even maintain unity within the small group of his team. As such, government administration has indeed snapped into a quandary. I think that this

will not just happen to the legislation on Article 23. Policies related to the people's livelihood and other areas will also be affected. Take yesterday's debate on the authorization of football betting as an example. The Government was able to do nothing about the forces traditionally supportive of the Government. It had to go over to the other side, and tried hard to persuade the dissident voices, those usually confronting the Government and working against both China and Hong Kong, to support the Government. As a matter of fact, those who have abandoned ship are not just members of the Liberal Party. Matters bothering the Government also are not confined to the legislation on Article 23.

In the short term, I believe the removal of some blameworthy officials, introduction of new faces by means of a cabinet reshuffle, and reopening of dialogue and communication with the public and dissidents may provide an instant and wise solution. If, however, the system remains unchanged, and if Mr TUNG is prepared to listen to only words pleasing to his ears, then people with talent, foresight and abilities just will not join the leadership team as accountability officials. To implement the Accountability System without a democratic foundation is just as difficult as to grow flowers in the desert. Now in the long term, I believe Secretary Stephen LAM should not follow the timetable set out in the policy address or deploy so little manpower to the constitutional reform. I call upon every person to loudly and firmly tell the Government what to do immediately regarding the consultation on constitutional reform. Hong Kong people's grievances against the current Government can be somewhat pacified only by the knowledge that in the political system of the future there will be channels for them to voice their views. Madam President, it is hoped that the Government can really do something to ease public feelings before another eruption takes place shattering six years of silence. The reason is that toleration cannot be indefinite. It is hoped that we can jointly maintain the stability of the community.

MR ALBERT HO (in Cantonese): Madam President, as stated by us in July last year, the objective of the TUNG-Chee-hwa-styled Accountability System for Principal Officials (the Accountability System) is just a manifestation of accountability to TUNG Chee-hwa himself. To the general public, it is a system for senior officials to evade responsibility jointly. The political consequence of the Accountability System is merely a reinforcement of TUNG Chee-hwa's political control on senior officials. TUNG Chee-hwa himself definitely was not elected by the people. So it is difficult to expect from him

any democratic accountability. However, if he was a capable person, he probably could be a benevolent dictator. It is, however, a pity that he has no capability; nor does he have such political faith or inclination.

Let us take a look at some of TUNG Chee-hwa's concepts of governance and his character. Considering himself to be a leader preordained by the Central Authorities, he dances to the tone of the Central Authorities' instructions. I am convinced that on the issue concerning the legislation on Article 23 of the Basic Law, he has been obstinately sticking to his course, wantonly trampling on public opinions. The effort to get the legislation rushed through by 9 July is an attempt to pledge his heart to the Central Authorities. There is no other justification. Really, I fail to see how sacrosanct a date 9 July can be. On the other hand, as far as Hong Kong is concerned, he thinks he is riding on the people, and looks upon himself as a "big boss". In his mind, perhaps only the bosses of major consortia are his working partners. Sorry, I have to tell the truth. I think that in Mr TUNG's mind, the high-ranking accountability officials are just senior aides, not political partners or fellow fighters sharing the same vision. Unfortunately, in Mr TUNG's mind, the people of Hong Kong only represent a function, a component or just a figure in the economic community. Having witnessed his attitude, one signifying tyranny, arrogance, self-importance and egotism, I really have to question again whether or not he really has the zeal to earnestly care for and serve the people of Hong Kong.

What are the characteristics of the Accountability System under such a governance style of Mr TUNG Chee-hwa? First comes cronyism. When making appointment, he, I believe, definitely will not take that person's ability as the most important factor of consideration. The most important thing is to find persons whom he can trust, to look for "own guys" whom he can trust. So, often appointed to important offices by Mr TUNG are those winning his confidence or going along with his mind. Have we not all seen that? Mr James TIEN courageously and correctly said "No" at such a critical moment. In the end, he could not even retain his membership in the Executive Council, an office not even carrying any power. However, for Secretary Antony LEUNG, one being universally condemned, enjoying no trust whatsoever among the people, and becoming a laughing stock of the international community, Mr TUNG still described him as "honourable", and pressed him to stay. What kind of people can such an Accountability System retain? It is believed that very often only those — I do not mean without exception — who know how to flatter and pander are likely to play well.

Secondly, Mr TUNG Chee-hwa's political wisdom and talent to govern are very limited. This is well known to all, and on this there is no need for me to speak at length. Unfortunately, he is not clever enough to know himself well. Worse still, he is inclined to poke his nose into everything and concern himself with all matters. More disastrous is that he works from "seven to eleven", issuing orders incessantly, driving senior officials to their wits' end, and making them not know what course to take. He often will issue orders suddenly, making it necessary for many senior officials to negate themselves in order to be absolutely obedient. So, to be fair, it is TUNG Chee-hwa, not necessarily individual senior officials, who should be responsible for many of the mistakes. Mr TUNG has his so-called code of brotherhood, that is, harbouring his officials blindly. He, therefore, does not look into the case concerning Secretary Antony LEUNG's integrity, but puts in full efforts to cover him up. With regard to Dr YEOH, who is suspected of having neglected his duties, he has not got the courage to answer the people's demand. Asking Dr YEOH to conduct a self-investigation was the uttermost that he could do in a bid to finish off the matter. With regard to Secretary Regina IP, who stuck up her nose in the air, who tried to bulldoze the legislation and who trampled on public opinions, so far there has been no response that answers the people's demands. Honestly, given such governance style and character of TUNG Chee-hwa, it is impossible to let officials bring into full play their talents even if they do have them. What is more, it is not even possible to protect civil service officers who work under those officials and shoulder no political responsibility, simply by replacing those officials or by holding those officials accountable; not to mention that he knows only too well how to protect himself by holding those officials accountable where necessary, and that he, being the top leader, need not shoulder all responsibilities.

Today, we see that to make individual senior officials step down and reshuffle the Executive Council can only ease off a little. The aspirations shared by many in the community can only be met if TUNG Chee-hwa steps down, and the only way out is democratization by electing the Chief Executive and the legislature by universal suffrage. Otherwise, the future and the well-being of Hong Kong are bound to be buried by the TUNG-Chee-hwa-styled governance.

MS EMILY LAU (in Cantonese): Madam President, I speak in support of Dr YEUNG Sum's motion. In my opinion, the Accountability System for Principal Officials (the Accountability System) is a total failure.

Madam President, in his policy address of October 2000, the Chief Executive undertook to review how best the accountability of principal officials could be strengthened in different policy areas. One year later, in October 2001, he further indicated in his policy address that a new appointment system would be introduced for principal officials. Then, several months later, on 17 April 2002, the Chief Executive appeared before the Legislative Council to announce that he was to introduce the Accountability System, saying that those officials, in addition to enhancing their commitment, were to primarily ensure better response to public aspirations by the Government, improve co-ordination among principal officials, strengthen the co-operation between the executive and the legislature, ensure the eventual effective implementation of policies, and provide better services to the community.

Madam President, for some years there have been talks on the matter. There should not be insufficient time. The system was proposed as early as 2000. It should have gone through careful consideration. However, when it first came out, it all looked like a pretty kettle of fish. Earlier in the meeting, when the Bill on football betting was under discussion, Mrs Selina CHOW made the request that papers should not be presented too late. However, with regard to the Accountability System, it was just like that. It was submitted to the Legislative Council as late as 17 April, but it was meant for implementation by 1 July. Did the Government hold that we had wings and could fly? Madam President, at that time the explanatory paper on the Accountability System did not even carry a table of contents. It is possible to visualize the great haste in which it was finished. In it were many flaws. Later it had to be patched up incessantly. But we can see what it is after the patching up. Why did I read out what had been said in the past? Madam President, because the Government has not delivered, not on a single item.

If there is, then 600 000 people, or 700 000 people, or even according to some, 800 000 people — I am not sure how many hundreds of thousands of people there were, but definitely more than 500 000 people — would not have taken to the streets in the sizzling heat. Surely, many of the marchers were against the legislation on Article 23 of the Basic Law. But many of them demanded that TUNG Chee-hwa step down (the Frontier included). In many areas, such as education, medical care and welfare, there is not one single area where the Government has delivered. As a result, the people are burning with anger. So, Madam President, the Accountability System must not continue.

At first, there was even mention of team spirit. In fact, the mention of that is ridiculous enough to make people laugh their heads off. When the team was being formed, it was found out at the last minute that some wanted to get in but some did not. As a result, it was all a pretty kettle of fish. Eventually, a team was formed. However, as far as I know, the relations among some of those principal officials, though not as extreme as treating each other as father's killers, had been rather tense with intrigues. Yet they are asked to assemble in the Executive Council. One can see whether or not Mr TUNG has raised the rock only to drop it on his own foot. The way in which TUNG Chee-hwa handles things is also obvious to all. If he were forming a team just for mahjong or entertainment, a failure to form the team would have been his own business. However, he is now governing Hong Kong, and yet is unable to form a team. Even KWONG Ki-chi — he is really amazing now as he works as a broadcaster — said that everybody was then going his own way. KWONG Ki-chi is, of course, familiar with the affairs of the Hong Kong Government.

So, with things going on like that, the Accountability System has long been a laughing stock. No team spirit has been demonstrated. Also, things are not well done. Each person just goes his own way. All these have led to failures or mistakes in policies, as a result of which several million people have to suffer. Therefore, I think that this garbage Accountability System is a total failure.

On the 21st of this month, the Secretary for Constitutional Affairs will appear before the Constitutional Affairs Panel of this Council for a presentation, the reason being that the Chief Executive on his two appearances before this Council promised to present a report to the Legislative Council by 30 June to sum up the past year's work. Issues that require attention now should be many. Quite a few dynastic events have taken place too. Secretary Stephen LAM had better tear it up if he has already written his report. Be very clear when rewriting the report. Do not hold back any unpleasant information.

Many things cannot escape the notice of the people. It is not possible to deceive oneself as well as others. Honourable colleagues have just cited many cases. There is no need for me to cite any more. The SARS epidemic is one of them; so are the penny stocks incident and Antony LEUNG's car-gate scandal. All those cases have made it clear to the people that the system absolutely is not accountable to the Legislative Council or the people. However, every Bureau Director is able to step forward and say: "I am only accountable to the Chief Executive, who takes me into his hold, who asks me not to quit, and who allows

me to stay on, no matter what I have done wrong and no matter how the people revile me". Is such a system not a total failure? The practice of each going his own way has already infuriated many people.

Turning now to the SARS epidemic, many members of the community, including businessmen and people from different trades and professions, are experiencing hardship. The Government, however, decided to set aside a sum of \$3 billion only to give assistance to certain sectors, offering no help whatsoever to others, no matter whether they are asking for alms, hanging themselves or going bankrupt. However, the sum of \$3 billion is not being utilized as many people do not bother to apply for it. Some people wanted to apply for it, but they were rejected because the Government was determined, very rigidly determined, not to help them. The Government even said that they should know that if there were no restrictions, many applicants would turn up. How can we explain this? Though the Government is fully aware that many people have to jump off buildings to their deaths and many are caught in financial problems, the Government still gives them no assistance. What sort of government is this?

Madam President, I, together with some people outside the said scope, once had a meeting with the authorities concerned. Those people burst into tears before the Government, demanding to know what they should do before the Government would help them. The Government is well aware that a large portion of the money set aside is not being applied for. However, for some reasons, it is still not prepared to help other people. It is infuriating to act like that and there, I think, have been far too many such cases.

There have been suggestions about a reshuffle of the cabinet. I think that is useless. TUNG Chee-hwa is the crux of the problem. We hope that the Chief Executive can take the blame and resign from his office as soon as possible. That will give Hong Kong a new start then. There will not be a good time for Hong Kong so long as he is in office. I so submit.

DR LAW CHI-KWONG (in Cantonese): Madam President, this so-called Accountability System for Principal Officials (the Accountability System) is a system of no power but responsibility, a system of no accountability even in the event of dereliction. What is meant by no power but responsibility? This means the concentration of power in one person, with the Chief Executive

attending to every matter regardless of its importance. It is said that the Chief Executive's Office is like a black hole. Once documents are sent in, it can never be sure when they can come out. The responsibility of accountability officials is just to enforce policies decided by the Chief Executive.

Take the SARS epidemic as an example. According to the laws on disease control, members of the public have empowered the Director of Health through the laws. For instance, such questions as whether or not to close the Prince of Wales Hospital and whether or not to quarantine residents of Amoy Gardens should all have been decided by the Director of Health. The Director's superior is Dr YEOH Eng-kiong, the Secretary for Health, Welfare and Food. He is, of course, in a position to influence the Director of Health's decision, but power still does not rest with him. Shortly after the outbreak of the SARS epidemic, the Chief Executive already personally took charge, thus becoming the commander in the fight against the epidemic. Final decisions were made by neither the Director of Health nor the Secretary for Health, Welfare and Food.

Superficially, Mr TUNG attends to matters personally. In reality, he does not trust others. He only trusts himself, considering himself to be superb. Mr TUNG is not prepared to set up an independent commission of inquiry, one of the reasons being that he himself took charge of the fight against the epidemic. Is the establishment of an independent commission of inquiry not tantamount to an investigation into himself? The SARS epidemic has proved once again that in Mr TUNG's opinion, accountability officials are accountable just to him, and need not be accountable to the public. As he took charge of the fight against the SARS epidemic, he thinks that he knows everything thoroughly, and finds no need for an investigation.

How can one who is unable to evaluate one's own abilities be capable of evaluating others' abilities and appoint accountability officials according to their talents? How can one who is unable to tell the triviality or significance of matters, and who tends to personally attend to everything, important or not, delegate authority to accountability officials? A good-for-nothing Accountability System coupled with a person who is not able to differentiate the capable from the incapable, or the insignificant from the significant, and who only cares about who pledges loyalty to him, will not work as two wrongs do not make a right. It is destined to fail. With these remarks, Madam President, I support the motion.

MR LAU PING-CHEUNG (in Cantonese): Madam President, on 1 July, half a million people took to the streets. The issue that triggered off a march by half a million people was the way in which the Government had handled the enactment of the National Security (Legislative Provisions) Bill (the Bill). In dealing with such a controversial issue, the entire leadership team of the Government showed no team spirit, with everybody still going his own ways and effecting no mutual co-ordination or support. As a result, promotional efforts were not meticulous and deep enough. Members of the public did not have a clear picture of the work of the Government. So there was distrust and a sense of resistance. The sooner the Government wanted to get the legislative work completed, the stronger the distrust and sense of resistance grew. Even though the Government had made concessions, the matter still went out of hand. Ultimately, a split emerged in the Executive Council, which made it necessary for the Government to defer the Second and Third Readings of the Bill.

Madam President, I understand very clearly that one of the duties of a Member of the Legislative Council is to examine bills proposed by the Government. I have to stress that we are to examine bills, but not to help the Government promote bills. Take the said Bill, a very complicated one, as an example. When the examination of the Bill nearly came to an end towards the end of June, I already knew that there were some 100 amendments from both the Government and Members, and that those amendments were very complicated, some being interrelated or overlapping. When the Bill was due to resume its Second and Third Readings, Members were still required to examine all the amendments one by one, not simply to vote yes or no, or to abstain.

In view of that, I sent questionnaires to electors of my constituency, asking them 18 questions, of which 15 were directly related to the Bill. Topics of the questions were based on the Bill. Those in favour of proposals in the government Bill were asked to check the boxes on the left only. Those opting to support Members' amendments were asked to check boxes on the right only. Those with knowledge about individual Members' amendments might make further comments. For example, on the definition of treason, one might opt for the amendment of Ms Audrey EU or that of Mr Albert HO.

I have to admit that because of the great haste, the questionnaire was inevitably crude and deficient. In particular, there were still new arguments about the Bill towards its final stage. It was not possible to cover all the divergent views between the Government and Members. Mr James TO in fact

pointed out to the media one data error in my questionnaire. I here express my gratitude to Mr James TO.

Last week, I gradually received returns of the questionnaire. I noted that most of the electors did not have an in-depth understanding of the difference between the position held by the Government and that held by Members. Many of them did not answer the questionnaire direct, choosing instead to ask me to vote against the Second and Third Readings of the Bill so as to gain more time to better understand the Bill, one affecting the various human rights of the people. So, I have to thank those electors who have carefully answered the questionnaire. In reality, the electors are wise. It can be noted from their choices that sharply divided though the stands are, they are not confused. The result is that most people are in favour of Members' amendments but are against the original Bill of the Government.

Madam President, it is the responsibility of accountability officials, not that of Members, to promote and explain government policies. It is especially true of legislation involving matters that are important and complicated. It is already inexcusable for responsible officials to be unable to explain clearly to the public. If not even their civil service colleagues offer support on account of being given no clear explanation, then it is even more unacceptable. It is so in the case of this Bill on national security. It was the same in the case of the enactment of the Bill on civil service pay cut.

According to fellow members of the profession who have taken part in the march, they took to the streets mainly because of their discontent with the fact that when the entire community was full of doubts and worries about the Bill, the entire government leadership showed no co-operation among themselves to bring team spirit into play so as to give clear explanations through different channels and at different levels. So they had the impression that the Government wanted to rush through the Second and Third Readings.

Similarly, on a number of occasions both inside and outside this Council, I put to the Government questions of concern to the construction industry, including the request that, so long as it is not against the WTO agreement, building projects be broken up into smaller units and tendering criteria be improved so as to let more local small construction companies and consultant firms take part in the tender; train up local talents and make it possible for local

companies to grow healthily. However, there has been no response from senior government officials, who simply turn a deaf ear to our advice. As everyone probably still recalls, I once put to the Chief Executive a question about a "one-dollar project", which was in fact harassment by big firms flexing their muscles. Has the Government learned the lesson? The answer is in the negative. The project in respect of the Central Government Offices has now been shelved. Still rejecting advice from members of the profession, the Government was about to call for tenders on the basis of "design and build". To the officials, only expedience matters. They just look for the lowest price at the expense of design, paying no attention to the function of professionalism in balancing social interests.

Moreover, in holding a design contest for the West Kowloon Reclamation, the Government, in total disregard of objection from professional institutes, forbade government officers from the various professional grades of different departments to take part in the contest. They were thus denied the chance to temper themselves and broaden their experience by participating in the contest.

Operations within government departments are no exceptions. The Architectural Services Department has to be "downsized". So jobs have to be contracted out. Yet being understaffed, the Buildings Department has not got enough manpower to clear illegal structures and commercial signboards. They are all architects, surveyors or engineers. Why can they not be seconded so as to make up for each other's deficiencies? We have raised this point again and again. However, the officials simply continue to tend to their own domains, with everybody minding his own business.

Furthermore, although the Chief Executive has ranked the service industry among the four main pillars of our economy, all along there has been no direct support from accountability officials to help local professionals enter the mainland market. By comparison, other countries' trade representatives in Hong Kong are far more active. For instance, following the conclusion of the closer economic partnership between the Central Authorities and Hong Kong, the United States trade representatives in Hong Kong immediately arranged a video conference across the ocean for United States infrastructure firms — I was also invited — in a bid to get business opportunities for their own businessmen. However, our accountability officials still hide under the umbrella of "positive non-intervention" and work behind closed doors.

The Accountability System for Principal Officials has operated for one year. The outcome indeed has been unsatisfactory. It is really necessary for the Government to conduct a review and make improvement so as to actively respond to public aspirations and restore the confidence of the Government and that of Hong Kong people.

Madam President, I so submit.

MRS SELINA CHOW: The Liberal Party was one of the first advocates of the accountability system. We have remained a staunch supporter, and have helped to bring about the implementation of the system last year.

The system has operated for less than a year, and it is fair to say that the principal officials have been trying their best to be responsive to the community. However, like any cabinet, there are bound to be some members who perform very well, and others who do not.

One of the merits of an accountability system is the flexibility it offers to the Chief Executive to change members expeditiously without being hampered by the red tape of the bureaucracy. As the appointments of principal officials are political appointments, their main duty is to not only to make policies that best serve the public interest, but also to take charge of the political management of such policies to ensure their acceptability and adoption by the community.

There is no doubt that our people have high aspirations regarding the accountability system, as well as the principal officials that that system has placed in the key positions of leadership in the governing team. The fact that many of them have never taken up any public office before their appointments, and are therefore unfamiliar with the procedures and workings of the political process, has at times made life difficult for themselves as well as for this Council, and the community. During last year, it is clear that those principal officials who have had experience of the workings of the Government have on the whole done better than those who have not. It is a fact that, broadly speaking, principal officials are more prepared to face the public, the media, and this Council than their predecessors in the Civil Service.

The Liberal Party maintains that the system is the right one for our Government. It is for this reason that we cannot possibly vote for the motion.

We believe that whatever problems we might have had with the workings of the system, we should appeal to the Chief Executive to come up with solutions, as it is his prerogative and in his interest that the system works well. Cabinet reshuffle is a means with which he can use to fine-tune the effectiveness of his team, so we do not object to the use of this tool if the Chief Executive believes that the situation warrants it. However, we are sure that if this happens, it would be regarded as a very serious move, and the result of the reshuffle must have the acceptance of the community. This is no easy task, as such changes would need to be confidential before the final decisions are announced. It therefore requires the best political judgement and the most accurate assessment of community acceptance.

Madam President, the Liberal Party cannot believe that anyone who love Hong Kong could be unmoved by the march on the 1 July and the sit-in last night, least of all Mr TUNG. He has also assured us that he always listens to the voice of the people. The word "accountability" implies a two-way relationship between the Government and the people. Mr TUNG has to admit that no matter how hard he and his team have tried, there are many in the community who do not believe the system has worked well. He must therefore acknowledge and accept the cry for changes he must make to his team so as to prove that the system can work effectively and in line with the will of the people.

Yesterday, in a press interview of a five year old, she said that Mr TUNG does not admit he is wrong. Perhaps the starting point of the reshuffle is the acknowledgment that he has stuck up once, twice, or thrice even too often for mistakes that his team members have made.

The system has not failed. We hope steps Mr TUNG will take, sooner rather than later, will prove it so.

MR NG LEUNG-SING (in Cantonese): Madam President, however good a system can be, it has to be implemented by suitable persons. With regard to the Accountability System for Principal Officials (the Accountability System) now under discussion, its merits and demerits cannot be judged by the labels of democracy. In fact, there is no direct correlation between them. The reason is that whilst the Accountability System deals with an operational arrangement within the executive, democracy is something concerning the entire political system. The offices of accountability officials can be filled either by Members

returned by popular elections, or by political figures or political talents outside the parliamentary assembly. Take the United States as an example. In the United States, Secretaries of Departments are appointed by the President from persons outside the Congress. Many people probably will not take it to mean that the ministerial system of the United States is not democratic, the reason being that this has nothing to do with the question as to whether or not there is democracy. Even when an elected Congressman is appointed as a Secretary it does not stand for democracy, because the electors only elected that person as a Congressman, not a Secretary of Department.

Now on the issue of accountability, let us look at it from the legal point of view. Apparently, under the current Accountability System, principal officials ought to be accountable to the Chief Executive. This is indisputable. To reflect and respond to public opinions denotes the work of the Government as an entity; it does not denote the work done for the Chief Executive by principal officials. If individual accountability officials act on their own interpretation of public opinions, then what coming out of the Accountability System would have been just another parliamentary body or another monitoring or checking body, instead of being a collective body leading the executive. Surely, under the existing Accountability System, principal officials join and stay in the collective body of leadership because they are politically like-minded. They may opt out when there is political divergence. At the same time, whether or not to press an official to stay on is the Chief Executive's decision. The exercise of such discretion does not mean that there is no accountability. The reason is that the entire collective body of leadership must shoulder the political responsibility towards the people as well as the gains and losses arising from this.

The Chief Executive is constitutionally and lawfully selected by election in accordance with the existing provisions of the Basic Law. He discharges his duties during his term of office. No matter who is the person elected, one point is definite. Any political move not legally-based and capable of undermining or debilitating the governance of the Hong Kong Special Administrative Region (SAR) Government headed by the Chief Executive cannot do any good to Hong Kong's present and future social development. After the year 2007, the SAR's political system will evolve towards full-scale universal suffrage in gradual and orderly manner. The process is lawful and definite. If there is any illusion that such a goal could be achieved by attacking the existing political system and the constitutionality and legality of the Chief Executive's position, then it is bound to harm the protection given to us by the Basic Law, ultimately even

damaging the "one country, two systems" and "Hong Kong people ruling Hong Kong", privileges now being enjoyed by the people of Hong Kong. Here I sincerely call upon the persons concerned to "think twice" again and again.

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

DR RAYMOND HO: Madam President, the Accountability System for Principal Officials introduced by the Chief Executive last year is apparently an improvement to the previous system. In the new system, the principal officials can focus on their political roles and assume political accountability while civil servants can concentrate on policy implementation.

Nevertheless, a number of requirements must be met if the system is going to work effectively. First, the Chief Executive must exercise strong leadership. Second, principal officials should be politically sensitive and possess strong political skills in winning the support of the public, the media and this Council. Third, they must have the right qualities in terms of character and experience. Fourth, principal officials should work as a team. Fifth, principal officials dealing with policy areas involving the Mainland must have a certain degree of understanding about the Mainland and are willing to foster better liaison between Hong Kong and the Mainland.

Despite the high expectation of the public on the new system, the current team of principal officials have obviously let us down. Crises and scandals one by one blotted the first year of their administration, from the health threat posed by Severe Acute Respiratory Syndrome (SARS) to "penny stocks" fiasco, from the so-called "car-gate" saga to inappropriate remarks by some principal officials. Basically, the first team of principal officials under the accountability system have failed the abovementioned requirements.

Judging from the Government's handling of many crises, particularly the SARS crisis, the 1 July march and most recently the decision on deferring the Second Reading of the National Security (Legislative Provisions) Bill, the Chief Executive has yet to demonstrate his leadership and ability to manage crises with determination and swiftness in a convincing manner.

Lack of political sensitivity of some principal officials has been doing a disservice to the Administration. The antagonizing style adopted by the Secretary for Security in "persuading" Members of this Council to support the passage of national security legislation has backfired. Some members of the public have been incensed by her arrogant manners.

But I must say that it is very unfair for the Secretary for Security to fight this uphill battle single-handed all along. Hers is by no means an individual case. Instead of working as a team, the current team of principal officials have given us the impression that they work independently for their respective bureaux most of the time. Their joint efforts in relaunching Hong Kong in the wake of the SARS epidemic seems to be the only exception that I can recall.

The "car-gate" has also called into question the character of individual principal officials. Like most of the people in Hong Kong, I found the Financial Secretary's explanation not convincing at all. As a principal official, he should uphold the highest standards as set out in the Code for Principal Officials under the Accountability System.

On the other hand, the outbreak of SARS in Hong Kong has highlighted a low degree of understanding of the working of the mainland authorities displayed by some principal officials. Compounded by the poor liaison between the mainland and Hong Kong health authorities, Hong Kong had to pay a very high price in both economic terms and human lives.

Having said that, I still believe that the accountability system has its own merits. Of course, the recent course of events shed new light on the weaknesses of the system. But every system has its strengths and weaknesses. Therefore, we should not simply dismiss it. Instead, improvements could be made.

Madam President, I sincerely hope that the Chief Executive will learn from the experience of the past year and refine the current system. With the cooling down of the public sentiments following the latest government concessions in deferring the Second Reading of the National Security (Legislative Provisions) Bill, Mr TUNG may consider seriously making a reshuffle in his cabinet so as to make a fresh start. A new line-up of competent ministers being put in charge of portfolios corresponding to their respective expertise will be the best way to restore the public's confidence in the Government.

Apart from the reshuffle, it is imperative for the Chief Executive to put more emphasis on crisis management and strengthen his public relationship skills. With these remarks, I so submit. Thank you.

MR MICHAEL MAK (in Cantonese): Madam President, it seems to me that the democrats are like prophets or they have a crystal ball in their hands, for otherwise, how could they have predicted one year ago the results that will appear this year? However, it has never occurred to me that things will be worse than I have imagined. Why? A spate of events has happened one after another and top officials have made serious mistakes or policy blunders, but they are still unaffected.

First of all, there is the penny stocks incident and it is amazing to find the official concerned say that he is unable to finish reading the pile of papers in his tray. I think that this is totally unacceptable, for the most fundamental interest of the public and the investors is at stake. One just cannot imagine how a top official can be like that, for he should have many assistants. They enjoy a lucrative salary under the Accountability System for Principal Officials. With the many kinds of support they get, yet the official in the incident dare to say that he has overlooked the papers. How can officials like these be accountable to the people?

Then there is the incident of Financial Secretary Antony LEUNG buying a car before the tax was raised. It is also amazing to see that he came up with the explanation that he had two ways of thinking, that his mind was compartmentalized for the family and his duties, and he could say that he forgot to declare his interests, not knowing that he should make the declaration. But then, I must ask, "Why did his subordinates not remind him of that?"

Then came the unfortunate SARS outbreak in which close to 300 people lost their lives. The Secretary, Dr YEOH Eng-kiong, said to everyone's surprise that this could be accepted. He said that could be accepted. The Chief Executive appointed him to head the investigation into the SARS incident, and said in public that the investigation would just be dealing with the matter and no people would be implicated. How can the 297 dead souls rest in peace and why did these people die? Besides, what is going to become of the health of the

1 800 SARS survivors? Why were they infected and will their future health be able to sustain their life and work?

It is things like these — and I have omitted the most important and traumatic event, one that can also bring some good to the people of Hong Kong. That is the high-handed and arbitrary attempt to enact laws on Article 23 of the Basic Law in the National Security (Legislative Provisions) Bill. I think that the result is rather fortunate. Some say that Mr James TIEN is a hero, while some other say that the Liberal Party is a party with a conscience. I think the heroes are the people — the half a million people who took to the streets. The newspapers put it as 650 000 people. These 650 000 people took to the streets under the heat of 35 degrees Celsius. This is coupled by the many people who wrote articles and sent e-mails in support of the march. Mr James TIEN was only bold enough to put all these to action. I hope when this is reported and praised, there should be a place for the people of Hong Kong, for if the event had not taken place, we would still be arguing here the violent legislation on Article 23.

I fail to see why with a powerful government like this, with the "three departments and 11 bureaux" with heads drawn from all quarters of society and led by the Chief Executive and Members of the Executive Council, that Hong Kong could be turned into such a big mess. So bad that Hong Kong has hit the charts, not for anything good, on a few occasions. Come to think about how these people were selected. I doubt very, very much how these Secretaries of Departments and Directors of Bureaux were picked. This is really a monstrosity of an undemocratic system. It is an evil outcome which has put the people of Hong Kong in an everlasting hell fire, or at least a situation that will heal up only after a long, long time. Before this Accountability System was set up, the Civil Service used to have a clear mechanism whereby civil servants could be dismissed. But this Accountability System does not even have any dismissal mechanism. Even as it is, I would not feel in any way happy about it. For if I were one of these principal officials, I would not know where to hide myself in shame.

How can they ever face the millions of people in Hong Kong? But they are really very bold, for example, Secretary Antony LEUNG is still sitting with us today after all these reprimands we have levelled at him, and facing the camera. And he is still sitting here. Actually, I cannot think of any reason for

this. Does our Chief Executive really insist that he should stay, or does he himself insist that way despite all the shame and disgrace?

I therefore hope that Secretary Stephen LAM can make some response on the constitutional system. But I think he will only make a routine official reply, one that will never convince me. For the staff who work under me, every year I would require them to write down their main duties. They have to write a report to me every year on their work and I will write a report on their performance. Have these top officials written a report of their work to us? They have not, not even an interim report. But that does not matter, the half a million people plus those of us who stood behind them are the report they get and they can tell from this report how they have performed. Thank you, Madam President.

MR ALBERT CHAN (in Cantonese): Madam President, Dr David CHU mentioned earlier "three representations". He put forward this idea of "three representations" as a bogus Premier ZHU. I think he was doing this in the hope that someday he would put this into practice when he became the Chief Executive. I do not know if he is planning or creating such sentiments and he intends to stand in the race for the third-term Chief Executive. For this idea of "three representations" is such a lofty idea and if he does not intend to run for the Chief Executive office, there is no need for him to present it on this occasion. May I wish him every success in his race. I would think that if Dr CHU becomes the Chief Executive, he would definitely be more close to the people than TUNG Chee-hwa and his communication with the pro-democracy camp would be more meaningful.

On this idea of "three representations", I think that there are also three representations in TUNG Chee-hwa and the officials in the Accountability System. These are: chaos, evasion of responsibilities and failures. I think these well represent Hong Kong under the "one country, two systems" up to now. These are the three representations and symbols. I hope they can be gone as soon as possible.

When we look back, the Accountability System was born in very peculiar circumstances. TUNG Chee-hwa has ruled Hong Kong for five years and his numerous blunders has brought one disaster after another to Hong Kong. Some time ago, I moved a motion calling for TUNG Chee-hwa to resign and I listed out his 19 sins. Some people reminded me that I had missed one and the 20th

sin is the honouring of YEUNG Kwong with the Grand Bauhinia Medal. This has injured our feelings, an insult to our wisdom and a distortion of history.

TUNG Chee-hwa puts the blame of five-years of his failed administration onto the former governors and the British-style civil service system. This system encompasses our Eunuch LAM who used to be a member of the former British Hong Kong Government. TUNG Chee-hwa said these former officials, these remnants of the colonial government, had not done their best to help the Chief Executive implement his policies. It was these people who had not done a good job and so he did not get the prestige and recognition that he deserved and so he could not do a good job in governing Hong Kong. In this way, he had shirked every responsibility onto the officials of the former British Hong Kong Government.

Then he set up the Accountability System and the so-called three Departments and 11 Bureaux and hand-picked the so-called elites from different sectors to fill up the posts. But what is the situation like when these new appointees have filled up the three Departments and the 11 Bureaux without some of those so-called officials from the former British Hong Kong Government? It can be said to be heaps of catastrophes. Political catastrophes have come one after another.

To sum up the performance of TUNG Chee-hwa's Accountability System in the past year or so, it can be said that the inept TUNG when added to the confused and disorganized Accountability System have pushed Hong Kong to yet greater miseries and calamities. Looking back at the six years of governance, in particular the accountability issue, I have the impression that TUNG Chee-hwa lacks in a philosophy of governance and an effective approach to it. He does not know the ABCs of politics and after he has assumed office, he always carries the word reform on his lips. He talks incessantly about reforms in almost all areas of public policy, such as education, Civil Service, constitutional system and so on. Recently, he has refrained from talking about the housing policy. The vigorous way in which he pushes for these reforms are like the "Three Againsts and the Five Againsts" in the MAO Zedong times. Like MAO, he is against everything, but sadly to say, he does not have MAO's capabilities in governance. He only relies on the backing from the Central Government.

Let us turn back to the three Departments and the 11 Bureaux. Sometimes I would see what common political beliefs these 14 persons have. I

have looked at each one of them, but I fail to see any common political belief among these people. Do they have any common or fundamental experience in public administration? Some have and some have not. Some are well-experienced while some do not have any experience at all. Do they have any recognition from the people? From many opinion polls it can be seen that some of them have a higher rating while some have a lower rating. Many of them have a rating so low that they fail to meet any acceptable standards. In the one year or so since the Accountability System has been in place, in terms of governance and policy implementation, have these people adopted any effective approach, tactics and means to implement the policies? Often times, one word will suffice to describe the situation: chaos.

The three Secretaries of Departments and 11 Directors of Bureaux do not seem to be top officials in charge of government policies, they seem to be the retinues of TUNG Chee-hwa more. When TUNG says no, these Secretaries of Departments and Directors of Bureaux will have nothing to say. Many of them are idle, like Secretary Stephen LAM who does not have much to do. That will certainly deal a blow to public confidence in the Government.

TUNG Chee-hwa often says that he wishes to emulate LEE Guan-yew. But I think he is only making a mockery of himself. LEE has made history by his own efforts. Despite the fact that there may be somethings which I do not agree with LEE, he must be commended for being a person who has the ability and the dedication to create history by his own efforts. However, TUNG came into power on appointment by the mighty leaders in the Central Government. He got his job for he had their backing. He is a person who is obsessed with power and achievements, but he lacks deplorably any ability to govern. It is a great problem for Hong Kong if a person like TUNG is allowed to hold the reins of power. He thinks of himself as a genius, but as Mr Martin LEE described him earlier, he is nothing but an incurable simpleton. The way he governs Hong Kong has rocked the pillars of governance and many institutions in Hong Kong and ruined its stability and prosperity. The crisis which the "one country, two systems" faces has not stemmed from any foreign influence, nor is it a making by the democrats in Hong Kong. But it is because of the existence of this "Lord of Misrule" as embodied in this fellow who is outwardly kind but inwardly devoid of conscience.

It has become a must that TUNG Chee-hwa should go if Hong Kong is to be ruled fit and proper. Put in Premier WEN's words, TUNG has let the

people of Hong Kong down, and he has also let the Chinese compatriots down. He must resign. Thank you, Madam President.

MR ABRAHAM SHEK: Madam President, it has been a year since the Accountability System has been implemented. Admittedly, the current system has not met the general public's overall expectations. The Accountability System's ultimate goals of respecting the public's wishes, better responding to community needs, and enhancing the administration of the Special Administrative Region (SAR) have not been attained. There is a perception that principal officials who have made mistakes and incurred public scorn have been protected from the Accountability System and have not stepped down. Not surprisingly, this has brought great public disappointment and made society even more polarized. Honestly speaking, many in the community have already lost confidence in this Accountability System. Unless there is a fundamental change in its implementation — I repeat, implementation, the Government will gain little respect from the public and the crisis that is challenging the Administration will continue.

I can recall the Chief Executive addressing Honourable Members of this Council on his plans to introduce the Accountability System on 17 April last year. He stressed that the purpose of implementing such a system was to better understand public views and bring a fundamental change to Hong Kong's governance. By assuming responsibility for policy portfolios, the principal officials would respond to the needs and demands of the community more directly. Ideally, a more open-minded government culture would be created. He added that the Accountability System would enable the upper echelon of the Government to share a common agenda and to have clear directions for improving the priorities of the Government and overall policy co-ordination. Also, he anticipated that the Accountability System would strengthen liaison and communication with the Legislative Council so that the Government could better serve the community.

After a year, it is obvious that the Accountability System has not been implemented to Mr TUNG's original idea. Examples such as the Severe Acute Respiratory Syndrome (SARS) crisis, the refusal to set up an independent inquiry into the SARS outbreak, the proposed public transport fare adjustment mechanism and the New Territory taxi fare concessions incident reveal that no significant improvements have been installed in Mr TUNG's Administration. I would be the first to admit that some accountability officials have performed

below par. After all, there is error, and there is negligence. Some officials have even given a blank cheque to the public for increasing their own popularity. It is clear from the Government's shabby public consultation exercise on the implementation of Article 23 of the Basic Law that top officials have seriously misread and ignored the public's wishes. The Accountability System's basic principle was entirely breached. Not surprisingly, the Government's popularity dropped from new lows to new lows since the handover. Half a million citizens took to the streets to show their displeasure and the Government is shocked and astonished. Clearly, it shows that the principal officials have no idea what the public is thinking. Few could have imagined that public resentment towards the Government would grow so drastically after a short period of implementation of the Accountability System.

Mr TUNG, being the architect of the Accountability System, also has the ultimate say on the appointment of his cabinet. But that he has been too generous and lenient with his ministers has proven fatal to his political image.

I am sure that the public would welcome the Accountability System if it could truly enhance the accountability of public officials. The system itself is sound, what has gone wrong is the execution.

Its design, unprecedented in Hong Kong's political development, aims to address public demands for better governance and greater accountability. There has been, indeed, a brief honeymoon period, during which the newly appointed officials have shown promising signs of changing the Government's culture and style. The public has great expectations of the ministers, too. They expect the new appointees to respond quickly to social and economic crisis, and most importantly, to feel the pulse of society. Under the new system, senior officials have no doubt been under mounting pressure to prove their abilities in their respective departments as quickly as possible.

In retrospect, I consider Mr TUNG's Accountability System as an administrative measure. It is not a constitutional reform, nor does it relate to democracy. Attacking the system as undemocratic, I am afraid, is an irrelevant argument. The Government has launched the system in an attempt to answer public expectations that it should take public opinions into account in policy formulation. The system, I stress, is an administrative measure aiming to improve the decision-making process. Whether it is successful or not should

not be confused with whether it is democratic or not. I dare to disagree with Dr the Honourable YEUNG Sum on this basic standpoint.

Ultimately, the Accountability System is still a novel and a new concept. It would be unfair and unjust to say that the system is a complete failure. Without doubt, I would say that the purpose of implementing the Accountability System is to enhance the administration efficiency and improve the public governance. To dismiss the importance of this new system only after a short period of its implementation would be harmful to public governance and political stability. What we should do is give it and the Government more patience and time to review and identify the system's problems. Only in this way can the Accountability System's implementation be refined.

After one year of implementation of the Accountability System, I hope now more than ever that Mr TUNG clearly understands the public's views on the system. To this end, the principal officials have to learn from their painful experience. They have to bear in mind that the SAR Government is here to serve the people. They should feel the pulse of the community, give selfless efforts and put away their personal ego to listen clearly to the community's views in order to rebuild solidarity and restore the public's confidence in the Accountability System. I have faith in this system. It is my hope that Mr TUNG and his principal officials will make Hong Kong the prosperous world city it should be in the near future.

Madam President, with these words, I so submit.

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

MR SIN CHUNG -KAI (in Cantonese): Madam President, I recall when this Council debated on the Accountability System for Principal Officials, I said that when he encountered some difficulties at the beginning of his term, TUNG Chee-hwa immediately put up the excuse that the problems were left over by the British who had ruled Hong Kong for so many years. So the responsibility was shirked onto the British Hong Kong Government. After more than one year when problems rose again, he shifted the responsibility onto Mrs Anson CHAN.

What happened when Mrs CHAN was gone? He shifted the responsibility onto the civil servants. He made up an accountability system on this premise. At that time I asked to whom he would shift the responsibility again should this Accountability System fail. Now with more than one year since the Accountability System was implemented, the popularity rating of TUNG Chee-hwa has hit an all-time low. His score is only 35 points. It is an all-time low after an all-time low. So please do not say that we are besmearing the TUNG administration, the people are precisely doing that. When 700 000 people took to the streets, they apparently gave TUNG his report card. That is also a remark made by Mr Michael MAK earlier.

I do not dare to expose my shortcomings by pretending to be well-learned in political systems in front of people like Mr Andrew WONG. However, I do know that there are a few major political systems. One is the presidential system of the United States. The other is the cabinet system formed by the majority party as practised in Britain. Yet another is like the system in France where they have both a president and a premier. In terms of political system, Hong Kong is more like the presidential system of the United States. Though the president of the United States is elected by the people, he does not have any direct control of the Congress, for there are the political parties of the Democrats and the Republicans. The United States system is not as sound as the British one, for in Britain, the country is ruled by the majority party and all bills become Acts of Parliament and the policies are thus enforced. As the One Country Two Systems Research Centre puts it, in the United States system, bills introduced by President BUSH to the Congress will be "disfigured" in the sense that they are heavily amended. Often such changes are made by members of the Republican Party, that is, those who belong to the same party as BUSH. So what will President BUSH do in the end? He falls back on one thing, and that is, public opinion. He will push his policy through with the support of the people. It is because he is returned by universal suffrage and he has the mandate of the people. So if we know anything about the United States system, we will know that even when it comes to the President of the United States, sometimes he will have to face opposition from the Congress.

Hong Kong does not practise the British system. Under the Accountability System, two major parties made their way into the TUNG cabinet. So it is a hybrid system. TUNG hopes that with the backing of these two major parties, he will get the bills passed in the Legislative Council. However, things may go wrong at the most critical moment of all, like the legislation on Article

23 of the Basic Law. As a matter of fact, when we make a review of the Accountability System today, there is not much room for us to manoeuvre, for the patchwork kind of changes that come with the reshuffle of officials under the system will not help at all. As TUNG is not returned by universal suffrage, so when he runs into problems, he does not have to think about re-elections. As for President BUSH, if he is contemplating a second term, he has to think about whether his policies will cost his party the next election. It is because of this need to continue with the rule that no matter what he may do, he has to determine how the people will react. That is how the United States system works. As TUNG Chee-hwa is not elected by universal suffrage, unless and until he changes his basics, that is, when he feels that there should be continuity in his rule because he is returned by elections, he will never change his philosophy of governance in the four years to come.

Let me ask a simple question. If a political leader, be he a president, a premier or whatever, when he is faced with half a million people who take to the streets, what is the first thing that comes to his mind? He will put aside the issue of enacting laws to implement Article 23 and think of how to deal with the problem of what makes half a million people speak out their anger and discontent. For in comparison, the Article 23 legislation is only a trivial matter. Why did TUNG have to wait four days? Some newspapers have reportedly written that the reason for TUNG Chee-hwa to have to wait four days was to wait for a reply from Beijing on whether or not the green light would be given on the three major amendments in respect of the proscription of organizations, the public interest defence and police power in entering premises for searches. Even if this report is not true, I think that even a mediocre political leader would not have to use four days to respond to the demands made by half a million people. Personally, I think that the statement Mr TUNG made in the midnight six days after should have been made five days earlier. To put it simply, the statement which he made when he called a midnight meeting of the Executive Council for the second time should have been made right after the 1 July march. Any popularly elected president or premier will know that if he fails to do that, it will mean his stepping down.

The root of the problem is therefore the system. If we do not have a Chief Executive who is returned by universal suffrage, there are bound to be fundamental conflicts between the executive and the legislature. If the Chief Executive is not returned by universal suffrage and does not have the mandate of the people, when faced with 60 Members of this Council coming from different

political parties, he will find it difficult to exert control over the Council. And there will be no end to this problem.

Madam President, I so submit.

MR TAM YIU-CHUNG (in Cantonese): Madam President, after the reunification, "Hong Kong people ruling Hong Kong" is implemented in Hong Kong. The people now have greater expectations on the Government than before. In addition, there have been rapid changes in the structure of the economy. Therefore, the Government has to act quicker and more effectively in response to the demands of the people. Before the implementation of the Accountability System for Principal Officials (the Accountability System), we could see that the operational framework of the Government could no longer meet the demands of society in terms of response and speed. As a lot of changes in social conditions have taken place, and there is detailed division of responsibility among various government departments, a single incident or a single policy could involve many departments. And a problem may not be solved promptly or may drag on for a long time if no department takes the lead in a certain issue. A notorious defect in the government framework, often the target of public criticism, is insufficient horizontal co-operation among government departments. A few years ago, the Government was beset with various problems: little progress in economic co-operation between Hong Kong and the Mainland; lack of co-ordination in various infrastructure projects; insufficient co-operation among the departments concerned in the crisis arising from the avian flu incident; repeated delays in such infrastructure projects as the Lok Ma Chau Spur Line of the East Rail and the Ngong Ping Cable Car System. All these incidents reflected that the mechanism then was no longer adequate to meet the needs of the fast changing conditions in society.

On the other hand, the original framework of the Executive Council failed to grasp the gestation and formulation processes of policies. Therefore, it could only play the role of a final approving body. For this reason, there were a lot of criticisms to the effect that Members of the Executive Council then had not actively explained the various public policies to the people.

The Accountability System was introduced against such a background. The system quickens the administrative paces and improves the efficiency by reorganizing the framework as well as strengthening the horizontal co-operation among departments. The principal officials under the new system have direct

input in the final determination of various policies. They have to assume the political responsibility for the success or failure of policies implemented in their respective portfolios, so as to boost the efficiency and respond to the aspirations of society in a timely manner, thus providing better services to the people. In the implementation of the Accountability System during the past year, we could really see some progress. For example, in the co-operation between Hong Kong and the Mainland, the Government has managed to actively promote the economic co-operation and the infrastructure development with Guangdong. Such moves would attract more mainland tourists to visit Hong Kong and promote the development of the tourist industry. Also, the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) signed recently will provide more business opportunities for Hong Kong and create more job opportunities. In the course of fighting against SARS, we could see improved co-operation and co-ordination among the various government departments, and the various measures for improving environmental hygiene have been fully implemented. The major functions of the Accountability System can only be seen if principal officials can effectively assist the Government in promoting its policies, helping the implementation of its policies and enhancing the co-ordination among government departments.

Of course, the implementation of any new system would essentially require a run-in. During the past year, the principal officials have been facing more and more challenges in their work. So, the Government and the principal officials have to keep reviewing the system and adjusting the policies, so as to make the implementation of the Accountability System smoother. The principal officials must walk among the people. They should actively understand and listen to opinions from all walks of life, and exercise very stern discipline over themselves. Only in this way can they gain the support of the people and dispel their discontent and grievances. Moreover, they also have to strengthen their communication and discussion with the Civil Service to promote mutual trust. This will help pooling together collective wisdom and promote co-operation, and eventually it will lead to improved efficiency and quality in the enforcement of government policies.

Madam President, this morning, a serious traffic accident occurred in Tuen Mun, leading to the death and serious injury of the driver and dozens of passengers. In the rescue and follow-ups to the accident, we can see the good co-ordination among many different departments. The persons-in-charge of different departments actively and promptly gave a full account of the accident to

the public, undertaking to proceed with remedial work later on, and offering assistance to families of the deceased and injured victims. I hope this practice of making such prompt responses could carry into the future.

Some people insist that the election of the Chief Executive by universal suffrage is a prerequisite for the implementation of the Accountability System. As they challenge the arrangements of the political development in Hong Kong, so they discredit the Accountability System. But I disagree with such a view. According to the Basic Law, the political system of Hong Kong should develop in a gradual and orderly manner. The Accountability System is the most effective means of administration under the present political system. If you project your anger onto the Accountability System just because you are dissatisfied with the political system, then it is most unfair to the principal officials who have been working with great devotion to serve the people of Hong Kong.

Thank you, Madam President.

MR ANDREW WONG (in Cantonese): Madam President, the Accountability System for Principal Officials (the Accountability System) has been implemented for one year. The Government undertook at that time to submit a report on the implementation of the system after one year and the responsibility was to be assumed by Secretary for Constitutional Affairs Stephen LAM. Therefore, maybe it is a bit too early for us to discuss this motion today, since we have yet to see the report. However, we still have to debate on this motion today because this is the last meeting of the Legislative Council for the current Session, and so there will be no more opportunity afterwards.

Certainly, I hope the report can be released early, but now it seems that there may be certain difficulty even for the report to be released at a later date. The reason is that Mr TUNG has to handle a major crisis now. What measures Mr TUNG will take to tackle the crisis are closely related to the content and suggestions to be included in the report. Perhaps Members may say that there is no problem at all, and some people may even think that the two matters can be discussed separately.

The Panel on Constitutional Affairs will convene a meeting on 21 July. Now I wish the President can do us a favour by reminding the Secretary for

Constitutional Affairs that, we hope he can ensure that the report must be tabled on that day, and that the report should be sent to us earlier. Do not be too late. Please let him know that he should not distribute the report to us as late as the 21st right in the conference room.

I wish to make it clear that I am speaking in support of the motion moved by Dr YEUNG Sum. Mrs Selina CHOW mentioned earlier that the accountability system was originally proposed by the Liberal Party. In fact, I was the first person who suggested the appointing principal officials on political appointment, and then requesting them to assume political accountability, as stated in my election leaflets when I ran in the direct election to the Legislative Council. In fact, I had made such a proposal a long time ago, but only until then that I put forward such a proposal in the political scene in a high profile. Nevertheless, when the Accountability System was introduced last year, I said, "Sorry, I cannot accept it." Why could I not accept it? At that time, I said I could not agree with an accountability system like that, for I found many fundamental prerequisites for an accountability system were lacking in the accountability system introduced then. Therefore, I shall discuss the Accountability System today completely from the perspective of system.

If we talk about the system, we shall have to look at the relation between the system and how it had actually worked if we have to determine whether it is a success or a failure. As Mr NG Leung-sing mentioned earlier, we are discussing a system. However, systems are administered by men, and men could mess up a system. I do not wish to mention any specific names, but sometimes certain examples could show us how the system could be affected by men. I must state clearly that if any of my comments should imply any attack on any person, I do not mean it. I just want to illustrate the defects of the system which, as a result, generate the problems, and consequently leading to the failure of the system and making it a failed system.

As for the democracy dimension, Mr Abraham SHEK has spoken on it already, and Mr NG Leung-sing has also pointed out that this motion has absolutely nothing to do with democracy. I could agree to this point, but I must also say that I disagree with it. Why do I agree to this point? The reason is that the accountability system proposed by me in 1991 was to be implemented on the basis of political appointment. Even if all the Members were not elected but

appointed, such Members would still have to be accountable to the public. If any Member did not discharge his duties well, he still had to be accountable to the Council, and to the public through the Council. Having realized this point, I have high expectations of the accountability system. I think even if we cannot introduce elections of the Legislative Council and the Chief Executive by universal suffrage, the implementation of the accountability system is still meaningful to a certain extent. However, we must understand one point, that is, if Members of the Legislative Council can be elected by universal suffrage, it will be easier for us to meet the prerequisites which I have suggested for the accountability system. If the Chief Executive were elected by universal suffrage, he would not be too insistent and obstinate, because he has to seek re-election for the next term. This is the crux of the matter. Now I would like to mention certain criteria that Mr Stephen LAM may use for his reference in conducting the review.

I think the first problem is that we are often times thinking in different frequencies. Madam President, where does the problem lie? The problem is whether we perceive the political system provided for in the Basic Law as something like a presidential system or a parliamentary cabinet system. Mr SIN Chung-kai has spoken on the issue, but I think he did not have to make things too complicated. He described the systems in France, Germany and the United Kingdom in such a way as if they were all different from each other. In fact, all the three countries have adopted the parliamentary system, and the only difference is that, under the French system, government officials cannot be Members of the National Assembly at the same time, while in the United Kingdom, government officials must also be Members of the Parliament. And in Germany, officials may or may not be Members of the Bundestag, but both officials and Members of the Bundestag are politically appointed and are accountable to the public through the Bundestag. It is just such a system.

Under this system, there is basically one nominal leader, or a leader with greater authority. For example, the head of the French cabinet is the President of France. He is accountable to the National Assembly (that is, the Prime Minister and his team). This team has to win the majority support from the National Assembly. You may call such a team a ruling coalition or the majority party.

If we do not adopt such a system, we may turn to another system, that is, what we call the United States system. Under the system of the United States, the entire party culture is different. Political parties are free machines that appear only in times of elections for the purpose of helping candidates to be successfully elected. They are different from the political parties in Western Europe, where both the ruling and opposition parties have their own whips, platforms and fixed lines which they would insist on implementing, and only under such conditions would there be competition between opinions of different parties. The two types of systems are very different.

If we view the political system of Hong Kong as something else, for example, if we say that it is similar to the United States system, there is no problem. Or if we want to adopt the presidential system, and say that Hong Kong will implement the presidential system in future, there is also no problem as well. And once the presidential system is implemented, there will be a stronger call for the election of the Chief Executive by universal suffrage. It will also be fair enough if we do not adopt the presidential system but the parliamentary system and even the Chief Executive could be promoted to assume a "nominal" position. In this way, the Chief Executive may choose to adopt a high profile like the French president, or adopt a low profile like the German president (that is, the Federal Chancellor, not Chancellor, for Chancellor is the same as the prime minister). Therefore, I think we need to have a clear picture of the differences. There will be problems if the distinction is not clear.

The second point I wish to make is the delegation and the sharing of power. If the Chief Executive is willing to delegate his power to and share his power with the ruling party, then all matters will not be decided entirely by the principal officials.

The third point is political accountability. Once a principal official commits a serious blunder, he must assume the responsibility. What is our biggest problem? What is our biggest failure? The failure is, when the Financial Secretary had made a blunder, I am not accusing Mr TUNG of defending him, and according to the understanding of Mr Stephen LAM, the resignation of the Financial Secretary required the approval of the Central Authorities. Anyway, when someone resigns, he must have decided to quit, so whether his resignation is approved or not, he has already quitted. Though, of course, he was persuaded by the Chief Executive to stay. I need not dwell on such details further.

As for other points, I have already spoken on them during our past debate on the Accountability System. For example, civil servants should not be politicized. Posts like Deputy Bureau Secretary and Deputy Director should be set up under the principal officials, so that civil servants may not need to answer certain political questions. I think if we do not conduct a comprehensive review of this system, it will never be a success. Thank you, Madam President.

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

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the Accountability System for Principal Officials (the Accountability System) has been implemented for one year. During the past 10 days, we had the mass march on 1 July, and the enactment of laws to implement Article 23 of the Basic Law (Article 23). The people of Hong Kong and the media have made comments on many different issues. Today, at this meeting, we are supposed to summarize the experience gained in the implementation of the accountability system during the past year in the light of events that have taken place.

The people, Honourable Members and the media have expressed their opinions on the Accountability System. During the past few months, such opinions can mainly be divided into two categories. First, some people are of the opinion that, after the implementation of the new Accountability System, the Government has not been able to respond fully and effectively to the aspirations of the people regarding its governance. Secondly, some other people are of the opinion that the new system has failed to meet the expectations and demands of the people, that is, principal accountability officials should assume the responsibilities for their own work. I would respond to these two aspects.

First of all, regarding the response to the aspirations of the community and the people, we can see that in the past year, from the economic point of view, the economic development of Hong Kong had come to a standstill and the unemployment rate remained high. Together with the impact of the SARS epidemic on the economy and society of Hong Kong from March to May, the people had been indeed subject to immense pressure. In fact, all our colleagues in the Government felt the same pressure. In order to get out of the present

predicament, it was the unshirkable responsibility of the Government of the Hong Kong Special Administrative Region (SAR) to address the problems squarely and work out some proposals.

Therefore, the policy address and policy agenda published in January, not long after we had assumed our offices, carried two major goals — revitalizing our economy and creating job opportunities. In more concrete terms, our work includes, for example, the provision of new training opportunities and the implementation of other works projects.

These goals will further be spelt out in more concrete terms in March when the Financial Secretary delivers his Budget speech.

The most important point is, since the implementation of the Accountability System, as I take an insider's view, the Government has become more decisive and more flexible in its overall operation. For example, during the SARS outbreak, we launched a series of measures involving a total spending of \$11.8 billion to relieve the difficulties of the people and promote economic recovery. In the meantime, we also launched several programmes that have since created 72 000 jobs and training opportunities. These plans were formulated within a few weeks. This illustrates that, after the implementation of the Accountability System, we have become more flexible and decisive in response to the aspirations and demands of the public. We have acted faster than before, though we cannot fully satisfy all the aspirations in society. That is why we always say that we must work harder.

Let me cite another example to illustrate that our long-term economic policies are beginning to bear fruits. At the end of June, we signed an agreement for the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA), which was the fruit of our concerted efforts in the past period of more than a year. With this new arrangement, we hope that the manufacturing industries of Hong Kong can tap the mainland market and even further expand it, and that the service industries and the professional sectors can find greater room for business development in the Mainland.

From this, we can see that we have been formulating positive measures and policies conducive to the economic development of Hong Kong. We cannot reverse the present economic predicaments of Hong Kong in the short run, as Hong Kong is experiencing the economic restructuring; and also as the economy

of Hong Kong is externally-oriented, it is frequently subject to external influence. However, all these examples have shown that the principal officials of the SAR Government do attach great significance to the sentiments, opinions and needs of the people.

On the other hand, the mass march on 1 July has conveyed several very significant messages to us: It clearly tells us that the people have discontents towards the administration by the Government; it clearly tells us that there is a major gap between the efforts of the SAR Government in the past and the expectations of the people; and it clearly tells us that we have to step up and continue our work and efforts in improving our communication with the people. We have heard all these messages. We shall actively conduct internal reviews to find out in what aspects we need to work harder and quicken our pace.

I wish to respond to the motion moved by Dr YEUNG Sum in three aspects: How can accountability be enforced under the Accountability System? Can the Accountability System be compatible with a democratic government? Has the Accountability System operated according to our original design last year?

Below I would like to respond to the way accountability is enforced under the Accountability System. Madam President, according to the Basic Law, the Chief Executive is the head of the SAR. He is also the head of the SAR Government. This is the constitutional status conferred on him by the Basic Law. Whenever a major event occurs, it is the Chief Executive who should determine what kind of responsibility a politically appointed principal official should take and how the matter should be handled. Should a criticism be made against the principal official concerned? Should the principal official apologize to the public or resign from his office? Such decisions should ultimately be made by the Chief Executive according to the circumstances? This is the duty and authority conferred by the Basic Law on the Chief Executive.

If we take the perspective of the Chief Executive, we would find that, on the issue of penalizing the accountability officials, he has to consider many factors, such as the overall interest of Hong Kong, the causes of the relevant incident and the response of the people.

I wish to reiterate that, in the penny stock incident and the car purchase incident, our relevant officials had been willing to come forward and shoulder

their political responsibility and apologize to the public. It is important that they were willing to shoulder their responsibility. Their spirit marks a new page in the establishment of a culture of accountability. In comparison, the offices of principal officials in the past were usually filled by civil servants. If something occurred, punishments were imposed on the relevant officials according to the civil service regulations, and it was unlikely that a civil servant would shoulder political responsibility. In this sense, the present arrangement is a progress.

Some Honourable Members questioned the independence of the expert committee commissioned by us to investigate the SARS epidemic. In fact, when we announced the establishment of the expert committee in May, we decided to invite both foreign and local authoritative experts to serve as members of the committee, because we hoped that the committee could review and identify the lessons we could learn from handling and controlling the epidemic and that it could make recommendations what we could do to improve the current arrangements.

We certainly understand that there are different views in society on the outbreak and transmission of SARS and the way in which the relevant review was conducted. Yet our most urgent task now is to complete the review before winter and find out what other measures we can take to enable us to handle such outbreaks better and make further improvements under the existing medical system and framework.

Madam President, Dr YEUNG Sum has criticized the Accountability System as undemocratic. In fact, this issue had already been debated at the design stage of the Accountability System. Some people considered that the Accountability System should be introduced only after the implementation of the election of the Chief Executive by universal suffrage, while others believed that the Accountability System could be implemented under the current circumstances. Today, our stand remains the same, that is, we still think that, under the present circumstances of Hong Kong, we can implement the Accountability System, and we can implement the system of political appointment of principal officials. This is also a significant step in the political development of Hong Kong.

Although we still have not introduced an election system of universal suffrage in Hong Kong, the existing system in Hong Kong is very open. It is absolutely practicable for us to introduce an accountability system under which

political appointments are made to fill the offices of principal officials. We have a Legislative Council returned by elections, and also the mass media enjoy freedom in their operation.

The design of the whole Accountability System subjects all Principal Secretaries and Directors of Bureaux to the scrutiny of the Legislative Council, the media and the general public. For instance, we see that public scrutiny has played an important role in the effective monitoring of certain incidents such as the penny stock incident and car purchase incident.

On the other hand, under the design of the Basic Law, the executive authorities and the legislature should exercise checks on each other. The SAR Government cannot and will not act arbitrarily. We must obtain the support of the Legislative Council before we can implement our legislative proposals and the proposals we put forward in many different aspects in our Budget. These proposals can be realized only with the support of Honourable Members in the Legislative Council.

Let us review the enactment of laws to implement Article 23, which is in fact a very good example. Though the existing Legislative Council is not fully returned by one-person-one-vote elections, it has fulfilled the function of monitoring the executive authorities. The SAR Government has proposed amendments and postponed the Second Reading of the relevant Bill in response to public opinions and opinions tendered to us by Members of the Legislative Council.

Madam President, Miss Margaret NG questioned earlier whether or not our ruling coalition would collapse or fail to function smoothly after the resignation of a party leader from the Executive Council. First of all, I have to clarify that the implementation of the Accountability System and the appointment of Members of the Legislative Council and party leaders to the Executive Council are two separate and different issues. The Accountability System is related to the appointment of our principal officials who, of course, may also be appointed to the Executive Council. However, I wish to clarify another point, that is, we have never declared the formation of any ruling coalition. We have only invited political parties and Members holding similar political views to work in co-operation with us. In the Executive and Legislative Councils, we used to rely on the co-operation with political parties and Members holding similar political views. Very often, such co-operation would entail some

flexibility with regard to different proposals. For example, in the enactment of the Bill on football betting yesterday and today, we have had the support of different political parties, and as far as I know, among our supporters, there are independent Members from the pro-democracy camp. We have to handle everything according to the circumstances. Madam President, this clarification is a sidetracking, which may not have any direct relation with the motion on the Accountability System.

Let us return to the review on the political development after 2007. It is necessary for me to state that we shall continue to conduct our review step by step. This political review will be a serious review. We shall ensure that adequate time is reserved for the people to express their opinions and participate in the process.

In the days ahead, we shall conduct internal studies and public consultations according to our original schedule. I also hope to proceed with local legislation after a consensus is reached.

Although we have not yet started any official public consultation, I have been listening carefully to different views expressed by the people on this issue.

Last night, I heard the voices of the people gathered outside the Legislative Council Building. It is only natural that the people have expectations on our political development. I shall proceed with the work very seriously and prudently. In the days ahead, I am willing to continue listening to opinions from all the different sectors of society.

Madam President, this morning Dr YEUNG Sum expressed his support for our proposal of conducting on-site vote counting in the District Council elections. He also said that he hoped they could support more government proposals on political development in future.

Madam President, I wish to reiterate to Dr YEUNG Sum and all the Members in this Chamber now that I shall exert my utmost to strive for a consensus with different parties and Members on the political review and development after 2007, in the hope that we can work together to create new dimensions of development for Hong Kong, and that our future political development can meet the needs of the community of Hong Kong.

Madam President, coming back to the Accountability System, I wish to finish by responding to the question of Dr YEUNG on whether the Accountability System is a success or a failed system.

The implementation of the Accountability System is a crucial change in the administrative framework of the SAR Government. This is a system formulated and adopted after months of discussions with Honourable Members of the Legislative Council last year.

If we look around the world, we may find that in every open society, there must be a group of people willing to come forward and shoulder the political responsibility of administering the place, to face the aspirations of society, and to respond to people's needs. Therefore, we adopted this new system in 2002, so that all subsequent Chief Executives of the SAR have to appoint a team of principal officials, who hold similar political views and are willing to face the Hong Kong community and shoulder collective responsibility, to continue to enforce and implement the Accountability System. I think this is the most significant long-term impact we would have after the implementation of the Accountability System in 2002. Since the implementation of the Accountability System last year, there has been a fundamental change in the administrative framework of Hong Kong, that is, there is the need to actively answer the aspirations and responses of the public.

Madam President, on the other hand, we have retained our permanent, professional and politically neutral civil service system through the implementation of the Accountability System. We have appointed a group of permanent secretaries, who represent our top-level permanent, professional and politically neutral civil servants. We believe the establishment of this system will have a positive and stabilizing effect on the long-term administrative framework of Hong Kong.

In conclusion, I think the overall direction for the implementation of the Accountability System is correct, though we must admit that the system has not operated very smoothly in the past year. We can see clearly in a number of political events that the people have such a question: Why should nobody have to step down when something has happened? I wish to respond to this query on two levels.

First, the Accountability System is designed *per se* on the basis that, when necessary, principal officials may be required to shoulder political responsibility in order to relieve pressure from society. Such a mechanism does exist. In the

Code for Principal Officials under the Accountability System and our contracts with individual principal officials under the Accountability System, we have the room that permits us to take such a step.

Second, as I mentioned before, whenever some major political events take place, the Chief Executive will assess the circumstances and decide whether the relevant principal official should face criticisms, apologize to the public, or resign from his office.

The existing system permits the Chief Executive to make his own judgement on every single event. Of course, there may be different views in society. It is the nature of political events that there are never-ending diversities in opinions and judgment on each particular event.

Madam President, after one year of implementation of the Accountability System, we have formed a political team which is accountable to the Hong Kong community and responsible for responding to the aspirations of society. This is only the beginning. I fully agree that we still have to work hard on it.

The SAR Government will review the ways of gauging public opinions and grasping the mechanism of communicating with the people more effectively, so as to strengthen our communication with all sectors to ensure that our policies can better answer the aspirations of the people.

The concern of the people as shown in the mass march on 1 July has definitely demonstrated that we have to conduct further reviews and make further efforts in a number of aspects. We shall learn our lessons from our experience in the past events and we shall strive to pursue further improvements.

I would also like to thank all the Members present today for their efforts and time spent in preparing their speeches to enlighten us with their sincere opinions in many aspects. We may not necessarily agree with all the views expressed, but we can surely see the sincerity of all Members who hope that the Accountability System can work better and serve Hong Kong well. Therefore, I wish to thank them for their opinions. To us, these opinions carry very important value for our reference and reflection.

Madam President, we, the principal officials of the SAR Government, shall continue our work along this path with perseverance.

With these remarks, Madam President, I implore Members to oppose this motion.

PRESIDENT (in Cantonese): Dr YEUNG Sum, you still have seven minutes 23 seconds for your reply.

DR YEUNG SUM (in Cantonese): Madam President, I believe Honourable Members must feel relieved when I rise to speak, because after my speech and the voting, the long and tedious two-day meeting would come to an end.

Madam President, there are actually several goals for the Government in launching the Accountability System for Principal Officials (the Accountability System). The first is to bring the team spirit into play, the second is to ensure better response to the aspirations of the people, the third is to improve the relationship between the executive and the legislature, the fourth is to maintain the neutrality of the Civil Service, and the fifth is to provide quality services. Madam President, these five goals are indeed very lofty, but one year into the implementation of the system, I think we can do some grading work now.

The overall rating of the Chief Executive is 35%, which is in a macroscopic sense. With regard to team spirit and whether Bureau Directors are birds sharing the same grove, or they would simply fly away a catastrophe strikes, it could be shown in the promotion of the National Security (Legislative Provisions) Bill. Mr KWONG Ki-chi said that in fact the three Secretaries of Departments could give each other backing, but whenever there is a major issue, who would be held responsible? Who would share the risks? Who would work together to promote the Bill? In the end, even Mr James TIEN refrained from supporting the Second Reading of the Bill. One may say in a sense that the team spirit has been completely ruined.

Secondly, speaking of ensuring better response to the aspirations of the people, just now Secretary Stephen LAM said that the Government had made some efforts to fight SARS, several hundred million dollars were spent and job opportunities had been created accordingly. However, the biggest demand of 500 000 people is to oppose the Article 23 legislation and to return political

power to the people. With regard to these important demands, Mr TUNG Chee-hwa has not made any serious response so far except bidding good mornings. For that reason, I am sorry that I could only give him a zero score in the area of ensuring better response to the aspirations of the people.

Thirdly, as to improving the relationship between the executive and the legislature, the fact was that Mr James TIEN eventually left Mr TUNG Chee-hwa. He was supposed to play the role of bridging up the executive and the legislature, however, one can see from him alone that he is unable to show the unity of the executive and the legislature, let alone a thorough improvement of the relationship between the executive and the legislature.

Fourthly, with regard to maintaining the neutrality of the Civil Service, once I took part in a radio interview together with Ms Audrey EU and Mr Allen LEE. Mr Allen LEE strongly criticized Mr Timothy TONG and said he did not know what Mr Timothy TONG was doing. Mr Timothy TONG is a member of the Civil Service, he is not one of the accountability officials, why was he selling political affairs? In fact, the argument of Mr Allen LEE was right. The current Accountability System is neither fish, flesh nor fowl, which has totally ruined the neutrality of the Civil Service.

As to the provision of quality services, there are too many examples to cite, thus there is no need for me to say anything more. We should take a look at the housing policy and education policy. Every time when the Government wants to make some achievement and do some serious deeds, the change in policy will bring about some other impact.

Therefore, Madam President, if I have to draw a conclusion on the five goals, basically they could be depicted as a "total failure".

Madam President, in the very early debate on the Accountability System, the Democratic Party already pointed out that the system had both inherent and acquired deficiencies. The inherent deficiency means that the objective of the Accountability System is not to establish a democratic system and that system is only accountable to Mr TUNG Chee-hwa, but Mr TUNG Chee-hwa needs not to be accountable to the people of Hong Kong. For that reason, nothing would be changed and everything is fine as long as Mr TUNG Chee-hwa says nobody should resign. In fact, there would not be any change as a result of the

Accountability System, since Mr TUNG Chee-hwa is not democratically elected and these accountability officials are not directly elected. So the entire Accountability System is just like a mansion built on quick sand, and it is very much the same system even now. Hong Kong is now facing a major political crisis, but Mr TUNG Chee-hwa has basically lost his orientation, he could not act as a leader to lead Hong Kong out of the valley of economic doldrums and political crises. For that reason, the system has both inherent and acquired deficiencies. Basically, the group of so-called political elites has very little political experience except those promoted from the Civil Service. The culture and other aspects of these two groups of people are incompatible with each other, resulting in a situation that each does things his own way. Therefore, on the whole, the Accountability System is a failure.

To sum up the Accountability System, we consider that there are four points. Firstly, it is in a state of disunity as each does things his own way. Secondly, it has destroyed the old but not built anything new. In general, we would destroy the old and build something new in the light of social development, but the Accountability System has seriously impacted on the neutrality of the Civil Service and single-handedly destroyed the long-standing system which underpins the success of Hong Kong. However, it could not establish a new system because the principal officials have not delivered. They destroyed the old in order to make way for something new, however, they did destroy the old but failed to establish anything new. It is most unfortunate indeed, and it has also caused great impact on the morale of the Civil Service. I have some civil servant friends who are only in their early fifties, but they all want to retire early, that is, to join the voluntary retirement scheme.

Thirdly, accountability officials are not accountable; they would not give any explanation, either. I felt puzzled just now when Secretary Stephen LAM said the Financial Secretary, Mr Antony LEUNG, had assumed the responsibility. What responsibility has he assumed? He is left intact even now. He made a mistake with regard to the date of the resignation letter, afterwards, nobody knew what exactly was about that letter. Mr TUNG Chee-hwa said Antony LEUNG needed not resign, despite the fact that he had not even read the report which explains the matter. Nobody knew whether or not they were just acting innocent and passing the buck to each other. Secretary Stephen LAM should not have said that the Financial Secretary had done all he could to assume the responsibility, in fact, he has never assumed any responsibility.

Fourthly, the division of labour. Mr Andrew CHENG raised a good point. He said that Dr YEOH Eng-kiong talked about health issues the most but welfare issues the least because he had no time to talk about welfare issues. Dr Sarah LIAO talked about issues of the environment and transport the most, but the least about works issues because she had no time to take care of them. I could not agree to any saying that the division of labour is meticulous and clear under the Accountability System, because I consider that there are still many ambiguities and overlaps. Since the division is not clear enough, many important tasks are left unattended.

Madam President, if we are to look at the way forward, the Democratic Party has three proposals. In the face of the controversy surrounding the Article 23 legislation, the only thing the Government could and should promptly do is to launch a second round of genuine, honest and comprehensive consultation, so as to allow people from all walks of life, including professionals, scholars of law and religious groups, to take the opportunity to put forward their views in this Chamber once again, and amend some darker, crude and hasty provisions so as to make the public feel at ease. In so doing, we can protect national security on the one hand, and strike on the other a right balance with human rights and freedom, a genuine balance with human rights and freedom. Secondly, the Government should dismiss and replace incompetent officials, that is, Bureau Directors and reshuffle the cabinet. Finally, it is the election of the Chief Executive by universal suffrage.....

PRESIDENT (in Cantonese): Dr YEUNG Sum, your time is up.

DR YEUNG SUM (in Cantonese): Thank you, Madam President.

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

(Members raised their hands)

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

(Members raised their hands)

Dr YEUNG Sum rose to claim a division.

PRESIDENT (in Cantonese): Dr YEUNG Sum has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Members, we originally anticipated that today's meeting would be finished only after dinner, therefore we have prepared a lot of food in the Dinning Hall. However, as the meeting will end earlier than anticipated, will Members please enjoy the dinner after the meeting.

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.

PRESIDENT (in Cantonese): Ms Miriam LAU, have you cast your vote?

MS MIRIAM LAU (in Cantonese): Madam President, my button shows no response. May I vote again now?

PRESIDENT (in Cantonese): Ms LAU, please press the button again, we are still in the process of voting.

MS MIRIAM LAU (in Cantonese): Madam President, I found that I had already voted.

PRESIDENT (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Eric LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong, Mr Michael MAK and Dr LO Wing-lok voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr LEUNG Fu-wah and Mr IP Kwok-him voted against the motion.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, 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 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, 24 were present, seven were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 15 were in favour of the motion and 10 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.

END OF SESSION

PRESIDENT (in Cantonese): Members, this meeting should be the last meeting of the current Legislative Session. I wish Members a happy summer vacation.

I now adjourn the Council. If, in accordance with the Legislative Council Ordinance, the Chief Executive publishes in the Gazette that the 2003-2004 Session will commence in October this year, the first meeting of this Council in the next Session will be held on 8 October 2003 at 2.30 pm.

Adjourned accordingly at nine minutes past Seven o'clock.

Annex II

BETTING DUTY (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "'Gaming Commission'" and substituting "'Football Betting and Lotteries Commission";".
2	In the proposed long title, by deleting "Gaming" and substituting "Football Betting and Lotteries".
4	In the proposed section 1A, in the definition of "football", by adding ", Australian Rules Football" before "or".
11(b)	In the proposed section 5(2), by deleting "3" and substituting "5".
New	By adding - "12A. Section added The following is added immediately after section 6 - "6AA. Offences and penalties under Part 2 (1) If a person acts in contravention of or fails to comply with this Part or any condition imposed under this Part, the person commits an offence and is liable to, if no other penalty is provided by this Part, a fine at level 3.

ClauseAmendment Proposed

(2) If a club acts in contravention of or fails to comply with this Part or any condition imposed under this Part, the secretary, treasurer and every steward or member of the committee or management of the club commit an offence and each is liable to, if no other penalty is provided by this Part, a fine at level 3."."

- 13 (a) By deleting the heading of the proposed Division 1 and substituting -

"Division 1 - Preliminary".

- (b) By deleting the proposed section 6A and substituting -

"6A. Interpretation of Part 3

- (1) In this Part -

"associate" (相聯者) means, in relation to a person -

- (a) the wife, husband or a minor child (including a minor step-child) of that person;
- (b) a body corporate of which that person is a director;
- (c) an employee or partner of that person; or
- (d) if that person is a body corporate -
 - (i) a director of that body corporate;

ClauseAmendment Proposed

(ii) a subsidiary of that body corporate; or

(iii) a director or employee of any such subsidiary;

"controller" (控制人) means, in relation to a company, a person who, alone or with any associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the company, or a body corporate of which the company is a subsidiary;

"director" (董事) includes any person occupying the position of director by whatever name called;

"financial penalty" (罰款) means a financial penalty imposed under section 6Z;

"juvenile" (未成年人士) means a person under the age of 18 years;

"principal officer" (主要人員) means, in relation to a company, a person employed by the company who -

(a) either alone or with any person, is responsible under the immediate authority of the directors of the company for the conduct of the business of the company; or

(b) under the immediate authority of a director of the company or a person employed by the

ClauseAmendment Proposed

company, exercises managerial functions in respect of the company;

"Secretary" (局長) means the Secretary for Home Affairs;

"subsidiary" (附屬公司) has the same meaning as in the Companies Ordinance (Cap. 32).

(2) A reference in this Part to a condition of a licence shall be a reference to a condition subject to which the licence is issued, or to continue in force."

(c) By adding immediately after the proposed section 6A -

**"6AAA. Determining if a person is a
"fit and proper" person**

In determining for the purpose of any provision of this Part if a person is a fit and proper person, the Secretary shall, having regard to that purpose, take into account -

- (a) the person's financial status and financial integrity;
- (b) the person's qualifications and experience;
- (c) the person's ability to act competently, honestly and fairly;

ClauseAmendment Proposed

- (d) the person's reputation and reliability;
 - (e) whether or not the person has any potential or actual conflict of interest;
 - (f) whether or not the person has been charged with or convicted of any offence, whether in Hong Kong or elsewhere; and
 - (g) any other matter that the Secretary considers relevant."
- (d) In the heading of the proposed Division 2, by deleting **"Gaming"** and substituting **"Football Betting and Lotteries"**.
- (e) In the proposed section 6B -
 - (i) in subsection (1) -
 - (A) by deleting "Gaming" and substituting "Football Betting and Lotteries";
 - (B) by deleting "博彩" and substituting "足球博彩及獎券";
 - (ii) in subsection (2)(c), by adding "appointed under paragraph (b)" before "as";
 - (iii) by adding -
 - "(2A) Of the persons appointed under subsection (2)(b) -

ClauseAmendment Proposed

- (a) at least one shall be a registered social worker within the meaning of the Social Workers Registration Ordinance (Cap. 505);
- (b) at least one shall be eligible under the Legislative Council Ordinance (Cap. 542) to be registered as an elector for the education functional constituency specified in section 20(1)(e) of that Ordinance; and
- (c) at least one shall -
 - (i) occupy in any organized religion any office associated with the teaching of, the giving of guidance on, or the promotion of adherence to, the precepts of the religion; or
 - (ii) be engaged in the teaching of any theology, philosophy or ethics.

ClauseAmendment Proposed

(2B) If -

(a) a person appointed under subsection (2)(b) ceases to be a member; and

(b) as a result, the total number of members appointed under that subsection falls below 8,

the Chief Executive shall, within 3 months after the date on which the person ceases to be a member, appoint another person as a member under that subsection.

(2C) If -

(a) a person appointed under subsection (2)(b) ceases to be a member; and

(b) as a result, subsection (2A) is no longer complied with,

the Chief Executive shall, within 3 months after the date on which the person ceases to be a member, appoint another person as a member under subsection (2)(b) so that subsection (2A) will be complied with.";

(iv) by adding -

ClauseAmendment Proposed

"(3A) If one of the reasons for appointing a person under subsection (2)(b) is to comply with subsection (2A), the notice published under subsection (3) in relation to the person shall contain a statement of that fact.".

(f) If the proposed section 6E -

(i) by adding -

"(1A) The quorum for a meeting of the Commission shall be not less than 6 members or one-third of the total number of members of the Commission, whichever is the greater.";

(ii) in subsection (3), by deleting everything before the comma and substituting -

"(3) If the Chairperson of the Commission reasonably believes that it is impracticable to call a meeting of the Commission".

(g) In the proposed section 6F, by adding -

"notice of additional assessment" (補加評估通知)
means a notice of additional assessment given under section 6NA;".

(h) In the proposed section 6G -

(i) in subsection (1) -

(A) by deleting "The" and substituting "Subject to subsection (1A), the";

ClauseAmendment Proposed

(B) by adding "fixed odds betting or pari-mutuel" before "betting";

(ii) by adding -

"(1A) The Secretary shall not issue the licence to a company unless the Secretary is satisfied that the company, and all the directors, principal officers and controllers of the company, are fit and proper persons for the purpose of this section.";

(iii) by deleting subsection (3) and substituting -

"(3) Issuance of the licence to a company is subject to the conditions that the company -

(a) shall not accept, or authorize any person to accept, bets from juveniles;

(b) shall not accept bets in any premises to which juveniles are permitted to have access;

(c) shall not pay dividends to juveniles;

(d) shall not advertise the conduct of betting on football matches on television or radio between the hours of

ClauseAmendment Proposed

4.30 p.m. and 10.30 p.m. on any day;

(e) shall not, in conducting any advertising or promotional activity -

(i) target juveniles;

(ii) exaggerate the likelihood of winning; or

(iii) expressly or impliedly suggest that betting on football matches is a source of income or a viable way to overcome financial difficulties;

(f) shall not accept bets on credit, or accept credit cards as a means of payment for placing bets; and

(g) shall conspicuously display and keep displayed notices that comply with subsection (5) -

(i) in any premises where the

ClauseAmendment Proposed

company accepts
bets; and

- (ii) on any web site
through which the
company accepts
bets.

(4) Issuance of the licence is also
subject to such conditions as the Secretary may
think fit to impose, including but not limited to
conditions relating to -

- (a) the categories of
matches on which
betting may be
conducted;
- (b) the manner and form in
which bets may be
accepted;
- (c) the keeping of premises
for accepting bets, the
number of such premises
and the persons who
may have access to such
premises; and
- (d) the provision of
information to the
Secretary.

(5) Any notice referred to in
subsection (3)(g) shall -

ClauseAmendment Proposed

- (a) contain a warning of the seriousness of the problems caused by excessive gambling; and
- (b) provide information on the services and facilities available in Hong Kong to problem gamblers and pathological gamblers.

(6) In this section -

"fixed odds betting" (固定賠率投注) means betting on the terms that any dividend payable on a bet is fixed at the time when the bet is placed;

"pari-mutuel betting" (彩池投注) means betting on the terms that any dividend payable on a bet depends on the respective shares of all winning bettors in the total amount of dividends available."

- (i) In the proposed section 6J(4)(b), by adding ", subject to section 6QA(6)," after "means".
- (j) In the proposed section 6M(3), by deleting "If a" and substituting "If the".
- (k) In the proposed section 6N(4) -
 - (i) in paragraph (a), by deleting "of the" and substituting "of";

ClauseAmendment Proposed

- (ii) in paragraph (d), by adding "manner in which and the" before "date".

- (l) By adding -

"6NA. Additional assessment

(1) Despite having given a notice of assessment to a football betting conductor in relation to a charging period, if the Collector reasonably believes that the net stake receipts that were derived from the conduct of authorized betting on football matches by the conductor in respect of that charging period exceed the amount of net stake receipts as specified in the notice, the Collector shall make an additional assessment of the net stake receipts that were derived in respect of that charging period.

(2) The additional assessment may only be made within 6 years after the end of that charging period.

(3) As soon as practicable after making the additional assessment, the Collector shall give the conductor a notice of additional assessment in writing, specifying -

- (a) the amount of net stake receipts as additionally assessed; and
- (b) the amount of additional football betting duty that is payable by the conductor, and the manner in which and the date on or before which the amount shall be paid.

ClauseAmendment Proposed

(4) The conductor shall make payment to the Collector in accordance with the notice of additional assessment."

(m) By deleting the proposed section 6O and substituting -

"6O. Surcharges

(1) If a notice of assessment, notice of additional assessment or notice of payment given under section 6PA(4) specifies that a football betting conductor shall pay an amount on or before a date, the Collector may, by notice in writing given to the conductor, demand the conductor to pay -

- (a) a surcharge if that amount is not fully paid on or before that date; and
- (b) a further surcharge if that amount is not fully paid at the end of 6 months after that date.

(2) The surcharge shall not exceed 5% of the unpaid part of the amount referred to in subsection (1).

(3) The further surcharge shall not exceed 10% of the total of -

- (a) the unpaid part of the amount referred to in subsection (1); and
- (b) if the surcharge is not fully paid at the end of the 6 months referred to in subsection

ClauseAmendment Proposed

(1)(b), the unpaid part of the surcharge.

(4) The Government may recover any surcharge or further surcharge as a civil debt."

(n) In the proposed section 6P -

(i) in the heading, by adding "**and holding over of duty**" after "**assessment**";

(ii) in subsection (1) -

(A) by adding ", or an additional assessment under section 6NA," after "6N";

(B) by adding "concerned" after "the assessment";

(C) by deleting everything after "Court" and substituting a full stop;

(iii) by adding -

"(1A) The appeal may only be made within 1 month after the date on which the notice of assessment or notice of additional assessment, as the case may be, is given.";

(iv) in subsection (3)(a)(i), by adding "concerned" after "assessment";

(v) in subsection (3)(a)(ii), by adding "concerned" after "assessment";

(vi) in subsection (5), by adding "concerned" after "assessment";

ClauseAmendment Proposed

(vii) by deleting subsection (6) and substituting -

"(6) If, according to the assessment concerned, an amount is payable by the conductor under section 6N or 6NA, as the case may be -

(a) the making of the appeal does not affect the conductor's obligation to pay the amount; and

(b) the Collector may, at the request of the conductor and subject to any conditions that the Collector may impose, order that payment of the whole or part of the amount be held over pending the final determination of the appeal."

(o) By adding -

"6PA. Provisions relating to holding over

(1) This section applies if -

(a) a notice of assessment or notice of additional assessment, as the case may be, specifies that a football betting conductor shall pay an amount on or before a date; and

ClauseAmendment Proposed

- (b) the Collector has ordered under section 6P(6)(b) that payment of the whole or part of the amount be held over pending the final determination of an appeal made by the conductor.

(2) If the conductor withdraws the appeal, the conductor shall pay the Collector -

- (a) the amount that was held over; and
- (b) interest on the amount that was held over, calculated at the specified rate from the date referred to in subsection (1)(a) to the date on which the appeal is withdrawn.

(3) If, according to the final determination of the appeal, the amount that is payable by the conductor under the assessment concerned exceeds the amount that was not held over, the conductor shall pay the Collector -

- (a) the difference between the 2 amounts; and
- (b) interest on so much of the amount that is held over and becomes payable as a result of the final determination, calculated at the specified rate from the date referred to in subsection (1)(a) to the date on

ClauseAmendment Proposed

which the appeal is finally determined.

(4) Where an amount is payable by the conductor under subsection (2) or (3) -

(a) the Collector shall give the conductor a notice of payment in writing, specifying -

(i) the total amount that is payable; and

(ii) the manner in which and the date on or before which the amount shall be paid; and

(b) the conductor shall pay the amount in accordance with the notice given under paragraph (a).

(5) The Government may recover any interest payable under this section as a civil debt.

(6) In this section, "specified rate" (指明利率) means the rate determined by the Chief Justice by order under section 50(1)(b) of the District Court Ordinance (Cap. 336).".

(p) By adding -

"6QA. Hedging policies

(1) A football betting conductor may submit to the Collector for approval a hedging policy, setting out -

ClauseAmendment Proposed

- (a) the factors that the conductor undertakes to consider; and
- (b) the procedure that the conductor undertakes to follow,

in placing a bet under section 6Q.

(2) As soon as practicable after receiving a policy submitted under subsection (1), the Collector shall, by notice in writing given to the conductor, inform the conductor if the policy is approved or not approved.

(3) A notice under subsection (2) shall, if the Collector approves the policy, specify the date on which the approval is to take effect.

(4) At any time after approving a policy, the Collector may, by notice in writing given to the conductor, withdraw the approval of the whole policy, or of any part of the policy.

(5) A notice under subsection (4) shall specify the date on which the withdrawal is to take effect.

(6) For the purpose of section 6J, if a football betting conductor claims that a bet was placed under section 6Q, and -

- (a) the conductor does not have a hedging policy that is approved under this section; or

ClauseAmendment Proposed

- (b) in relation to the placing of the bet, the Collector reasonably believes that the conductor has failed, in a material manner, to comply with the hedging policy that is approved under this section,

the bet shall not be taken as a hedging bet."

- (q) In the proposed section 6R(2), by deleting "3" and substituting "5".

- (r) In the proposed section 6S -

- (i) in subsection (1), by deleting "The" and substituting "Subject to subsection (1A), the";

- (ii) by adding -

"(1A) The Secretary shall not issue the licence to a company unless the Secretary is satisfied that the company, and all the directors, principal officers and controllers of the company, are fit and proper persons for the purpose of this section.";

- (iii) by deleting subsection (3) and substituting -

"(3) Issuance of the licence to a company is subject to the conditions that the company -

- (a) shall not accept, or authorize any person to accept, bets from juveniles;

ClauseAmendment Proposed

- (b) shall not accept bets in any premises to which juveniles are permitted to have access;
- (c) shall not entertain claims by juveniles for prizes;
- (d) shall not advertise the conduct of lotteries on television or radio between the hours of 4.30 p.m. and 10.30 p.m. on any day;
- (e) shall not, in conducting any advertising or promotional activity -
 - (i) target juveniles;
 - (ii) exaggerate the likelihood of winning; or
 - (iii) expressly or impliedly suggest that betting on lotteries is a source of income or a viable way to overcome financial difficulties;
- (f) shall not accept bets on credit, or accept credit cards as a means of payment for placing bets; and

ClauseAmendment Proposed

(g) shall conspicuously display and keep displayed notices that comply with subsection (5) -

(i) in any premises where the company accepts bets; and

(ii) on any web site through which the company accepts bets.

(4) Issuance of the licence is also subject to such conditions as the Secretary may think fit to impose, including but not limited to conditions relating to -

(a) the types of lotteries that may be conducted;

(b) the manner in which lotteries may be drawn;

(c) the manner in which the results of lotteries may be announced; and

(d) the provision of information to the Secretary.

(5) Any notice referred to in subsection (3)(g) shall -

(a) contain a warning of the seriousness of the problems

ClauseAmendment Proposed

caused by excessive gambling; and

- (b) provide information on the services and facilities available in Hong Kong to problem gamblers and pathological gamblers."

- (s) In the proposed section 6U(2), by deleting "3" and substituting "5".

- (t) In the proposed section 6Y -

- (i) in subsection (1)(a), by deleting "of the licence" and substituting "that is imposed by the Secretary";

- (ii) by adding -

"(1A) The variation shall not take effect before the expiry of the period referred to in section 6ZB(2), being the period within which the holder of the licence may appeal against the decision of the Secretary to make the variation.";

- (iii) by deleting subsection (2) and substituting -

"(2) The notice shall specify -

- (a) the reasons for varying the conditions of the licence; and
 - (b) the date on which the variation is to take effect."

ClauseAmendment Proposed

- (u) In the proposed section 6Z, by adding -

"(1A) The holder shall not be required to pay the penalty before the expiry of the period referred to in section 6ZB(2), being the period within which the holder may appeal against the decision of the Secretary to impose the penalty.".

- (v) In the proposed section 6ZA -

- (i) by adding -

"(1A) The Secretary may also, by notice in writing given to the holder of a licence, revoke the licence if the Secretary is no longer satisfied that the holder, or any of the directors, principal officers or controllers of the holder, is a fit and proper person for the purpose of section 6G or 6S, as the case may be.";

- (ii) by deleting subsection (2) and substituting -

"(2) The notice shall specify -

- (a) the reasons for revoking the licence; and
- (b) the date on which the revocation is to take effect.".

- (w) In the proposed section 6ZB -

- (i) in subsection (3), by adding "other than a decision to revoke a licence" before the comma;

ClauseAmendment Proposed

(ii) by adding -

"(4) If an appeal is made against a decision to revoke a licence, the effect of the decision is not suspended by the making of the appeal."

(x) In the proposed section 6ZD, by adding -

"(2A) Hearing of an appeal shall be held in public unless the Chairperson decides that the hearing shall be held in private."

(y) In the proposed section 6ZF(3), by deleting "level 3" and substituting "level 6".

17(b) By deleting "者" and substituting "商".

19 In the proposed regulation 3A -

(a) in paragraph (1), by deleting "以";

(b) in paragraph (2)(b), by deleting "in accordance with paragraph (3)";

(c) in paragraph (3) -

(i) by deleting everything before subparagraph (a) and substituting -

"(3) The qualified person shall state in the audit report whether, in the opinion of the qualified person and in relation to that charging period, the following statements are true -";

(ii) in subparagraph (b), by deleting "and audited".

BETTING DUTY (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Cyd Ho Sau-lan

ClauseAmendment Proposed

1

By deleting subclause (2) and substituting -

"(2) This Ordinance shall come into operation on 1
January 2004.".

Annex III

PREVENTION OF CHILD PORNOGRAPHY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>(a) In the definition of "child pornography", in paragraph (a), by deleting "appears to be" and substituting "is depicted as being".</p> <p>(b) In the definition of "pornographic depiction", in paragraph (a), by deleting "who is or appears to be engaged in explicit sexual conduct;" and substituting "as being engaged in explicit sexual conduct, whether or not the person is in fact engaged in such conduct; or".</p>
2(2)	<p>By deleting paragraph (b) and substituting -</p> <p>"(b) shows the child pornography in any manner whatsoever to another person (including but not limited to showing, playing or projecting the child pornography to or for another person using any machinery or apparatus and publicly displaying the child pornography).".</p>
4	<p>By deleting the clause and substituting -</p> <p>"4. Defences</p> <p>(1) It is a defence to a charge under section 3 for the defendant to establish -</p>

ClauseAmendment Proposed

- (a) that the depiction that is alleged to constitute child pornography has artistic merit; or
- (b) that the thing that is alleged to constitute child pornography is, or was at the time the offence is alleged to have been committed, classified as a Class I or a Class II article under the Control of Obscene and Indecent Articles Ordinance (Cap. 390).

(2) It is a defence to a charge under section 3 (other than section 3(3)) for the defendant to establish -

- (a) that he committed the act that is the subject of the charge for a genuine educational, scientific or medical purpose;
- (b) that the act that is the subject of the charge otherwise served the public good and did not extend beyond what served the public good;
- (c) that he had not seen the child pornography and did not know, nor did he have any reasonable cause to suspect, it to be child pornography; or
- (d) that -
 - (i) he took all such steps as were reasonable and practicable in the circumstances of the case to ascertain the age of the person pornographically depicted in the

ClauseAmendment Proposed

child pornography when
originally depicted;

- (ii) in so far as the defendant was able to influence in any way how the person was depicted, he took all such steps as were reasonable and practicable in the circumstances of the case to ensure that the person was not depicted as a child; and
- (iii) he believed on reasonable grounds that the person was not a child when originally depicted and that the person was not depicted as a child.

(3) It is a defence to a charge under section 3(3) for the defendant to establish -

- (a) that his possession of the child pornography was for a genuine educational, scientific or medical purpose;
- (b) that his possession of the child pornography otherwise served the public good and did not extend beyond what served the public good;
- (c) that he had not seen the child pornography and did not know, nor did he suspect, it to be child pornography;
- (d) that he had not asked for any child pornography and, within a reasonable

ClauseAmendment Proposed

time after it came into his possession, he endeavoured to destroy it; or

- (e) that he believed that the person pornographically depicted in the child pornography was not a child when originally depicted and that the person was not depicted as a child.

(4) Unless subsection (5) applies, a defendant is to establish any fact that needs to be established for the purpose of a defence under this section on the balance of probabilities.

(5) A defendant charged with an offence under section 3(3) is to be taken to have established any fact that needs to be established for the purpose of a defence under subsection (3)(c), (d) or (e) if -

- (a) sufficient evidence is adduced to raise an issue with respect to the fact; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt."

5(5) By adding -

" "vehicle" (車輛) does not include a military vehicle;".

8(1)(a) By deleting "and" and substituting "or".

10(2)(b) By deleting "or (4)" and substituting ", (2)(a) or (b) or (3)(a) or (b)".

<u>Clause</u>	<u>Amendment Proposed</u>
11(1)(a)	By adding "and" after the semicolon.
14	<p>(a) By deleting the proposed section 138A(4) and substituting -</p> <p style="padding-left: 40px;">"(4) For the purposes of this section, to depict a person pornographically means -</p> <p style="padding-left: 80px;">(a) to visually depict a person as being engaged in explicit sexual conduct, whether or not the person is in fact engaged in such conduct; or</p> <p style="padding-left: 80px;">(b) to visually depict, in a sexual manner or context, the genitals or anal region of a person or, in the case of a female person, her breast,</p> <p style="padding-left: 40px;">but, for the avoidance of doubt, a depiction for a genuine family purpose does not, merely because it depicts any part of the body referred to in paragraph (b), fall within that paragraph."</p> <p>(b) In the proposed section 138A(5), in the definition of "pornography", in paragraph (a), by deleting ", whether or not it is a depiction of a real person".</p>
16	<p>(a) By deleting the proposed section 153P(3) and substituting -</p> <p style="padding-left: 40px;">"(3) Where a defendant is charged with an offence that is an offence by virtue of subsection (1) or (2) and involves a sexual act done by him with or to another person, it is a defence for the defendant to establish that -</p>

ClauseAmendment Proposed

- (a) at the time of the sexual act, there existed between the defendant and that other person a marriage that was valid, or recognized as valid, under the law of -
 - (i) the place where the marriage was solemnized;
 - (ii) the place where the sexual act was done; or
 - (iii) the place of the defendant's residence or domicile;
 - (b) when it was solemnized, the marriage was genuine; and
 - (c) at the time of the sexual act, that other person consented to the sexual act."
- (b) In the proposed section 153Q(4), by deleting "himself".