

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 17 March 2004

The Council met at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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.

MEMBERS ABSENT:

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

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

PUBLIC OFFICERS ATTENDING:

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

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

DR THE HONOURABLE YEOH ENG-KIONG, J.P.
SECRETARY FOR HEALTH, WELFARE AND FOOD

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

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

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

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

THE HONOURABLE AMBROSE LEE SIU-KWONG, IDSM, J.P.
SECRETARY FOR SECURITY

CLERKS IN ATTENDANCE:

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Patents (General) (Amendment) Rules 2004	37/2004
Registered Designs (Amendment) Rules 2004	38/2004
Trade Marks (Amendment) Rules 2004	39/2004
Intellectual Property (Miscellaneous Amendments) Ordinance 2001 (2 of 2001) (Commencement) Notice 2004	40/2004
Mutual Legal Assistance in Criminal Matters (Philippines) Order (Cap. 525 sub. leg. K) (Commencement) Notice 2004	41/2004

Other Papers

- No. 71 — Hong Kong Tourism Board
2002/2003 Annual Report
- No. 72 — Audited Financial Statements and Report on Activities of
the Hong Kong Examinations and Assessment Authority
for the year ending 31 August 2003

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Mobile Phones with Built-in Camera Functions

- DR TANG SIU-TONG** (in Cantonese): *Madam President, will the Government inform this Council:*

- (a) *of the number of cases reported to the authorities regarding unlawful acts committed by using the camera functions of mobile phones in the past year, whether there is an upward trend for such unlawful acts, and whether the authorities have instituted prosecutions in such cases; if prosecutions have been instituted, of the offences involved and the prosecution results;*
- (b) *whether there are express provisions prohibiting users of the Leisure and Cultural Services Department (LCSD)'s venues, in which changing rooms are provided, from bringing their mobile phones with built-in camera functions into these changing rooms; if so, how such provisions are implemented; if not, the reasons for that; and*
- (c) *whether the authorities have any plans to monitor the use of the camera functions of mobile phones through legislation or other measures, so as to safeguard privacy and prevent unruly elements from engaging in unlawful activities using such functions?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the third part of Dr the Honourable TANG Siu-tong's question is related to the protection of privacy. I would give a brief account of privacy protection in Hong Kong before I reply to his question in *seriatim*.

With respect to the protection of personal privacy, Article 17 of the International Covenant on Civil and Political Rights provides that no one shall be subjected to interference of his private life. By virtue of Article 39 of the Basic Law of the Hong Kong Special Administrative Region, provisions of the Covenant have acquired a constitutional status in Hong Kong. Chapter 486 of the Laws of Hong Kong, the Personal Data (Privacy) Ordinance, protects the personal data privacy of living individuals. Other than this, Hong Kong does not have specific legislation dealing with privacy issues. The Law Reform Commission Subcommittee on Privacy is following up the views expressed by different sectors on the Consultation Paper on Civil Liability for Invasion of Privacy. We will study the subject in detail when the report is available.

My reply to Dr TANG's question is as follows:

- (a) The police has not kept separate statistics on offences involving the use of mobile phones with camera functions. As regards offences related to clandestine photographing with such functions in mobile phones, the police received 12 complaints in 2003. Most of them involved clandestine photographing of female private parts. On average, there is one such offence every month. Yet, there is no sign of an upward trend. Of the seven cases heard in court by the end of 2003, all offenders had been successfully prosecuted for offences such as loitering, disorderly behaviour in public places or outraging public decency. The sentence handed out included immediate or suspended imprisonment, putting on probation order or a fine.
- (b) There is no express provision prohibiting members of the public from carrying their mobile phones with built-in camera functions into the changing rooms of the LCSD's venues. As mobile phones with built-in camera functions are gaining popularity, more and more people are using them. It does not necessarily follow that unlawful acts would be performed when people carry such mobile phones into changing rooms. If carrying of these phones into changing rooms is strictly prohibited, it would cause inconvenience to users including the law-abiding majority. There would also be enforcement difficulties.

Nevertheless, there are clear provisions in the subsidiary legislation of Chapter 132 of the Laws of Hong Kong, the Public Health and Municipal Services Ordinance, regulating the acts of users in the LCSD venues such as sports grounds, beaches, swimming pools, and so on. Generally speaking, taking photos or making a video recording in the venues is an offence if the act has caused obstruction or annoyance to the other users. Venue staff will take immediate action to stop them on detecting such acts. A person found in breach of the regulation is liable to a fine at level one (that is, \$2,000) under Chapter 221 of the Laws of Hong Kong, the Criminal Procedure Ordinance, and to imprisonment of 14 days on summary conviction.

- (c) Neither Chapter 106 of the Laws of Hong Kong, the Telecommunications Ordinance, nor the licence issued to mobile

phones operators prohibits installation or use of camera functions of mobile phones, or transmission of the images taken to the others. The Office of the Telecommunications Authority considers that the camera functions of mobile phones can be used for video telephony and are therefore not inconsistent with the Telecommunications Ordinance.

There is no specific ordinance making clandestine photographing or video-shooting with any equipment, including mobile phones with camera functions, a criminal offence. As I have said earlier, of the seven cases tried in 2003, the offenders were convicted of the offence of loitering, behaving disorderly in public places or outraging public decency. The penalty meted out to them include immediate or suspended imprisonment, putting on probation order and fines.

DR TANG SIU-TONG (in Cantonese): *Madam President, part (b) of the main reply pointed out that, generally speaking, taking photos or making a video recording in LCSD venues was an offence if the act had caused obstruction or annoyance to the other users, and that venue staff would take immediate action to stop them on detecting such acts. But the problem is that when photos are being taken with the camera function of a mobile phone, it is difficult for venue staff to tell whether the camera function is in use. In this connection, in what way can the Government tell whether photos are being taken, and how can it safeguard people's privacy?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, for changing rooms in LCSD venues, venue staff usually conduct inspections on a regular basis. If they see anyone taking photos with camera or mobile phone with built-in camera functions, and if such act has caused annoyance to the other users, they can take immediate action. On the other hand, if the people being photographed feel disturbed or inconvenience has been caused to them, they can lodge complaints to the monitoring or inspecting staff at LCSD venues, and appropriate actions will be taken.

MR FRED LI (in Cantonese): *Madam President, legislation is, in fact, in place to prohibit the carrying of video camera into cinemas to prevent pirated*

recording of movies. Why does the Government not handle the matter based on the same logic, especially when there are many complaints involving the changing rooms of swimming pools, by targeting actions on this situation and strictly prohibiting the carrying of any devices with photo-taking functions — not only mobile phones, because technology has developed to a state that even a pen can take photos — into the changing rooms? Why is it that no rule has been made in the subsidiary legislation to prohibit people from carrying devices with camera functions into certain places, in particular changing rooms?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, of course we can do that, but we have to take into consideration the fact that most people who carry their mobile phones into changing rooms are not law offenders. As mobile phones with built-in camera functions are gaining popularity, more and more people are using them. If we strictly prohibit people from carrying mobile phones into changing rooms, it would cause inconvenience to the law-abiding majority.

MR HUI CHEUNG-CHING (in Cantonese): *Madam President, since it is difficult to prohibit people from carrying mobile phones into changing rooms, has the Government considered providing individual cubicles with curtains in the LCSD's changing rooms, so as to safeguard privacy?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, it is absolutely possible. As a matter of fact, the changing rooms of some LCSD venues — not all of them — are already equipped with individual cubicles.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, it is mentioned in part (a) of the main reply that the offenders had been prosecuted for offences such as loitering, disorderly behaviour in public places or outraging public decency. Were these charges instituted under the common law principles or provisions in statutory laws, that is, were such offences statutory offences or common law offences?*

PRESIDENT (in Cantonese): Secretary for Constitutional Affairs. Sorry, Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, Mr SIN's question involves the enforcement of law. We will refer the question to the Security Bureau for it to provide a written reply later on. (Appendix I)

MR HENRY WU (in Cantonese): *Madam President, in part (b) of the main reply, it is said that in LCSD venues, unauthorized photographing was an offence if such act had caused obstruction or annoyance to the other users. The question involves mobile phones and we all know that some mobile phones, such as the 3G phones, are used for communication purposes, not for taking photos. In this connection, is it possible to extend the meaning of "photographing" to include not only taking photos in the legislation? At present, photographing usually refers to taking photos, but the problem is that when using a 3G phone, the image in the background will also be shot. In this regard, will the meaning of "photographing" be extended in the legislation by making amendments in the light of new technological development? And will signages be provided in these places to tell people that such act is against the law?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, taking photos without the consent or not to the knowledge of the person concerned is not necessarily a malicious or unlawful act. Issues involving privacy are very complicated. In other words, clandestine photographing is not an unlawful act. As I have just said, the Law Reform Commission Subcommittee on Privacy is collecting views from different sectors on this issue. We will conduct detailed studies and hold public discussions when the report is available.

MR AMBROSE LAU (in Cantonese): *Madam President, in the second paragraph of the main reply, it is mentioned that the Law Reform Commission Subcommittee on Privacy was following up the views expressed by different sectors on the Consultation Paper on Civil Liability for Invasion of Privacy. Will the Government specifically conduct a study on this question raised by Dr TANG, that is, the problem of clandestine photographing or video-shooting in changing rooms? Also, apart from civil liability, will consideration be given to imposing criminal liability on such act?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we will certainly relay Mr LAU's request to the Law Reform Commission Privacy Subcommittee on Privacy.

PRESIDENT (in Cantonese): Second question.

Provision of Noise Enclosures for Route 5 Extension Passing Through Discovery Park

2. **MR TAM YIU-CHUNG** (in Cantonese): *Madam President, I have learnt that, at a meeting with the Owners' Committee of Discovery Park in Tsuen Wan, the Secretary for the Environment, Transport and Works undertook to reconsider the provision of noise enclosures for one of the road sections (the exit point at Mei Wan Street) of Route 5 Extension passing through Discovery Park, and review the effect of falling objects on road safety. In this connection, will the Government inform this Council:*

- (a) *whether it has decided to provide noise enclosures for the above road section in order to mitigate the traffic noise; if it has decided to do so, of the timetable and other relevant details of the works; if it has decided otherwise or not yet decided, the reasons for that; and*
- (b) *of the measures to prevent falling objects from endangering users of the road section concerned, and the amount of expenditure on these measures?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, I have done some detailed investigations on noise barriers and measures to mitigate noise. In particular, I had several meetings about the Discovery Park case as mentioned by Mr TAM Yiu-chung. Now I may report to the President.

- (a) The responsibility of providing traffic noise mitigation measures can rest with the Government and/or the developer, depending on the circumstances of individual cases. In the case in question, the traffic noise impacts on Discovery Park of Route 5 Extension

currently under construction are jointly addressed by the developer and the Government.

In approving the Master Layout Plan of Discovery Park in 1991, the Town Planning Board (TPB) imposed specific requirements on the developer to address the traffic noise impacts on Discovery Park, including those that are expected to arise from Route 5 Extension after its commissioning. According to the approved Master Layout Plan and the requirements of the TPB, the noise mitigation measures to be implemented by the developer included leaving space in the building structure of Discovery Park to allow Route 5 Extension to go through in future such that a section of the road would be covered by the podium of the building for noise insulation purpose; erecting a 30 m long noise enclosure to the east of Discovery Park at the exit point at Mei Wan Street; and using suitable building orientation and setting back the residential blocks away from the roadside as far as possible.

Direct noise mitigation measures have also been incorporated into the Route 5 Extension project being carried out by the Government, including erecting a 4 m high, 120 m long noise barrier to the west of Discovery Park, and paving the road sections to the east and west of Discovery Park with low-noise materials.

With these direct mitigation measures in place, it is expected that the traffic noise level to which more than 90% of the residential units of Discovery Park will be exposed will not exceed the limit of 70 dB. For the remaining less than 10%, the developer was required by the Master Layout Plan to provide indirect noise mitigation measures in the form of suitable insulated windows and air-conditioners to reduce the traffic noise levels to which they might be exposed.

As the developer has implemented all the direct and indirect traffic noise mitigation measures according to the Master Layout Plan and the requirements of the TPB in the Discovery Park development project and the Territory Development Department will implement the aforesaid direct noise mitigation measures as planned, we cannot accept the residents' request for the provision of additional noise barriers at the exit point of Route 5 Extension at Mei Wan Street.

Nevertheless, in view of the residents' concern, we will implement other noise mitigation measures, including minimizing the number of road joints on Route 5 Extension and ensuring that the road joints are as smooth as possible so as to reduce the traffic noise generated by passing vehicles.

- (b) On the question of objects falling from height, according to the Summary Offences Ordinance, if anything is dropped or allowed to fall from any building to the danger or injury of any person in or near a public place, the person who drops that thing or allows it to fall commits an offence and is liable to a fine of \$10,000 and imprisonment for six months.

As there are buildings along most of the roads in Hong Kong, we believe Members and the community may agree that using noise barriers or enclosures to avert the danger caused by objects falling from height is both a negative and an inappropriate approach. We must take legal actions against the offenders and impose severe penalty on them but not rely on using noise barriers or enclosures as preventive measures.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, the Secretary mentioned at the beginning that she had several meetings about this case, but she all along insisted that measures as originally designed were adequate. Why was she so insistent? Has it anything to do with the "face" of the relevant officials responsible for this project, as they think that they would lose face if additional noise barriers are added now and so, they strongly oppose the suggestion, or has it anything to do with financial commitment? I would like the Secretary to explain this.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, the Government has specific policies with regard to the retrofitting of noise barriers, that is, the noise mitigation measures have already been decided in drawing up the Master Layout Plan. Subsequently, residents of Discovery Park made the demand. Certainly, from the perspective of residents, the lower the noise the better, but there is no evidence showing that the noise has exceeded the permitted level. It is imaginable that in Hong Kong, which is a densely populated city, a lot of places are exposed to noise nuisance.

In the Discovery Park case, we could see that both the developer and the Government have, during the planning stage, drawn up many noise mitigation measures which are in conformity with the guidelines in our environmental protection legislation. If a noise enclosure is erected here, firstly, there will be contradictions as far as policy is concerned; secondly, residents in many other places would make the same request and then problems would arise in respect of practicality. Of course, from a financial viewpoint, this would create a burden. Whether in terms of the construction cost or the future repair and maintenance cost, it would be difficult to justify the viability from the perspective of government policies. For this reason, we conclude that we are unable to provide additional noise mitigation measures specifically for residents of Discovery Park.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, the Secretary did not tell us in her reply the amount of financial commitment.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, the cost of erecting a 7.5 m high, 80 m long semi-enclosure to the east of Discovery Park at Mei Wan Street is \$6.8 million. If the 4 m high, 120 m long noise barrier at the west end is upgraded to a semi-enclosure, it will cost \$9.8 million, and the total cost will be \$16.6 million.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, to residents of Discovery Park, the noise level is already very high now even before the commissioning of this Extension. The Secretary mentioned earlier that mitigation measures would be implemented to minimize noise nuisance in future. In this connection, I would like to ask the Secretary this: Since the actual result of the mitigation measures is still unknown, will the Secretary consider reviewing the effectiveness and the situation in the future? If the result is not ideal, will the Secretary take follow-up actions and reconsider the erection of a noise enclosure?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, we have given careful consideration to the traffic noise impacts on Discovery Park of Route 5 Extension, and as I have explained just now, the situation meets the established standard. We understand

the concerns of the residents and that is why we have minimized the number of road joints in the design of the road. As far as the engineering works are concerned, that is feasible and involves no additional costs. How could the best result be achieved? From the residents' perspective, of course, the lower the noise level the better. But when the standard is met, every subsequent move should be made only when the cost-effectiveness is not affected and then we may examine what adjustment can be made as far as engineering works are concerned. As to the extent of noise abatement, the noise would be reduced progressively by small degrees, and there will not be an overall reduction, because the noise level has already met the standard of not exceeding 70 dB according to our policy.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, just now I asked the Secretary whether she would review the effectiveness. The Secretary said in her reply that the noise level had already been kept within the limit of 70 dB, but it is only an estimate. What actions will be taken if the actual level exceeds the limit of 70 dB or the situation is even more serious? The Secretary has not responded to that.*

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, you were assuming that the noise level has exceeded the limit of 70 dB and asked what the Secretary would do. This appears to be a hypothetical question.

MR LEUNG YIU-CHUNG (in Cantonese): *No, just now I asked the Secretary whether she would review the effectiveness.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, all the noise levels that fall within the purview of the TPB are kept below the limit of 70 dB through assessments. As to the effectiveness, the Environmental Protection Department will conduct tests on the noise level. This is part of the ongoing work of our department.

DR TANG SIU-TONG (in Cantonese): *Madam President, we have to spend more than \$10 million on the construction of the noise barriers. My question is: If, in the future, the noise level exceeds 70 dB after the noise barriers are*

retrofitted and additional barriers have to be provided, what would be the costs involved?

PRESIDENT (in Cantonese): Dr TANG Siu-tong, the words "If, in the future" make your question a hypothetical one. Please think about it again and I will let you ask your supplementary later.

MR ALBERT CHAN (in Cantonese): *Madam President, if the Secretary passes Discovery Park, she will see a 6 ft portrait of her being placed at a footbridge permanently. Every day when I leave home, I will see her face before going to work. Residents of Discovery Park have hung a big banner with the portrait of the Secretary on it at a footbridge.*

The Secretary mentioned the work carried out by the developer in her main reply. However, does the Secretary know that most of the owners were unaware of the fact that the noise level of their units would exceed the limit of 70 dB when they purchased their units, despite that insulated windows and air-conditioners are subsequently installed in these units? Does the Secretary consider that these owners had been misled or deceived because they bought the units without knowledge of the problem and thought that as the Government had required that the noise level should be kept within the limit of 70 dB under the Town Planning Ordinance, the noise level of their units should not exceed this limit? Does the Secretary think that the Government is obliged to do justice to these owners by doing more for them, so that these owners will not expose to a noise level exceeding the limit of 70 dB even when they keep their windows open?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, in respect of noise control and design, I hope Members could listen clearly that it is a policy issue. I think it does not stand for anything even though my portrait is hung up there, only that I am scolded by people every day, and as Mr Albert CHAN passes there every day, he may also say something to the portrait. (*Laughter*) As for the planning and design of 1991, and whether the sales description and the overall planning have been announced and made clear to the public, these are the responsibilities of the developer; and as it also involves other provisions relating to land and the sales

of properties, I am not in a position to make comments here. We should understand that 70 dB is only an assessment criterion, not the objective that must be achieved as provided in the Noise Control Ordinance. We have tried our best to work out this 70 dB criterion to serve as a basis for assessment in planning and construction. So, we should look at the 70 dB criterion from this perspective.

MR ALBERT CHAN (in Cantonese): *Madam President, I asked the Secretary whether or not the Government should do justice to these owners who purchased the units without knowledge of the hidden problem?*

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

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, my reply is the same as the one I have given just now. That is, if the principal landlord concealed the problem, then the principal landlord should be held responsible and there is no reason for the Government to be held responsible. If you say that you wish to follow up why the legislation on the sale of property at that time did not provide that all future and known planning must be set out expressly, then it is another issue.

PRESIDENT (in Cantonese): This Council has spent more than 16 minutes on this question, but I have said earlier that I would give Dr TANG Siu-tong the last opportunity to ask his question.

DR TANG SIU-TONG (in Cantonese): *Madam President, I have reorganized my supplementary. After the completion of the road, what is the cost for the installation of those noise insulation facilities?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, I do not have the figures at hand. Please allow me to give a reply in writing. (Appendix II)

PRESIDENT (in Cantonese): Third question.

Promotion of and Education on Basic Law

3. **MR MA FUNG-KWOK** (in Cantonese): *Madam President, regarding the promotion of and education on the Basic Law, will the Government inform this Council:*

- (a) *of the amount of public money spent on the promotion and publicity of the Basic Law in each of the past six years; whether certain provisions of the Basic Law have been selected as the focal points in such promotional activities; if so, of the provisions selected;*
- (b) *whether it has assessed changes in the understanding of the Basic Law among civil servants, employees of subvented organizations and members of the public respectively over the past six years; if it has, of the assessment results; if not, the reasons for that; and*
- (c) *whether, in conducting consultations on policies involving provisions in the Basic Law, it has assessed the level of understanding of the relevant provisions among members of the public, and whether it has taken corresponding measures to ensure that they understand the contents of the provisions when discussing these policies?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President,

- (a) Over the past six years, the Government of the Hong Kong Special Administrative Region (SAR) allocated a total of \$28.5 million for promoting the Basic Law. In 1998-99 and 1999-2000, the SAR Government made a one-off non-recurrent allocation of \$10 million for promoting the Basic Law.

In 2001-02 and 2002-03, a further non-recurrent allocation of \$5.56 million was made.

From 2000-01 to 2003-04, the recurrent allocations of relevant bureaux and departments for promoting the Basic Law are as follows:

<i>Year</i>	<i>(\$ million)</i>
2000-01	3.76
2001-02	2.94
2002-03	2.78
2003-04	3.46

Since the reunification, in overall terms we have made use of a variety of channels to promote the Basic Law, as well as its significance to the various systems of Hong Kong and local issues.

These promotional activities include producing TV and radio programmes, TV Announcements of Public Interest (API), teaching materials, brochures, and leaflets; organizing seminars, training courses, competitions and roving exhibitions; and launching computer and on-line games.

The promotional activities and materials have covered the concept of "one country, two systems", knowledge about the country, the relationship between the Central Authorities and the SAR, as well as the rights and obligations of Hong Kong residents. For example, "An ABC Guide to the Basic Law" published by the Committee on the Promotion of Civic Education gives an overview of the Basic Law.

As regards promotional activities which focus on specific issues in the Basic Law and related provisions, we may take the training activities organized by the Civil Service Training and Development Institute (CSTDI) as an example. The CSTDI provides tailor-made training programmes for civil servants having regard to the operational needs of different departments or grades. For instance, the CSTDI has organized a seminar entitled "the Basic Law and the Bill of Rights" for newly recruited police officers. Where necessary, it will also organize seminars on specific topics in accordance with the Government's policy directions, such as seminars on the "implementation of Article 23 of the Basic Law,"

the "Basic Law and the Development of the Political Structure of the HKSAR" and the "Interpretation and Amendment of the Basic Law."

We have also produced TV APIs which focus on specific provisions of the Basic Law. These provisions include Articles 9, 10, 14, 23, 27, 28, 30, 31, 32, 33, 34, 37, 106, 111, 112, 114, 118, 140, 149 and 155.

- (b) In 2000 and 2002, the Constitutional Affairs Bureau commissioned the Census and Statistics Department to conduct surveys on the public understanding of the Basic Law. Respondents of the surveys included civil servants.

The percentage of members of the public aged 15 or above who claimed to have a good or some knowledge of the Basic Law increased from 25% in 2000 to 48% in 2002, representing almost a 100% rise. The percentage of members of the public who claimed to have heard of the Basic Law increased from 80% in 2000 to 90% in 2002. The findings in 2000 and 2002 reveal that nearly 80% of civil servants claimed to have a good understanding of or some knowledge of the Basic Law. In the 2000 survey, 0.3% of civil servants stated that they had never heard of the Basic Law; whereas in 2002, not one civil servant claimed to have never heard of the Basic Law.

The SAR Government has not made any specific assessment on the level of understanding of the Basic Law among employees of subvented organizations. However, generally speaking, the level of understanding of the Basic Law among the Hong Kong community has increased.

- (c) The Basic Law is closely related to the formulation and implementation of policies by the Government. In implementing any policy, the Government will ensure that the Basic Law is strictly adhered to and will introduce to the public the relationship between the relevant policies and the Basic Law, as necessary.

MR MA FUNG-KWOK (in Cantonese): *Madam President, although we understand that the Government has used a lot of resources to promote the Basic Law, we do not know much as to how the Government assesses the effectiveness of these promotions. For example, as an ordinary citizen, I have noticed that there are many TV APIs in recent years, for TV APIs are most heavily promoted. But they are only about the rights which Hong Kong people can enjoy, for example, free port, freedom of living, shouldering of the expenditure for garrison by the Central Authorities, and so on. As for matters which are more fundamental and political — although some work has been done in respect of national security — it appears that little has been mentioned in such aspects as the relationship between the Central Authorities and the territory, the responsibilities of SAR residents, and also the principle that the people should abide by the Basic Law or the Government should abide by the Basic Law. I would like to ask the Government what criteria do the authorities follow in choosing which Articles to promote? Regarding the fundamental and political issues which I mentioned, is the Government avoiding them on purpose, or does it regard them as totally unimportant?*

As regards part (c) of the main question, Madam President, I think the Government has not answered it because I asked the Government if it has assessed whether the public has fully understood the Basic Law when discussing these policies, instead of whether these policies conform to the Basic Law.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): *Madam President, I thank Mr MA for his further question. In fact, in handling the promotion of the Basic Law, we will focus on promotions covering all the contents of the Basic Law, as well as promotions and introductions on individual Articles or individual areas. Mr MA is particularly concerned about whether our TV APIs will over-emphasize individual freedom and rights. It is true that a substantial part of the TV APIs are about this, but we do have other APIs which focus on areas other than rights, for example, the official languages adopted by the SAR, national flag and regional flag, national emblem and regional emblem, and so on. Another category of APIs includes issues such as Hong Kong can participate in international sports activities using the name of the SAR, and Articles relating to literary and artistic creation, and so on.*

Mr MA is concerned about whether, when promoting these Articles of the Basic Law, there is any link with the policy matters that we have to handle. I

can say that whenever necessary, we will focus specially on introducing to Hong Kong society certain areas and certain Articles of the Basic Law. For example, in 1999, we had to deal with the interpretation of Article 24 of the Basic Law and the right of abode issue. Apart from publicity efforts, we also conducted numerous discussions in society in respect of the substantive work. That is why we were able to properly handle the problem back then. Another example is the issue on the principle and legal procedure for constitutional development which we are handling at the moment. We have intentionally introduced this issue to Hong Kong society, guided and led the discussions, and promoted public understanding of this area of the Basic Law through television, other forms of media and web pages. By doing so, we can gain new insights through reviewing past experiences. Moreover, we all the more hope that such issues concerning the principles of the Basic Law and legal procedures can be broadly understood in Hong Kong, so that a platform can be laid to help us do a good job. Therefore, we will, having regard to the current situation, step up promotion in certain areas.

PRESIDENT (in Cantonese): Mr MA Fung-kwok, has your supplementary question not been answered?

MR MA FUNG-KWOK (in Cantonese): *No, it has not been answered, Madam President. The part unanswered is relating to part (c) of the main question, that is, whether it has assessed the level of understanding of the relevant provisions among members of the public, and whether it has taken corresponding measures to ensure that they know and understand the provisions.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, in fact, in these first six years after the reunification, our focus has all along been on letting the public have a preliminary understanding of the Basic Law and making them feel that it is closely related to their living. If we have to enhance their understanding of a certain area of our work, we will step up our efforts and increase the strength of our work, having regard to the situation. This is the same as matters relating to constitutional development that we are

handling now, which involve many Articles in Chapter IV of the Basic Law, as well as the relationship between the Central Authorities and the SAR, the setting up of the SAR, and so on. So, at this stage, we have to step up work in this regard. However, there are 160 Articles to the Basic Law. Under the present circumstances, if we have to conduct surveys, we should first focus on how well the public understands the Basic Law as a whole.

MR LEUNG FU-WAH (in Cantonese): *Madam President, the Secretary mentioned in the second paragraph of part (b) of the main reply that in the survey of 2000, 0.3% of civil servants stated that they had never heard of the Basic Law, whereas in 2002, not one civil servant claimed to have never heard of the Basic Law. Nevertheless, as far as I understand it, having heard of the Basic Law should not be tantamount to understanding its contents. Otherwise, there would not have been so many discussions in society recently on the issue of patriotism, which is natural and absolutely fair, and which even the Americans, British and French would not discuss. Such an issue can be discussed in our society, with no decision reached*

PRESIDENT (in Cantonese): Please raise your supplementary question directly.

MR LEUNG FU-WAH (in Cantonese): *I would like to ask the Secretary if he admits that when promoting the Basic Law in the last few years, the Government has in fact focused on "two systems" to the neglect of "one country" which is the kernel of comprehensive promotion of the Basic Law?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, regarding the question raised by Mr LEUNG, my reply is that the SAR Government attaches great importance to the promotion of the Basic Law. For a certain period of time, we have certainly promoted "two systems", but we have not forgotten the concept of "one country".

Last week, the Basic Law Promotion Steering Committee held an internal discussion. We will now continue to promote the Basic Law in three aspects. First, we think that efforts should be made to promote the Basic Law more comprehensively. We have to enable the public to more fully understand the

concept of "one country, two systems" through an all-round introduction of the history and process of how the Basic Law came into being, as well as its principle and contents. We will also fuse the concept of "one country" into the set of new promotional activities. For example, we are considering whether or not to include this concept into the newly produced APIs.

Second, we think that promotion of the Basic Law should be linked to national education, with a view to further strengthening the public's knowledge of our Motherland, for example, our knowledge of the history, constitution, national flag and national anthem of our country. During April and May, the Leisure and Cultural Services Department and the Home Affairs Department will hold exhibitions in different places of the territory on the national flag, national emblem and national anthem of the People's Republic of China, and the Education and Manpower Bureau will continue to hold talks on national education.

Third, we think that the promotion of the Basic Law should be comprehensive and thorough, and cannot rely solely on the Government. The Government will encourage more community organizations to participate in the promotion of the Basic Law, hoping that they can work from the bottom up to complement the overall promotion strategy for the Basic Law.

Madam President, generally speaking, I think we have made a start for the promotion of the Basic Law, and the public's understanding of the Basic Law has been enhanced. Nonetheless, we still have to spare no efforts to work in this direction.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, Secretary Patrick HO has said that learning the Basic Law was like showing filial obedience to one's mother, which is never enough. I would like to ask the Secretary for Constitutional Affairs this: Do these words of Secretary Patrick HO represent the stance of the SAR Government, thinking that we have not learned enough of the Basic Law and we have not been showing enough filial obedience? Does the word "learn" represent the stance of the SAR Government? "Learn" has the meaning of instillation, rather than interaction. This is like learning the documents of the Party or the Central Authorities — only the thinking of the Party is forever correct, and there is no interaction. May I ask if this also represents the stance of the SAR Government, that is to learn the Basic Law, rather than comprehending, discussing and understanding the Basic Law?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, human beings in fact have to learn lifelong. We learn new things from our daily activities. Take my coming to the Legislative Council to answer questions from Members as an example. Everytime I come, I will have new inspirations. To students, going to school every day is also for learning. Everyone of us should have the heart for continual lifelong learning. As for us officials and Honourable Members, I believe everyone is concerned about the Basic Law, and will work to obtain a better understanding of the Basic Law in respect of the different areas which we are concerned about. In this way, we can better understand the legal or policy matters that we have to handle, and can duly play a part in the promotion work in accordance with the Basic Law.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has not answered my supplementary question, that is, have we not learned enough and do we have to learn through instillation?*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, it is only natural that we must learn more of the Basic Law. Although we have the basic knowledge, everytime when we formulate new policies or make legislative amendments, we have to ensure compliance with the provisions of the Basic Law. I think this learning process is very often dual-way and multi-oriented, rather than one-way, that is, learning from what one party gives to the other. More often than not, the seminars on the Basic Law or other seminars are, in fact, dual-way and multi-oriented.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary stated in the main reply that in the past six years, \$28.5 million was spent on promotion and the survey findings showed that less and less people had not heard of the Basic Law. The promotional efforts appear to be quite effective, but the Secretary has not explained whether the public is in fact very clear about the contents of the Basic Law and whether they understand it. Therefore, I would like to know if the Secretary would consider reviewing again the present modus operandi, and whether funding would be increased for more in-depth education on the detailed contents of the Basic Law, so that we in our daily life or civil*

servants in their administrative work will realize that the contents of the Basic Law are very important to us? This is because the Basic Law is the lifeline for the implementation of "one country, two systems". If we do not understand the Basic Law in our everyday life, it would actually have a great impact on us in many aspects.

PRESIDENT (in Cantonese): Mr CHAN, you have already raised your supplementary question.

MR CHAN KAM-LAM (in Cantonese): *Thank you, Madam President.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I would like to thank Mr CHAN for his question. We in fact lay much emphasis on the understanding and promotion of the Basic Law. This overall objective is agreeable to us all, and we are willing to participate and pool our efforts together.

We know that in promoting the Basic Law, we have to adjust the strength of our work in the light of different circumstances. Therefore, we have launched several promotional activities for March and April this year as this is the fourteenth anniversary of the promulgation of the Basic Law. A few days ago, we held the first of the seminars in March and April to commemorate the fourteenth anniversary of the promulgation of the Basic Law. Yesterday, we invited legal experts from the Mainland and legal academics in Hong Kong to give a talk to senior civil servants on the provisions and notions of the Basic Law, as well as the relationship between the Basic Law and constitutional development.

As regards resources, the bureaux and departments concerned have at this stage reserved \$4 million from the recurrent expenditure for this year's promotion of the Basic Law. Compared with 2003 and 2004, there is a slight increase in the provision. Nevertheless, I would like to emphasize that at the present stage, the four working groups under the Basic Law Promotion Steering Committee are still reviewing the activities to be conducted in 2004-05 to ascertain in what areas should we increase strength and step up efforts. Resources will then be increased according to need. So, I would like to assure Mr CHAN that we all attach great importance to the promotion of the Basic Law.

In respect of resources and promotional work, we will increase our strength in accordance with need and our understanding of the situation in society.

PRESIDENT (in Cantonese): This Council has spent over 21 minutes on this question. Although many Members are still waiting in line to ask their questions, there is nothing I can do. I can only allow one more Member to raise the last supplementary question.

MR HOWARD YOUNG (in Cantonese): *Madam President, in the second paragraph of part (b) of the main reply, the Secretary mentioned that there was an almost 100% rise in the number of people who claimed to have some knowledge of the Basic Law. In fact, the percentage only increased from 25% to 48%, so the base is very small. Will the Secretary tell us apart from generally showing the overall percentage of people with some knowledge of the Basic Law, does this survey include some general breakdowns by, for example, social strata, sex and age, so that if a certain group of people is found to be particularly lacking in such knowledge, more promotional work can be targeted on them in future? May I ask whether this has been done, or are these just vague and general figures?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I would like to thank Mr YOUNG and the several Members who have asked questions earlier for their concern over the knowledge of the Basic Law among members of the public and in society. Actually, this survey carried out by the Census and Statistics Department was conducted at several levels. We have mainly surveyed how well those aged 15 or above know the Basic Law, and we have provided breakdowns by, for example, gender and age according to the grouping for similar surveys generally conducted by the Census and Statistics Department, and so on. We have also conducted surveys specifically among three groups of people, that is, students, teachers and civil servants, on their knowledge of the Basic Law. This is useful in helping us to grasp how to launch promotional activities on the Basic Law in the education sector. This is also conducive to activities to promote the understanding of the Basic Law among civil servants.

Madam President, we are planning to conduct a new round of surveys in 2004-05 through the Census and Statistics Department. Therefore, on the one

hand, we will live up to our words and make greater efforts to promote the Basic Law; on the other hand, we will constantly review the progress of this area of work and the needs of society, and also how the promotional activities on the Basic Law can facilitate and support the implementation of policies by the Government. This is how we carry out the overall work.

PRESIDENT (in Cantonese): Fourth question.

Public-Private-Partnership Approach

4. **MS AUDREY EU** (in Cantonese): *Madam President, in the 2004 policy agenda, the Environment, Transport and Works Bureau proposed to adopt a Public-Private-Partnership (PPP) approach in the delivery of large-scale public works projects. In this connection, will the Government inform this Council:*

- (a) *of the criteria for determining the types of public works projects to be delivered by way of the PPP approach;*
- (b) *of the public works projects which will be delivered by way of the PPP approach in the next three years; and*
- (c) *given that Article 73(3) of the Basic Law stipulates that the Legislative Council shall exercise the powers and functions to approve public expenditure, how it will ensure that the delivery of public works projects by way of the PPP approach will not contravene the spirit of that provision?*

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

- (a) While considering the delivery of a public works project, it is in fact essential for the Government to establish its justifications, urgency, economic benefits, technical feasibility and the Government's affordability; and put into perspective its priority against other public works projects. Infrastructure development and community

facilities can be implemented by an array of PPP approaches. A number of criteria will be considered by bureaux and departments when provisions are being made for new facilities. They include the policy objectives and needs of the respective bureaux and departments, the characteristics and requirements of the facilities concerned, the business opportunity brought by the project as well as the cost-effectiveness of the partnership. All these factors will be taken into account when selecting the best option for project delivery. That means there is not a certain rule to determine the types of projects to be delivered by way of the PPP approach.

- (b) The Home Affairs Bureau has identified two pilot projects for PPP. One comprises the construction of an ice sports centre, a bowling centre and a town park in Tseung Kwan O. The other project is for a leisure and cultural centre in Kwun Tong. The Government has drawn up development plans for these two projects, and will invite the private sector to finance, build and operate the facilities after consulting the District Councils concerned and obtaining the support of the Town Planning Board. We have recently completed a preliminary feasibility study on the reprovisioning of the Sha Tin Water Treatment Works through PPP at a cost of some \$6 billion, and the results are encouraging. We are now considering the way forward in the light of the findings from the study. We will continue to study and actively consider other possible projects for PPP implementation and follow up accordingly.
- (c) Under the PPP approach, the private sector can propose various financial arrangements with reference to the different natures of and requirements for public works projects. The Government will abide by the provisions in the Basic Law and be accountable to the Legislative Council when considering the proposals. Should the projects involve public expenditure, the Government will apply for funding in accordance with legal requirements.

MS AUDREY EU (in Cantonese): *Madam President, I would like to ask the Secretary this: Regarding part (c) of his main reply, in particular the last sentence, the Secretary said that should the proposals involve public expenditure, the Government will apply for funding in accordance with legal requirements. If a PPP approach is adopted, the developer who has successfully bid for the*

land will finance the construction of public facilities. According to legal opinions, the costs borne by the developer for the construction of public facilities will no longer be considered as public expenditure. In this connection, I would like to ask the Secretary whether such costs can circumvent Article 73 of the Basic Law in relation to the approval of public expenditure by the Legislative Council.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank Ms Audrey EU for her question. As regards PPP, the Government's Efficiency Unit has published a book which gives a clear explanation on whether the Government is required to seek approval from the Legislative Council. If I do not misunderstand Ms EU's question, I think she was asking whether the Government is required to obtain approval from the Legislative Council if land is granted for a project at a below-market price. I would like to know whether or not I have misunderstood her question.

MS AUDREY EU (in Cantonese): *No. Madam President, my question was: If the Government has granted a piece of land, and the developer which has successfully bid for this piece of land will have to finance the provision of some facilities which are considered as public facilities, such as a bridge or an ice-skating rink. So, this is a public works project. Generally speaking, if the Government is responsible for this project, it must apply for funding from the Legislative Council because it is required to do so.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Yes.

MS AUDREY EU (in Cantonese): *However, since the developer has successfully bid for the land, the developer will have to finance the construction of these public facilities. An example is the West Kowloon project. Will it turn out that since the developer will finance the project, no public expenditure will then be involved and hence, it will be unnecessary for the Government to apply for funding from the Legislative Council to build these facilities which are public facilities?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, please allow me to answer Ms EU's question. Ms EU's understanding is correct. If the Government grants a piece of land to a developer for a works project at a cost lower than the market price, then we usually will consult the Legislative Council. The West Kowloon project is an example. As far as I remember, the Chief Secretary for Administration once said that the Legislative Council would be consulted on this project. Therefore, in terms of the policy, what Ms EU has said is correct, because the cost will not be borne by the Government and so, no public expenditure will be involved. However, as the land is granted by the Government and the cost involved in this type of project is usually enormous, while it is unnecessary for the project concerned to obtain approval from the Legislative Council in accordance with the Basic Law and the procedures of the Legislative Council, I believe the various Policy Bureaux will come to the Legislative Council to explain to Members and also explain to and consult the relevant Panel.

MR BERNARD CHAN (in Cantonese): *Madam President, I would like to ask a question on part (b) of the main reply. Part (b) of the main question asked about the number of projects to be delivered by way of the PPP approach in the next three years. According to the reply, two projects have been identified. A study has just been completed for another project and this project is found to be highly feasible for the PPP approach. Moreover, other projects will also be considered. I would like to ask whether in the next three years, no other projects will be considered by the Government except for these three projects (there should certainly be many other small projects apart from these three projects) or the Government simply has not started its consideration. Logically, there should be many projects that can be implemented. Due to the Government's financial constraints, there should, in fact, be many projects worth considering to be delivered by way of the PPP approach. I very much wish to ask the Secretary whether there is indeed no such project or the Government has not yet identified any such project.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, as regards public works projects, we will examine each single project to see if there is a chance for co-operation between the public and private sectors, whether market forces can be introduced to enhance efficiency and whether we can make use of the *modus operandi* and

expertise of the private sector to provide more services and to reduce the demand for government resources. I can tell Mr CHAN that in fact, we are now considering several projects, but many of which involve public fees and charges. The polluter pays principle as often mentioned by me is an example. Under private management, how much should we charge to enable operators to balance the books or even to operate with cost-effectiveness? We have also visited many sewage treatment plants, and will continue to study how to arrive at a viable model. In addition, we will soon submit a landfill charging scheme to the Legislative Council, under which the recycling plant will not be operated by the Government. We hope that the operation can either be in the form of PPP or private management. These proposals are all currently under consideration. I believe in the next few years, these proposals will be submitted to the Legislative Council one after another for discussion and consideration.

MS MIRIAM LAU (in Cantonese): *Madam President, nowadays, many large-scale transport infrastructure projects are delivered by a build, operate and transfer (BOT) approach. I would like to ask the Secretary whether the PPP approach will be considered for these large-scale transport infrastructure in future. If yes, will the Secretary identify ways to solve the problems arising from the BOT approach, in order to ensure that no similar problems will arise from the PPP approach?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, I very much agree with what Ms Miriam LAU has said. When adopting the PPP approach, we must think about the existing problems. As regards some large-scale infrastructure developments, for example, the Western Harbour Crossing or the Eastern Harbour Crossing operated under BOT, although there are legal provisions governing the level of tunnel tolls, some regulatory problems have indeed arisen. From the perspective of transport policy, while new infrastructure will help alleviate traffic congestion, private operators should be allowed to enjoy reasonable profits. The dilemma still exists. As a Policy Bureau, we are proactively studying this problem, trying to find out a model which can best serve both objectives. Therefore, we should first consider whether there is an ideal mechanism for a new infrastructure project to ensure a balanced return on this investment and to achieve the policy objectives in public transport or other areas, and the return on this investment should also be attractive to the private sector.

Route 3, for example, has aroused much controversy. So, we will consider these preliminary feasibility studies, analyse the needs for financial arrangement and the business opportunities provided by the projects, and also test the market feedback. At the same time, we will provide a monitoring mechanism in our policies and devise a sound management methodology before privatizing these large-scale infrastructure developments.

MISS MARGARET NG (in Cantonese): *Madam President, as regards Ms Audrey EU's supplementary question to which the Secretary has just given a reply, she means that by granting land to private developers, the Government can justifiably turn public facilities into non-public facilities. The question is whether such act intends to circumvent Article 73 of the Basic Law, in order to preclude the Legislative Council from performing its functions.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank Miss Margaret NG's question. In fact, as I have just said in my reply, the Government will abide by the provisions in the Basic Law and be accountable to the Legislative Council when considering the proposals, and it absolutely will not bypass the Legislative Council. I have also said that if the proposals involve public expenditure, the Government will apply for funding for such public expenditure in accordance with legal requirements.

MR WONG SING-CHI (in Cantonese): *Madam President, in his reply to Ms Audrey EU and Miss Margaret NG, Secretary Frederick MA said that if the proposal involves public expenditure, it will be submitted to the Legislative Council for approval. However, the Secretary also said earlier that even if the proposal does not involve public expenditure, the Legislative Council will also be consulted. I would like to clarify the meaning of consultation. If the Government's proposal is not approved by the Legislative Council during consultation, will the Government give up the proposal, or to put it in another way, will the Government give the relevant power back to the Legislative Council?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, my thanks go to Mr WONG Sing-chi. I believe

that we are now talking about the general cases. When a case is submitted to the Legislative Council, I think every Bureau Director will have his or her own judgement. If there are many voices and much disagreement in the Legislative Council, I believe the Bureau Director will make a decision in view of the responses at that time.

DR RAYMOND HO (in Cantonese): *Madam President, there are many kinds of PPP approaches. Over the last three years, I have urged the Government to consider more options of private financing and participation, that is, the Private Finance Initiative (PFI) approach. Will the Government consider adopting the PFI approach, which is commonly used overseas, and whereby the selected projects are usually non-public works projects, in order to fully utilize the abundant resources of the private sector, which can reach as much as \$3,600 billion, and hence implement more projects, particularly those related to the people's livelihood?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, there is an array of PPP approaches. The PFI approach mentioned by Dr HO is indeed commonly used in many European countries. Under this approach, the project is not on the Government's agenda. It is only proposed by the private sector, and recognized by the community as financially and operationally viable, with its investment fully funded by the developer. In this regard, there is no hindrance to this approach in Hong Kong. The Government welcomes investors to submit such proposals to us. I have also given explanations on many different occasions. During implementation, some problems will certainly arise. By its name, PFI, which stands for Private Funded Initiative, means that the proposal is initiated by the private sector and is generally a very "smart" idea, capable of achieving considerable economic benefits. The thrust of the question is this: If it is proposed by company A, will this company be allowed to operate in the form of exclusive franchise? Or should it go through a fair, just and open tendering process? If it is necessary to go through an open tendering process, many people will hesitate because they do not wish to see that after they have put forward a superb idea, their idea will then be stolen by others. Therefore, we must study this problem in greater depth to identify reasonable and lawful means to implement these innovated proposals in a way that it will be fair to investors while providing a level playing field for other people. So, this problem is still under discussion.

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

MR MA FUNG-KWOK (in Cantonese): *Madam President, I would like to ask why the development proposal of the West Kowloon Cultural District, for example, is not listed in part (b) of the Secretary's main reply. What are the substantive reasons?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, it is because my Bureau plays the role of an agent. We will list a project in part (b) only after a Policy Bureau has made a decision and submitted the project to us. The West Kowloon project is still at an initial stage where investors are invited to indicate their interest. Since the approach to be adopted in future has not yet been decided, the proposal has not yet been submitted to us.

PRESIDENT (in Cantonese): Fifth question.

Hospital Authority to Re-create Two Director Posts

5. **DR LO WING-LOK** (in Cantonese): *Madam President, it has been reported that the Hospital Authority (HA) has decided to recreate two director posts responsible for internal/external communications and human resources respectively. In this connection, will the Government inform this Council whether it knows:*

- (a) *the respective specific responsibilities and the total annual expenditure on the salaries, benefits and performance incentive awards of each of these posts;*
- (b) *how the establishment of the above posts will enhance the quality of service of public hospitals; and*
- (c) *if the HA will conduct a value-for-money assessment on the above posts; if it will, of the assessment criteria to be adopted?*

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

(a) and (b)

The HA is planning to conduct a recruitment exercise to fill two vacancies in the top executive team. The two vacant posts are those of the Director (Human Resources) and the Deputy Director (Public Affairs).

The former has been vacant since the retirement of the last Director (Professional Services and Human Resources) in September last year. The HA has reviewed its top management structure and concluded that there is an urgent need to strengthen its human resource management function, particularly in view of the recommendations of the SARS Expert Committee Report and the Report of the HA Review Panel that various aspects of human resources management should be improved, including communication with staff, co-ordination and deployment of human resources during an outbreak and staff training. Thus the HA is in the process of recruiting a Director (Human Resources) while the professional services portfolio of the original post will be shared between the other two directors.

The key responsibilities of the Director (Human Resources) include:

- (i) to provide advice to the HA Board and Management in the development and implementation of the HA's human resource strategies, policies and practices;
- (ii) to provide leadership in and to ensure the effective and efficient implementation of human resources policies, systems and practices, including, but not limited to, those relating to staff relations, staff training, compensation and benefits, payroll, performance management, compliance, recruitment, retention and succession;

- (iii) to develop, revise and implement manpower plans for various grades of staff in collaboration with relevant internal parties; and
- (iv) to enlist and foster support for the mission, values, strategies and policies of the HA among staff members, including communicating proactively with staff unions and other staff groups.

The Deputy Director (Public Affairs) post has been left vacant since early 2000. The experience in the past four years indicated that there is a need to strengthen expert leadership and strategic advice in respect of the public relations of the Authority. Furthermore, the SARS outbreak revealed that the HA's communication with the public and media needed to be improved, as pointed out by the SARS Expert Committee Report and the Report of the HA Review Panel. The HA has therefore decided to fill this vacancy again to augment the expertise needed in the development and implementation of public relations and communications strategies, policies and practices.

The key responsibilities of the Deputy Director (Public Affairs) include:

- (i) to develop and implement a public relations strategy to project and reinforce the mission and philosophies of the HA;
- (ii) to proactively work with the media and other relevant external parties to heighten community awareness on topical issues that arise from time to time;
- (iii) to enlist and foster public support for the work of the HA to involve the public as partners in health care; and
- (iv) to collaborate with the internal communication team to ensure the delivery of timely and accurate messages to the media, the public and HA staff as and when appropriate.

The HA is considering the remuneration package of these two posts. The remuneration packages will be finalized in consideration of the experience and qualifications of the candidates to be appointed.

- (c) The HA has reviewed its top management structure and has concluded that there is a need to fill these two vacancies to strengthen the organization's human resources and public affairs functions. After the most appropriate candidates have been appointed, their performance will be closely monitored and assessed by the Chief Executive of the HA as well as members of the HA Board with reference to the responsibilities assigned to them, in line with the established performance appraisal system for senior officers. The strength of their expert leadership and the quality of their strategic advice will be the key elements to be assessed.

DR LO WING-LOK (in Cantonese): *Madam President, I raise this question today as the HA does not require the endorsement of the Legislative Council at all for its recent creation of two posts equivalent to Directorate posts in the Civil Service. From the main reply provided by the Secretary, it seems to us that the HA does not respect the Legislative Council. After reading part (a) and the last paragraph of part (b) of the main reply, I find that the HA seems to be refusing to disclose the salaries and benefits of these two posts. In fact, even if the salaries and benefits of such posts have not been decided now, there must at least be an estimate. In this connection, I would like to ask the Secretary whether there is such an estimate, and to tell us the estimated salaries and benefits.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I believe the HA does not mean that. In conducting the recruitment exercise, we have to look at the salaries for the two posts under consideration, and it will also depend on the candidates who responded to the recruitment exercise. Besides, the HA always keeps its framework under review. As I just mentioned in the main reply, the HA had to consider from time to time the functions within the purview of a Director. As far as I understand, it also has to depend on whether suitable candidates are available for the posts. In the past, when a Director performed the duties of several posts, that is, when a Director was doubling sideways the duties of the post of another

Director, the salary would be determined according to the original level of remuneration of that Director. This is the situation now as the HA has to exercise greater prudence in making use of its resources.

In recent years, the HA has been cutting down the number of its Directors and Deputy Directors. Therefore, I can tell Honourable Members that the HA has been very prudent in optimizing the use of its resources. However, I can tell Dr LO Wing-lok roughly the average salary of a Deputy Director. Although this may not be related to these two posts, this may at least give Members some ideas about the average salaries of Directors and Deputy Directors. I think it is untrue that the HA does not want to submit the relevant data. It is just because the salaries have not been finalized. Generally speaking, for a Deputy Director, the basic salary and the monthly cash allowance will add up to a total annual income ranging from \$1.62 million to \$2.85 million. For a Director, his annual remuneration, consisting of the basic salary and cash allowance, is between \$2.66 million and \$2.95 million. These figures are arrived at by adding up the basic salaries and the cash allowances.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, according to the Secretary's reply to Dr LO Wing-lok's supplementary, I think he has not clearly depicted the full picture to us. Madam President, the Legislative Council had severely criticized the HA for having more than 10 Directors. As a result, the number has been reduced to about five or six now. But now it has decided to recreate posts. In this connection, I would like to ask the Secretary this: For the post of Deputy Director (Public Affairs), for example, as far as I know, Dr KO Wing-man is also performing similar duties. What exactly is the full picture? As the two posts have to be recreated and since the work is already undertaken by some people, may I ask how the work would be rearranged? I hope the Secretary could give us a picture of greater dimensions.*

PRESIDENT (in Cantonese): Miss CHAN, were you asking the Secretary to tell you more?

MISS CHAN YUEN-HAN (in Cantonese): *The Secretary provided the details for he had to respond to Dr LO Wing-lok. But the thrust of my question is: the HA had over 10 Directors in the past and it was harshly criticized by the*

Legislative Council for having so many Directorate posts, as all the money was spent on the top management team, instead of the patients. Consequently, the number of Directors has been reduced to five or six now. However, it now seeks to recreate two posts. That is why I asked the Secretary in the case of Dr KO Wing-man, for example, who is now in charge of public affairs, what will he do in future after these posts are recreated?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, it is very difficult to tell what the future framework would be based on the present recruitment procedure. In regard to the human resources post, it was taken up by a Director on a doubling sideways basis, that is, as I explained just now, a Director was overseeing two areas of responsibilities. But that Director retired last year and so, we must find someone to fill this vacancy for managing human resources matters. However, it is not easy to identify a suitable candidate to take up this post with the responsibility of managing human resources matters. As far as I know, the HA has already commissioned an outside consultancy firm to conduct the recruitment exercise. Although several attempts have been made, no suitable candidates have been identified so far. At present, as the recruitment exercise is still being conducted, it is not convenient for me to disclose further details because we still have not decided which candidate is to be appointed. However, I can provide details to Honourable Members on the establishment of the HA at a more senior level during the past 10 years, that is the number of officers at the ranks of the Chief Executive, Directors, Deputy Directors, Cluster Chief Executives and Hospital Chief Executives. In 1994-95, there were altogether 55 people in such posts, and the number was reduced to 50 by 1999. As of today, that is March of 2004, even if these two posts are filled, the number will only be 40. Therefore, the HA has been cutting down the number of its senior officers continuously. Even if these two vacancies are filled, there will be only 40 senior officers. From 1999 to now, 10 posts have been deleted. As such, we are sure that the HA is exercising great care in considering the posts of senior staff.

MS CYD HO (in Cantonese): *Madam President, according to the recommendations of the SARS Expert Committee Report, each key position should be provided with a backup officer who can take over the work to prevent any such position from becoming vacant. Can this objective be met with the creation of these two posts, that is, whenever a significant officer falls ill or*

cannot cope with the workload, someone would be immediately available to take over the work, or do we still need to create a lot of posts in future and spend many more resources before this objective could be achieved? Has the Secretary a package of plans for negotiation with the HA, which could put resources to good use on the one hand and achieve the desired effects on the other?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, of course we do have ongoing discussions with the HA on the strategy of optimizing the use of resources. I have a colleague who is also a member of the HA. He will carefully monitor the HA to see whether it has put resources to good use, as well as to ensure that the created posts would, most important of all, improve service quality, as stressed by Dr LO Wing-lok. The duties of this post of Deputy Director (Human Resources), as I explained just now, were actually taken up by a Director last September. That is, this Director oversaw two areas of responsibilities — matters within his own profession as well as human resources. In such a large-scale organization, there must be someone tasked to handle human resources matters. So, the HA has two options. One is to ask an incumbent Director to take up the work of human resources on top of his own duties. In any major organization, there must be a Director in charge of human resources matters and so, we asked a Director to look after this area of work in addition to his own area of responsibilities. Another option is to employ a Director exclusively in charge of human resources matters. I believe the HA will make a decision after the recruitment exercise. This is why I said earlier that it was not convenient for me to disclose further information.

The HA is of the opinion that this human resources post is very important. In the past, they had tried to employ someone outside the HA to take up this human resources post, so as to facilitate the proper administration and implementation of policies in this regard. However, it had been very difficult to identify the suitable candidate. That is to say, with that level of remuneration, it is very difficult to employ the right person to take up this post. Therefore, it explains why the job had been taken up by another Director in the past. As far as I understand, the HA is still considering this possibility, so they may not necessarily create a new post for this. But they are trying to see if a candidate can be identified through open recruitment. If so, they may employ an additional officer for the job; if not, they may ask an incumbent Director to take up this area of work.

Regarding public affairs, I think Members would agree that, for such a major organization, it will run into great difficulties if it does not have a senior executive in charge of this area of work. Insofar as this post is concerned, I do not have any doubt about the need of the HA to fill it. Just now I have told Honourable Members the number of senior executives of the HA. This number has been reducing in recent years, and the number has been reduced by 10 since 1999.

PRESIDENT (in Cantonese): This Council has spent more than 16 minutes on this question. Last supplementary question now.

MR MICHAEL MAK (in Cantonese): *Madam President, during an earlier Legislative Council meeting, Dr LO Wing-lok had raised a question on the HA's decision to award \$12 million to its senior officers as bonus. I think at that time, the HA was already under heavy criticism. This time, it has decided to recreate two Directorate posts. Although the Secretary said that he considered the creation of the posts necessary, has he considered asking other colleagues to take up or share the relevant duties? My supplementary question is: It had already triggered some criticism last time, and everyone was feeling unhappy about it. This time, in proposing to recreate two posts, what public relations strategies would be adopted to make Members of the Legislative Council as well as other HA colleagues think that this is fair, impartial and reasonable?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I believe there must be someone in charge of human resources matters in any major organizations. I believe every employee would agree with this. Human resources duties and responsibilities have to be handled by senior executives. I believe there is no major organization which does not have dedicated personnel to take charge of work in this area. Most important of all, are the relevant salaries set at a reasonable level? As for the other post with responsibilities in public affairs, there must also be someone in charge of work in this area in every public organization.

In regard to the remuneration, at the moment, Directors and Deputy Directors of the HA generally do not have any performance incentive awards.

The HA is currently reviewing the whole remuneration package. As I have just said, in general, the remuneration of Directors and Deputy Directors of the HA consists of their basic salaries, cash allowances and other benefits, but it does not include performance incentive awards.

MR MICHAEL MAK (in Cantonese): *Madam President, the Secretary has not answered my supplementary question at all. My question was: In the re-creation of these two posts, what public relations strategy the Secretary or the HA would like to adopt to make the general public, Members of the Legislative Council and their staff feel that this is fair, impartial and reasonable? I was asking about public relations strategy.*

PRESIDENT (in Cantonese): Mr MAK, please sit down after asking your question, and do not stand up again after sitting down.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as I have explained earlier, these are not recreated posts, but vacancies. Today, Members of the Legislative Council have given me a very good opportunity to explain the situation. But I will leave it to the HA to carry out the public relations work.

PRESIDENT (in Cantonese): Last oral question.

Robberies on Public Light Buses and Taxis Late at Night

6. **MR CHAN KAM-LAM** (in Cantonese): *Madam President, in view of the recent spate of robberies on public light buses and taxis late at night, will the Government inform this Council of:*

- (a) *the number of reports to the police on the above cases in the past three years; and*
- (b) *the concrete measures and plans to curb such crimes?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) During the past three years, the number of cases reported to the police concerning robberies on public light buses and taxis late at night (that is, from after mid-night to before 6 am) are as follows:

<i>Year</i>	<i>Number of robberies late at night</i>	
	<i>Taxis</i>	<i>Public light buses</i>
2001	41	0
2002	44	1
2003	39	2*

* In one of the cases the passengers were robbed collectively.

- (b) The police are highly concerned about this type of robbery cases. To assist the industry in preventing recurrence of similar robbery cases and to further safeguard the safety of passengers, the Police Crime Prevention Bureau and the Transport Department have discussed with the industry on how to effectively prevent such incidents, and briefed them on effective security devices as well as proper responses in case of robbery. To curb such crimes, the police will, having regard to the circumstances, continue to strengthen patrol at public light bus termini, set up road blocks at appropriate locations to check public light buses and taxis, and launch publicity activities on crime prevention.

MR CHAN KAM-LAM (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary said that discussions had been held with the industry to formulate measures. I would like to know whether the Government has checked the additional cost to be incurred in the installation of those effective security devices. How many vehicles have already installed such devices? Will the Government encourage the industry to install such devices to safeguard the safety of drivers and passengers?*

SECRETARY FOR SECURITY (in Cantonese): In end October last year after a case of passengers on a public light bus being robbed collectively, the police, in collaboration with the Transport Department, organized a seminar for the

industry on 6 November last year, with a view to assisting the industry to prevent such crimes. With the assistance of the Transport Department, representatives from associations of public light buses had also attended. At the seminar, the police introduced a series of preventive measures against robbery, including the installation of Global Positioning System (commonly known as GPS) and the relevant communication systems, which can help control centres identify the location of the public light bus being robbed. Those measures also include the installation of rooftop emergency signal lights and intercom systems, so that drivers can enlist outside help whenever necessary, and the installation of video camera and closed circuit television to reinforce the deterrent effect. It is also proposed that vehicle licence number should be displayed inside the public light buses, so that passengers on the vehicles can tell their families the relevant information by mobile phones.

In general, the industry welcomes the initiatives of the police in introducing to them proposals and preventive measures against robbery. However, as mentioned by Mr CHAN Kam-lam earlier, given that some measures do incur additional costs, the industry is now considering whether or not the relevant devices will be installed in accordance with the situation of individual vehicle owners. Just now, the Member also asked about the effectiveness of the devices after installation. As I said in the main reply, in addition to the installation of such devices, the police had already strengthened their patrol at public light bus termini and set up more roadblocks to reinforce the deterrence. I believe the authorities have already adopted appropriate measures to prevent the occurrence of such crimes, and I consider those measures effective for the time being.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary has not answered as to how many public light buses or taxis had already installed the relevant devices and the additional costs involved.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we do not have such information.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, will the Secretary tell us the amount involved in those cases of robbery? What are the routes of the vehicles? Were casualties involved?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we do not have such information. Perhaps I can provide supplementary information to Mr CHAN Kwok-keung in writing. (Appendix III)

MR LAU KONG-WAH (in Cantonese): *Madam President, regarding the last two robberies occurred on public light buses, it was reported that the public light bus concerned in the second robbery had passed a police roadblock but the robbery did not come to the police's notice. However, this is only what the report said. Will the Secretary clarify the situation at that time? With regard to the strengthening of roadblock checks on public light buses and taxis, what measures have been adopted to step up such checks? What steps can be taken to prevent the situation as in the previous case where the robbery was overlooked?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we consider the setting up of roadblocks an effective measure to prevent crime. Roadblocks will be set up according to the circumstances to intercept suspicious vehicles. Obviously, in reality, it is impossible for the police to stop each and every vehicle to conduct checks, for this will cause nuisance to the people and is unreasonable. Police officers will observe the situation of the passengers on the vehicle to decide whether the vehicle has to be stopped for search.

The robbery occurred in February was an individual incident. It does not mean that the effectiveness of roadblock checks and our operations have big problems. Certainly, the police will pay more attention to public light buses and taxis when conducting roadblock checks to prevent the recurrence of similar incidents.

MS MIRIAM LAU (in Cantonese): *Madam President, as the effective security devices proposed by the Government or the police are quite costly, for example, the cost for the installation of the Global Positioning System is not low, does the Government have any plan to provide assistance to public light buses that need to install these devices?*

SECRETARY FOR SECURITY (in Cantonese): As I said in the main reply, in addition to the installation of these devices, the police have already implemented

various preventive measures, including the setting up of roadblocks and the strengthening of patrol at termini. We will implement appropriate measures according to the circumstances. Certainly, the installation of these devices against robbery is mainly a personal decision to be made by individual vehicle owners according to their own situation.

MR MICHAEL MAK (in Cantonese): *Madam President, as shown by the figures, the number of robberies on taxis is very high. Apart from the measures mentioned by the Secretary, will the Secretary make reference to overseas experience and consider installing metal frames behind the driver's seat to protect the taxi-drivers?*

SECRETARY FOR SECURITY (in Cantonese): *The police are very willing to give advice on the security design of taxis, and the Transport Department has exchanged views with the taxis industry on the installation of security devices inside the vehicle. In fact, so far as the design, material and installation method of the devices conform to safety standards and will not pose any danger to passengers or drivers in the event of traffic accidents, individual operator may, on a need basis, apply to the Transport Department for the installation of such devices on individual vehicle.*

DR RAYMOND HO (in Cantonese): *Madam President, the Global Positioning System (GPS) may enhance the safety of drivers and passengers, for once the driver sends out the signal, the police will be able to identify the location of the robbery immediately and arrive at the scene expeditiously. Apart from considering the provision of direct subsidy for the cost of installation, will the Government consider imposing a levy, such as including a levy in the licence fees, so that resources in this respect can be used to subsidize drivers in the installation of such devices?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President, I did not say that the Government would provide subsidies to vehicle owners for the installation of these devices. However, I will relay Dr Raymond HO's views to the relevant Policy Bureau.*

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

WRITTEN ANSWERS TO QUESTIONS

Enforcement of Various Environment Related Ordinances

7. **MR MARTIN LEE** (in Chinese): *Madam President, will the Government inform this Council of the respective numbers of prosecutions instituted in the past five years by government departments by invoking the relevant provisions of the Air Pollution Control Ordinance, Water Pollution Control Ordinance, Noise Control Ordinance, Waste Disposal Ordinance, Dumping at Sea Ordinance, Environmental Impact Assessment Ordinance, Marine Parks Ordinance and Town Planning Ordinance, the outcome of such prosecutions and the penalties imposed by the Court on the convicted?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, the numbers of prosecutions instituted by invoking the relevant ordinances, the outcome and the penalties imposed by the Court are set out in the table below.

	1999	2000	2001	2002	2003
<i>Air Pollution Control Ordinance</i>					
Prosecution ¹	502	529	309	222	224
Conviction	487	467	276	215	207
Range of fine	\$100 to \$79,200	\$200 to \$50,000	\$300 to \$80,000	\$200 to \$25,000	\$500 to \$50,000
Imprisonment	0	0	0	0	0
<i>Water Pollution Control Ordinance</i>					
Prosecution ¹	456	350	199	133	69
Conviction	443	342	176	110	64
Range of fine	\$300 to \$100,000	\$500 to \$100,000	\$2,000 to \$140,000	\$1,000 to \$80,000	\$1,500 to \$40,000
Imprisonment ²	2	2	0	0	0
<i>Noise Control Ordinance</i>					
Prosecution ¹	415	578	401	302	152
Conviction	399	532	352	266	240

	1999	2000	2001	2002	2003
Range of fine	\$1,000 to \$140,000	\$100 to \$200,000	\$200 to \$120,000	\$350 to \$140,000	\$100 to \$100,000
Imprisonment	0	0	0	0	0
<i>Waste Disposal Ordinance</i>					
Prosecution ¹	386	417	256	206	141
Conviction	375	398	251	202	133
Range of fine	\$500 to \$50,000	\$100 to \$30,000	\$500 to \$80,000	\$500 to \$80,000	\$500 to \$75,000
Imprisonment ³	0	1	0	0	1
<i>Dumping at Sea Ordinance</i>					
Prosecution ¹	12	3	18	5	7
Conviction	8	3	12	3	7
Range of fine	\$12,500 to \$40,000	\$30,000 to \$50,000	\$2,000 to \$20,000	\$20,000 to \$20,000	\$10,000 to \$15,000
Imprisonment ⁴	1	0	0	0	0
<i>Environmental Impact Assessment Ordinance</i>					
Prosecution ¹	0	0	1	1	0
Conviction	0	0	0	0	0
Range of fine	Not applicable as there was no conviction				
Imprisonment	Not applicable as there was no conviction				
<i>Marine Parks Ordinance</i>					
Prosecution ¹	172	120	90	94	118
Conviction	172	120	90	94	118
Range of fine	\$200 to \$5,000	\$400 to \$16,500	\$280 to \$5,000	\$250 to \$2,000	\$200 to \$2,000
Imprisonment	0	0	0	0	0
<i>Town Planning Ordinance</i>					
Prosecution ¹	47	13	44	38	20
Conviction	36	13	42	37	18
Range of fine	\$500 to \$150,000	\$500 to \$50,000	\$500 to \$30,000	\$500 to \$220,000	\$2,000 to \$50,000
Imprisonment	Not applicable as there is no imprisonment penalty under this ordinance				

Note:

1. The prosecution figure is based on the number of summonses issued.
2. There were two cases in 1999. In one of them, the offender was sentenced to one month's imprisonment, suspended for one year. In the other case, the offender was sentenced to 28 days' imprisonment, suspended for two years.

There were two cases in 2000. In one of them, the offender was sentenced to 28 days' imprisonment, suspended for two years. In the other case, the offender was sentenced to seven days' imprisonment, suspended for three years.

3. There was one case in 2000, where the offender was sentenced to 14 days' imprisonment.

There was one case in 2003, where the offender was sentenced to two months' imprisonment.

4. There was one case in 1999, where the offender was sentenced to 28 days' imprisonment, suspended for two years.

Hong Kong's Position as an Aviation Hub in Asia Pacific Region

8. **MR AMBROSE LAU** (in Chinese): *Madam President, it is noted that the airport authorities of Singapore and Guangzhou are actively striving for more air passenger/cargo business, thereby challenging Hong Kong's position as an aviation hub in the Asia Pacific Region. In this regard, will the Government inform this Council:*

- (a) *of the criteria and procedures adopted by the authorities in vetting and approving applications from overseas airlines for introducing new air services and increasing flight frequencies; the respective numbers of these two types of applications rejected in the past three years and the reasons for rejection, and whether, as a result of the rejection, any overseas airline has excluded Hong Kong from its aviation network; and*
- (b) *whether it knows the Hong Kong Airport Authority (AA)'s plans for securing the sustained growth of its air passenger/cargo business and maintaining Hong Kong's position as an aviation hub in the Asia Pacific Region?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Chinese): Madam President, air services operated by local and overseas airlines to or through Hong Kong are regulated by bilateral air services arrangements concluded between Hong Kong and the aviation partners concerned. Such bilateral arrangements normally provide for the routes and capacity of scheduled services that may be operated by designated airlines of each side. Overseas

airlines may, according to its business objectives and market circumstances, freely decide to introduce new services and determine the frequency of such services, so long as the services provided are fully in compliance with the relevant provisions of the bilateral arrangements concerned.

If an overseas airline wants to operate extra sections over and above the capacity limits set out in the bilateral air services arrangements, it has to apply to the Hong Kong Civil Aviation Department (CAD) for prior approval. In considering such applications, the Government has an obligation to give due consideration to the scheduled services operated on the same route(s) in order to uphold the commitment and spirit of the relevant bilateral air services arrangements. The Government has to consider factors including whether scheduled services provided by local and overseas airlines are providing sufficient capacity to meet the needs of the travelling public, for example, whether the scheduled services are full. At the same time, the Government has to take into account the prevailing market situation, for example, the total number of extra-section applications made by all airlines on the same route, and so on. The concerned airline also has to satisfy the normal regulatory requirements of the CAD such as those related to safety, aircraft noise, insurance, and so on.

The Government has all along been adopting a very positive attitude towards applications for extra sections. In the past three years, the CAD has approved 11 850 extra sections and has refused only 224 extra sections. The main reason for the refusal is because of the scheduled services provided at the time had far exceeded the market demand. The rejection of a small number of applications has not led to any overseas airline withdrawing its services from Hong Kong.

In the light of increasing competition from neighbouring airports, the AA has been enhancing the facilities and services of the Hong Kong International Airport (HKIA) and proactively expanding its passenger and cargo catchment area. On airport facilities, the AA has recently commenced the advance works on the development of the SkyPlaza connecting to the Passenger Terminal Building with a view to further enhancing passenger handling capacity. Phase I of the airport's Express Cargo Terminal will be commissioned this year, which will significantly enhance the HKIA's competitiveness in capturing express cargo business. Four more cargo aircraft stands will be added next year, bringing the total number of cargo aircraft stands to 25.

To enhance the HKIA's status as an international aviation hub, the AA is actively expanding the passenger and cargo catchment area of the HKIA to the Pearl River Delta (PRD). In addition to the cross-boundary coach services between the HKIA and 18 PRD cities, the AA has developed high speed cross-boundary ferry services between the HKIA and three PRD ports (Shenzhen Fuyong, Dongguan, Shekou) and Macao which provide fast and convenient intermodal connection for passengers transiting at the HKIA. The cross-boundary ferry services will shortly be extended to more PRD ports such as Guangzhou. On the cargo side, apart from the Marine Cargo Terminal which provides sea linkage between the HKIA and 17 PRD ports, the AA and the Hong Kong Air Cargo Terminals Limited are discussing co-operation plans to develop air cargo consolidation centres within the PRD Region with simplified customs clearance procedures so as to attract more PRD cargo to be exported via the HKIA.

Furthermore, the AA is liaising with other major PRD airports including Guangzhou, Shenzhen, Zhuhai and Macao to foster closer co-operation and co-ordination so as to realize the potential of the PRD in air transport. The AA is also discussing specific co-operation proposals with individual PRD airports such as Shenzhen and Zhuhai with a view to expanding the catchment area of the HKIA, so that more PRD passengers and cargo will be attracted to make use of the HKIA's extensive aviation network for overseas destinations while at the same time facilitating the flow of overseas passengers and cargo to the Mainland via the HKIA. These proposals could lead to a win-win situation for both the HKIA and the mainland airports concerned and will also be conducive to enhancing Hong Kong's status as an international and regional aviation centre.

Construction of Temporary Heliport at Golden Bauhinia Square

9. **MR ABRAHAM SHEK** (in Chinese): *Madam President, I have learnt that the Government plans to construct a temporary heliport at the Golden Bauhinia Square in Wan Chai for use by the Government Flying Service (GFS). In this connection, will the Government inform this Council:*

- (a) *of the reasons for constructing a heliport at that location, the estimated construction cost and average number of helicopter flights per day;*

- (b) *why the heliport is to be used exclusively by the GFS, and whether it plans to open up the heliport for commercial helicopter flights; and*
- (c) *whether it has plans to construct a permanent heliport in the vicinity of that location or at another location; if it has, of the details; if not, the reasons for that?*

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

- (a) Under the draft Wan Chai North Outline Zoning Plan gazetted in April 2002, a permanent heliport is planned at the northeast corner of the Golden Bauhinia Square in Wan Chai. It is necessary to develop a helipad on the northern shore of the Hong Kong Island because the GFS requires such facilities to provide emergency casualty evacuation services and support the law enforcement operations of other disciplinary forces. The original plan is for the permanent heliport to be completed in 2007. The estimated construction cost is \$23.31 million. The original Central Heliport at Lung Wui Road was closed in January 2004 to make way for the implementation of the Central Reclamation Phase III works. The GFS has since relocated its operation to the temporary heliport at the former Wan Chai Public Works Cargo Area. We expect the number of flight movements at the temporary heliport in Wan Chai would be about the same as that at Central Heliport, that is, around eight movements per day.

The Government is currently reviewing the proposed reclamation for Wan Chai North and the review includes the planned permanent heliport.

- (b) According to the paper submitted by the Administration to the Legislative Council Panel on Planning, Lands and Works on 7 December 2001, the planned heliport at the northeast corner of the Golden Bauhinia Square in Wan Chai would be confined to

government flying services only and primarily related to emergency and security functions. In the course of discussing the Government's proposal, the Panel expressed concern over any possible noise and safety impact on visitors to the Hong Kong Convention and Exhibition Centre (HKCEC) as well as the effect on the HKCEC as a tourist attraction. As a result, the Panel endorsed that the heliport should be strictly confined to the limited uses by the GFS.

- (c) To support the long-term development of commercial helicopter services in Hong Kong, the Government is actively seeking a suitable site in the vicinity of Sheung Wan for the development of a permanent heliport. In this connection, the Government commissioned a technical feasibility consultancy study in October 2003. The Government will consult the Legislative Council and the community upon completion of the study.

Obstruction of Private Roads by Vehicles

10. **MR HOWARD YOUNG** (in Chinese): *Madam President, I have recently received complaints from the public that many vehicles often park on the only vehicular access roads to some housing estates in Repulse Bay and obstruct the access of fire engines or ambulances, and that the surfaces of some of these roads are rugged. They have complained to the departments concerned, but have been told that the authorities cannot offer assistance because these roads are on private land (that is, private roads). In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of complaints received by the relevant departments over the past three years about the obstruction of private roads by vehicles and the unrepaired surfaces of private roads; and*
- (b) *how existing legislation regulates the problem of emergency vehicles' access to private roads being blocked by vehicles parked on such roads; and*

- (c) *whether the departments concerned have advised the relevant owners to carry out repairs on rugged private roads; if they have, of the respective numbers of cases of compliance and non-compliance with the advice by the relevant owners over the past three years; the reasons for non-compliance and how such cases were followed up; if they have not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, in the past three years, the Fire Services Department and the Transport Department received 12 and six complaints respectively about obstruction of private roads by vehicles. During the same period, the Highways Department received 150 complaints about unrepaired surfaces of private roads.

Under the Road Traffic Ordinance, the police may remove and detain any vehicle which has caused unnecessary obstruction of a private road or danger to other users. The owners of private roads are also empowered by the Road Traffic (Parking on Private Roads) Regulations to take similar actions.

Under the Buildings Ordinance, the owners of premises fronting, joining or abutting on a private road are required to ensure that the road is surfaced and maintained in good order to the satisfaction of the Director of Buildings. If the private road is not so surfaced and maintained, the Buildings Department (BD) may serve notices on the owners and require them to carry out repair works. If the owners fail to comply with this requirement, the Government may repair the private road concerned and recover the cost from the owners. In the past three years, the BD has not issued any such notices.

Slab-paved Pavements

11. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, regarding slab-paved pavements, will the Government inform this Council of:*

- (a) *the total area of slab-paved pavements at present, as well as its percentage in the overall area of pavements in the territory; and*

- (b) *the frequency of inspections on such pavements conducted by staff of the Highways Department (HyD)?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) The total area of slab-paved pavement is about 1 930 000 sq m. This amounts to about 27% of the total area of footways in Hong Kong.
- (b) The HyD carries out routine road inspections on all public roads, including slab-paved pavements. Road inspections include safety inspections and detailed inspections. Safety inspections are normally carried out on slow-moving vehicles covering all the public roads in Hong Kong at a frequency of about once per week. More detailed inspections on the pavements are carried out on foot about twice a year. The HyD also responds to defects reported by other government departments and the public.

Enforcement Actions Taken by SFC

12. **MR HENRY WU** (in Chinese): *Madam President, will the Government inform this Council, among the persons subject to the enforcement actions taken by the Securities and Futures Commission (SFC) in the past three years, of the respective numbers of intermediaries and non-intermediaries not prosecuted by the authorities, those against whom prosecutions were successfully instituted or disciplinary actions taken by the authorities; as well as the violation involved in each of these actions?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President, the reply from the SFC to the Member's question is at the Annex. We have been assured by the SFC that it is willing to address any further enquiries on particular cases which the Member may have in this regard.

Annex

Total enforcement actions taken for the period 1 April 2001 to 5 March 2004 ⁽¹⁾

	<i>Intermediaries</i>	<i>Non-intermediaries</i>	<i>Total Enforcement actions involving intermediaries and non-intermediaries</i>
Part I Concluded Prosecution	37	119	156
Part II Concluded Discipline	378	0	378
Part III Outstanding Prosecution before court	14	17	31
Outstanding with Insider Dealing Tribunal	3	79	82
Part IV Outstanding awaiting Discipline	227	0	227
Part V Outstanding Investigation	310	318	628
Part VI Closed cases	340	673	1 013
Total	1 309	1 206	2 515

Part I. Concluded prosecutions for the period 1 April 2001 to 5 March 2004

(a) For the period 1 April 2001 to 31 March 2002

	<i>Successfully prosecuted intermediaries⁽²⁾</i>	<i>Successfully prosecuted non-intermediaries⁽³⁾</i>	<i>Total successful prosecutions (both intermediaries and non-intermediaries)</i>	<i>Unsuccessfully prosecuted intermediaries</i>	<i>Unsuccessfully prosecuted non-intermediaries</i>	<i>Total unsuccessful prosecutions (both intermediaries and non-intermediaries)</i>
Market Manipulation	2	2	4	0	0	0
Protection of Investors Ordinance	2	8	10	0	1	1
Securities (Disclosure of Interests) Ordinance	1	21	22	0	3	3
Unregistered dealing in securities	3	5	8	0	1	1
Unregistered dealing in commodities	0	1	1	0	0	0
Unregistered investment advising	0	3	3	0	0	0
Unregistered margin financing	1	1	2	0	0	0
Total	9	41	50	0	5	5

(b) For the period 1 April 2002 to 31 March 2003

	<i>Successfully prosecuted intermediaries</i>	<i>Successfully prosecuted non-intermediaries⁽⁴⁾</i>	<i>Total successful prosecutions (both intermediaries and non-intermediaries)</i>	<i>Unsuccessfully prosecuted intermediaries</i>	<i>Unsuccessfully prosecuted non-intermediaries</i>	<i>Total unsuccessful prosecutions (both intermediaries and non-intermediaries)</i>
Securities (Disclosure of Interests) Ordinance	1	20	21	1	3	4
Protection of Investors Ordinance	0	8	8	0	2	2
Market Manipulation	2	2	4	0	1	1
Short selling	2	1	3	0	0	0
Unregistered Dealing in securities	0	1	1	0	0	0
Total	5	32	37	1	6	7

(c) For the period 1 April 2003 to 5 March 2004

	<i>Successfully prosecuted intermediaries⁽⁵⁾</i>	<i>Successfully prosecuted non-intermediaries⁽⁶⁾</i>	<i>Total successful prosecutions (both intermediaries and non-intermediaries)</i>	<i>Unsuccessfully prosecuted intermediaries</i>	<i>Unsuccessfully prosecuted non-intermediaries</i>	<i>Total unsuccessful prosecutions (both intermediaries and non-intermediaries)</i>
Disposition of securities without authority	1	0	1	0	0	0
Provision of false and misleading information	3	1	4	0	0	0
Financial Resources Rules	5	0	5	0	0	0
Failure to attend SFC interview	1	4	5	0	0	0
Failure to maintaining trust accounts	1	0	1	0	0	0
Hawking of futures contracts	3	0	3	0	0	0
Market Manipulation	1	6	7	0	0	0
Securities (Disclosure of Interests) Ordinance	0	11	11	0	0	0
Protection of Investors Ordinance	0	5	5	0	0	0
Short Selling	1	0	1	0	0	0
Unregistered dealing in commodities	0	1	1	0	0	0

	<i>Successfully prosecuted intermediaries⁽⁵⁾</i>	<i>Successfully prosecuted non-intermediaries⁽⁶⁾</i>	<i>Total successful prosecutions (both intermediaries and non-intermediaries)</i>	<i>Unsuccessfully prosecuted intermediaries</i>	<i>Unsuccessfully prosecuted non-intermediaries</i>	<i>Total unsuccessful prosecutions (both intermediaries and non-intermediaries)</i>
Unregistered dealing in securities	4	2	6	0	0	0
Unregistered investment advising	0	3	3	0	0	0
Unregistered Leveraged Foreign Exchange Trading	2	2	4	0	0	0
Total	22	35	57	0	0	0

Part II. Disciplinary actions taken 1 April 2001 to 5 March 2004

<i>Disciplinary nature</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>		<i>Total disciplinary actions (2001 to 04)</i>	
	<i>Sanctioned</i>	<i>No penalty⁽⁷⁾</i>	<i>Sanctioned</i>	<i>No penalty</i>	<i>Sanctioned</i>	<i>No penalty</i>	<i>Sanctioned</i>	<i>No penalty</i>
Trading malpractice	15	3	1	1	4	4	20	8
Facilitating trading malpractice	4	0	1	2	5	0	10	2
Short selling	3	0	0	1	0	1	3	2
Unregistered dealing	10	0	5	4	2	3	17	7
Internal control weaknesses	13	2	7	6	29	5	49	13
Misappropriation	7	0	5	2	3	1	15	3
Other intermediaries misconduct	47	2	58	35	27	32	132	69
Account opening related matters	6	0	8	4	5	2	19	6
Corporate finance related matters	0	0	1	0	2	0	3	0
Total	105	7	86	55	77	48	268	110

Part III. Outstanding prosecution cases waiting to be heard as at 5 March 2004⁽⁸⁾

<i>Nature of Offences</i>	<i>Total number of intermediaries and non-intermediaries involved in the outstanding prosecution cases⁽⁹⁾</i>	<i>Number of intermediaries involved in the outstanding prosecution cases</i>
Provision of false and misleading information	6	3
Financial Resources Rules	1	0
Failure to attend SFC interview	2	0
Failure to maintain trust accounts	4	4
Hawking of futures contracts	1	1
Market Manipulation	3	1
Securities (Disclosure of Interests) Ordinance	3	0
Protection of Investors Ordinance	2	1
Unregistered dealing in Leveraged Foreign Exchange Trading Ordinance	3	1
Unregistered margin financing	2	0
Unregistered Investment advising	4	3
Total	31	14

Summary for the period 1 April 2001 to 5 March 2004

	<i>Intermediaries</i>	<i>Non-intermediaries</i>	<i>Total</i>
Part IV. Outstanding cases awaiting Discipline			
Breach of Financial Resources Rules	11	0	11
Breach of Protection of Investors Ordinance	9	0	9
Breach of Securities (Disclosure of Interests) Ordinance	2	0	2
Market Manipulation	6	0	6
Misappropriation	23	0	23
Miscellaneous	4	0	4
Negligence/Mismanagement	11	0	11
Non-Compliance of Laws/Rules	26	0	26
Other Misconduct by Intermediaries	103	0	103
Short Selling	11	0	11
Unregistered Dealing	21	0	21
	227	0	227
Part V. Outstanding Investigation			
Breach of Securities (Disclosure of Interests) Ordinance	22	42	64
Breach of Financial Resources Rules	33	10	43
Breach of Protection of Investors Ordinance	1	7	8
Companies Inspection	0	18	18
Insider Dealing	9	15	24
Market Manipulation	63	107	170
Misappropriation	11	6	17
Negligence/Mismanagement	10	6	16
Non-Compliance of Laws/Rules	35	11	46
Other Misconduct by Intermediaries	65	17	82
Short Selling	10	19	29
Other miscellaneous conduct	10	12	22
Unregistered Dealing	41	48	89
	310	318	628
Part VI. Closed Cases			
Breach of Securities (Disclosure of Interests) Ordinance	10	175	185
Breach of Financial Resources Rules	11	1	12
Breach of Protection of Investors Ordinance	5	60	65
Breach of Takeovers Code	5	1	6
Companies Inspection	0	7	7
Insider Dealing	3	36	39
Market Manipulation	92	97	189
Misappropriation	12	17	29
Negligence/Mismanagement	10	13	23
Non-Compliance of Laws/Rules	36	3	39
Other Misconduct by Intermediaries	114	125	239
Short Selling	3	3	6
Unregistered Dealing in Leveraged Foreign Exchange Trading	39	135	174
	340	673	1 013

Note:

- (1) It is not until a case reaches the final stages of prosecution or disciplinary actions that individuals are accredited with specific offences. For prosecutions this occurs when summonses are drafted and for disciplinary matters when Notices of Decisions (NODs) are drafted. For all other closed cases and outstanding investigations the cases and parties involved are subject to "broad types of activity" headings.

The SFC has split the answer into six separate headings as follows:

- I. concluded prosecutions
- II. concluded disciplinary action

- III. outstanding prosecution
- IV. outstanding cases awaiting disciplinary action
- V. outstanding investigations
- VI. closed cases

Only for Parts I to III can we split by specific offences or regulatory conduct. Parts IV to VI are summarized in terms of broad headings.

All the ordinances mentioned in Parts I to VI were repealed on 1 April 2003. The relevant provisions were largely re-enacted in the Securities and Futures Ordinance (SFO) which came into effect on 1 April 2003.

- (2) Intermediaries refer to those persons registered with the SFC. Non-intermediaries refer to persons not registered with the SFC.
- (3) Of the 41 successfully prosecuted non-intermediaries, one person was prosecuted for over one offence.
- (4) Among the 32 successfully prosecuted non-intermediaries, two persons were prosecuted for over one offence.
- (5) Among the 22 successfully prosecuted intermediaries, one person was prosecuted for over one offence.
- (6) Among the 35 successfully prosecuted non-intermediaries, one person was prosecuted for over one offence.
- (7) The "No penalty" category refers to cases which did not entail a penalty. It comprises cases ended with the issue of a warning letter and cases with no further action (NFA) as the relevant entity ceased to be a licensed person and thus the SFC has no disciplinary jurisdiction over the entity concerning his pre-SFO conduct.
- (8) In addition to the information provided in Part III, three intermediaries and 79 non-intermediaries were involved in cases to be heard by the Insider Dealing Tribunal.
- (9) Among the 31 entities involved in the outstanding prosecution cases, only 27 persons were involved as four persons were prosecuted for more than one type of offence.

Source of Information: Securities and Futures Commission
March 2004

Clandestine Photo-taking or Peeping with Intent

13. MR FREDERICK FUNG (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the number of cases received by the police over the past three years from the public complaining that someone took photos of or peeped at them clandestinely with intent in public places, broken down by months and districts in which such cases occurred, and the number of persons convicted for carrying out such illegal activities, as well as the sentences imposed on them;*
- (b) *of the means generally used by those who are involved in clandestine photo-taking or peeping with intent; and*

- (c) *whether it has reviewed if the police's general practice in preventing and handling such cases, and the relevant anti-crime publicity are effective and timely; if it has, of the review results?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) Before 2003, the police did not keep separate statistics on this type of cases. The number of cases involving clandestine recording or peeping in 2003 is as follows:

	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sept</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Total</i>
Hong Kong Island	-	-	1	-	1	-	-	1	3	-	1	1	8
Kowloon East	-	-	1	2	2	1	-	-	1	-	-	-	7
Kowloon West	-	-	1	1	2	-	2	3	1	1	1	-	12
New Territories North	-	1	-	-	-	2	-	-	-	1	1	-	5
New Territories South	-	2	-	1	2	-	1	1	1	1	1	-	10
Total	-	3	3	4	7	3	3	5	6	3	4	1	42

As at the end of 2003, among the above cases, 21 persons have been convicted, of which two sentenced to immediate imprisonment, 11 put on probation order, one put on community order, one sentenced to suspended imprisonment, and six fined.

- (b) According to the information of the police, offenders usually carried out clandestine recording activities in crowded places such as escalators or shopping arcades. They would clandestinely record private parts of the victims' body from the rear with cameras, video camcorders, or mobile phones with photo-taking functions, when the victims were unaware of such activities.
- (c) Upon receiving reports of such cases, the police would launch investigation in accordance with established procedures, which include intercepting the suspect and searching for witnesses, and so on. Also, the police have all along been disseminating anti-crime messages to the public through various channels.

The police review the relevant anti-crime publicity measures regularly, and the procedures to deal with this type of cases from time to time, having regard to the circumstances. The police consider the current practice appropriate.

Crimes Involving Information Technology

14. **SIN CHUNG-KAI** (in Chinese): *Madam President, it has been reported that crimes involving information technology (IT), particularly those relating to online games, rose substantially in the past year. In this connection, will the Government inform this Council:*

- (a) *of the number of people arrested for crimes involving IT over the past 18 months and, among them, the number of youngsters who were aged 18 or below;*
- (b) *whether it has formulated measures or guidelines to strengthen the security level of online games, such as requiring that game systems meet specific security standards or be subject to regular security audits; and*
- (c) *whether it has formulated measures to strengthen the promotion of "Cyber Ethics" and awareness of information security, so as to educate children and youngsters on the correct attitude and conduct to adopt when using IT, and enhance the level of the public's security awareness in handling day-to-day computer information; if it has, of the details of such measures?*

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

- (a) Technology crimes refer to crimes targeted at computers or computer systems (such as unauthorized access to servers or defacement of websites) and crimes committed via the Internet (such as online gambling). Thus, most of the crimes arising from online games could be categorized as technology crimes. Common crimes related to online games include unauthorized change of other

online game players' account passwords resulting in loss of control over their accounts, theft of virtual weapons from other online game players' accounts, and refusal to pay or hand over virtual weapons after a virtual weapon transaction. In 2002 and 2003, the respective numbers of people arrested by the police for technology crimes were 68 and 108, of whom 20 and 27 were youngsters aged 18 or below.

- (b) The Government attaches great importance to information security. Apart from promulgating information on information security management framework, standards and best practices for reference by businesses in different industries, the Government has written to professional organizations and trades associations inviting them to consider whether to formulate specific information security standards for their respective industries and establish audit mechanisms to certify compliance with such standards. The Government has invited the online game industry to, having regard to the information security concerns and needs of the industry, consider formulating information security standards and an audit mechanism for the industry, so as to strengthen the security level of online games.
- (c) In 2000, the Education and Manpower Bureau developed a set of IT Learning Targets outlining the essential IT knowledge, skills and attitudes that students should acquire at various stages of their schooling. One of the targets is that students should be trained to look out for improper and inaccurate information on the Internet and take measures to protect their own information while using the Internet.

Besides, the general computer courses in the junior secondary curriculum already cover such issues as copyright of computer information, data privacy and data security. Those in Secondary Four and Five are being taught the correct attitudes and values to be adopted in using computers and IT in the latest "Computer and IT" curriculum. Apart from topics like intellectual property rights and software licensing, students will also be led to explore the impacts of certain online activities including unauthorized access, indecent and false information, spam and computer virus. The main

objective of the curricula is to provide students with the basic knowledge of legal and ethical responsibilities in computer and IT application.

To co-ordinate and devise plans for promoting computer and cyber ethics, Education and Manpower Bureau established a committee in collaboration with a number of government departments and community organizations in October 2002. The committee has set up a "Cyber Ethics for Students and Youth" website (<www.cesy.qed.hkedcity.net>), provided advice and guidelines on the proper use of computers and Internet to schools, parents and students, and designed and produced relevant teaching resources for teachers.

Furthermore, the Television and Entertainment Licensing Authority, in addition to enforcing the Control of Obscene and Indecent Articles Ordinance, has also launched publicity and public education activities, like the "Ten Healthy Websites Contest" and "Creating a Healthy Cyber World", to provide guidance to children and youngsters on the proper use of the Internet so as to stay away from objectionable materials on the Internet.

To promote and enhance public awareness of information security, the Information Technology Services Department (ITSD) has implemented a series of measures including setting up the INFOSEC website (<www.infosec.gov.hk>), which is a one-stop portal to facilitate enterprises and the general public to obtain various resources on information security. The ITSD has also prepared reference materials on information security for distribution to teachers and students of primary and secondary schools. Seminars are also organized regularly in schools to enhance students' awareness of information security. Besides, the ITSD has produced several series of infotainment programmes and short educational messages on information security last year for broadcast on the television and radio. Starting from March 2004, a new series of short educational messages will be broadcast on the radio as a continuous effort to further enhance public awareness of information security.

Safety of Escalators

15. **MR ALBERT CHAN** (in Chinese): *Madam President, the Codes of Practice on the Design and Construction of Lifts and Escalators (CoP) issued by the Electrical and Mechanical Services Department (EMSD) require that deflector devices (such as brush bristles) be placed between the steps and skirt guards on both sides of escalators to reduce the possibility of trapping the feet or clothing of users. However, escalators installed before 18 March 1994, the date on which the CoP came into effect, are not subject to the requirement. As I have recently received many complaints about injuries arising from the use of escalators without the above devices, will the Government inform this Council:*

- (a) of the number of injuries involving the use of escalators in each of the past three years and the respective numbers of such injuries involving escalators installed before the CoP came into effect;*
- (b) of the number of escalators which had been installed before the CoP came into effect, and the number of them that are currently fitted with deflector devices; and*
- (c) whether it will strengthen the regulation on the construction of escalators and standardize the safety specifications for escalators installed in different periods; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in the absence of Secretary for Housing, Planning and Lands) (in Chinese):
Madam President, my response to the three parts of the question is as follows:

- (a) To enhance the safety of escalators and to keep users off the step edges so as to prevent their feet and clothing from being trapped between the skirt guards and the steps, the EMSD requires that escalators installed after 18 March 1994 be fitted with deflector devices, such as protective fixtures in the form of brush bristles suitably placed on the skirt guards.

Listed below are the total number of escalator incidents involving injuries in each of the past three years and the corresponding

number of such incidents involving escalators installed before the relevant Codes of Practice came into effect on 18 March 1994. Most of the incidents involved injuries of a minor nature, and those incidents involving injuries sustained as a result of trapping between the skirt guards and the steps only accounted for a small percentage of the total number of injury cases.

<i>Year</i>	<i>Total number of incidents involving injuries^{Note}</i>	<i>Number of injury incidents involving escalators installed before 18 March 1994</i>	<i>Incidents involving injuries sustained as a result of trapping between the skirt guards and the steps</i>	
			<i>Number of incidents</i>	<i>As a percentage of the total number of incidents</i>
2001	596	443	41	6.9
2002	620	428	32	5.2
2003	589	436	48	8.1

Note: The total numbers of incidents involving injuries include cases which took place on all escalators irrespective of their year of installation.

- (b) The total number of escalators installed before 18 March 1994 is 3 244. It is estimated that about 650 of them (20%) have been fitted with deflector devices.
- (c) The above data showed that most escalator incidents involving injuries were not caused by the absence of deflector devices. Therefore, the EMSD has no plans at this stage to standardize the safety specifications for escalators installed in different periods by requiring the installation of deflector devices on escalators installed before 18 March 1994. However, the EMSD will continue its efforts to encourage escalator owners to install such devices on their escalators. The EMSD will also continue to promote the safe use of escalators, including promoting the requirement for escalator owners to put up conspicuous posters or signs at their escalators to remind users of the proper way to use escalators so as to prevent

accidents, including those arising from trapping between the skirt guards and the steps.

Through the Lifts and Escalators (Safety) Ordinance (Cap. 327), the Government has put in place a stringent system for regulating the construction and safe operation of escalators. The system has been operating well. We also conduct reviews from time to time to see whether there is room for improvement. At present, we do not see the need to strengthen the relevant control.

Directional Signs for Pedestrian Subway at Kowloon Park Drive

16. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that the pedestrian subway at Kowloon Park Drive is underutilized as a result of ambiguous and inadequate directional signs. In this connection, will the Government inform this Council:*

- (a) *of the number of directional signs provided for the pedestrian subway;*
- (b) *of the respective numbers of complaints about ambiguous directional signs and requests for more directional signs from the public since the opening of the subway; and*
- (c) *whether it has assessed if the above directional signs are ambiguous; if the assessment results indicate that they are, the improvement measures in place?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) There are currently 66 directional signs and 11 route maps provided to guide pedestrians to use the subway across Kowloon Park Drive.
- (b) Since the commissioning of the pedestrian subway in June 2003, we have received two complaints about unclear directional signs and

seven requests for directional signs. In response, we have erected 10 additional signs, adjusted the location and orientation of three existing signs, and amended their content to improve clarity.

- (c) We consider the existing signage arrangements adequate. We will closely monitor the comments and feedback from users and will consider further improvements if required.

Individual Visit Scheme Leading to Increase in Theft Cases

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, it has been reported that since the implementation in July last year of the Individual Visit Scheme (IVS) for individual mainland residents to come to visit Hong Kong, the number of thefts committed by mainlanders in Hong Kong has shown an upward trend. The police plans to set up an anti-theft squad in the Kowloon West Region specially tasked with combating gang thefts or new forms of stealing activities. In this connection, will the Government inform this Council:*

- (a) *how the number of thefts in various districts in the first six months since the implementation of the IVS compares with that of the previous six months;*
- (b) *of the number of mainlanders holding individual visit endorsements arrested for alleged thefts so far;*
- (c) *of the details of the police's plan to set up the anti-theft squad; and*
- (d) *whether the police has redeployed its manpower to cope with these crimes?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) From January to June last year, the police received 20 457 reports of theft. The breakdown by district is as follows:

<i>District</i>	<i>2003</i>					
	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>
Hong Kong Island	671	693	920	734	776	690
Kowloon East	450	315	437	410	579	593
Kowloon West	750	627	832	783	774	792
New Territories North	880	664	892	750	794	823
New Territories South	704	525	681	563	660	642
Marine Police	8	5	10	15	8	7
Total	3 463	2 829	3 772	3 255	3 591	3 547

Since the Central Government relaxed its policy on individual mainland residents visiting Hong Kong in July 2003, the number of theft cases in various districts has generally remained stable. The total number is 20 430 for July to December. The detailed breakdown by district is as follows:

<i>District</i>	<i>2003</i>					
	<i>July</i>	<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>
Hong Kong Island	720	706	508	610	542	587
Kowloon East	573	534	481	542	516	566
Kowloon West	967	788	877	1 007	945	1 008
New Territories North	768	771	628	753	685	782
New Territories South	670	623	527	590	532	579
Marine Police	5	8	7	9	9	7
Total	3 703	3 430	3 028	3 511	3 229	3 529

- (b) The number of mainland visitors coming to Hong Kong under the IVS who have been arrested for theft is very small. From July 2003 to February 2004, more than 1.2 million mainlanders had visited Hong Kong under the IVS. Amongst them, only 49 have been arrested for theft, representing 0.004% of the total number of IVS visitors.

- (c) and (d)

The police have all along placed much emphasis on combating this type of "quick cash" crimes. Combating such crimes is one of the

police's operational targets for 2004. Individual police districts will, according to the local circumstances, strategically deploy their resources to target theft and other "quick cash" crimes. Apart from deploying plain-clothes task force members to patrol black spots, the police also make full use of intelligence to take proactive enforcement actions against targeted suspects. The police have also been liaising closely with the mainland authorities to exchange intelligence, with a view to preventing organized cross-boundary criminal activities. In addition, the police widely disseminate information on anti-theft measures to the public through various channels.

SFC's Regulation of Intermediaries

18. **MS EMILY LAU** (in Chinese): *Madam President, both the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the Code) and the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission (the Guidelines), published by the Securities and Futures Commission (SFC), provide for the avoidance and disclosure of conflicts of interests by intermediaries and their representatives when carrying on the regulated activities. In this connection, will the executive authorities inform this Council whether they know:*

- (a) *the current number of intermediaries who have complied with the Guidelines' requirement of segregating the research function from the sales, dealing and corporate finance functions in their firms, and their percentage in the total number of intermediaries;*
- (b) *the measures adopted by the SFC to ensure that intermediaries and their representatives strictly comply with the relevant requirements of the Code and the Guidelines;*
- (c) *the number of cases in the past three years in which the SFC took disciplinary actions against intermediaries and their representatives for suspected breaches of the requirements of the Code and the Guidelines and, among such cases, the number of those in which the persons were penalized by civil sanctions or convicted for having*

engaged in "market misconduct" under the Securities and Futures Ordinance; and

- (d) *the details, including the implementation timetable and the resources required, of the SFC's plan to step up investor education with the objective of enhancing investors' awareness of the conflict-of-interest issues relating to securities analysts?*

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

- (a) The SFC conducted a survey on investment research activities of securities firms in 2003^{Note}. The survey found that 62 firms, which employed a total of 529 analysts, had conducted research activities and published reports. Of these 62 firms, 30 were the larger ones with investment banking and research business, employing 442 analysts (about 84% of the analysts employed by the respondent firms). For these larger firms, 28 firms (93% of the group) had segregated their research function from the sales, dealing and corporate finance functions, with a view to addressing the potential and actual conflicts of interests relating to analysts. As for the remaining 32 smaller firms which did not engage in investment banking business and employed less than three analysts on average to provide retail investors with investment advice, 14 (44% of the group) had segregated the relevant functions.
- (b) Under the Securities and Futures Ordinance (Cap. 571), intermediaries applying for licences or registration should satisfy the SFC that they are fit and proper persons to be licensed or registered. In considering whether they are fit and proper persons for the purpose of the Ordinance, the SFC will take into account whether they have established effective internal control procedures to ensure their compliance with all regulatory requirements under the relevant provisions.

Note

The survey report can be downloaded from the SFC's website at

<http://www.hksfc.org.hk/eng/press_releases/html/publications/sfirm_survey_report.pdf>.

With a view to ensuring that intermediaries can continue to satisfy the SFC that they are fit and proper persons for the licences or registration, the SFC will pay inspection visits to check their compliance with the Securities and Futures Ordinance, the Code, and the Guidelines, and so on. Besides, the SFC will act on complaints against intermediaries received from the investing public. Should breaches of the regulatory requirements be found during the visits and complaint investigation process, the SFC would take appropriate supervisory or disciplinary actions.

- (c) The number of cases in the past three years in which the SFC took disciplinary actions against intermediaries and their representatives for breaches of the requirements of the Code and the Guidelines is as follows:

<i>Year 2001-02</i>	<i>Year 2002-03</i>	<i>Year 2003-04</i> <i>(up to 29 February 2004)</i>
105 cases	86 cases	77 cases

"Market misconduct" (including market manipulation, insider dealing, and so on) is defined under the Securities and Futures Ordinance. Before this Ordinance commenced operation on 1 April 2003, "market misconduct" was governed by the repealed Commodities Trading Ordinance (Cap. 250), Securities Ordinance (Cap. 333), and Securities (Insider Dealing) Ordinance (Cap. 395).

Under the old legal regime, the SFC resorted to the criminal route to deal with "market misconduct", save for insider dealing. In the past three years, no intermediaries or representatives of the cases set out in the above table were penalized by civil sanctions or convicted for having engaged in "market misconduct" (other than market manipulation). The number of persons convicted for having engaged in market manipulation in the above cases is as follows:

<i>Year 2001-02</i>	<i>Year 2002-03</i>	<i>Year 2003-04</i> <i>(up to 29 February 2004)</i>
0 person	1 person	1 person

After the implementation of the Securities and Futures Ordinance, no intermediaries or their representatives have so far been penalized by civil sanctions or convicted for having engaged in "market misconduct" as specified under the Ordinance.

- (d) The SFC always reminds retail investors to exercise caution when they consider any kind of investment advice before making investment decisions. This already forms part of the SFC's objectives in the current investor education efforts. The SFC disseminates this important message through different channels and plans to screen a relevant TV series in the summer of this year.

Once the Code of Conduct on Securities Analysts is adopted, the SFC will have a series of educational programmes to enhance investors' awareness of the conflict-of-interest issues relating to securities analysts and the SFC's regulatory regime.

MTR Fare Discount

19. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, the MTR Corporation Limited (MTRCL) introduced last year a 10% Introductory Fare Discount concession plan for passengers using any type of the Octopus Card on Mass Transit Railway (MTR) trains to and from Nam Cheong Station and Mei Foo Station between mid-December last year and the end of March this year. In this connection, will the Government inform this Council whether it knows:*

- (a) *the respective average daily numbers of passengers who have enjoyed the above discount since the opening of the West Rail, and the total amount of the discount involved; and*
- (b) *if the MTRCL will make the above concession plan a long-term practice and give further concessions so as to alleviate the burden of travelling expenses on passengers and attract more West Rail passengers to change to take MTR trains at these two stations; if it will, of the details; if not, the reasons for that?*

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

- (a) In conjunction with the commissioning of the MTR Nam Cheong Station and Mei Foo Station as interchange facilities with the West Rail, the MTRCL introduced a 10% Introductory Fare Discount on 17 December 2003 for all Octopus cardholders on their MTR fares to or from any destinations (except Airport Express journeys) when they enter or exit the Nam Cheong Station or Mei Foo Station. According to the MTRCL, the average daily number of passengers enjoying the discount is about 16 000 and 89 000 for Nam Cheong Station and Mei Foo Station respectively. However, the MTRCL considers that, due to commercial sensitivity, it is not appropriate to disclose the revenue involved in this discount scheme.
- (b) The discount will expire on 31 March 2004. We have encouraged the MTRCL to consider further measures after the expiry of the discount to help attract more West Rail passengers to interchange with the MTR at these two stations. The effect of the discount scheme is being assessed by the MTRCL and the Corporation will decide and announce the way forward in due course.

Press Releases Issued by SFC

20. **MR HENRY WU** (in Chinese): *Madam President, will the Government inform this Council of the total number of press releases on enforcement actions issued by the Securities and Futures Commission (SFC) in each of the past three years, and provide a breakdown of the violation involved in each of the actions set out in these press releases, the legislation or rules breached, the dates when the violations were committed and the disciplinary actions taken, and the dates of issuing the press releases?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President, the reply from the SFC to the Member's question is attached at Annexes A and B.

We have been informed by the SFC that it has tried to provide the information as close and meaningful as possible to meet the specific requests. In view of the number of cases (that is, 316 cases) which are captured by this question and the resources required to prepare the reply in a short period of time, the SFC has endeavoured to categorize each case under a specific type of misconduct or offences to enhance the usefulness of the information. The categorization is based upon how the SFC maintains such data for record purposes.

We have also been informed by the SFC that all the information provided in the reply has been extracted from the press releases issued by the SFC during the past three years. The full details of each case are readily and conveniently available to the public on the SFC's website. We have been assured by the SFC that it is willing to address any further enquiries on particular cases which the Member may have in this regard.

In preparing this reply, we have invited the SFC to consider modifying its database to improve users' analysis of its enforcement efforts having regard to the practice of other law enforcement agencies and its resource constraints. The Commission has undertaken to follow up.

Annex A

Press releases on discipline cases (2001 to 2004)

Key

- | | |
|--------------------------|---------------------------------------|
| Categories of misconduct | (1) Trading malpractice |
| | (2) Facilitating trading malpractice |
| | (3) Short selling |
| | (4) Unregistered dealing |
| | (5) Internal control weaknesses |
| | (6) Misappropriation |
| | (7) Other intermediaries' misconduct |
| | (8) Account opening related matters |
| | (9) Corporate finance related matters |

* Cases appealed to Securities and Futures Appeals Panel/Securities and Futures Appeals Tribunal

(i) 1.4.2003 to 5.3.2004

<i>No.</i>	<i>Press release date</i>	<i>Misconduct category</i>	<i>Misconduct date</i>	<i>Decision date</i>
1.	05-May-03	5	Sep-00	02-Apr-03
2.	05-May-03	2	Dec-00 to Mar-01	03-Apr-03
3.	06-May-03	1	22-Mar-02 to 28-Mar-02	04-Apr-03
4.	15-May-03	7	Dec-01	14-Apr-03
5.	15-May-03	7	Dec-01	14-Apr-03
6.	29-Apr-03	7	Jun-00 to Sep-00	15-Apr-03
7.	23-Apr-03	7	Aug-01, 11 ~ 13-Sep-01	16-Apr-03
8.	23-Apr-03	7	Aug-01, 11 ~ 13-Sep-01	16-Apr-03
9.	22-May-03	7	Jul-01 to Feb-02	20-May-03
10.	17-Jun-03	9	13-Mar-01	11-Jun-03
11.	02-Jul-03	7	May-02	26-Jun-03
12.	04-Jul-03	5	2 ~ 13-Feb-01	27-Jun-03
13.	04-Jul-03	5	2 ~ 13-Feb-01	27-Jun-03
14.	04-Jul-03	7	2 ~ 13-Feb-01	27-Jun-03
15.	28-Jul-03	7	Dec-00 to Mar-01	04-Jul-03
16.	06-Aug-03	7	Aug-01 to Oct-01	15-Jul-03
17.	13-Aug-03	5	Jan-98 to Jun-01	17-Jul-03
18.	20-Oct-03	5	Jun-98 to Jun-01	17-Jul-03*
19.	30-Jul-03	5	Jan-00 to Mar-00	25-Jul-03
20.	30-Jul-03	2	Jan-00 to Mar-00	25-Jul-03
21.	30-Jul-03	5	Jan-00 to Mar-00	25-Jul-03
22.	18-Aug-03	7	Jan-02	13-Aug-03
23.	18-Aug-03	7	Jan-02	13-Aug-03
24.	18-Aug-03	7	Jan-02	13-Aug-03
25.	18-Aug-03	7	Jan-02	13-Aug-03
26.	04-Sep-03	7	Jun-02 to Aug-02	13-Aug-03
27.	18-Aug-03	5	Oct-02	14-Aug-03
28.	18-Aug-03	5	Oct-02	14-Aug-03
29.	18-Aug-03	5	Oct-02	14-Aug-03
30.	10-Sep-03	7	2000 to 2001	18-Aug-03
31.	10-Sep-03	7	2000 to 2001	18-Aug-03
32.	21-Aug-03	5	Jun-98 to Dec-00	21-Aug-03
33.	21-Aug-03	5	Jun-98 to Dec-00	21-Aug-03
34.	21-Aug-03	5	Jun-98 to Dec-00	21-Aug-03

<i>No.</i>	<i>Press release date</i>	<i>Misconduct category</i>	<i>Misconduct date</i>	<i>Decision date</i>
35.	02-Oct-03	6	Dec-01 to Jan-03	10-Sep-03
36.	13-Oct-03	5	Nov-01	22-Sep-03
37.	13-Oct-03	5	Nov-01	22-Sep-03
38.	13-Oct-03	5	Nov-01	22-Sep-03
39.	17-Oct-03	6	Apr-03	24-Sep-03
40.	17-Oct-03	7	May-02	24-Sep-03
41.	29-Sep-03	8	May-02	24-Sep-03
42.	30-Sep-03	7	Early-01	24-Sep-03
43.	30-Oct-03	1	Apr-01 to Sep-01	08-Oct-03
44.	24-Oct-03	7	Dec-00 to Mar-01	22-Oct-03
45.	23-Oct-03	4	19-Mar-03 to 16-May-03	22-Oct-03
46.	30-Oct-03	8	Nov-01	28-Oct-03
47.	30-Oct-03	9	Apr-01	29-Oct-03
48.	24-Nov-03	5	Apr-01 to Feb-02	31-Oct-03
49.	24-Nov-03	5	Apr-01 to Feb-02	31-Oct-03
50.	24-Nov-03	5	Apr-01 to Feb-02	31-Oct-03
51.	8-Dec-03	3	2002	13-Nov-03
52.	17-Dec-03	5	May-02	13-Nov-03*
53.	09-Dec-03	5	May-02	14-Nov-03
54.	09-Dec-03	7	Jul-00 to Jun-02	17-Nov-03
55.	17-Dec-03	1	26-Jul-02	16-Dec-03
56.	29-Dec-03	5	Jan-01 to Jul-02	23-Dec-03
57.	29-Dec-03	5	Jan-01 to Jul-02	23-Dec-03
58.	02-Jan-04	2	Jun-02	30-Dec-03
59.	02-Jan-04	2	Jun-02	30-Dec-03
60.	05-Jan-04	7	Oct-02	02-Jan-04
61.	28-Jan-04	8	2002	06-Jan-04
62.	28-Jan-04	5	2000	06-Jan-04
63.	08-Jan-04	5	2000	06-Jan-04
64.	13-Jan-04	5	18-Sep-00 to 27-Mar-02	08-Jan-04
65.	21-Jan-04	7	Jun-98	14-Jan-04
66.	06-Feb-04	8	11 and 12-Oct-01	04-Feb-04
67.	16-Feb-04	5	Aug-98 to Apr-99	13-Feb-04
68.	16-Feb-04	5	Aug-98 to Apr-99	13-Feb-04
69.	23-Feb-04	1	6-Sep-01	19-Feb-04

(ii) 1.4.2002 to 31.3.2003

<i>No.</i>	<i>Press release date</i>	<i>Misconduct category</i>	<i>Misconduct date</i>	<i>Decision date</i>
1.	09-May-02	5	Jan-01 to May-01	08-Apr-02
2.	27-May-02	2	2000	13-Apr-02
3.	27-May-02	1	2000	13-Apr-02
4.	18-Apr-02	7	Aug-94 to Mar-00	15-Apr-02
5.	18-Apr-02	7	Aug-94 to Mar-00	15-Apr-02
6.	18-Apr-02	7	Aug-94 to Mar-00	15-Apr-02
7.	18-Apr-02	7	Aug-94 to Mar-00	15-Apr-02
8.	16-Sep-02	7	Nov-00 to Jan-01	17-Apr-02
9.	31-May-02	7	Oct-01 to Dec-01	29-Apr-02
10.	09-May-02	7	Sep-99 to Sep-00	06-May-02
11.	12-Dec-02	7	May-00 to Mar-01	15-May-02*
12.	12-Dec-02	7	May-00 to Mar-01	15-May-02*
13.	29-May-02	7	1 and 2-Mar-01	28-May-02
14.	10-Jun-02	7	1-Jan-00 to 20-Feb-01	10-Jun-02
15.	23-Jul-02	7	6-Aug-99 to 10-Dec-99	10-Jun-02
16.	18-Jul-02	7	Apr-01 to Feb-02	11-Jun-02
17.	08-Aug-02	7	27-Sep-00 to 23-Oct-00	27-Jun-02
18.	16-Aug-02	7	9-Jun-00 to 18-Sep-00	08-Jul-02
19.	19-Aug-02	7	Late-00 to early-02	12-Jul-02
20.	19-Aug-02	7	Late-00 to early-02	12-Jul-02
21.	19-Aug-02	7	Late-00 to early-02	12-Jul-02
22.	30-Jul-02	7	1997 to 1998	19-Jul-02
23.	09-Sep-02	7	7-Feb-01	08-Aug-02
24.	20-Sep-02	7	26-Oct-02	19-Aug-02
25.	17-Sep-02	7	2001	02-Sep-02
26.	17-Sep-02	7	2001	02-Sep-02
27.	21-Oct-02	7	Dec-99 to Jul-02	17-Sep-02
28.	18-Oct-02	7	Feb-98 to Nov-00	16-Oct-02
29.	18-Oct-02	7	2000	16-Oct-02
30.	22-Nov-02	7	Jul-01	16-Oct-02
31.	22-Nov-02	7	2001 to 2002	23-Oct-02
32.	29-Nov-02	7	1-Jul-00 to 31-Aug-00	23-Oct-02
33.	29-Nov-02	7	1-Jul-00 to 31-Aug-00	23-Oct-02
34.	29-Nov-02	7	1-Jul-00 to 31-Aug-00	23-Oct-02

<i>No.</i>	<i>Press release date</i>	<i>Misconduct category</i>	<i>Misconduct date</i>	<i>Decision date</i>
35.	20-Nov-02	7	Oct 2000	07-Nov-02
36.	04-Apr-03	7	Oct 2000	07-Nov-02*
37.	12-Dec-02	7	Jan-01 to Sep-01	11-Nov-02
38.	19-Nov-02	7	Dec-00 to Jan-01	13-Nov-02
39.	22-Nov-02	7	1-Sep-99 to 31-May-00	19-Nov-02
40.	28-Jan-03	7	Oct-98 to May-99	22-Nov-02
41.	29-Nov-02	7	Oct-99 to Nov-00	27-Nov-02
42.	28-Jan-03	7	Oct-98 to May-99	28-Nov-02
43.	28-Jan-03	7	Oct-98 to May-99	16-Dec-02
44.	19-Dec-02	7	2000	16-Dec-02
45.	17-Jan-03	7	Jun-01 to Jul-01	16-Dec-02
46.	20-Dec-02	7	Oct-01	17-Dec-02
47.	06-Jan-03	7	Aug-01	02-Jan-03
48.	15-May-03	7	Dec-01	04-Jan-03
49.	05-Mar-03	7	Nov-01	06-Jan-03
50.	05-Mar-03	7	Nov-01	06-Jan-03
51.	05-Mar-03	7	Nov-99	06-Jan-03
52.	17-Mar-03	7	2002	06-Jan-03
53.	14-Feb-03	7	Oct-00 to Mar-01	09-Jan-03
54.	18-Feb-03	7	Aug-00	13-Feb-03
55.	18-Feb-03	7	Aug-00	13-Feb-03
56.	24-Feb-03	7	1995 to 1998	18-Feb-03
57.	25-Mar-03	7	Aug-01	21-Feb-03
58.	25-Mar-03	7	Aug-01	21-Feb-03
59.	25-Feb-03	7	Jun-01 to Sep-01	21-Feb-03
60.	25-Feb-03	7	Jun-01 to Sep-01	21-Feb-03
61.	25-Feb-03	7	May-01	21-Feb-03
62.	26-Feb-03	7	2002	21-Feb-03
63.	07-Apr-03	7	1992 to 2002	25-Feb-03
64.	04-Mar-03	7	Mar-01 to Jan-01	28-Feb-03
65.	04-Mar-03	7	Mar-01 to Jan-01	28-Feb-03
66.	03-Apr-03	7	Oct-98 to Mar-99	05-Mar-03
67.	03-Apr-03	7	Oct-98 to Mar-99	05-Mar-03
68.	13-Mar-03	7	May-00 to Oct-00	10-Mar-03
69.	20-Mar-03	7	Aug-01	13-Mar-03
70.	20-Mar-03	7	Aug-01	13-Mar-03

<i>No.</i>	<i>Press release date</i>	<i>Misconduct category</i>	<i>Misconduct date</i>	<i>Decision date</i>
71.	20-Mar-03	7	Aug-01	13-Mar-03
72.	27-Mar-03	7	Jan-00 to May-01	21-Mar-03
73.	27-Mar-03	7	Jan-00 to May-01	21-Mar-03
74.	27-Mar-03	7	Jan-00 to May-01	21-Mar-03
75.	28-Mar-03	7	May-00 to Sep-00	24-Mar-03
76.	22-Dec-03	7	Jun-00 to Sep-00	24-Mar-03*
77.	25-Apr-03	7	Jun-00 to Sep-00	24-Mar-03
78.	01-Apr-03	7	2002	26-Mar-03

(iii) 1.4.2001 to 31.3.2002

<i>No.</i>	<i>Press release date</i>	<i>Category</i>	<i>Misconduct date</i>	<i>Decision date</i>
1.	24-May-01	7	4-Apr-98 to 24-Sep-98	04-Apr-01
2.	19-Apr-01	7	1995 to Jul-00	09-Apr-01
3.	19-Apr-01	7	Apr-97 to Jun-00	09-Apr-01
4.	19-Apr-01	7	Mid-93 to Jul-00	09-Apr-01
5.	19-Apr-01	7	Apr-97 to Jun-00	09-Apr-01
6.	19-Apr-01	7	1998	12-Apr-01
7.	26-Apr-01	4	May-99 to Nov-99	18-Apr-01
8.	26-Apr-01	4	May-99 to Nov-99	18-Apr-01
9.	26-Apr-01	4	20-Jan-99 to 12-Nov-99	18-Apr-01
10.	26-Apr-01	4	20-Jan-99 to 12-Nov-99	18-Apr-01
11.	26-Apr-01	4	20-Jan-99 to 12-Nov-99	18-Apr-01
12.	20-Jul-01	4	2000	04-May-01*
13.	17-May-01	5	Oct-96 to Jan-99	15-May-01
14.	24-May-01	7	Aug-98	18-May-01
15.	22-Jun-01	1	17-Sep-99 to 13-Nov-99	22-May-01
16.	14-Jun-01	7	Jan-00 to Aug-00	04-Jun-01
17.	12-Jul-01	1	May-96 to Apr-98	06-Jun-01
18.	4-Jan-02	1	Nov-99 to Feb-00	13-Jun-01*
19.	29-Jun-01	1	Sep-99	15-Jun-01
20.	29-Jun-01	1	Sep-99	15-Jun-01
21.	29-Jun-01	1	Sep-99	15-Jun-01
22.	29-Jun-01	1	Sep-99	15-Jun-01
23.	22-Jun-01	7	Jul-97 to Aug-99	15-Jun-01
24.	28-Jun-01	7	Mar-98 to Jun-99	19-Jun-01

<i>No.</i>	<i>Press release date</i>	<i>Category</i>	<i>Misconduct date</i>	<i>Decision date</i>
25.	28-Jun-01	7	Mar-98 to Jun-99	19-Jun-01
26.	19-Jul-01	5	1995 to 2000	19-Jun-01
27.	19-Jul-01	5	1995 to 2000	19-Jun-01
28.	20-Jul-01	4	Jan-00 to Jun-00	27-Jun-01
29.	19-Jul-01	4	Jan-00 to Feb-00	12-Jul-01
30.	19-Jul-01	1	23-Jun-99	14-Jul-01
31.	19-Jul-01	7	Dec-98 to May-99	16-Jul-01
32.	26-Jul-01	7	Mar-99	19-Jul-01
33.	06-Sep-01	1	30-Jan-00 and 1-Feb-00	06-Aug-01
34.	09-Aug-01	1	30-Dec-99	07-Aug-01
35.	13-Sep-01	6	Dec-98, Apr-00, Aug-00	10-Aug-01
36.	13-Sep-01	6	Dec-98, Apr-00, Aug-00	10-Aug-01
37.	13-Sep-01	6	Dec-98, Apr-00, Aug-00	10-Aug-01
38.	23-Aug-01	4	1-Apr-99 to May-00	17-Aug-01
39.	23-Aug-01	4	1-Apr-99 to May-00	17-Aug-01
40.	23-Aug-01	4	1-Apr-99 to May-00	17-Aug-01
41.	15-Nov-01	6	Jun-98 to 2001	03-Sep-01
42.	15-Nov-01	6	Jun-98 to 2001	03-Sep-01
43.	20-Sep-01	8	21 ~ 26-Oct-99	10-Sep-01
44.	27-Sep-01	7	11 ~ 21-Dec-00	12-Sep-01
45.	20-Sep-01	8	Jun-99	17-Sep-01
46.	26-Oct-01	7	Jan-99 to Feb-99	24-Sep-01
47.	11-Oct-01	6	Feb-98 to 2000	26-Sep-01
48.	04-Oct-01	5	Jan-97 to Jul-00	26-Sep-01
49.	04-Oct-01	1	Early-97 to Feb-00	27-Sep-01
50.	04-Oct-01	1	Early-97 to Feb-00	28-Sep-01
51.	08-Nov-01	7	May-00 to Aug-00	08-Oct-01
52.	15-Nov-01	7	Oct-00 to Dec-00	11-Oct-01
53.	06-Dec-01	6	8-Jun-98 to 27-Dec-01	06-Nov-01
54.	22-Nov-01	5	Sep-98 to Jul-00	13-Nov-01
55.	15-Nov-01	5	Jul-98	21-Nov-01
56.	11-Jun-02	7	2000	10-Dec-01
57.	17-Jan-02	1	22 and 23-Feb-01	12-Dec-01
58.	17-Jan-02	7	May-99 to Jun-01	14-Dec-01
59.	4-Jan-02	1	Nov-99 to Feb-00	19-Dec-01

<i>No.</i>	<i>Press release date</i>	<i>Category</i>	<i>Misconduct date</i>	<i>Decision date</i>
60.	28-Feb-02	1	Jan-99 to Mar-99	25-Jan-02
61.	14-Mar-02	5	1-Sep-99 to 31- May-00	30-Jan-02
62.	21-Feb-02	7	Jan-99 to Feb-99	07-Feb-02
63.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
64.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
65.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
66.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
67.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
68.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
69.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
70.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
71.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
72.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
73.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
74.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
75.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
76.	11-Mar-02	7	Sep-99 to Sep-00	08-Feb-02
77.	08-Apr-02	7	2002	01-Mar-02
78.	21-Mar-02	7	May-01 to Jun-01	18-Mar-02
79.	17-Apr-02	7	21-Jun-01	18-Mar-02

Note:

- (1) *Decision date* is the date on which the SFC makes a decision on the penalty to be imposed in relation to the misconduct and issues a Notice of Decision to the target advising it of the relevant decision.
- (2) *Press release date*: For non-appealable decisions (that is, public reprimands for conduct before the Securities and Futures Ordinance came into effect on 1 April 2003), the press release date is usually very close to the decision date. For appealable decisions (that is, suspensions and revocations for conduct before the Securities and Futures Ordinance came into effect on 1 April 2003), the press release will not be issued and the penalty will not come into operation until the time for making the appeal has expired or, where an appeal is made, the appeal is determined or withdrawn. The appeal period under the post-1 April 2003 regime was 30 days and that under the post-1 April regime is 21 days.
- (3) In view of the number of cases captured by the Member's question, the SFC has tried its best to categorize each case under a specific type of misconduct to enhance the usefulness of information. The categorization is based upon how the SFC maintains such data for record purpose.

Source: Securities and Futures Commission
March 2004

Annex B

Press release on prosecution (2001 to 2004)

Abbreviations used

CTO	Commodities Trading Ordinance
LFET	Leveraged foreign exchange trading
PIO	Protection of Investors Ordinance
SDIO	Securities (Disclosure of Interests) Ordinance
SO	Securities Ordinance

(i) 1.4.2003 to 5.3.2004

<i>No.</i>	<i>Press release date</i>	<i>Offence</i>	<i>Offence date</i>
1.	1-Apr-03	Unlicensed LFET	Dec-00 to Nov-01
2.	1-Apr-03	Provision of false information	8 ~ 13-Mar-02
3.	8-Apr-03	Issuance of unauthorized investment advertisements	14-Aug-02 to 12-Sep-02
4.	20-May-03	Market manipulation	12-Feb-01 to 9-Mar-01 2-Jan-02 to 7-Mar-02 15 ~ 27-Mar-01
5.	27-May-03	Contravening the SDIO	31-Jan-02 to 19-Feb-02
6.	27-May-03	Failure to notify the SFC of its liquid capital deficiencies	2-May-02 to 27-Aug-02
7.	3-Jun-03	Contravening the SDIO	18-Jul-02 to 3-Sep-02
8.	3-Jun-03	Issuance of unauthorized advertisements and carrying on an unregistered advisory business	15-Jul-02 to 26-Aug-02
9.	10-Jun-03	Market manipulation	4-Jul-01 to 21-Sep-01
10.	24-Jun-03	Contravening the SDIO	Oct-01 to Dec-01
11.	8-Jul-03	Contravening the SDIO	14-Jun-02 to 15-Jul-02
12.	15-Jul-03	Contravening the SDIO	31-Jul-01 to 11-Sep-01
13.	22-Jul-03	Market manipulation	Sep-00
14.	25-Jul-03	Short selling	26-Mar-02
15.	29-Jul-03	Providing misleading information to the SFC Failure to notify the SFC of its liquid capital deficiencies	Jul-00 to Jun-02
16.	29-Jul-03	Manipulating the share price of a listed company	Feb-02 to Mar-02
17.	18-Aug-03	Providing misleading information to the SFC and failing to notify the SFC of its liquid capital deficiencies Breaches relating to the keeping of trust accounts	Jan-02 to Jul-02

<i>No.</i>	<i>Press release date</i>	<i>Offence</i>	<i>Offence date</i>
18.	5-Sep-03	Market manipulation	Jun-01 to Jul-01
19.	9-Sep-03	Acting as investment representative whilst unregistered	Jun-01
20.	16-Sep-03	Acting as an investment representative whilst unregistered	Jun-01
21.	30-Sep-03	Not attending the SFC investigation interviews	25-Jul-03
22.	21-Oct-03	Unregistered dealing	Aug-01 to May-02
23.	31-Oct-03	Unlicensed LFET	Feb-00
24.	18-Nov-03	Contravening the SDIO	Sep-02 to Oct-02
25.	18-Nov-03	Aiding and abetting a broker while her licence was still accredited to another brokerage	Sep-02 to Oct-02
26.	4-Dec-03	Acting as an investment representative whilst unregistered	Jun-01
27.	16-Dec-03	Hawking of futures contracts	Oct-02 to Dec-02
28.	29-Dec-03	Aiding and abetting unlicensed LFET	Dec-00 to Nov-01
29.	13-Jan-04	Failure to assist the SFC investigation	Mar-03
30.	20-Jan-04	Not attending the SFC investigation interviews	27-Aug-03
31.	27-Jan-04	Not attending the SFC investigation interviews	8-Aug-03
32.	4-Feb-04	Acting as a dealer's representative whilst unregistered	Apr-02 to Feb-03
33.	5-Feb-04	Mishandling clients' securities	Nov-01 to Jul-02
34.	27-Feb-04	Unlicensed LFET	Oct-02 to Nov-03
35.	3-Mar-04	Contravening the SDIO	5-Mar-03

(ii) 1.4.2002 to 31.3.2003

<i>No.</i>	<i>Press release date</i>	<i>Offence</i>	<i>Offence date</i>
1.	9-Apr-02	Contravening the SDIO	8-Jun-01 to 17-Aug-01 8-Mar-00 to 27-Aug-01 12-May-00 to 28-Aug-01
2.	15-Apr-02	Contravening the SDIO	17-Jan-00 to 18-Jan-00
3.	13-May-02	Contravening the SDIO	Jul-00 to Dec-00 3 ~ 7-Nov-00
4.	5-Jun-02	Contravening the SO and PIO	May-00 to May-01
5.	10-Jun-02	Intentionally creating a false and misleading appearance of active trading	20-Mar-00 to 7-Jun-00
6.	20-Jun-02	Contravening the SDIO	9-Mar-01, 18-May-01
7.	16-Jul-02	Contravening the PIO	23 ~ 25-Jan-02

<i>No.</i>	<i>Press release date</i>	<i>Offence</i>	<i>Offence date</i>
8.	16-Jul-02	Contravening the SDIO	14-Jun-01 to 11-Sep-01
9.	13-Aug-02	Contravening the SDIO	Apr-02
10.	27-Aug-02	Contravening the SDIO	3-Sep-01
11.	29-Aug-02	Contravening the SDIO	9-Mar-01
12.	10-Sep-02	Contravening the PIO	21-Sep-01
13.	17-Sep-02	Contravening the SDIO	16-Feb-01 to 27-Aug-01
14.	8-Oct-02	Possession and issuance of unauthorized investment advertisements and promotional documents	Nov-01 to Jan-02
15.	15-Oct-02	Contravening the SDIO	14-Oct-98 to 11-Jan-01
16.	22-Oct-02	Contravening the SDIO	17-Sep-01 to 27-Dec-01
17.	28-Oct-02	Market manipulation	20-Sep-00 to 20-Oct-00
18.	5-Nov-02	Contravening the SDIO	1-Aug-01 to 10-Jan-02
19.	26-Nov-02	Short selling	14-Sep-01 to 2-Jan-02
20.	24-Dec-02	Contravening the SDIO	24-May-01 to 16-Jan-02 22-Nov-01 to 15-Jan-02
21.	14-Feb-03	Issuance of unauthorized investment advertisements	18 ~ 21-May-01
22.	11-Mar-03	Contravening the SDIO	6-Apr-00 to 24-Dec-01
23.	25-Mar-03	Short selling and market manipulation	2-May-02
24.	25-Mar-03	Short selling	14-Mar-02
25.	25-Mar-03	Contravening the SDIO	7-Aug-98 to 19-Mar-02

(iii) 1.4.2001 to 31.3.2002

<i>No.</i>	<i>Press release date</i>	<i>Offence</i>	<i>Offence date</i>
1.	11-Apr-01	Unregistered dealing	1-Nov-99 to 28-Apr-00
2.	24-Apr-01	Contravening the SDIO	16-Jul-99 to 25-May-00
3.	5-Jun-01	Contravening the SDIO	28-Jun-00 to 14-Aug-00
4.	3-Jul-01	Unregistered dealing	1-Sep-99 to 31-May-00
5.	31-Jul-01	Contravening the SDIO	12-Jul-00, 11-Aug-00
6.	7-Aug-01	Contravening the SDIO	16-Jun-00 to 21-Aug-00
7.	22-Aug-01	Contravening the SDIO	8-Feb-01 to 1-Mar-01
8.	22-Aug-01	Contravening the PIO	Jun-00 to Aug-00
9.	5-Sep-01	Contravening the SDIO	8 ~ 16-Dec-99
10.	11-Sep-01	Contravening the SDIO	11-Apr-00 to 21-Aug-00
11.	25-Sep-01	Contravening the SDIO	9-Jun-00
12.	25-Sep-01	Unregistered dealing	1-Sep-99 to 31-May-00
13.	27-Sep-01	Unregistered dealing	1-Sep-99 to 31-May-00
14.	4-Oct-01	Unregistered dealing	1-May-00 to 30-Nov-00

<i>No.</i>	<i>Press release date</i>	<i>Offence</i>	<i>Offence date</i>
15.	5-Oct-01	Aiding and abetting unregistered dealing	Sep-99 to Jun-00
16.	9-Oct-01	Contravening the SDIO	10-Jul-98 to 15-Jul-99
17.	16-Oct-01	Contravening the SDIO	Jun-98 to May-00
18.	17-Oct-01	Unregistered dealing	1-Sep-99 to 31-May-00
19.	28-Nov-01	Contravening the SDIO	4-Aug-00 to 1-Nov-00
20.	11-Dec-01	Contravening the SDIO	29-Aug-00 to 13-Oct-00
21.	11-Dec-01	Carrying on a business without obtaining registration	3-Jul-00 to 15-Dec-00
22.	18-Dec-01	Intentionally creating a false and misleading appearance of active trading	2-Aug-99 to 31-Aug-99
23.	8-Jan-02	Contravening the SDIO	3 ~ 7-Nov-00
24.	15-Jan-02	Contravening the SDIO	1-Feb-01 to 20-Mar-01
25.	15-Jan-02	Contravening the SDIO	7-Jun-00 to 5-Sep-00
26.	30-Jan-02	Contravening the SDIO	15-Apr-99 to 19-Aug-00
27.	18-Feb-02	Creating a false market	3-Jan-00 to 18-Feb-00
28.	25-Feb-02	Violating the PIO	May-00
29.	26-Feb-02	Violating the PIO	Dec-00
30.	26-Feb-02	Contravening the CTO and PIO	5 ~ 26-Feb-01

Note:

In view of the number of cases captured by the Member's question, the SFC has tried its best to categorize each case under a specific type of offence to enhance the usefulness of information. The categorization is based upon how the SFC maintains such data for record purpose.

Source: Securities and Futures Commission

March 2004

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bill: First Reading.

CRIMINAL PROCEDURE (AMENDMENT) BILL 2004

CLERK (in Cantonese): Criminal Procedure (Amendment) Bill 2004.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bill: Second Reading.

CRIMINAL PROCEDURE (AMENDMENT) BILL 2004

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that the Criminal Procedure (Amendment) Bill 2004 (the Bill) be read a Second time.

The purpose of the Bill is to amend the Criminal Procedure Ordinance (CPO) to provide that Judges of the Court of First Instance (CFI) be vested with the power to determine the minimum terms of 25 prisoners who are serving indeterminate sentences. In addition, the Bill also proposes that for the 14 prisoners among them who have committed murder under the age of 18, the CFI Judge should, subject to the consent of the prisoner concerned, have the discretion to give a determinate sentence as an alternative to determining a minimum term.

The 25 prisoners comprise 12 prisoners detained at Executive discretion for having committed murder under the age of 18, two prisoners serving mandatory life sentences for having committed murder under the age of 18, and 11 prisoners serving discretionary life sentences. In a court ruling in September 2002, the Court held that section 67C(2), (4) and (6) of the CPO, the legislative provisions under which the prisoners' minimum terms were originally determined, were invalid. Twenty-five prisoners are now without lawfully determined minimum terms. To put this matter right, we propose that the power to determine the minimum terms for the prisoners concerned should be vested in a Judge of the CFI, so that these prisoners could be given lawfully determined minimum terms.

In addition, the Bill proposes that for the 14 prisoners who committed murder under the age of 18 (young murderers), the CFI Judge should, subject to the consent of the prisoner concerned, be given the discretion to give a determinate sentence as an alternative to determining a minimum term. This proposal is premised on section 2 of the Offences against the Person Ordinance,

which came into effect on 30 June 1997. Under that section, the Court has the discretion to sentence "young murderers" to a life sentence or a determinate sentence. This discretion provided for by law was not available to the Courts when they decided on the sentences in respect of the 14 cases in question. The proposal would, therefore, put the 14 prisoners on a par with the "young murderers" convicted of murder committed after 30 June 1997, in terms of the penalty to which they would be liable.

The proceedings in respect of the cases will be held in open court and determined after hearing the parties in accordance with the existing provisions of the CPO. The prisoners concerned will have the right to appeal to the Court of Appeal with leave of the Court of Appeal and to the Court of Final Appeal with leave on the criteria laid down in the Court of Final Appeal Ordinance. In addition, the Bill proposes to introduce consequential amendments to the Legal Aid in Criminal Cases Rules to enable the prisoners to apply for legal aid.

Madam President, the proposed amendments would enable the 25 prisoners who have no lawfully determined minimum terms to be given minimum terms of imprisonment determined by the Judiciary, and the "young murderers" among them would have a chance to be given a determinate sentence to replace their indeterminate sentence. I hope Members will support the proposals and pass the Bill as soon as possible. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Criminal Procedure (Amendment) Bill 2004 be read the Second time.

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

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Legal Aid Ordinance.

PROPOSED RESOLUTION UNDER THE LEGAL AID ORDINANCE

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I wish to thank the Honourable Margaret NG, Chairman of the Subcommittee, for her detailed report on the Subcommittee's deliberations.

I want to move the resolution standing in my name on the Agenda.

At present, a person whose financial resources do not exceed \$169,700 is financially eligible for legal aid under the Ordinary Legal Aid Scheme. The corresponding limit for the Supplementary Legal Aid Scheme (Supplementary Scheme) is \$471,600. The two limits are specified in the Legal Aid Ordinance. Our policy is to review, and adjust the limits periodically, to take into account changes in consumer prices, so as to maintain their real values.

In accordance with our review cycle, we completed in 2001, 2002 and 2003 three annual reviews of the financial eligibility limits to take account of changes in consumer prices. We note that there has been a significant and persistent decrease in consumer prices from July 2000 to July 2003. The cumulative decrease in Consumer Price Index (C) over that period is 8.2%. There is a need to adjust downward the financial eligibility limits to maintain their real values. Otherwise, some sections of the community would be brought into the net of legal aid for no reason other than the reduction in prices during this deflationary time.

We accordingly propose in the resolution to adjust the limit for the Ordinary Legal Aid Scheme from \$169,700 to \$155,800, and that for the Supplementary Scheme from \$471,600 to \$432,900. This is in accordance with the cumulative reduction in consumer prices of 8.2% recorded during that period.

I repeat my gratitude to the Honourable Margaret NG, Chairman of the Subcommittee, and other Subcommittee members, for the time they have devoted to scrutinizing the resolution. I shall be happy to respond to any views expressed by Members later in my concluding speech.

The Chief Secretary for Administration moved the following motion:

"RESOLVED -

(a) that the Legal Aid Ordinance (Cap. 91) be amended -

(i) in section 5(1), by repealing "\$169,700" and substituting "\$155,800";

(ii) in section 5A(b) -

(A) by repealing "\$169,700" and substituting "\$155,800";

(B) by repealing "\$471,600" and substituting "\$432,900";
and

(b) that this Resolution shall come into operation on a day to be appointed by the Director of Administration by notice published in the Gazette."

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

MISS MARGARET NG: Madam President, in my capacity as Chairman of the Subcommittee on proposed resolution under section 7(a) of the Legal Aid Ordinance, I wish to highlight the major deliberations of the Subcommittee.

The financial eligibility limits for the present legal aid schemes, that is, the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme, are respectively set out in sections 5(1) and 5A(b) of the Legal Aid Ordinance. Section 7(a) of the Ordinance provides that the limits may be amended by a resolution of the Legislative Council. The resolution moved by the Chief Secretary for Administration seeks to adjust downward the financial eligibility limits for the two legal aid schemes to take account of the reduction in consumer prices recorded during July 2000 to July 2003.

Various issues had been raised and discussed by the Subcommittee during its deliberations. According to the Administration, the proposed adjustment follows the review mechanism implemented since 2000 for revising the financial eligibility limits based on changes in consumer prices and litigation costs, so as to maintain the real values of the limits. The present proposed adjustment reflects the cumulative fall in consumer prices which occurred in the three-year period from July 2000 to July 2003. Some members of the Subcommittee, nevertheless, question the need for reducing the limits, now that the deflationary pressure is easing and is expected to disappear soon. Moreover, there is no statutory requirement that the limits have to be strictly adjusted in line with changes in consumer prices. In fact, the Administration has exercised flexibility in not adjusting the limits immediately after the 2001 review exercise, in view of the small changes in consumer prices then occurred.

Some members consider that litigation costs are an important factor affecting a person's ability to litigate. According to the statistics provided by the Administration, the median litigation costs for some major types of civil legal aid cases and criminal legal aid cases handled in the District Courts have increased. Changes in litigation costs, therefore, should also be taken into account in deciding whether the financial eligibility limits should be lowered.

Another major concern expressed by some members is whether the existing financial eligibility limits are set at reasonable levels. Under the present limits, many legal aid applicants have been refused legal aid for failure to pass the means test, despite the fact that they are unable to afford the costs of private litigation. These members are of the view that the present eligibility limits for legal aid do not reflect realistically the financial viability of persons to conduct litigation on a private basis. The present legal aid schemes fail to achieve the Government's declared policy objective of providing legal aid to those in need to ensure that no one with reasonable grounds to pursue litigation is prevented from doing so because of a lack of means. Further reduction in the eligibility limits will deprive more people with justifiable grounds of taking legal action from the grant of legal aid, or force them to appear in legal proceedings without legal representation. This would be a very undesirable situation in the pursuit of justice.

Some members of the Subcommittee support the resolution. They consider that the adjustment complies with the established review mechanism. They also consider that issues relating to improvements in the provision of legal

aid services should be examined in the context of a general review which is being undertaken by the Panel on Administration of Justice and Legal Services.

Madam President, the Subcommittee submitted a report on its detailed deliberations to the House Committee meeting on 5 March 2004. Members will no doubt have taken note of the report of the Subcommittee and the reasons given by the Chief Secretary for Administration for revising the financial eligibility limits when he moved the resolution earlier at this meeting. As I have explained, the Subcommittee does not have a consensus view on whether the resolution should be supported. It will be a matter for Members to decide today.

Madam President, I would like to say a few words in my personal capacity. It is an incontrovertible fact that the cost of litigation is generally beyond the means of an average family, not just a poor one. This means legal aid plays a crucial role in keeping open the access to justice. The rigidity and restrictions of legal aid in Hong Kong is an increasing cause for concern. In theory, legal aid in Hong Kong is generous, in that there is no ceiling for legal costs provided. In practice, the pressure of reducing expenditure is overwhelming, and there are many ways of reducing legal aid in effect.

One method in criminal legal aid is to grant legal aid on condition that a large contribution is paid up front. Figures provided by the Government show an upward trend, with more applicants being granted legal aid on that condition, and legal aid being withdrawn when the applicant was unwilling or unable to pay. In one shocking case I had occasion to refer to before in this Council, a man went on trial for a murder too complicated for him to defend without a lawyer to represent him, because legal aid was granted on condition that he paid more than \$320,000 up front in contribution which represented 50% of his nominal asset. According to government figures, this is much higher than what the average criminal trial would cost, and he would have to pay the Government the whole sum, before a lawyer was assigned to him. Such harsh conditions are the very opposite purpose of legal aid.

There are many problems with the present system of legal aid. The symptoms that all are not well are many. One is the mounting number of unrepresented litigants. This is troubling the Judiciary so much because of the judicial time wasted and the risk to justice of procedure and of outcome, that this was discussed at some length in the interim and the final reports on civil justice

procedure reform. Another symptom is the rise of claim assessors who are increasingly replacing lawyers in personal injury cases, with a corresponding erosion of professional safeguard for the interests of the victims.

It is said that the defects of the legal aid system itself should not affect our support for the present resolution, which is merely an adjustment of the financial eligibility limits in accordance with inflation or deflation. Defects in the system itself should be tackled in the five-year overall review or the biannual review of the limits themselves. In logic and in theory, this is certainly right. In point of fact, no such hope may be held out. The Panel on Administration of Justice and Legal Services recently took the trouble of consulting the views of a wide spectrum of legal professional and community bodies, and based on that, painstakingly drew up problems of the present legal aid system requiring review and reform. The Government just turned down each and every item, with only a few minor exceptions. Neither the Panel nor this Council can force the Government to change its attitude or reconsider the decision.

But the end result is that we are left with a system which is demonstrably inadequate, and leaves a wide gap between the need for legal aid and the eligibility for it. The present resolution further widens that gap. This Council does have the power to refuse to allow this to happen by voting against the resolution. We should so exercise our power. Madam President, I for one would oppose the resolution. Thank you.

MR LEUNG FU-WAH (in Cantonese): Madam President, the Hong Kong Federation of Trade Unions (FTU) will vote against this resolution today. We consider that this resolution is unable to manifest the aim of legal aid, rather, it highlights the authorities' rigid way of doing things, that every administrative task is conducted in strict accordance with the book without giving consideration to the realistic conditions of society.

The aim of legal aid is to provide persons who cannot afford the expensive costs of proceedings with legal service at no cost or just at a cost lower than that of the market, so that he is not denied access to a fair trial because of poverty. Yet, to an ordinary person, besides the merits of case itself, the biggest hurdle or consideration which would deter a person from engaging into legal proceedings is the expensive costs of proceedings in Hong Kong. For that reason, when the authorities adjust the financial eligibility of a legal aid applicant, they can

absolutely not but take the major factor of costs into consideration. According to the statistics of the Legal Aid Department (LAD) on legal aid assignments assigned to private practitioners, between 2000 and 2002, except divorce cases, there was no reduction in the median of litigation costs in other civil legal aid cases, which means that despite consumer prices have gradually gone down in the past few years, the LAD has continued to make payments according to the indicator of litigation costs drawn up in 1997. Is it because there is only a "one-price system" in the legal services market, or is it because the Government is being generous at the expense of taxpayers?

More unfortunately, the authorities told the FTU that up to now, they were unable to grasp the changes in litigation costs of the private sector in the past two years. In view of that, the authorities' logic that in the wake of depression and the fall in consumer prices, the costs of litigation should have come down, thus people are more capable of meeting the litigation costs, is not tenable.

Undoubtedly, the target groups of legal aid services are the lower-middle classes. Out of a lack of job security, most of them are self-conscious enough to save up some money for future use, but as they do not have ample assets to make investment or "make their money snowball", all they can save up over several decades are perhaps just \$100,000 to \$200,000. The figure sounds pretty good, and it may even exceed the legal aid limit of \$169,700, but their future living depends all on these savings. If they use the savings for litigation, they may run the risk of getting compensations to which they are entitled far less than the savings used in litigation. What option do they actually have?

The income of the lower-middle classes is characterized by its highest falling speed but slowest pick-up pace. For that reason, despite the drop in consumer prices, their lot is not necessarily improved, and quite the contrary, it only shows that their living is even less secured.

Madam President, Hong Kong has been caught in a deflation for several years in a row, so if one says prices have fallen, I believe the extent of pay cut of wage earners in Hong Kong has taken the most drastic plunge in Hong Kong, and numerous extremely complicated labour disputes have stemmed from that. According to the statistics provided by the LAD, the number of legal aid cases relating to labour disputes and wages claim approved were rising continuously in the years 2001 and 2002, which shows that due to employers' violation of the laws or unfair treatment, wage earners have a grave need for legal aid.

According to labour dispute cases handled by the FTU, although the Labour Tribunal's judgement was in favour of the employee, wage earners were forced to engaged in a lawsuit as some employers had applied for insolvency in order to delay the whole thing and some others even resorted to using their wealth for appeals. The employees would be very miserable if they lose their cases, but they were reluctant to give up. According to the actual situation I mentioned earlier, a lot of elderly wage earners have some savings, they may have no alternative but to give up their right to remedy because their financial resources have exceeded the financial limits prescribed by the Ordinary Legal Aid Scheme.

We have also seen some people pursuing the Supplementary Legal Aid Scheme in the hope of mitigating their financial burden, because their financial resources exceeded the prescribed limits of the Ordinary Legal Aid Scheme. The result was that even though they won the case, they could hardly realize that the contributions they have to make were close to or even higher than the claimed amount. So under such circumstances, how can justice be done?

Madam President, the FTU requests the LAD to carry out the merit test before the means test when it scrutinizes applications relating to labour disputes and wages claim, for only in so doing can justice of law and essence of legal aid be manifested.

The FTU considers that the economy of Hong Kong is gradually walking away from the shadow of deflation. According to the Consumer Price Index (CPI) figures of January announced by the Census and Statistics Department on 22 February, deflation in Hong Kong has been improving continuously, with the overall consumer prices having fallen by 1.5% from a year earlier and the seasonally adjusted Composite CPI, CPI (A) and CPI (B) showing an average monthly increase from 0.2% to 0.3% respectively as of January 2004. Madam President, while the aforesaid rates of increase are quite small, but they tell us that the economy of Hong Kong is recovering gradually. We consider that it is inappropriate to propose a reduction of the financial eligibility limits now. Moreover, the authorities have failed to present to this Council any evidence to support the likelihood that, if the eligibility limits remain unchanged, a large number of people would become eligible for legal aid and constitute an extra burden on legal aid services.

Madam President, on basis of the aforesaid phenomena and principles, the FTU opposes this resolution. We request the authorities to take the adjustment

of litigation costs and the performance of unrepresented litigants into consideration in the course of reviewing the financial eligibility limits for legal aid. I so submit.

MR LEE CHEUK-YAN (in Cantonese): Madam President, I oppose today's motion on behalf of the Hong Kong Confederation of Trade Unions (CTU), and I urge colleagues to join me. The motion itself involves the principle of law, as the Basic Law prescribes that all Hong Kong residents shall be equal before the law. Certainly, that all persons are equal before the law means that the law will not discriminate against any person. However, if there is a strong and a weak side in a litigation, that is, the strength between both parties, in particular, the financial strength, is not in proportion, then very often, the law will incline towards the rich side, and the poor side is always no match for the rich side. There is a Chinese saying: "the poor will not fight against the rich and the rich will not fight against the government". However, I have to fight against them this time around. Why should I fight against them? It is because I am afraid that the situation that "the poor will not fight against the rich" will go on and on.

Very often, most cases handled by the CTU reveal that the relevant parties could not get their entitled wages in arrears because they fail the means test. Everybody knows that in order to recover the outstanding wages, the company concerned should first wind up, and for that matter a solicitor must be employed to make a winding-up petition to the Court. We have consulted some lawyers and learn that unrepresented claimants will have to spend at least \$30,000 to \$40,000, but if they could not obtain the services from the LAD for failing the means test, it would be difficult for them to claim the \$10,000 to \$20,000 outstanding wages. But everybody knows that it is impossible for a person to spend several tens of thousands of dollars to claim just \$10,000 to \$20,000 wages in arrears. For that reason, a lot of cases are still pending as these people may end up getting nothing, not even the wages in arrears.

Besides the wage claim cases mentioned by me, other cases include claims in respect of injury at work and labour dispute adjudication. On the whole, we do not wish to see that when some poor people, who are actually not that poor, but just some middle-income people, face litigation, they are forced to relinquish their recourse to justice because of lack of means. For that reason, I urge every colleague to oppose this motion in the interest of justice. If we allow the

middle-income class to be denied justice by our society simply because we press the button today to support the reduction of the upper financial limit of the means test, then I think we should not do so and we should not let this state of affairs continue.

Let us take a look at today's motion, which seeks to reduce the limit from \$169,000 to \$144,000. I have two reasons to oppose today's motion. First of all, the basis of computation of \$169,000 is already a result of an unreasonable determination mechanism. We have been discussing that with the LAD and the Administration Wing for a long time, and it has been put on the record for a long time. So it suffices to show that we oppose this basis of computations. It is because the present basis of calculating disposable income is to deduct allowable deductions from the gross income, while expenses are deducted on the basis of the 35-percentile household expenditure. We consider that the 35-percentile household expenditure cannot represent the expenditure of ordinary households, and we are of the view that a 50-percentile should be adopted as the median, which can represent the average household expenditure. Nevertheless, with regard to this point, our discussion with the Administration Wing has not been successful. For that reason, the 35-percentile basis is already unreasonable, and it is doubly unreasonable if this unreasonable basis is adjusted downward.

The second reason of my opposition is that we have brought up another concern in the Subcommittee on the proposed resolution, that is: Will the litigation costs rise or fall when people have to engage in a lawsuit by themselves before they can obtain legal aid? The figure showed that the decrease in civil cases was 0.16, which was a small number. In some cases, the costs did increase, such as cases relating to employee compensation and personal injuries. The litigation costs of these cases did increase. For that reason, there was no significant reduction in the litigation costs, and on average, it was just a 0.16 decrease. In the respect of criminal cases, the litigation costs increased, in particular, criminal cases tried in the District Court, and there were slight increases in litigation costs for the majority of such cases.

For that reason, if we look at the litigation costs, there was actually no decrease. If the litigation costs have not gone down, that is, if those people, whose applications have been refused, have to engage in lawsuits, their ultimate burden will not be reduced. At the same time, we can note from some figures

that the Government would waive the requirement at discretion in respect of criminal cases and there were 31 jobs in the past three years. However, I estimate that after the exercise this time around, perhaps discretion would be exercised in each and every job, then it will become meaningless eventually.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, "31 cases" is a better expression.

MR LEE CHEUK-YAN (in Cantonese): What did I say? I cannot hear that. I have just forgotten.

PRESIDENT (in Cantonese): You should try using that expression as far as possible in future.

MR LEE CHEUK-YAN (in Cantonese): Yes, I do not know..... I thought I had said 31 cases. Nevertheless, I wish to thank the President for her reminder. I will verify later what I said earlier. Discretion was given in the past with regard to 31 cases, and there will be cases requesting discretion in future. But there will be no discretion in civil cases, so situation in this respect will deteriorate.

Consequently, due to the two reasons, I hope Members will oppose this motion. Since the Government's aspiration is to give the community a respite and allow it to build up its strength, then it should not cause any nuisance to the public. If the community is given a respite, please let the people build up their strength in this respect too. Please? Please make no more troubles. Thank you, Madam President.

MS AUDREY EU (in Cantonese): Madam President, I speak also in opposition to today's resolution. The Legal Aid Department (LAD) always claims that its mission is to ensure that any person who has reasonable grounds for taking or defending a legal action is not prevented from doing so by lack of means. Unfortunately, since the threshold for legal aid has been set so very high that the mission can practically not be achieved.

At present, there are two types of Legal Aid Schemes, one of them is the Ordinary Legal Aid Scheme, which I would like to speak on first. Under the Ordinary Legal Aid Scheme, the financial resources of the applicant should not exceed the upper financial limit, and the current limit is \$169,700. However, just as a colleague has said, there is enormous unfairness in the calculation, such as the applicant and his spouse's income will be counted as his disposable income, and this year's income will be based on that of the preceding year. Furthermore, just as Mr LEE Cheuk-yan has said, when calculating the expenses, besides rent, mortgage repayments, rates and income tax which are accountable, other expenses are based on a figure which is equivalent to the average household expenditure of the lowest 35 percentile in Hong Kong instead of on an accountable basis, and they are the so-called allowable deductions. However, the financial resources of the applicant may exceed the allowable deductions, for example, the applicant's children are studying abroad, and it is impossible to ask them to drop out of school and come back to Hong Kong. For that reason, this basis of computation is totally unreasonable, and even if the education expenditure of the applicant's children is included in the financial resources, if the figure exceeds the allowable deductions, it will not be allowed. Moreover, a number of liabilities will not be counted, too. For that reason, although \$169,700 sounds like a very large sum of money, it does not necessarily mean that the applicant has this sum of money in his bank account. Accordingly, this is an overestimation of the financial resources of the ordinary man in the street. Moreover, as Mr LEUNG Fu-wah said just now, even if the applicant has this sum of money in his bank account, it is not at all possible to ask him to draw all the money out to pay for the lawsuit. Besides, this is an across-the-board approach, that is, no matter how complicated the lawsuit is and no matter how many days it will take, everything is calculated on the basis of this upper limit. For that reason, in view of numerous unfair situations which exist at present, it would be totally unfair yet again to reduce the limit by 8%.

Furthermore, according to the Civil Justice Reform - Interim Report and Consultative Paper (IRCP) of the Judiciary, of the 4 524 civil cases heard in the High Court in 2000, 53% of them involved at least one litigant, Madam President, at least one litigant was unrepresented, and at times the figure was greater than that. The 53% is already a very high percentage. If you ask any judge, he will tell you that there is a big, big problem with the existing legal procedure, because one cannot expect this impartial judge to uphold justice on the one hand, and help or assist these unrepresented litigants on the other. This

will be totally unrealistic. This has caused a lot of problems in the administration of justice.

Furthermore, recently, my office has interviewed 400 people who have parties to litigation, in which the legal aid applications of 295 people were refused. Among these people, 143 applicants were refused legal aid because their financial resources had exceeded the upper limit, and although the LAD pointed out that 85 % of the financial resources of these 143 people had exceeded the upper limit, they were actually unable to afford representation; the majority of these 143 people were thus forced to represent themselves. A small number of them had to give up litigation as their applications were refused by the LAD and they could not afford representation.

Additionally, earlier a colleague mentioned that according to the statistics of the LAD, besides matrimonial causes, the median litigation costs of the majority of cases had actually increased instead of decreasing during 2000 to 2002; just as Mr LEE Cheuk-yan said just now, the proposal of downward adjusting the financial eligibility limits of legal aid would undoubtedly drive more people away from the doorstep of legal aid.

According to Article 22 of Hong Kong Bill of Rights under the Hong Kong Bill of Rights Ordinance and Article 25 of the Basic Law, all persons are equal before the law. One of the major factors in this equality is the so-called "Equality of Arms", that is, everyone should be represented in front of a judge. However, we can learn from the figures of the Judiciary that in real life, at least one litigant is unrepresented in 53 % of the civil cases, which is not a healthy situation. Madam President, as a practitioner of law, I understand that unrepresented litigants always or most of the time consider that they are denied justice. For that reason, Madam President, I oppose today's resolution.

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

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, the objective of the legal aid system is to ensure that no individuals will be unable to employ a counsel because of a lack of financial resources, and thus denied the opportunity to fair or just litigation. The establishment of the legal aid system is not only aimed to ensure the due availability of legal services to individuals, but more

importantly, as many colleagues mentioned earlier, to make use of the relevant mechanism to establish the rule of law, that is, all people shall be equal before the law, and to enable the judicial system to realistically see to it that justice is done. Therefore, the restrictions on legal aid applicants should be as lenient as possible, so as to cater for the needs of more people. Unfortunately, in recent years, the Government has repeatedly deprived some people of their rights by reviewing the means test, and thus directly damaged the legal aid system which can uphold justice in society. For example, we notice that the eligibility of public housing applicants has been tightened year after year. Now it comes to legal aid services. Madam President, we cannot help asking to what extent the Government will want to reduce its commitments.

Given that the Government has lowered the financial eligibility limits of applicants under the Ordinary and Supplementary Legal Aid Schemes by 8.2%, some people may think that it is perfectly geared to the practical situation by taking account of the reduced Consumer Price Index (C). In their view, a small downward adjustment will not exclude the majority from legal aid services. According to the Government's statistics, since the implementation of this new measure, the number of qualified applicants has still increased as compared with the last three years. However, we must point out that this situation is simply a reflection of the increasing seriousness of poverty in society and the increasing polarization between the rich and the poor. Certainly, the adjustment has only limited impact on those with extremely low income. However, for some borderline cases, such as those underemployed, those with diminishing income, or those from the middle class or the lower sandwich class who may not meet the requirements or the eligibility for legal aid, how can they handle the situation when they need to institute proceedings? I believe they will certainly be very perplexed.

On the ground of a budget deficit, the Government can certainly think that excessively lenient restrictions may result in abuse of legal aid services, making the taxpayers to bear the litigation costs incurred by private disputes. However, under the present system, the so-called abuse is just an excuse of the Government. At present, in addition to the means test, there is also the merits test. Basically, the LAD will not easily approve any application for legal aid. Moreover, applicants in civil proceedings need to share part of the litigation costs according to their financial conditions. So, basically there does not exist any abuse of legal aid services or any free lunch.

Once again, we emphasize that the legal aid system is an important means to uphold fair administration of justice. The Government has given many reasons and pointed out that the tightening of the eligibility for legal aid does not contravene Article 25 of the Basic Law, which states that all people shall be equal before the law. It considers the relevant requirement satisfied so long as the Judiciary does not discriminate against anybody at the trials and individuals are not discriminated against for not being represented by counsel. However, I would like to point out that even if it does not contravene the Basic Law, it does not mean that it is a proper practice. In fact, from an objective viewpoint, if a person cannot afford to employ a counsel, he is already at an unfavourable position to face a just and fair trial in the existing complicated proceedings. We wonder how equality can be assured without the provision of legal aid.

We must point out that the downward adjustment of the financial eligibility limits by the Government is definitely doing harm to the system of rule of law in Hong Kong. Perhaps the Government may argue that the proportion of rejected cases each year is very low. However, Madam President, our concern is that, as several colleagues said earlier, a great problem will arise when employees apply for legal aid to apply to the Court for the winding up of their employer or for a bankruptcy order against their employer. Although the percentage of rejected cases in 2003 is a mere 1.3%, we must stress that the Government cannot take it as nothing because of the small percentage. As these employees are all wage earners, if they cannot wind up their employer, they will be unable to claim compensations to which they are entitled. As a result, they will not be compensated for the efforts they have made before. For this reason, we cannot say that it is not a problem or it is not important because of the small percentage. We have to realize that the problem itself does have a profound effect on the general public.

Moreover, I think a further reduction of the financial eligibility limits for legal aid will have significant impact on society. We think that a litigation system can only be called a sound system when it gives everybody an opportunity to employ a counsel to protect his due rights, and only in this way can fairness prevail in society. Otherwise, we are worried that what we call the social cornerstones of fairness and justice will be damaged.

In fact, the strict criteria of the means test are imposed by the Government to make litigants bear the heavy burden of litigation costs. Perhaps the conventional thinking of the Government is that litigants should at least bear

some costs, or else they would seem to simply take resources from society for nothing. However, I do not think that this thinking is right. Nowadays, we live in a society where there is increasing polarization between the rich and the poor, so we should enable more people to have access to justice in the Court. Otherwise, our society will only be filled with violence and grievances, hindering its harmonious development. For this reason, Madam President, I emphasize again that the tightening of the eligibility for legal aid will cause losses not only to individual applicants, but also to society as a whole. We hope that the Government will think twice, withdraw the proposed resolution and also carry out a comprehensive review of the existing legal aid system.

Just as many colleagues have mentioned earlier, there are already many existing problems even if the eligibility for legal aid is not tightened. If the eligibility for legal aid is now tightened, the present situation will only further deteriorate. For this reason, we hope that the Government will pull back before it is too late, so as to avoid creating more unpleasant situations in society and accumulating more cases of unfairness and injustice. We hope that the Government will withdraw this proposed resolution and then review the legal aid system to give more people opportunities to pursue justice in the Court.

Madam President, I oppose this proposed resolution, and hope that the Government will withdraw it. I so submit. Thank you, Madam President.

MS MIRIAM LAU (in Cantonese): Madam President, the resolution moved by the Chief Secretary for Administration seeks to adjust the financial eligibility limits for legal aid applicants on the basis of the cumulative fall of the Consumer Price Index. The Liberal Party supports the resolution. The Liberal Party notes that the authorities conducted three financial eligibility limit reviews annually in 2001, 2002 and 2003, and this resolution only seeks to adjust the limits to take account of the cumulative drop of 8.2% in the Consumer Price Index (C) (CPI(C)) without dragging in other factors. The rate of adjustment is relatively mild.

We are of the view that the relevant proposal is in line with the established mechanism, meaning that in times of inflation, there should be upward adjustments, and when there is deflation, there should be downward adjustments. Likewise, the standard rates of Comprehensive Social Security Assistance (CSSA) were lowered by 11.1% in the middle of last year because of deflation.

Besides, in the past few years, the remuneration and allowance of District Council members and Legislative Council Members were also adjusted to reflect changes in the Consumer Price Index.

In the case of us, Legislative Council Members, for example, our remuneration and allowance are adjusted annually on the basis of CPI(C). And, precisely because of the persistent deflation in the past few years, Members' remuneration have been reduced four times, with the cumulative reduction rate amounting to over 11%. Similarly, the remuneration of District Council members has also been reduced four times over the past few years due to deflation.

Therefore, the Liberal Party maintains that it is reasonable to adjust the financial eligibility limits for legal aid applicants on the basis of deflation. What is more, the income of many people has dropped in recent years, and we have said in this Council many times before that the wages of workers have all gone down. Because of this, and also due to the effects of deflation, the number of people who can still benefit from legal aid will probably not see any significant changes. The resolution may instead enable a more reasonable utilization of resources, thus providing more effective help to those people who are badly in need.

It is true that many people are not satisfied with the existing legal aid system, and many Members have expressed their views on this already. They maintain that many people are unable to get legal aid; they say that these people should be given legal aid, but this has not been the case so far. However, if, on the one hand, we accept inflation-based adjustments as a fair mechanism and gladly accept upward adjustments of the limits in times of inflation (as was indeed the case in the past) but refuse to accept any reduction in times of deflation on the other, will we not be reducing the mechanism to something largely useless? How can we make the general public, taxpayers in particular, who have to bear the burden of legal aid convinced? If the legal aid system is really as unable to offer assistance to those in need as described by Members or others in the wider community, we can only say that the system itself is defective. What we should do is to conduct a comprehensive review and revise the system, instead of opposing this resolution, which is nothing but an attempt to implement a reasonable mechanism.

Madam President, I so submit, and the Liberal Party will support the resolution.

MR ALBERT HO (in Cantonese): Madam President, I understand that I may not need to declare that I sometimes represent legal aid applicants to institute proceedings, but still I decided to do so.

Madam President, as I can recall, after the Subcommittee had completed its deliberations, and when the Director of Administration had realized the points of disagreement from us, he told us that it appeared to be unfair for members to express various views on issues beyond the scope in the Subcommittee because the current subject was about the review mechanism, and that it was actually not right to do so. In fact, Ms Miriam LAU has also expressed similar viewpoints just now. However, I would like to reiterate here that our disagreement with various measures, various criteria and various provisions governing the operation of the entire legal aid system has in fact long been expressed in detail in the Subcommittee. We have long been requesting a comprehensive review. Therefore, the Government should make some reforms that we consider reasonable. However, so far, those reasonable reforms have not yet been made. While the Government insists on employing this mechanism to make the so-called corresponding adjustment based on the reduction in the Consumer Price Index, we find it unacceptable.

The review mechanism is part of the entire system. If the entire system is unfair, can this mechanism operate separately on a fair basis? I am afraid I cannot agree with it. Therefore, given an unfair mechanism, if you tell us that this mechanism can still be used to make a reasonable adjustment, I simply cannot accept it. In fact, many colleagues have already talked about some unreasonable issues. Ms Audrey EU has also made it quite clear. I want to emphasize again that we have no authority to push the Government to make some amendments or introduce some reforms to the existing legal aid system. The only power we have here is to reject adjustments which, we think, will lead to unfair results or criteria under the unfair mechanism. This is the first point.

Here comes the second point. As some colleagues mentioned earlier, the aim of legal aid is to enable each person with a reasonable right of action to be legally represented in the pursuit of justice under the judicial system, and legal aid exactly serves to provide such aid as far as possible. We all know that this is a lofty goal, which we certainly accept. However, in reality, there is a considerable gap. How far are we from this goal? We cannot tell from the statistics at all. The statistics provided by the Government only give the number of rejected legal aid cases because of the assets problem. Yet I know

that in fact many people become hesitant after reading the statistics and learning about the legal requirements. In such case, it is actually not necessary to ask the staff of the LAD to calculate the means.

As an elected member, I have actually encountered many people seeking help. They came with piles of document and asked me to explain to them, help them or teach them how to institute proceedings to pursue justice. In fact, as a Member, the number of people whom I can help is very limited, given my personal limitation. There are many people whom I really want to help, but unable to do so. For this reason, I do hope that the Government can really make a reasonable review as soon as possible.

The Basic Law allusion to all people being equal before the law is just one of the articles we need to be concerned with. In fact, this is another one, Article 35, which stipulates that each Hong Kong resident shall have the right to access to the Courts, choice of lawyers and judicial remedies in the Courts through lawyers. There is so much stipulated in the law, but eventually, in reality, he cannot get any help from a trained legal professional due to a lack of resources. Therefore, such provisions are simply existing in names only. As I have just said, these provisions are written like this. We cannot make use of some channels to push the Government to do something we consider reasonable to enable more people to obtain due legal aid, so under such circumstances, we can only veto this resolution of the Government so as to express our strong aspiration.

Madam President, this figure in fact has not been adjusted since seven years ago. The last adjustment was made in 1997. As far as I know, the adjustment cycle is once every five years. In the last two years, the Government decided not to make any adjustment. We have already been observing the situation for two years. Now we can see some signs of recovery in our economy. If adjustment is to be made to take account of the deflation factor, the adjusted figure may lag behind the prevailing economic conditions, making the unfair situation even worse. Therefore, given the current economic conditions, we think that it is absolutely not suitable to make any adjustment at this time.

Madam President, here comes the last point I would like to talk about. Solely from the perspective of public money, the Government thinks that a downward adjustment can save money. But as Miss Margaret NG said, it may

not be the case in reality. We must not forget that our Courts do not charge for any proceedings instituted in the Court. This is a very good practice. I absolutely do not want our Courts to charge a litigation fee like the Courts of other places or countries. I do not want this to happen. However, we have to bear in mind that all we spend is public money because the remuneration of these judges and the court facilities are all met by public money. Now we can see that many of the unrepresented litigants are forced to institute proceedings on their own. In fact, litigation is indeed a heavy burden on both the Judge and the respondent (even if the respondent is legally represented). Why? If both parties are legally represented, many problems will be solved easily without stating the obvious or starting from the basics. However, if one of the parties is not legally represented, the Judge may need to carefully handle each step and explain to that party from the very basics, so as to shorten the distance between the parties, if not possible to ensure absolute equality between the parties. As a result, the litigation time will substantially increase, and I think the Judiciary will thus bear an even heavier burden.

In fact, the case mentioned by Miss Margaret NG earlier is a very good example. The Justice of Appeal has clearly told us not to think that it is a financial consideration not to grant the respondent legal aid. It is practically an absolutely incorrect financial concept. As we all know, until now, in a retrial, not only the victim will suffer from great mental stress, but his family will also need to give evidence in the Court again. Not to mention all these, however, the prosecutor of the Legal Department and the Judge of the Court both have to start a new trial, which will last for six weeks. This time, the trial may take less time because the respondent is legally represented. Yet it may still take three, four or even six weeks. Could all these be free? Is it not a waste of money? In fact, I can notice that when the litigant is not legally represented in the Court, those persons involved are really tired. Even many of the people involved also say that if one of the parties is not legally represented, it will really create a heavy burden.

Of course, I know there is no guarantee that these situations can totally be pre-empted if the financial eligibility limits for legal aid are now increased or kept unchanged or increased in the future. I only want to bring this to the attention of the Government. If the Government considers solely from the perspective of public money, the calculation method may not be as simple as perceived. In fact, the pressure to be faced by the Judiciary should also be considered.

Therefore, for all these reasons, the Democratic Party opposes today's motion.

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

(No Member indicated a wish to speak)

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I wish to thank the personal views of Honourable Margaret NG again, and the views of other Members who have expressed so volubly today. Let me take this opportunity to explain the Administration's position on a number of key issues raised by Members.

I should first clarify that the Administration does not have, as a matter of policy, a target coverage of legal aid services, in terms of percentage of eligible households. Nor is it our intention to reduce legal aid coverage through the current exercise, other than to adjust the financial eligibility limits in accordance with movements of consumer prices.

We have indeed adjusted prices upwards in the past, and time has come for us to do likewise in the opposite direction.

As I mentioned earlier, our policy rationale in revising the limits in line with the changes in consumer prices is to maintain their real values. By so doing, we ensure that, whether in inflationary or deflationary times, the same sections of the community who have come within the scope of legal aid will continue to be eligible.

Some Members consider that we have set the current limits too low, and we do not help those genuinely in need. Let me restate our policy. As legal aid is funded by the public coffer, there has to be a mechanism to limit disbursement on the basis of relative merits and priorities. Determining the means of a legal aid applicant for the grant of legal aid is, accordingly, one of the two cardinal criteria. The other being the merits test. A clear financial eligibility limit is essential to ensure that public resources for legal aid are directed to those most in need.

Within our existing system of screening legal aid applications against specific financial limits, we also have in place certain safeguards to ensure the fair and proper administration of legal aid. Our law confers upon the Director of Legal Aid the discretion to waive the financial eligibility limit of applicants, and to grant legal aid in special cases. In addition, individuals who are initially refused legal aid on means can always apply for legal aid again at subsequent stages of the legal proceedings. We trust that these safeguards should help ensure that publicly funded legal aid is directed to those most in need.

Back to some Members' assertion that the current limits are too low, I do not think it is sufficient for us to simply look at a single aspect of our legal aid regime, and ignore the bigger picture of the overall effectiveness of the system as a whole. Let me highlight a number of key features of our existing regime, and contrast them with those of the legal aid systems overseas. Our system as a whole compares well with the prevailing international standards, in facilitating access and helping those in need.

To start with, we are the exception, rather than the rule, in not having a cap on legal aid spending. Other jurisdictions subject their legal aid costs to a financial limit. Some even impose spending caps on individual cases. In not having a cap on legal aid spending, we seek to ensure that financial constraint does not prejudice the grant of legal aid to those most in need.

Second, many overseas jurisdictions are still pegging the deductible standard personal allowance of their legal aid applicants to their social security assistance rates. We have moved on and adopted the "35-percentile household expenditure" as our standard since the year 2000. This is a major enhancement to our system which serves to expand the legal aid net by about 10% in terms of the number of eligible households. We also have a comprehensive set of statutory deductibles for calculating a legal aid applicant's disposable income and capital, for the purpose of assessing his financial eligibility. Indeed, we are considering whether we may expand the scope of some of these deductibles in the context of the review completed in the year 2002.

Under our existing system, our legal aid coverage extends to more than 55% of our total households in Hong Kong. That is, more than one in every two households is eligible for legal aid under our present regime. We are far from being an average performer in this respect. We understand that in England and Wales, and in Ontario, Canada, which are considered more

advanced in the granting of legal aid, the comparable figure is around 40% of their families fall within their respective legal aid net.

In overall terms, we believe that the funding policy and coverage of our legal aid regime compare very favourably with most of the other jurisdictions. As it is, in the year 2003, about 13 000 individuals were granted publicly funded legal aid in Hong Kong. The total legal cost amounted to some \$470 million. The revised estimate in 2003-04 amounts to \$530 million. These statistics underline our continuous efforts and commitment in helping those most in need. And, it goes without saying that within the confines of available resources, we would continue to look for ways to improve our present system.

Some Members consider that our current financial limits do not reflect the high costs of private litigation. In the 2002 review, the Administration tried to ascertain the changes in litigation costs between July 2000 and July 2002 as a basis for proposing possible adjustment to the limits. This was not very fruitful, because neither the two professional bodies nor the Judiciary has maintained the relevant legal cost statistics. The figures derived from data of the Legal Aid Department showed little cost movements. Of course, this is arbitrary in character and does not reflect the actual cost being charged in the private sector. We are thus unable to establish a case to revise the financial eligibility limits on account of changes in litigation costs over the two-year period. We would, however, be ready to reconsider the case, when the two legal professional bodies are able to help us with reliable cost statistics showing a rising trend.

Some Members are concerned with the increasing number of unrepresented litigants. As Members may recall from an earlier study by the Chief Justice's Working Party on Civil Justice Reform, there may be many different reasons why a litigant is not legally represented. Litigants may choose to represent themselves. Some may believe that they are capable of running the case without a lawyer. Some litigants may simply distrust lawyers, or some may decide to continue unrepresented despite legal advice as they could not win.

As observed by the Judiciary's Working Party in its Final Report, which was released earlier this month, initiatives towards helping unrepresented litigants to navigate litigation in the Courts would require the concerted efforts and co-operation among the Judiciary, the Administration and the legal profession to take forward.

On the part of the Judiciary, a resource centre for unrepresented litigants in civil proceedings in the High Court and the District Courts has commenced operation since December last year. The Judiciary is also studying the possibility of introducing, by way of a pilot scheme, a system of providing an unrepresented litigant with a quick and up-to-date printout of key information about his case, in order to encourage him to seek legal advice from, for instance, a *pro bono* legal adviser.

On our part, we continue to review our legal aid system. Though we do not have a target coverage of legal aid services, we estimate that more than 55% of the total households in Hong Kong would be financially eligible for legal aid under the Ordinary Legal Aid Scheme, and some 70% in the case of the Supplementary Legal Aid Scheme (Supplementary Scheme). We are satisfied that the existing legal aid system and coverage are fair, reasonable and adequate, bearing in mind also our tight fiscal position. I would also look to the legal profession and other *pro bono* non-governmental organizations (NGOs) for their contributions towards assisting unrepresented litigants.

Some Members urge the Administration to formulate measures to facilitate access to legal aid. We are in fact dealing with this separately. In parallel with the annual reviews, we also conducted in the year 2002 a five-yearly review of the criteria used to assess the financial eligibility of legal aid applicants. Following that review, we have identified a number of improvements to the existing arrangements, and are discussing them with the Panel on Administration of Justice and Legal Services (AJLS Panel) of the Legislative Council. These improvements, as I have briefly mentioned earlier on, seek to further expand the scope of "deductibles" in the calculation of disposable income and disposable capital of legal aid applicants, and to reduce the scale of contributions by aided persons under the Supplementary Scheme. Their overall effect would be to further facilitate access to legal aid. Subject to our discussion with the AJLS Panel, we hope to put in place these improvements very shortly.

Members suggest that the Administration should use the median household expenditure as a standard deductible allowance for calculating the disposable income of legal aid applicants. Members may recall that the previous method of calculating the allowable deductibles was based on Comprehensive Social Security Assistance (CSSA) rates. In the year 2000, we adopted a "35-percentile household expenditure" in calculating the allowance. The objective of adopting a "35-percentile household expenditure", which is incidentally quite

different from "the average expenditure of the lowest 35 per cent households", as some Members may have also mistaken, is to reflect more realistically the expenditure level of our target group, that is, households in the lower-middle class and below, for legal aid. We do not agree to the using of a median household expenditure as the basis for calculating the deductible income because this level of expenditure will not be representative of that of our target group. Further raising the standard personal allowance in this way would have significant financial implications for the Government. At issue here is the affordability of this proposal by the taxpayers in the light of our fiscal stringency.

There have been occasional suggestions that the law does not specifically require us to revise the limits in strict accordance with the movements in consumer prices. For this reason, it was argued that the Administration could defer a downward adjustment now as proposed in the resolution.

If I may reiterate here, it has long been our established policy to review the limits periodically, to take account of changes in consumer prices. The arrangement before the year 2000 was to conduct a review biannually. In response to views expressed during a public consultation exercise, a review of our legal aid policy in 1998, we agreed to revise the review cycle to an annual one, so as to better maintain the real value of the limits. We put that in place in the year 2000. What we are seeking to achieve now through this resolution is to implement the outcome of the reviews under the new cycle. Having completed three annual reviews, and having done nothing on adjustment, we consider that it would be irresponsible of the Administration to defer this exercise further. We have thus proposed to adjust the financial eligibility limits to reflect the cumulative decreases in Consumer Price Index C of 8.2% over the period July 2000 to July 2003.

We believe it is a matter of good administration and justice and discipline to adhere to the established review mechanism and cycle, irrespective of whether we are in the midst of inflationary or deflationary times. Deferring adjustments would entrench and even aggravate the erosion to the limits, and defeat the whole purpose of instituting a review mechanism in the first place — and that review mechanism was endorsed by the Legislative Council.

Madam President, it is the established practice of the Administration to review the financial eligibility limits of legal aid applicants to take account of changes in price levels. I am sorry I have to repeat this again and again. Our

objective is simple. We have never changed our course. As I have reiterated, we are seeking to maintain the real value of the limits through these periodic adjustments. We hope that the resolution will have the Legislative Council's support. We hope the resolution will again secure that support.

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

(Members raised their hands)

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

(Members raised their hands)

Miss Margaret NG rose to claim a division.

PRESIDENT (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for three minutes, and the division shall then proceed.

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 Raymond HO, Dr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM

Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-CHEUNG and Mr MA Fung-kwok voted for the motion.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, 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, Ms LI FUNG-ying, Mr Michael MAK, Mr LEUNG Fu-wah, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

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

THE PRESIDENT announced that there were 56 Members present, 31 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.

PRESIDENT (in Cantonese): Proposed resolution under the Public Finance Ordinance.

PROPOSED RESOLUTION UNDER THE PUBLIC FINANCE ORDINANCE

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

The purpose of this motion is to seek funds on account to enable the Government to carry on existing services between the start of the financial year on 1 April 2004 and the enactment of the Appropriation Ordinance. This follows the procedure long established in the Legislative Council.

We have determined the funds on account sought under each subhead in accordance with paragraph four of the resolution, by reference to percentages of the provision shown in the 2004-05 Estimates of Expenditure. If the Estimates are changed by the Finance Committee or officers under delegated powers, the provision to which the percentages are applied will also change accordingly. Thus the provision on account under each head is not constant but may vary, with every increase being matched by an equal decrease. The initial provision on account under each head is shown in the footnote to this speech. The aggregate total under all heads is fixed at \$83,602,440,000 and cannot be exceeded without the approval of the Legislative Council.

The resolution also enables the Financial Secretary to vary the funds on account in respect of any subhead, provided that these variations do not cause an excess over the amount of provision entered for that subhead in the 2004-05 Estimates of Expenditure or an excess over the amount of funds on account for the relevant head.

The Financial Secretary will issue a vote on account warrant to the Director of Accounting Services, authorizing him to make payments up to the amount specified in this motion and in accordance with its conditions. The vote on account will be subsumed upon the enactment of the Appropriation Ordinance, and the general warrant issued after the enactment of the Appropriation Ordinance will replace the vote on account warrant.

Madam President, I beg to move.

Footnote

<i>Head of Expenditure</i>		<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of provision on account \$'000</i>
21	Chief Executive's Office.....	59,760	11,952
22	Agriculture, Fisheries and Conservation Department.....	720,686	183,202
25	Architectural Services Department.....	1,453,374	292,099
24	Audit Commission	123,206	24,642
23	Auxiliary Medical Service	62,304	12,879

<i>Head of Expenditure</i>		<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of provision on account \$'000</i>
82	Buildings Department	803,932	169,962
26	Census and Statistics Department	503,306	100,750
27	Civil Aid Service.....	74,991	14,999
28	Civil Aviation Department	663,715	142,806
43	Civil Engineering Department	922,614	195,243
30	Correctional Services Department	2,466,385	503,988
31	Customs and Excise Department	1,904,226	400,984
37	Department of Health	2,900,869	616,541
92	Department of Justice	897,942	182,632
39	Drainage Services Department	1,637,681	349,928
42	Electrical and Mechanical Services Department.....	238,627	63,379
44	Environmental Protection Department.....	2,422,912	749,629
45	Fire Services Department.....	3,078,749	728,229
49	Food and Environmental Hygiene Department.....	3,958,769	879,666
46	General Expenses of the Civil Service	4,872,854	1,164,667
166	Government Flying Service	201,835	80,979
48	Government Laboratory	244,718	59,688
59	Government Logistics Department.....	511,386	176,206
51	Government Property Agency	1,706,753	352,769
35	Government Secretariat : Beijing Office	48,256	9,652
143	Government Secretariat : Civil Service Bureau	445,102	110,991
152	Government Secretariat : Commerce, Industry and Technology Bureau (Commerce and Industry Branch) ..	531,435	130,139
55	Government Secretariat : Commerce, Industry and Technology Bureau (Communications and Technology Branch)	133,372	26,675

<i>Head of Expenditure</i>		<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of provision on account \$'000</i>
144	Government Secretariat : Constitutional Affairs Bureau	34,442	6,889
145	Government Secretariat : Economic Development and Labour Bureau (Economic Development Branch) .	713,802	151,697
156	Government Secretariat : Education and Manpower Bureau	35,068,749	7,573,038
158	Government Secretariat : Environment, Transport and Works Bureau (Environment and Transport Branch)	96,317	20,832
159	Government Secretariat : Environment, Transport and Works Bureau (Works Branch)	216,055	44,747
148	Government Secretariat : Financial Services and the Treasury Bureau (Financial Services Branch)	152,187	40,520
147	Government Secretariat : Financial Services and the Treasury Bureau (The Treasury Branch)	190,776	38,156
149	Government Secretariat : Health, Welfare and Food Bureau	28,589,332	6,048,222
53	Government Secretariat : Home Affairs Bureau	684,835	149,647
96	Government Secretariat : Hong Kong Economic and Trade Offices	279,293	57,088
138	Government Secretariat : Housing, Planning and Lands Bureau (Planning and Lands Branch)	84,798	16,960
155	Government Secretariat : Innovation and Technology Commission	412,078	107,002
142	Government Secretariat : Offices of the Chief Secretary for Administration and the Financial Secretary.....	542,827	140,168

<i>Head of Expenditure</i>		<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of provision on account \$'000</i>
151	Government Secretariat : Security Bureau	124,820	27,377
60	Highways Department.....	1,949,958	393,078
63	Home Affairs Department.....	1,278,694	299,742
168	Hong Kong Observatory	208,073	42,450
122	Hong Kong Police Force	11,563,502	2,431,653
62	Housing Department	332,952	66,591
70	Immigration Department.....	2,322,478	464,496
72	Independent Commission Against Corruption.....	681,580	137,228
121	Independent Police Complaints Council	13,088	2,618
74	Information Services Department	373,036	79,932
47	Information Technology Services Department.....	506,520	101,832
76	Inland Revenue Department.....	1,236,311	247,719
78	Intellectual Property Department.....	107,787	53,518
79	Invest Hong Kong	233,718	197,544
174	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	13,057	2,612
80	Judiciary	981,099	213,151
90	Labour Department	1,176,254	449,494
91	Lands Department	1,488,396	310,119
94	Legal Aid Department	785,736	157,148
112	Legislative Council Commission	367,724	90,094
95	Leisure and Cultural Services Department	5,218,210	1,150,690
100	Marine Department	942,366	212,364
106	Miscellaneous Services	6,598,165	5,272,427
114	Office of The Ombudsman	86,978	17,556
116	Official Receiver's Office	135,815	31,723
120	Pensions	16,327,139	3,982,105

<i>Head of Expenditure</i>	<i>Amount shown in the Estimates \$'000</i>	<i>Initial amount of provision on account \$'000</i>
118 Planning Department	444,035	106,235
136 Public Service Commission	18,588	3,718
160 Radio Television Hong Kong	462,668	100,934
162 Rating and Valuation Department	390,596	81,183
163 Registration and Electoral Office	336,193	67,239
170 Social Welfare Department	33,166,139	7,835,829
173 Student Financial Assistance Agency ..	3,748,586	1,331,095
180 Television and Entertainment Licensing Authority	101,218	26,508
110 Territory Development Department ...	211,846	42,370
181 Trade and Industry Department	903,811	664,075
186 Transport Department	908,346	207,784
188 Treasury	338,686	67,738
190 University Grants Committee	12,042,532	2,509,432
194 Water Supplies Department	5,223,406	1,049,797
	<hr/>	<hr/>
	214,005,356	52,659,440
184 Transfers to Funds	30,943,000	30,943,000
	<hr/>	<hr/>
Total	244,948,356	83,602,440
	=====	=====

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

"RESOLVED that -

1. Authority is hereby given for a sum not exceeding \$83,602,440,000 to be charged on the general revenue for expenditure on the services of the Government in respect of the financial year commencing on 1 April 2004.
2. Subject to this Resolution, the sum so charged may be expended against the heads of expenditure as shown in the

Estimates of Expenditure 2004-05 laid before the Legislative Council on 10 March 2004 or, where the Estimates are changed under the provisions of the Public Finance Ordinance (Cap. 2) as applied by section 7(2) of that Ordinance, as shown in the Estimates as so changed.

3. Expenditure in respect of any head of expenditure shall not exceed the aggregate of the amounts authorized by paragraph 4 to be expended in respect of the subheads in that head of expenditure.
4. Expenditure in respect of each subhead in a head of expenditure shall not exceed -
 - (a) in the case of an Operating Account Recurrent subhead of expenditure, an amount equivalent to -
 - (i) except where the subhead is listed in the Schedule to this Resolution, 20% of the provision shown in the Estimates in respect of that subhead;
 - (ii) where the subhead is listed in the Schedule to this Resolution, the percentage of the provision shown in the Estimates in respect of that subhead that is specified in the Schedule in relation to that subhead; and
 - (b) in the case of an Operating Account Non-Recurrent subhead of expenditure or Capital Account subhead of expenditure, an amount equivalent to 100% of the provision shown in the Estimates in respect of that subhead,

or such other amount, not exceeding an amount equivalent to 100% of the provision shown in the Estimates in respect of that subhead, as may in any case be approved by the Financial Secretary.

SCHEDULE

[para. 4]

	<i>Head of Expenditure</i>		<i>Subhead</i>	<i>Percentage of provision shown in Estimates</i>
28	Civil Aviation Department	170	Airport insurance	100
46	General Expenses of the Civil Service	013	Personal allowances	40
90	Labour Department	280	Contribution to the Occupational Safety and Health Council	30
		295	Contribution to the Occupational Deafness Compensation Board	30
106	Miscellaneous Services	163	Write-offs	50
		192	Refunds of revenue	100
		284	Compensation	30
120	Pensions	021	Ex gratia pensions, awards, allowances and increases	50
		026	Employees' compensation, injury, incapacity and death related payments and expenses	50
170	Social Welfare Department	176	Criminal and law enforcement injuries compensation	60
		177	Emergency relief	100
		179	Comprehensive social security assistance scheme	25
		180	Social security allowance scheme	25
		187	Agents' commission and expenses	100"

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Security and Guarding Services Ordinance to approve the criteria for issuing a Security Personnel Permit.

PROPOSED RESOLUTION UNDER THE SECURITY AND GUARDING SERVICES ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Section 6 of the Security and Guarding Services Ordinance (the Ordinance) provides that a person must satisfy the criteria specified by the Security and Guarding Services Industry Authority (SGSIA) by notice in the Gazette before the Commissioner of Police may issue a Security Personnel Permit (SPP) to him for performing security work. The Ordinance also stipulates that the notice is not subsidiary legislation but it has to be laid before and approved by the Legislative Council before publication in the Gazette.

The SGSIA is established under the Ordinance. Most of its members are from the community. Its current Chairman is the Honourable Miriam LAU. The SGSIA has specified the criteria for issuing SPP in relation to four categories of security work. The current criteria for issuing SPP in relation to three categories of security work include "Proficiency in Security Work". This

criterion was newly added in the amendment exercise in 2003 with a view to eventually replacing the requirement for producing a certification of employment issued by a prospective employer. Prior to the amendment exercise in 2003, persons who were first-time applicants for SPP for performing the relevant categories of security work had to produce letters of employment from prospective employers. Consequently some applications were made through employers. The SGSIA received feedback that this had given rise to abuse by certain employers who, for instance, charged the employees at a rate higher than the SPP licensing fee. For this reason, in the last revision exercise, the SGSIA decided to remove the "Certification of Employment by Prospective Employer" criterion eventually.

After the amendment exercise in 2003, fulfillment of the criterion of "Proficiency in Security Work" can be proved by an applicant's working experience in the security industry or the passage of a trade test. As a transitional arrangement, it was stipulated that the production of an employment certificate remains a valid criterion for applying for SPP until 31 March 2004.

To provide an additional avenue for individuals to apply for SPP on their own, the SGSIA proposes to amend the criteria in such a way that an applicant who has successfully completed a security training course that has met the requirements of a scheme for quality assurance that has been endorsed by the SGSIA, will be deemed to have met the criterion of "Proficiency in Security Work". Other existing avenues for fulfilling the criterion include the passage of a trade test and relevant working experience and years of service, and so on.

The scheme for quality assurance involved in this amendment exercise builds upon the Recognition Scheme for Security Training Course (the Recognition Scheme) which the SGSIA has put in place since 1997. The Recognition Scheme aims to provide the public with information on the security training courses that are up to a standard accepted by the SGSIA and are available in the market. As at 31 January 2004, a total of 60 training courses recognized under the Recognition Scheme are available in the market. To ensure the quality of the recognized courses, the SGSIA has invited the Vocational Training Council to develop a scheme for quality assurance to ensure that the recognized training courses are properly run and meet the required standards. The scheme sets out the requirements in respect of programme administration, course content, qualification of trainers, training facilities, assessments and course evaluation, and so on. The scheme is drawn up in

consultation with the trade associations, trade professionals, training providers and trade unions and is widely accepted by these parties.

As a transitional arrangement, the SGSIA proposes to extend the validity of the existing "Certification of Employment by Prospective Employer" criterion for six months, that is, the criterion will cease to have effect on 1 October 2004. This will ensure that there will be a sufficient number of recognized courses which have met the requirements of the scheme for quality assurance in the market for SPP applicants to choose from, before the criterion ceases to have effect.

Madam President, the proposed amendments will on the one hand facilitate interested persons to join the security and guarding services industry and on the other hand ensure that only fit and proper persons with the necessary knowledge in security work are granted SPP. The amendments will help to promote the standard of and enhance public confidence in private security services. I hope Members would support the motion and approve the notice at the Annex, which sets out the amended criteria for issuing SPP.

Thank you, Madam President.

The Secretary for Security moved the following motion:

"That the notice, as annexed to this Motion, which specifies the revised criteria that a person must satisfy before the Commissioner of Police may, under the Security and Guarding Services Ordinance, issue to him a permit to do security work, be approved.

Appendix

SECURITY AND GUARDING SERVICES ORDINANCE (Chapter 460)

(Notice under section 6(1)(b)(i))

CRITERIA FOR ISSUING A SECURITY PERSONNEL PERMIT

Take notice that, pursuant to section 6(1)(b)(i) of the Security and Guarding Services Ordinance, the Security and Guarding Services Industry Authority (hereafter referred to as "the Authority") hereby specifies the following revised

criteria (hereafter referred to as "the revised criteria"), which replace the ones published in G.N. 1224 on 28 February 2003 with effect from 1 April 2004, for issuing a permit under the said Ordinance. The criteria specified below in relation to a particular type of security work must be satisfied by a person before the Commissioner of Police may issue to him a permit under the said Ordinance to do that type of security work.

(A) Guarding work restricted to a "single private residential building", the performance of which does not require the carrying of arms and ammunition (See Note 1)

- | | |
|---|---|
| <i>(a) Age</i> | <ul style="list-style-type: none">(i) The applicant must be 18 years of age or above on the date of application.(ii) If the applicant or permit holder is 65 years of age or above, he/she must produce a medical certificate (see Note 2) issued by a registered medical practitioner to certify that he/she is fit to undertake the duties required every two years. |
| <i>(b) Fitness</i> | The applicant must be physically fit to perform the job. A medical certificate (see Note 2) issued by a registered medical practitioner may be required if the Commissioner of Police reasonably considers necessary. |
| <i>(c) Good Character</i> | The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors. |
| <i>(d) Proficiency in Security Work</i> | <p>The applicant must satisfy one of the followings:</p> <ul style="list-style-type: none">(i) He/She must have sat and passed a trade test recognized by the Authority and announced in a manner that it thinks fit, within 1 year before submitting his/her application; or |

- (ii) He/She must have not less than 3 years of cumulative working experience in performing security work lawfully in Hong Kong over the past 5 years immediately before submitting his/her application (Note 4); or
- (iii) He/She must have not less than 1 year of cumulative working experience in performing security work lawfully in Hong Kong over the past 2 years immediately before submitting his/her application (Note 4); or
- (iv) He/She must have sat and passed a course-end examination, within 1 year before submitting his/her application, of a security training course that has met the requirements of a scheme for quality assurance that has been endorsed by the Authority and announced in a manner that it thinks fit; or
- (v) He/She must produce a letter of employment from the prospective employer (see Note 5).

(B) Guarding work in respect of any persons, premises or properties, the performance of which does not require the carrying of arms and ammunition and which does not fall within Category A

- (a) *Age* The applicant must be 18 years of age or above. The upper age limit for engaging in this type of security work is 65 years.
- (b) *Fitness* The applicant must be physically fit to perform the job. A medical certificate (see Note 2) issued by a registered medical practitioner may be required if the Commissioner of Police reasonably considers necessary.

- (c) *Good Character* The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors.
- (d) *Proficiency in Security Work* The applicant must satisfy one of the followings:
- (i) He/She must have sat and passed a trade test recognized by the Authority and announced in a manner that it thinks fit, within 1 year before submitting his/her application; or
 - (ii) He/She must have not less than 3 years of cumulative working experience in performing security work lawfully in Hong Kong over the past 5 years immediately before submitting his/her application (Note 4); or
 - (iii) He/She must have not less than 1 year of cumulative working experience in performing security work lawfully in Hong Kong over the past 2 years immediately before submitting his/her application (Note 4); or
 - (iv) He/She must have sat and passed a course-end examination, within 1 year before submitting his/her application, of a security training course that has met the requirements of a scheme for quality assurance that has been endorsed by the Authority and announced in a manner that it thinks fit; or
 - (v) He/She must produce a letter of employment from the prospective employer (see Note 5).

(C) Guarding work, the performance of which requires the carrying of arms and ammunition

- (a) *Age* The applicant must be 18 years of age or above. The upper age limit for engaging in this type of security work is 55 years.
- (b) *Fitness* The applicant must be physically fit to perform the job. A medical certificate (see Note 2) issued by a registered medical practitioner may be required if the Commissioner of Police reasonably considers necessary.
- (c) *Good Character* The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors.
- (d) *Proficiency in Security Work* The applicant must satisfy one of the followings:
- (i) He/She must have sat and passed a trade test recognized by the Authority and announced in a manner that it thinks fit, within 1 year before submitting his/her application; or
 - (ii) He/She must have not less than 3 years of cumulative working experience in performing security work lawfully in Hong Kong over the past 5 years immediately before submitting his/her application (Note 4); or
 - (iii) He/She must have not less than 1 year of cumulative working experience in performing security work lawfully in Hong Kong over the past 2 years immediately before submitting his/her application (Note 4); or

(iv) He/She must have sat and passed a course-end examination, within 1 year before submitting his/her application, of a security training course that has met the requirements of a scheme for quality assurance that has been endorsed by the Authority and announced in a manner that it thinks fit; or

(v) He/She must produce a letter of employment from the prospective employer (see Note 5).

(e) *Arms Licence* The applicant must possess a valid arms licence for the arms used on duty issued by the Commissioner of Police.

(D) Installation, maintenance and/or repairing of a security device and/or designing (for any particular premises or place) a system incorporating a security device

(a) *Age* The applicant must be 18 years of age or above.

(b) *Proficiency* The applicant shall have received appropriate training or can demonstrate the capability and proficiency (see Note 6) in the skills/technique required in performing his/her job.

(c) *Good Character* The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors.

(d) *Certification of Employment by Prospective Employer* On his/her first application for a permit, the applicant must produce a letter of employment from the prospective employer.

Notes

- (1) A single private residential building means an independent* structure -
- (a) covered by a roof and enclosed by walls extending from the foundation to the roof, and
 - (b) used substantially for private residential purpose; and
 - (c) with only one main access point⁺.
- * A building is considered to be independent from another if on most of the floors, one cannot get access to the quarters on the same floor in the other building without going to an upper/lower floor, roof or the street.
- ⁺ 'Main access point' means the entrance gate or lift lobby or staircase commonly used by residents to gain access to their flats. This excludes emergency and fire exit.
- (2) A standard medical certificate form is available from the Licensing Office of the Hong Kong Police Force.
- (3) The Commissioner of Police shall consider the nature of the criminal offence committed by the applicant and may refer the application to the Security and Guarding Services Industry Authority for decision under section 14(5)(b) of the Security and Guarding Services Ordinance. No person will normally be granted a permit if he/she -
- (a) was convicted of any offence specified in column 2 of Schedule 2 to the Security and Guarding Services Ordinance and the penalty imposed on him/her for that offence is the corresponding penalty specified in column 3 of that Schedule, within 5 years before submitting his/her application; or
 - (b) is currently on probation, bound over, remission or suspended sentence; or
 - (c) is within 3 years of release from a term of imprisonment; or
 - (d) was convicted of 3 or more offences within 5 years before submitting his/her application. Offences involving fixed penalty tickets, traffic summons, illegal hawking, article obstruction, littering, jaywalking and failing to answer Police or Court bail are considered minor and will be excluded.
- (4) Working experience may be substantiated by relevant documentary evidence, certification provided by employers or a statutory declaration of experience by the applicant.
- (5) Item (v) will cease to have effect on 1 October 2004.
- (6) The applicant shall attach copies of certificate of relevant technical training, or record of employment showing his/her experience in this type of security work.

Miriam LAU Kin-ye *Chairman, for and on behalf of the
Security and Guarding Services Industry Authority"*

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

MS MIRIAM LAU (in Cantonese): Madam President, first of all, I would like to declare interest. I am the Chairman of the Security and Guarding Services Industry Authority (SGSIA).

The Security and Guarding Services Ordinance aims at providing for a licensing scheme to regulate the security industry, with its spirit being the supervision of the service quality of organizations and their employees in the provision of security services in order to safeguard the interests of consumers. Besides, the Ordinance has to take into account the actual operation of the industry in Hong Kong, strike a balance between the interests of those in the industry and the public as far as possible, thereby making gradual improvement.

In order to enhance the quality of security and guarding services and the professional level of the security industry, ever since the SGSIA's inception in June 1995, it has been maintaining contact and working closely with the police, associations of the trade, the Vocational Training Council (VTC), the Employees Retraining Board and other training providers, with the hope of further enhancing the skills and knowledge of security personnel through training, thereby strengthening the confidence of the public in private security services.

One of the criteria for making amendments in 2003 was that in applications for a permit of Category A, B or C, the criterion of "Proficiency in Security Work" would eventually replace the requirement for producing the employment certificate issued by a prospective employer. Since 1 April 2003, so long as the applicant possesses working experience in the security industry or passes the trade test, he will satisfy the criterion of "Proficiency in Security Work". According to information provided by the police, there is a rising trend in the number of people choosing to apply for a security personnel permit through passing the trade test. We can thus see that there is a need to establish an avenue whereby individuals can apply for the permit on their own, and this avenue is gradually resorted to by applicants.

In fact, the SGSIA often reviews the criteria for issuing security personnel permits, so that improvements can be made out of actual experience. The SGSIA has received a suggestion from the Hong Kong Security Association and

some training providers, pointing out that participants who have successfully completed training courses in security and passed the course-end examination should be regarded as meeting the criterion of "Proficiency in Security Work". The SGSIA always attaches great importance to training matters. Regarding that suggestion, the SGSIA feels that a strict scheme for quality assurance should first be drawn up to ensure that recognized security training courses can be properly run and managed, and that they can be maintained at a level acceptable to the SGSIA, before consideration should be given to whether those who have completed such courses meet the criterion of "Proficiency in Security Work".

Therefore, the SGSIA has invited the VTC to draw up a Quality Assurance Scheme to ensure proper running of recognized training courses. The SGSIA notes that the VTC, having considered the views of the various trade associations, security professionals, training providers and trade unions, has implemented a strict Quality Assurance Scheme to ensure the standard and quality of the courses concerned. The SGSIA thinks that passing training with quality assurance can make sure that security personnel issued with permits possess the basic knowledge required for performance of their duties. Thus, the SGSIA will suggest that applicants who have successfully completed a security training course which is recognized by the SGSIA and which meets the requirements of the Quality Assurance Scheme can be regarded as having met the criterion of "Proficiency in Security Work".

This suggestion can provide an additional avenue for individuals to apply for permits on their own. It is therefore unnecessary for applicants to make applications through prospective employers. They can apply for permits directly and swiftly, and disputes between employers and job-seekers can be reduced accordingly. Under the present economic circumstances, this is of particular importance.

In order that there is sufficient time for the smooth and gradual introduction of courses meeting the Quality Assurance Scheme, the SGSIA also suggests to extend the validity period of the "employment certificate" condition for six months, up to 30 September 2004.

Subject to endorsement by the Legislative Council, the effective date for the revised criterion would be 1 April 2004.

Madam President, I so submit and call upon Members to support this motion.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the Hong Kong Federation of Trade Unions supports the amendment to the relevant provision because, just as Ms Miriam LAU, Chairman of the SGSIA, said earlier, in the past few years, trade unions have always thought that if someone wants to join the industry, the employer's recommendation is in fact not necessary. If they can complete a certain recognized course, they should be regarded as having the relevant qualification, and this can increase the employment opportunity of the grassroots. Therefore, we support this amendment now proposed by the SGSIA.

Moreover, we also hope that during this process, the approved courses can be designed according to the level of those in the industry, and that the threshold should not be set at too high a level. This is my greatest worry. Overall speaking, those in the property management industry are the grassroots, who also hope that through their respect for their job, each building we are living in can be protected. If the level of the approved courses is too high, or the requirements are too strict, I think it will make it more difficult for them to join the industry.

Madam President, we will support this amendment. Thank you.

MR TAM YIU-CHUNG (in Cantonese): Madam President, if a person wants to undertake security work, there must be a company willing to employ him before he can apply to the police for a permit. Therefore, even if he is well-versed in the trade and very experienced, there is no way that he can apply to the police for a permit if he is not employed by any company. Meanwhile, if he is dismissed by the security company employing him, he cannot remain in the industry. Thus, the merit of this amendment is that the two things are now delinked, making it possible for those who hope to join the security and property management industry to obtain a permit through evaluation separately.

I am the Chairman of the Employees Retraining Board (ERB). The ERB has also organized a lot of courses in this field, offering around 22 000 such places each year. Under the ERB, there are also 24 training providers organizing these courses. In future, these training providers can also participate in this Recognition Scheme drawn up by the Security Services Training Board (SSTB). So long as they pass the assessment by the SSTB, they will be included in this Scheme. However, I would like to point out here that if these training providers want to join this Quality Assurance Scheme, the first-time application

fee is \$4,500, and they also have to pay \$6,000 annually for two inspections. With regard to this sum, although we feel that it is something which training providers should pay, we at the same time feel that the amount is actually too high. We hope that the SSTB can, jointly with the VTC, look into whether it can be lowered.

The ERB also thinks that the Government and the SSTB should conduct more publicity on the present amendment. Why? It is because very often, a lot of security companies will use all excuses against their employees. For example, as early as the end of last year, we received complaints and reflected to the SSTB that some security companies had told the employees that since there were such assessments in place, if the employees did not take the assessments and pass them, they would not be employed again. In fact, this is not the truth. We are discussing this motion only today. In order that the security companies concerned will not impose this amendment arbitrarily on their employees, using it as an excuse to dismiss those whom they do not like or as an excuse for not employing them, I hope that the Authority can propagate this message extensively as far as possible. Then, those in the industry or those hoping to join the security and property management industry can have a deeper understanding and know that this amendment can in fact help them, so that it will not be used as an excuse by some companies for dismissing them.

In addition, the ERB also plans to organize some refresher courses for those trade workers who have long working experience but also want to take this standard assessment. Through the refresher courses, they can pass the assessment more easily and remain in the industry without worries. We think this amendment is conducive to raising the qualification of personnel in the whole industry. Therefore, we support this amendment. Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now call upon the Secretary for Security to reply.

SECRETARY FOR SECURITY (in Cantonese): Madam President, I would like to thank Members for their views on the proposed amendment to the criteria for issuing a security personnel permit.

Since the criteria were amended last year, they have been able to cope better with the evolving social environment and reflect the public requirements of the security personnel. The proposed amendment seeks to provide an additional avenue for interested persons to join the security and guarding services industry by satisfying the criterion of "Proficiency in Security Work" through completion of a training course that has met the requirements of a Quality Assurance Scheme (QAS), thereby helping to promote further the standard of security services. I am aware that before drawing up the proposed amendment, the SGSIA has extensively consulted the industry and taken into consideration their views as far as practicable.

I am most grateful for the efforts made by the SGSIA, especially Ms Miriam LAU, the Chairman. The proposed amendment has struck a proper balance among the concerns raised by all parties. Apart from upgrading the standard of security services, it can also prevent disputes from arising among employers and employees when the "employment certificate" condition is formally removed in about half a year's time.

Just now, Miss CHAN Yuen-han raised the issue of course threshold. As far as we know, the VTC has drawn up the QAS in consultation with the trade associations and the industry. I implore Members to support the motion.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee on the speaking time of Members. Since Members are already familiar with this recommendation, I am not going to dwell on it. I only wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Respecting and complying with the principles prescribed in the Basic Law.

RESPECTING AND COMPLYING WITH THE PRINCIPLES PRESCRIBED IN THE BASIC LAW

MR JAMES TO (in Cantonese): Madam President, at a time when the controversy over constitutional reform is charged with anger and has even come down to personal attacks, the leaders of our country seem to have adopted another tone. Premier WEN Jiabao said in the second meeting of the 10th National People's Congress that it was necessary to extensively unite members of all sectors in Hong Kong and Macao, and President HU Jintao also called on all sectors to work in concert for the common good and be united in striving for progress, eliminating interference and overcoming difficulties. He further pointed out that it was desirable for Hong Kong to engage in a rational discussion on constitutional reform.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

The discussion on constitutional reform has become emotionally charged because of the proposition on patriotism. Not only has it made the discussion irrational, it has also made society descend into unnecessary disputes, division and instability. All this is the last thing we wish to see. More than two

months have passed since the Chief Executive delivered the policy address and announced the establishment of the Task Force on Constitutional Development (the Task Force). However, how much discussion have we had? The Task Force said that it was necessary to carry out a consultation on three major principles and five major legal issues. In this connection, the Democratic Party has said a number of times that there is urgency in discussing the concrete proposals on constitutional reform. If a consultation has to be carried out, it should be carried out simultaneously with a consultation on the concrete proposals. However, if we look in retrospect at the more than two months that have elapsed, the discussion in society has focused on only one of the principles raised by the Xinhua News Agency, that is, patriots should form the main body of people ruling Hong Kong.

Judging from the definitions concerning "unpatriotic people" given by the Xinhua News Agency, this debate on patriotism is, in the final analysis, merely a process to sideline and clamp down on dissents. On the last occasion, Mr CHEUNG Man-kwong said that patriotism and loving Hong Kong is not a stepping stone to power, fame or gain, nor is it a tool to sideline and clamp down on dissents. Today, the discussion concerning patriots has already gone awry and become a political movement characterized by political expediency, professions of allegiance, proclamations of stance and squaring accounts. This has evoked in me a lot of feelings and thoughts.

My aim in proposing this motion today is to urge the Task Force to right what has gone amiss by bringing the abstract discussion on constitutional reform back onto the right track. On the day before yesterday, Secretary Stephen LAM said in response to the questions raised by Members that the Government could complete the consultation on the three major principles and five major legal issues with various groups only at the end of March at the earliest. This is in fact idling around without doing anything gainful. The most pressing task now is to put forward concrete proposals on constitutional reform at once, rather than being entangled in issues of abstract principle. However, it will be a different matter if a deliberate delaying tactic is being adopted.

Not only is it necessary for us to come back onto the right track in our discussion by focusing the debate on essential and urgent matters, we also have to return to a rational discussion. The other day, Mr XIAO Weiyun said that apart from understanding the letter of the Basic Law, it was also necessary to understand its spirit as well as its original legislative intent, rather than merely

according to its wording. In giving an example, he said that although neither the phrase "executive-led" nor "with patriots forming the main body of Hong Kong people ruling Hong Kong" had been put down in the Basic Law, that they had not been so put did not mean that they were not there. The mode of expression for law is words. If it is possible to elaborate and make extensions arbitrarily on what is not written in the provisions and to inflate the issues out of proportion, then this is the rule of man, not the rule of law.

XIAO Weiyun's understanding of the Basic Law certainly raised many eyebrows among Hong Kong people, furthermore, even Chief Executive TUNG Chee-hwa, when commenting on this issue for the first time, also said that "any constitutional development in Hong Kong cannot run counter to the constitutional principle of executive-led governance". May I ask which Article in the Basic Law provides that executive-led governance is an important principle? Which Article in the Basic Law stipulates that the method for forming the Legislative Council should reinforce the principle of executive-led governance? How on earth does the election of the Chief Executive and all Members of the Legislative Council by universal suffrage run counter to the principle of executive-led governance? In fact, Articles 45 and 68 of the Basic Law stipulate clearly that the ultimate goal is to elect the Chief Executive and all Members of the Legislative Council by universal suffrage.

Moreover, Mr SHAO Tianren also said that real public opinion could actually be found among the "silent majority in Hong Kong" and the silent majority in Hong Kong did not really want too fast a pace of democratization. The silent majority has more and more often become a tool of those in power. Can they be hijacked and described as people who oppose democracy simply because they remain silent? Can they be imposed upon and be described as people who do not wish to see too rapid a pace of democratization because they are silent? Silence may simply be what it is. A free society respects people's right to remain silent. Moreover, voting is also what it is. A democratic society always respects the results of voting. Please do not paint people who are silent in a bad light. Let them continue enjoying their freedom of remaining silent without being painted in an unfavourable light.

Mr XU Chongde also said that 500 000 people accounted for only a fraction of 6 million or 7 million people. It can be seen from this how lightly he thinks of public opinion. I cannot but be reminded of the recent remarks made by the wife of CHEN Shui-bian, who said that there were only a few souls in the

rally on 13 March organized by the Kuomintang and the People First Party. How similar were those two remarks. Given that for a long time, 70% of the people have supported introducing election by universal suffrage in 2007 and 2008 and that 500 000 people took to the streets on 1 July to demand the return of political power to the people, I cannot help but ask if this 70% of the people and the 500 000 persons who opposed the legislation on Article 23 is a minority in Hong Kong. The Government dare not think lightly of this expression of views by the 500 000 people who took to the streets in indignation and in defiance of the blazing sun, bathing in sweat and bringing their children and old people along with them. I only want to illustrate with these examples that the issue of constitutional reform must be debated in a rational attitude.

What actually are the effects of this debate on constitutional development in Hong Kong? The effect is that it has aggravated the concern among Hong Kong people, who are worried that the Central Authorities may impose additional restrictions in addition to the parameters of the Basic Law. Why? Soon after the visit made by the Task Force to Beijing, the Xinhua News Agency immediately announced three major cornerstones and five major principles on constitutional reform and among these, in fact the proposition of patriots forming the main body of people ruling Hong Kong cannot be found in the Basic Law. If the Central Authorities now prescribe principles that are not spelt out in the Basic Law, which was promulgated more than 10 years ago, it will make Hong Kong people lose confidence in the Central Authorities' intention to comply with the principles spelt out in the Basic Law and respect the Basic Law. If constitutional reform does not adhere to the principles prescribed by the Basic Law, if a precedence of not adhering to the law is set, then the mutual trust between Hong Kong people and the Central Authorities will be eroded and a confidence crisis will emerge in Hong Kong. Therefore, another issue that I want to raise today is to urge the Task Force to make it clear to the Central Government that it has to respect and comply with the principles prescribed in the Basic Law when implementing constitutional reform. In fact, recent public opinion polls show that there has been a marked decline in the support of Hong Kong people for the Central Authorities and in their confidence in politics. To prevent Hong Kong from slipping into a crisis and social instability, issues of constitutional reform must be discussed in a rational and pragmatic attitude.

The Central Government has established the Hong Kong and Macao Research Institute under the charge of the former deputy director of the Xinhua

News Agency, ZHU Yucheng and established an office in Hong Kong to collect public opinion. Will the duties of the Research Institute overlap with those of the Task Force, thus giving rise to two so-called centres of power and consultation? Or has the Task Force already been overridden? In addition, when Chief Secretary for Administration Donald TSANG, who headed the Task Force, visited Beijing in the middle of last month, he was only received by the Deputy Director of the Hong Kong and Macao Affairs Office, and the Task Force is still engaged in a discussion of the major principles such as patriotism and the love for Hong Kong, whereas the party leaders of the Democratic Alliance for Betterment of Hong Kong (DAB), the Hong Kong Progressive Alliance and the Liberal Party have already met Vice-President ZENG Qinghong in Beijing when the two Conferences were convened and discussed concrete issues concerning constitutional development in Hong Kong.

Recently, Chairman of the DAB MA Lik complained that although some comments taking a far-left stance did not represent the stance of the DAB, it seemed that the DAB was held accountable for them, leading to a decline in their popularity. However, did the National People's Congress Deputies and the Chinese People's Political Consultative Conference delegates belonging to the DAB say anything to do justice to Hong Kong people while they were in Beijing? Since members of the DAB were received by ZENG Qinghong and since the DAB said that universal suffrage in 2007 and 2008 was its goal, did they convey the heartfelt wishes of Hong Kong people to the leaders? If they did, why did they set about dampening the hopes of Hong Kong people after the meeting, saying that they had been given the impression that the Central Authorities had reservations about introducing universal suffrage in 2007 and 2008, as a result of which Mr GAO Siren of the Liaison Office of the Central People's Government in the SAR had to go out of his way to say in public that the Central Authorities had not yet made a final decision on the introduction of universal suffrage in 2007 and 2008? What did the DAB actually say to the leaders? Why were no press conference held, no statement issued, nor any account given after the meeting? The greatest worry of all to the public is that what a certain person could manage to say in the presence of our leaders was that everything had been covered and he had nothing to add.

Furthermore, the Head of the Central Policy Unit, Prof LAU Siu-kai, said the other day that the issue of constitutional development in Hong Kong had basically been elevated to a national level, that the initiative on constitutional

matters now rested in the Central Authorities and the Hong Kong SAR Government could only take corresponding action. I hope the SAR Government can clarify today if Prof LAU Siu-kai was speaking for the Government. If he was, what other purpose can the Task Force serve? Are window-dressing exercises the only corresponding actions that it can take? The Task Force may just as well be disbanded early.

If the SAR Government can only act in response to the initiative of the Central Authorities, how can we have "Hong Kong people ruling Hong Kong" and "a high degree of autonomy"? If constitutional reform means "people in the capital ruling Hong Kong", how can this kind of "one country, two systems" serve as a showcase for Taiwan?

Today is 17 March. A few days later, an election will be held in Taiwan. Yesterday, the former chairman of the American Institute in Taiwan, Mr BELLOCCHI, said in an article that at a time when Hong Kong people were living under "one country, two systems" found that they had no right to choose, voters in Taiwan had all the more reason to take part in the general election. Being Hong Kong people, in finding that others look at "one country, two systems" this way, how should we regard this evaluation? Should we convey the wishes of Hong Kong people to the Central Authorities and seek a consensus even more actively, so that the "one country, two systems" principle can be successfully implemented in Hong Kong and Hong Kong can become a better showcase for Taiwan, so as to increase the possibility of unification?

I hope Members seated here can urge the Government to put forward concrete proposals for public consultation, so that Hong Kong people can reach a consensus with the Central Authorities and the wish of the public to introduce universal suffrage in 2007 and 2008 can be realized as soon as possible.

Mr James TO moved the following motion: (Translation)

"That this Council urges the Task Force on Constitutional Development to consult, in a pragmatic manner, the public on concrete proposals of constitutional reform, to avoid unnecessary arguments, causing social polarization and instability; and to express to the Central Government that the principles prescribed in the Basic Law shall be respected and complied with in implementing constitutional reform."

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

DEPUTY PRESIDENT (in Cantonese): Mr TAM Yiu-chung will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mr TAM Yiu-chung to speak and move his amendment.

MR TAM YIU-CHUNG (in Cantonese): Madam Deputy, the Basic Law is a piece of constitutional legislation of the Hong Kong Special Administrative Region (SAR) and the fundamental guarantee for maintaining the stability and prosperity of the SAR. The Basic Law is also a national law enacted by the National People's Congress (NPC) in accordance with the constitution of the People's Republic of China. Therefore, it is the obligatory duty of the Government and every Legislative Council Member who has sworn to uphold the Basic Law to strictly abide by the provisions of the Basic Law.

Recently, when the Premier of the State Council, Mr WEN Jiabao, presented his work report to the NPC, he reiterated when speaking on issues relating to Hong Kong that it was the steadfast goal of the Central Government to maintain the long-term stable and prosperous development of Hong Kong, that the Central Government adhered to the policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" and strictly abided by the Basic Law in handling any matter.

At the moment, the Hong Kong public is being consulted on constitutional development. It is beyond any doubt that future changes to the constitution should strictly adhere to the principles and processes prescribed by the Basic Law. The Task Force on Constitutional Development (the Task Force) headed by the Chief Secretary for Administration raised in January a number of issues concerning the principles and legislative process involved in constitutional development. Various sectors in society have been enthusiastic in expressing their views. However, there are also people who think it unimportant to discuss the principles and legislative process involved in constitutional development and, from their conspiracy theory, disparaged this approach as an attempt to delay introducing constitutional changes. I cannot subscribe to such a view.

In taking forward constitutional development in Hong Kong, several important principles in the Basic Law must be understood. They include "one country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy", as well as "gradual and orderly progress in the light of the actual situation in the Hong Kong Special Administrative Region" when carrying out constitutional development, and so on. I think that Hong Kong people, and in particular, politicians, must have a comprehensive understanding of these principles because they are closely linked to the fundamental interest of Hong Kong and they are the cornerstones of Hong Kong's long-term prosperity and stability.

Some politicians have expressed great loathing at the present discussion on "patriots ruling Hong Kong". Do they not understand that as one of those who play a part in the administration of Hong Kong, being patriotic is a matter of course and a very reasonable and justified requirement? In advancing the principle of "patriots ruling Hong Kong", Mr DENG Xiaoping required people ruling Hong Kong to support the "one country, two systems" principle, to uphold the territorial integrity of the country and not to undermine the interest of the Motherland and the prosperity and stability of Hong Kong. This requirement is by no means excessive, therefore, Hong Kong should not become a base for independence, separatist activities or subversion against the Central Government.

It is necessary for the constitutional review to cover the principles prescribed by the Basic Law. The purpose of discussing these principles is to comply with the Basic Law better. For example, "Hong Kong people ruling Hong Kong" as mentioned in the Basic Law does not mean "the British ruling Hong Kong", nor "美人治港" (the Americans/beauties ruling Hong Kong) — I want to clarify that "美人" does not mean "beauties" but "Americans". If we understand, respect and observe this principle, then definitely nobody would be so eager as to go to the United States, co-operate with the ultra right forces in the United States and sing to their tunes, thus enabling the United States to interfere in Hong Kong's internal affairs. Recently, there was a coup in Haiti and its President had to go into exile. There was political unrest and its people were displaced and uprooted. All these were the result of the instigation and plotting by the United States Government behind the scenes. Therefore, I am sure all patriotic members of the public who love Hong Kong definitely do not wish to see a situation similar to that in Haiti occur in Hong Kong.

Similarly, in talking about complying with the principle of "one country, two systems", we cannot be biased in favour of one to the other. We cannot take only "two systems" to the neglect of "one country". If we respect the principle of "one country, two systems", then we will understand that the development in Hong Kong is closely related to the Mainland and the Central Government. Any political change introduced in Hong Kong must take into account the major principle of "one country". Therefore, to take forward the constitutional development in Hong Kong, it is always necessary to foster dialogue with the Central Government rather than adopting a confrontational attitude or menacing tone.

Regarding how the "actual situation in the Hong Kong Special Administrative Region" as stated in Articles 45 and 68 of the Basic Law should be understood, the DAB believes that consideration should be given to four factors: firstly, the consensus of different strata in society on constitutional development; secondly, the level of development of political parties and organizations involved in politics; thirdly, whether constitutional development can achieve balanced participation in society and fourthly, consistency with the long-term interests of the country and Hong Kong.

In order to take forward constitutional development in Hong Kong, apart from the principles prescribed by the Basic Law, there are also a number of legislative processes that must be first clarified, including which party is to initiate amendments to the methods for selecting the Chief Executive and forming the Legislative Council, what method should be adopted in amending Annexes I and II to the Basic Law, whether it is necessary to invoke Article 159 in making the relevant amendments, and so on. It is only by devising clear procedures for these processes as soon as possible that the proposals on constitutional development can be formulated smoothly and a democratic and stable situation created for Hong Kong.

At present, the discussions within Hong Kong on the various principles involved in constitutional development indicate that views on the pace of constitutional reform in society are diverse. We can see that on the one hand, there are many views that call for the introduction of universal suffrage as soon as possible, and on the other, there are also many voices that express concern about universal suffrage. This situation is very similar to that in the years when the Basic Law was being drafted. I remember that during the years when the Basic Law was being drafted, the Basic Law Drafting Committee did not neglect

any voice in society. After many rounds of consultation in which the draft was passed to and fro, a wide array of views from different sectors of society were taken on board. It was after this that a proposal acceptable to all and balancing the interest of all strata of society was eventually formulated.

As a Special Administrative Region of China, it is neither possible nor appropriate for Hong Kong to bypass the Central Government and introduce constitutional reform unilaterally. Such an understanding is already a consensus in Hong Kong society. As pointed out by Prof Albert CHEN of the Department of Law of the University of Hong Kong, who is also a member of the Basic Law Drafting Committee, the Central Government has the right to participate and to make the final decision on constitutional reform in Hong Kong. To understand the legislative intent behind the Basic Law can help clarify grey areas. Therefore, in the process of taking forward democracy-based constitutional development, the SAR Government must play its assigned role more actively by clarifying the principles and processes of constitutional development with the Central Authorities as soon as possible and channelling divergent views in society adequately, so as to promote dialogue and rational discussion among various sectors in society and create more favourable conditions for formulation of the concrete proposals and details of constitutional reform. Moreover, this can also prevent confrontation between Hong Kong people and the Central Government, thus safeguarding the stability of Hong Kong society.

Madam Deputy, the Task Force is now collecting views on the principles and legislative process involved in constitutional development from various sectors of society. We believe that on the one hand, the public should be allowed to express their views fully, and on the other, the relevant issues must be clarified with the Central Government as soon as possible before formulating the concrete proposals on constitutional reform. To strictly abide by the stipulations of the Basic Law is the obligatory duty of the Government and every politicians. Since Hong Kong's reunification, the Central Government has strictly complied with the Basic Law in handling matters. This should be evident to all. If we request others to respect the Basic Law, we should also set an example ourselves. Otherwise, this will smack of a thief raising a hue and cry over other people. Therefore, I have proposed this amendment and hope that Members will support it.

I so submit. Thank you, Madam Deputy.

Mr TAM Yiu-chung moved the following amendment: (Translation)

"To delete "consult," after "Task Force on Constitutional Development to" and substitute with "expeditiously clarify,"; to add "with the Central Government the principles and procedure relating to constitutional development, and promote rational discussions among various sectors of the community; and to establish positive and interactive discussions with the Central Government, with a view to formulating, on the basis of respecting and strictly complying with the principles prescribed in the Basic Law, a constitutional development proposal that fully implements the concept of 'one country, two systems' whereby Hong Kong people rule Hong Kong with a high degree of autonomy, so as to develop a democratic and stable situation in Hong Kong and avoid" after "in a pragmatic manner,"; to delete "the public on concrete proposals of constitutional reform, to avoid unnecessary arguments," before "causing social polarisation"; and to delete "; and to express to the Central Government that the principles prescribed in the Basic Law shall be respected and complied with in implementing constitutional reform" after "and instability". "

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr TAM Yiu-chung to Mr James TO's motion, be passed.

DR PHILIP WONG (in Cantonese): Madam Deputy, I think, in the discussion on constitutional development, the pressing task is to gain a clear understanding of the spirit and principles of the Basic Law. If we lack the proper knowledge of the spirit and principles of the Basic Law, we may easily be misled, let alone "respecting" and "observing it strictly".

I have talked about issues on the constitutional development in relation to the Basic Law several times. Today, I just wish to highlight one point. That is the Basic Law has been promulgated for 14 years, but the publicity and promotion work related to the Basic Law done so far does not seem to be adequate. For example, how was the Basic Law formed? What is its core spirit? What are the important principles included? Where does its legislative

intent lie? The facts speak for themselves that it is essential for the people to study these issues all over again in order to master it.

Recently, a number of experts on the Basic Law have repeatedly stressed the above issues, expressing their opinions in the light of the actual situation in Hong Kong. To my understanding, the core spirit of the Basic Law lies in "one country, two systems", "Hong Kong people ruling Hong Kong" and "high degree of autonomy". A number of important principles prescribed in the Basic Law revolve around this spirit. These include the principles that "one country" is the premise of "two systems" and the main body of people governing Hong Kong must be patriots, and that constitutional development should follow a gradual and orderly process. The principle of executive-led government should be upheld, and that balance of interests and obligations should be taken into account.

Take the principle of "one country" being the premise of "two systems" as an example. This principle is stated at the outset in Article 1 of the Basic Law, that is "the Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China". If we have acquired a correct understanding of this important principle prescribed in the Basic Law, we will naturally understand that after the reunification, it is only right and proper to uphold patriotism. It is truthful and unquestionable to emphasize that those people governing Hong Kong should be patriots. It is also indisputable that constitutional development in Hong Kong should be led by the Central Authorities. Against this background, we will understand why our constitutional development should follow a gradual and orderly process, ensure balanced participation and maintain the executive-led principle. It is only by doing so that the long-term interest of the people of Hong Kong can be safeguarded, and that the solid foundation of Hong Kong's success will not be undermined.

Finally, I would like to reiterate the conclusion I made at the meeting on 6 February, that is, "the ultimate aim of constitutional development is to devise a mechanism under which people well-versed in the principles of 'one country, two systems', supportive of the Basic Law, patriotic and capable of making contributions to our stability and prosperity can be elected to be the Chief Executive or Legislative Council Members".

Madam Deputy, I so submit.

MR NG LEUNG-SING (in Cantonese): Madam Deputy, the Task Force on Constitutional Development (the Task Force) led by the Chief Secretary for Administration has commenced its work. But right at the beginning, the Task Force made it very clear that the Central Government had told the Chief Executive that before finalizing any work arrangements, the Government of the Hong Kong Special Administrative Region (SAR) must conduct adequate negotiations with the relevant departments of the Central Government on the principles and procedures governing the SAR's constitutional development as laid down in the Basic Law. It is against such an open and transparent backdrop that the Task Force is so orderly going about its work. On the one hand, it is seriously examining the related issues and consulting the relevant departments of the Central Authorities, and on the other, it is meeting continuously with the various social sectors of Hong Kong to gauge their views. It is very clear that in the process of opinion collection, simply no one has been barred from voicing his views, nor are there any restrictions preventing those airing their opinions from exploring any specific constitutional development schemes. There are simply no restrictions at all.

Actually, as my colleagues of this Council and I realized quite readily when preparing our speeches for today's motion, the contents and intent of the motion under debate in the Council now are similar to another one moved less than a month ago. I do not intend to challenge the Chair, though. The motion today does not ask the Government and the Task Force to consider the principles and procedures of constitutional development, but urges them to focus on concrete proposals of constitutional development, or even proposals marked by an obvious stance. But the original motion also asks the Task Force to express to the Central Authorities that "the principles prescribed in the Basic Law shall be respected and complied with in implementing constitutional reform" — I am quoting the exacting wording here. From this, we can see that the principles of constitutional development are an issue that no Member can possibly avoid at any time during the relevant discussions. But what principles are to be included? What are the specific contents of these principles? As a result of their political beliefs, some people's interpretation is very different from that of others. They do not agree to the principle that Hong Kong must be governed by people the main body of which must be patriots. Such differences can show precisely the absolute importance and necessity of clarifying the principles and procedures governing the SAR's constitutional development and of conducting adequate negotiations with the relevant departments of the Central Government.

I am of the view that care must be taken to avoid all unnecessary disputes and social instability during the studies and discussions on constitutional development. Most importantly, we must attach great importance to and maintain the sound relationship of co-operation and mutual trust between the SAR and the Central Government. All moves should aim to damage such a relationship instead of repeating over and over again the so-called political preferences and platform of anyone. The reality of "one country" as the premise should not be disregarded; nothing should be done to damage the mutual trust between the two places; much less should any motion be so worded as to stir up suspicion and misgiving about whether or not the Central Government will respect and comply with the principles laid down in the Basic Law. It is only natural that such an attitude of suspicion and skepticism, together with some actions overseas, will lead people to question why some Members should have turned to the political system of another country for discussions on a domestic issue between the SAR and the State. When anyone refuses to respect the constitutional powers and responsibilities of the Central Government under the Basic Law, when they disregard the objective effects of certain political acts, the general public will simply ask, "Who are trying to invite foreign forces to meddle with Hong Kong's constitutional reform? Who have dragged Hong Kong into unnecessary disputes? Who have led to the continued division and instability of society?" And, quite naturally, they will also ask, "Who are the true defenders of the interest of Hong Kong people as a whole?"

Madam Deputy, I so submit.

MR HOWARD YOUNG (in Cantonese): Madam Deputy, the discussion on the constitutional development of the Hong Kong Special Administrative Region (SAR) has a bearing on the long-term interest and stability of Hong Kong in future, and its effect will be far-reaching. This has thus aroused extensive concern in the community. Moreover, the Task Force on Constitutional Development led by Chief Secretary Donald TSANG has just visited Beijing and initiated discussions with the Central Authorities on the procedures and principles related to constitutional development. Therefore, we also share the view proposed by Mr TAM Yiu-chung in his amendment to the motion, that the Government should expeditiously clarify the relevant issues with the Central Government. We think only by doing so can the Government strive to put forth different concrete proposals for extensive public consultation before the Legislative Council election to be held in September this year. By then, voters

and candidates will have a clearer picture about the different positions and opinions held towards different proposals.

The recent row in Hong Kong has become white-hot. For example, the patriotism row has intensified sharply and escalated to mud slinging and name-calling, heaping with abuse and scorn. We do not want to see the slapping of political labels of Cultural-Revolution style and the making of exaggerated accusations to continue in the disputes. Otherwise, this will undermine the harmony of society, breed division and cause instability, which are detrimental to our economy that has just shown signs of recovery.

We also share the views of the leaders of the Central Authorities, that the overwhelming majority of the people of Hong Kong are patriotic. Actually, the late leader DENG Xiaoping had laid down clearly the criteria on patriotism, so further debate over the issue is thus uncalled for. We should waste no time but to return to rational discussions.

In addition, we believe through healthy interaction with the Central Authorities that promote two-way exchanges, Hong Kong people will have the opportunity to understand the opinions of the Central Authorities while the Central Authorities can listen more clearly to the views of Hong Kong people. This may avoid future disparity in understanding between both parties regarding the Basic Law provisions, which may lead to divergent views on constitutional development, causing unforeseeable disruption to the Hong Kong community.

All along, the Liberal Party has emphasized that constitutional development in Hong Kong should be in compliance with the Basic Law provisions, and be implemented in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. Any decisions related to constitutional development should be made on the premise of ensuring the prosperity and social stability of Hong Kong, and should take into full account the interests of different sectors not to the neglect of the views of the Central Authorities. The Liberal Party, in its party platform on constitutional affairs, follows exactly the wordings in the Basic Law, precisely seeking to realize more effectively the relevant requirements prescribed in the Basic Law.

Moreover, we consider the constitutional development in future should follow the principle of "balanced participation" to ensure that the interests of

different social strata and sectors will be fully represented. We consider the functional constituencies under the Legislative Council have a positive effect on ensuring "balanced participation" at least, and are thus worth retaining for the time being.

In fact, recently, the Liberal Party has received many views from members of the small and medium enterprises, middle class and business sector stating their opposition to the broad-brush abolition of functional constituencies in the year 2008. They feared that some politicians, for the sake of soliciting more votes, might vigorously promote welfarism regardless of the possible consequence of shaking the pillars supporting the economic prosperity of Hong Kong. For example, this may affect the free market economy system that has all along worked effectively and dampen the spirits of industry, enterprise and self-reliance. We cannot deny that some people in the community do have such concerns.

Frankly speaking, irrespective of the direction the constitutional development will take in future, the ultimate goal is to maintain prosperity and stability under the principle of "one country, two systems", and to enable the people to live and work in contentment. Any designs of constitutional development should in no way deviate from this goal. According to the Basic Law, Hong Kong will ultimately implement universal suffrage in election. The Liberal Party definitely has no query concerning this aim. However, the introduction of universal suffrage is a matter of enormous import, which is not as simple as many considered, and should thus be taken forward cautiously. We should not act recklessly, trying to achieve this goal in one step.

Finally, we find the wording of the original motion problematic for it urge the Task Force to express to the Central Authorities that the principles prescribed in the Basic Law shall be respected and complied with in implementing constitutional development. This writing *per se* seems to imply a worry that the Central Authorities will not comply with the Basic Law on the issue of constitutional development or will not follow the book. However, in last December, when President HU Jintao met with the Chief Executive who visited Beijing to report his duties, he stated clearly that, "the political structure of the SAR should comply with the Basic Law provisions, according to the actual situation in Hong Kong and following a gradual and orderly progress". As the highest authority of the state has already made it so clear, should we still question

the determination of the Central Authorities in complying with the Basic Law provisions? What else do we need to "express" to the Central Authorities?

The Central Authorities and Hong Kong are a family, and we are all in the same boat. Our difference should thus be easily reconciled through discussion. Mr James TO mentioned earlier that meetings between leaders of the State and some political parties were conducted behind closed doors. However, I have to point out that Mr James TO's point is not the fact. Actually, three political parties had met with national leaders. The Democratic Party has also met with national leaders, but it just happened that those they met were not the leaders of China. Closed-door meeting would be an issue of discussion, I think, but a better result will be yielded by meeting with the leaders of China. At present, what we need to do is to discuss, according to the principles set in the Basic Law, the constitutional arrangement that accords with the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "high degree of autonomy".

Madam Deputy, I so submit.

MR AMBROSE LAU (in Cantonese): Madam Deputy, constitutional development in Hong Kong covers a wide and complicated spectrum of issues. Since the community has yet to reach a consensus in respect of the understanding and views of some important principles, the Hong Kong Progressive Alliance (HKPA) considers the Task Force on Constitutional Development should clarify with the Central Government the relevant principles and procedures as soon as possible. We also think that different sectors in the community should initiate rational discussions and effect healthy interaction with the Central Government. As quoted in *The Book of Songs*, "only through mutual discussions can there be exchange of views", a consensus of the community can thus only be reached through discussion. A constitutional proposal in compliance with the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "high degree of autonomy" will then be formed, leading Hong Kong to a new era of democracy and stability and avoiding social division and instability.

Madam Deputy, a number of issues involved in the recent debate over constitutional development were in fact discussed during the drafting of the Basic Law. After a decade or so, arguments in the past are again brought up. This

illustrates that if we have to respect and observe the principles prescribed in the Basic Law, we have to learn and promote the Basic Law first, and to understand its legislative intent. To refresh and update the public on the Basic Law will help to narrow the difference in opinion in the community and gradually shape a general consensus, thus laying a sound foundation for solving the constitutional development issue.

In April 1990, the Basic Law was endorsed by the National People's Congress (NPC). In his address to the NPC, the Chairman of the Drafting Committee for the Basic Law, JI Pengfei, stated that insofar as the political structure of the Hong Kong Special Administrative Region (SAR) is concerned, "consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong's reality should gradually be introduced". The HKPA considers the political structure of the SAR a complete entity that includes the Chief Executive, the executive, the legislature, the Judiciary, district organizations and the Civil Service. Each of these six elements is interrelated and complementary, a tiny alteration to any one will affect the whole. If reform is emphasized on one or two elements, regardless of the possible overall influence on the whole, it will likely undermine the intent of the original design of the Basic Law, causing social division and instability.

Madam Deputy, democracy is a set of value, one of the noble philosophies established under the modern political civilization, the ultimate goal pursued by many other nations and countries in the modern history. However, democracy is also an institution, and this is why democratic systems found around the world vary. The French political thinker, Alexis de TOCQUEVILLE, in his famous work *Democracy in America*, considered the political structure in the United States "one of the modes of governance available to democratic countries", which he did not think was "the only and the best mode of governance a democratic country should establish". Obviously, while the value *per se* is universal, the institution used to put this value in practice varies according to the actual situation of society, history, politics, culture and economy of different places.

The Basic Law established a democratic system that suits the unique historical and social situation in Hong Kong. This system, unlike the parliamentary system, presidential system, the governor system adopted before

the reunification or the people's congress system adopted in the Mainland, is a regional political system adopted in compliance with the "one country, two systems" principle that suits the situation of democracy in Hong Kong. The HKPA thus considers the constitutional development in Hong Kong must underpin the principle that "one country" should be the premise and foundation of "two systems", and should not deviate from the "executive-led" principle. The development should also take into account the balance of interests of different sectors of society. It should be introduced in a gradual and orderly progress, in full accordance with the actual situation in Hong Kong. In every society, democracy has to be established through a process; achievement cannot be expected overnight. Hong Kong has been under colonial rule for one and a half centuries, but no governors had ever been elected by the people of Hong Kong. It started only from 1985 that some seats of the Legislative Council were returned by indirect elections and functional constituency elections. In 1991, some of the seats of the Legislative Council started to be returned by direct elections. The development of democratic politics in Hong Kong must go through a process. We have to respect and observe the principles prescribed in the Basic Law before we can ensure that the development of democracy in the SAR will be conducive to the well-being of the people and the stability of society.

The HKPA considers a consensus can be reached only through rational discussions and exchange of views, and acquisition of a thorough understanding and knowledge of the content of the guiding principles of political system prescribed in the Basic Law. On the basis of maintaining healthy constitutional development and social stability, we should seize the opportunities offered by CEPA and the series of State-initiated support policies, and pull together to promote the sustained recovery of the economy of Hong Kong.

Madam Deputy, I so submit.

MR ALBERT HO (in Cantonese): Madam Deputy, it is stipulated in Articles 45 and 68 of the Basic Law that the ultimate aim of Hong Kong constitutional development is the introduction of a system of popular election by universal suffrage. If the present constitutional review is conducted on the above premise, the atmosphere should be positive, open and proactive. Unfortunately, the present situation seems to be in a completely different climate. The leaders of the Central Authorities do display an open attitude home and overseas,

emphasizing the importance of accommodation and unity. But the attitude of some executive officials as well as some local left-wingers seems to be wholly incongruous with that of the leaders of the highest echelon. They choose to be "left" rather than "right", trying to put the clock back, adopt a hostile attitude towards democracy and suppress public opinion. Under the present circumstances, we are likely to be forced to experience the five movements; the tactic used by people vested with the authority on certain matters. What actually are these five movements? The first movement is limitation. The second is admonition. The third is intimidation. The fourth is delay. The last movement is coercion. Let me explain them one by one.

What does limitation refer to? First, it means restricting the role that the people of Hong Kong can play. We have been told at the outset that the Central Authorities have grave concern about the matter and would be fully involved. The Central Authorities have the full power to oversee the development. More so, they are determined to intervene in the matter right from the beginning. As this involves affairs and sovereignty of the State, the Central Authorities are decisive in intervening. The role to be played by the people of Hong Kong has been gradually put out of mind. Now, we do not even have a timetable for expressing our views. We know nothing about how we can exercise our right of expression through a selection of specific proposals.

The second movement is admonition. Many officials from the Central Authorities or some authoritative persons have emphasized a few so-called major principles openly and repeatedly. They have said that "one country" should be the premise, the main body of those people governing Hong Kong should be patriots and national consciousness should be established in Hong Kong. It is said that publicity efforts and education on the Basic Law should be targeted on the people of Hong Kong, as well as officials and judges, for everyone need to learn the Basic Law well. One of our officials considered these remarks very comprehensive that he needed to add nothing. Another even said that we had to be obedient and keep on learning; we should accept the admonition under these circumstances.

The third movement is intimidation. Intimidation of this kind takes place mainly in Hong Kong. Many conventional left-wingers and some "abrupt patriots" try to escalate the issue at every turn and label dissidents as "vice elements" on the least pretext. Recently, some people have invented the "four vice elements" label. They claimed that those people opposing the legislation on Article 23 of the Basic Law and mobilizing people to take to the streets, those

supporting the independence of Taiwan, those inviting foreign intervention and the Hong Kong Alliance in Support of Patriotic Democratic Movements of China aiming to subvert the Motherland should be labeled as the "four vice elements". This is intimidation. We are also exposed to relatively indirect intimidation, claiming that if the pro-democracy camp does come into power, it would be detrimental to our economy and Hong Kong might be caught in catastrophes for a hundred years or so. All this seems to imply that the Central Authorities will turn a cold shoulder on us, and will very likely engage the reverse gear in the economic integration with Hong Kong. The Central Authorities may even take away the great favours already offered to Hong Kong. Intimidation is thus the third movement.

The fourth movement is delay. We all know quite well about this delay. On 1 April, no, I think it should be in January this year, the Chief Executive called for a complete halt on the constitutional review in his policy address. The three-member Task Force was given a cold snub on their visit to Beijing and failed to make any achievement. They came back with a few major principles for consultation. Yet consultation has been conducted repeatedly for they do not know what should be the next step. When can we exchange views on specific proposals? Will the Government put forth a blueprint on initiating consultation? How will it analyse the public opinions? In what way will it facilitate exchanges between the local political community and the Central Authorities to strive for a consensus between Hong Kong and the Central Authorities? So far, despite repeated requests by us, these questions remain not answered. All we need is just an answer.

The fifth movement is the most pathetic one. Hong Kong people may ultimately be coerced and feel aggrieved. Many people suppressed by the four tactics mentioned by me would harbour no hope in pursuing their goals; many may even be deterred by the possible political consequences. Tacitly, they are forced to accept a result which they are unwilling to accept. Initially, many people do hope to put forth their opinions in a positive, open and proactive manner, and have interactive exchanges with the relevant parties. But now, they have lost the interest to express their views. As a result, we are not able to gauge public opinions in Hong Kong and opinions of the public cannot be fully expressed. What a pity it is.

I hope against hope that the people of Hong Kong will not have to follow through the fifth movement, though they are forced to experience the first four movements. Although we cannot avoid the first four movements, we can avoid

the fifth movement, we can choose not to follow this movement. That is to say, we can refrain from being aggrieved; we can stand up to the coercion. We have to be brave to express our opinions. We request the rule of law be respected. We request for an open and interactive discussion on the provisions of the Basic Law and the genuine meaning of these provisions. We request for open dialogue with officials from the Central Authorities to understand their concerns and worries, with a view to easing their unnecessary concerns and worries through rational discussions. I hope the people of Hong Kong will be true to their own beliefs and strive for their own rights. I am really disappointed to see some colleagues resort to criticisms of an escalated level, criticizing us for inviting foreign intervention at every turn. If these remarks are not alarmist talk, they are a full display of national inferiority. This is very sad indeed. How can we still feel inferior now? Our country is now one of the global powers. How can we easily conceive ourselves as dogs that are not allowed into parks? They may still conceive us as the sick man of East Asia, how can this happen. How pathetic!

Thank you, Madam Deputy.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Deputy, with respect to the repeated attempts by Mr James TO to propose motions in the Legislative Council and his taking great pains to urge the SAR Government to come back onto the right track, not to cause troubles in the issue of political structure and adhere to the principles of "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" as expressly stated in the Basic Law, as well as consulting the people of Hong Kong direct, I believe most members of the public, no matter if they belong to the silent majority or not, would support the attitude of Mr James TO like I do.

The motion today urges the Task Force on Constitutional Development to consult, in a pragmatic manner as well as in accordance with the principles in the Basic Law, the public on concrete proposals of constitutional reform. It is unfortunate to find that the various moves taken by the Central Government only serve to make these meaningful discussions out of place. Earlier this week the Central Authorities announced the setting up of a research institute on Hong Kong and Macao affairs and this is a proclamation that the SAR Government has been bypassed in the issue of constitutional reform. This direct meddling by the Central Authorities with Hong Kong affairs poses a serious threat to the

principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". As a result, all attempts to demand the SAR Government to do anything about the constitutional reform would become meaningless.

The people may well ask, "Why have things developed to such a state?" The answer is simple. That is because the SAR Government, inclusive of the Task Force, has not taken a firm stand and convey Hong Kong people's aspirations for universal suffrage to the Central Authorities. On the contrary, the SAR Government has only sided with the Central Authorities and the views of a minority of people in Hong Kong who oppose democracy. It is trying its best to muffle the calls for democracy which are increasingly felt in society. For if not, it will not have only proposed the so-called 12 principles for discussion by us and it will not have refused to hold any concrete consultation on the constitutional reform.

We must ask these question. Why does the Chief Executive only know to follow closely the instructions of the Central Authorities and add other things on top of the provisions in the Basic Law which have been clearly laid down? Does Mr TUNG want to rewrite the Basic Law according to his will? Does he want to replace the rule of law with the rule of man? Does he want to destroy all the institutions and foundations on which our development hinges? Since Mr TUNG knows how to present a host of requests to Premier WEN Jiabao for further assistance to the SAR, why does he not reflect our aspirations for democracy truthfully to the Central Authorities as this may gain more grounds for Hong Kong in the constitutional reform? That the SAR Government has been bypassed on this issue of constitutional reform is really a result of the self-abandonment on the part of the SAR Government and its turning a blind eye to the aspirations of the people of Hong Kong.

It is sad that not just Mr TUNG, but the entire SAR Government, only knows how to second-guess the wish of the Central Authorities. An example is Secretary Stephen LAM of the Task Force. The people will ask, "Is it not Secretary LAM's duty that he should collect the views of the people and truthfully reflect them to the Central Authorities? Why did he attend the meeting in which the four legal experts sent by the Central Authorities leashed their attacks on the Hong Kong people? Why did he talk like a parrot and repeat the words of these legal experts?" I have no idea if Secretary LAM has grown up drinking Hong Kong water, with Hong Kong blood flowing in his veins. One thing is clear, however, Secretary LAM is drawing his salary from

public money. But unfortunately, not only has he not spoken up for Hong Kong and its people, he also dumps our hopes for democracy into the gutters.

It is because of all these that Hong Kong has turned from a society where the rule of law used to reign to a closed society plagued by the rule of man. All our prosperity and stability has been washed down the drains. The tragedy of this is that Hong Kong has become the most powerful weapon which the separatists in Taiwan brandish against reunification. Yesterday, Richard BUSH, the former chairman of the American Institute in Taiwan, wrote an article saying that Beijing had backed down from its commitment to the "one country, two systems" and it was on its way to launch a progressively dictatorial rule in Hong Kong. He warned that the Hong Kong people should be wary of that. I would like to stress that we do not want to become a subject of mockery for the Taiwanese, nor an excuse for the Taiwanese separatists. So just as Premier WEN Jiabao has said, the people of Hong Kong should be united. But the goal of our unity should not only be for economic development as WEN Jiabao would want it to be, we should aim at a sound democratic system so that Hong Kong will grow and will not relegate into an international laughingstock and a burden for our country.

Madam Deputy, a recent news report has commanded our respect. It is about Dr JIANG Yanrong, the doctor in Hospital 301, that is, the General Hospital of the People's Liberation Army in Beijing, who exposed the SARS outbreak in Beijing last year. Dr JIANG wrote a letter to the authorities during the convention of the National People's Congress and the Chinese People's Political Consultative Conference to urge for a rectification of the pro-democracy movement in 1989. Dr JIANG not only gave evidence about the 4 June massacre which is known to all, but also wanted the Central Authorities to know that no economic benefits, no matter how great they may be, would ever wash away the bitter memories in the minds of the people and their aspirations for democracy. The courage demonstrated by Dr JIANG does command our respect and we should learn from him. From past experience, I think we can hardly require the officials of the SAR to act like Dr JIANG so fearlessly in the face of power and that they can really say to their heart's content and to reflect the views of the people. So we will just have to rely on ourselves. All of us should learn the example of Dr JIANG and we should say to the Central Authorities loud and clear that they should not add anything to the Basic Law but they should act on the express provisions in it and listen to the opinions of the

majority public in Hong Kong, implement the constitutional reform as soon as possible and introduce universal suffrage based on democracy.

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

MR SIN CHUNG-KAI (in Cantonese): Madam Deputy, discussions on constitutional reform have grown from the controversies over patriots ruling Hong Kong, to some Deputies to the National People's Congress or delegates to the Chinese People's Political Consultative Conference proposing an assessment of the patriotic sentiments of Members of the Legislative Council or even urging the officials, Judges and other public officers of the SAR Government to join study classes on the Basic Law, and so on. All this impresses us that the relevant discussion is straying afar.

In these days the people are like spectators and every day they are forced to bear comments reminiscent of the days of the Cultural Revolution in that people are recklessly labelled, smeared, verbally abused and even subjected to denunciations and purges.

On the occasion of Martin LEE's visit to the United States to attend a hearing, he is branded as a traitor, one who betrays his country and brings in foreign forces to meddle with China's internal affairs.

In the same capacity as a Member of the Legislative Council, the former Chairman of the DAB, that is, Mr Jasper TSANG, also visited the United States to talk about affairs in Hong Kong. In just one year after the reunification, Mr TSANG accepted an invitation by the Asia Society and attended a seminar entitled Hong Kong One Year after Transition: Business Opportunities and Policy Challenges. People who gave talks at the seminar included the former Chief Secretary for Administration, Mrs Anson CHAN, former Member of the Legislative Council and Chairman of the Citizens Party, Miss Christine LOH, and so on. All these people took part in the so-called overseas activities to which Mr NG Leung-sing has referred.

In June 1999, at that time I went with Mr James TO, Prof LAU Siu-kai who had not yet assumed office as Head of the Central Policy Unit, and Dr LIAN Yi-zheng, to Seattle, Boston, Washington D.C. and New York to meet with the assistants of some Congressmen. It might be that we were not of sufficient

senior ranks that we did not meet with more officials or Congressmen of higher seniority. We also met with officials from the Department of State and the White House. During these meetings, we talked about the situation in Hong Kong two years after the reunification.

If people visiting foreign countries to reflect on the real situation in Hong Kong should be criticized as traitors who betray their country, should Mr TSANG, Prof LAU and Dr LIAN be criticized in this way?

As we all know, and from interviews made on TV and newspapers, Prof LAU had, before he assumed office as Head of the Central Policy Unit, made criticisms against the SAR Government and the Chief Executive, often in a most incisive and unreserved manner.

Then as to what Prof LAU said in the United States, if that was different from what he used to be saying, then would this mean that Prof LAU was not true to his academic pursuits, or that he failed to meet the moral standards required of scholars or that he did not have the lofty ideals required of intellectuals?

However, if Prof LAU repeated his criticisms of the SAR Government, then did it mean that he was badmouthing Hong Kong? Would he be regarded as a traitor? Did the Chief Executive then select a traitor to lead the Central Policy Unit?

In 2000, the Democratic Party, in its support of China's accession to the World Trade Organization, Mr Martin LEE and I went specifically for that purpose to the United States and met with the then President Bill CLINTON and members of the House of Representatives. We lobbied in the United States Congress to forge with China a permanent and normalized trade relation. In these circumstances, should we be branded as bringing in foreign forces to meddle with affairs China? Or was it in fact Hong Kong and China were meddling with the internal affairs of the United States?

President HU Jintao went to Australia and France to ask these countries and even the United States to oppose independence of Taiwan. And Premier WEN Jiabao went to the United States and talked about the social conditions on the Mainland. Should he be subject to the same kind of criticisms?

Is it the case that the President and Premier can say all these, but not we? If we cannot, then would this be like only the officials are permitted to do things they like but the people are banned from doing the same?

Madam Deputy, though these things are similar in nature, the criticisms are different. As to the reasons behind it all, I do not want to make any speculations. But the results are obvious, and that is, plunging Hong Kong society into the turbulence of irrationality and posing obstacles to a rational discussion on the constitutional development.

Some people may say that the United States Government back in 1998 and 1999 was more open, while the United States Government today is a unilateral hegemonist. If that is the case, then we should go there all the more.

For that would make people who hold different views learnt about the situation in Hong Kong, so that they will be able to hear other voices. That would prevent anyone from doing anything to smear or otherwise the relationship between the Mainland and Hong Kong.

I recall last year when the SAR Government was pushing for the legislation to implement Article 23 of the Basic Law, most people in Hong Kong were opposed to the Bill to implement Article 23. At that time, Mr Martin LEE, Mr James TO and others went to the House of Representatives in the United States to attend their committee meetings and expressed the views of the people of Hong Kong on this matter. But there were no comments at that time about traitors and people who betray their country.

The hearing and the occasion mentioned by me and where Mr Jasper TSANG, Prof LAU and other attended do not differ so much. They are all occasions on which people talk about conditions in Hong Kong. Attending a hearing is not like being summoned as some people would mistakenly think it is, and there is no need to make an oath before people can say anything.

Madam Deputy, the Chief Executive has this to say in his policy address this year: "On the basis of maintaining 'one country, two systems' and adhering to the Basic Law, the Government will actively promote constitutional development in Hong Kong."

Madam Deputy, I cannot help but ask the Chief Executive, the two Principal Secretaries and the Director of Bureau, "What have you all done for the democratic development of Hong Kong? What have you striven for the development of Hong Kong?"

It is most unfortunate that over the past few months, discussions on the constitutional development have stuck in some senseless arguments and much time of the people has been wasted. Premier WEN Jiabao hopes that "the Hong Kong residents can take into consideration the broad situation, be united and work together with firm determination for a better future of Hong Kong." But those people who fail to do this badly are those Deputies to the National People's Congress and delegates to the Chinese People's Political Consultative Conference. Instead of conveying the views of Hong Kong people to the Central Authorities, all they are eager to do is to show their loyalty to the Central Authorities and incite hostility between Hong Kong people and the Central Authorities.

Madam Deputy, the aspirations of the people for universal suffrage in 2007 and 2008 are loud and clear. This can be seen from the findings of the opinion poll released by the Hong Kong Transition Project at the beginning of this year, and it is not necessary for me to dwell on the details.

I really want to tender the SAR Government a piece of advice and that is: What the Task Force should do is to reflect the aspirations of the people for universal suffrage to the Central Authorities truthfully so that they will know what Hong Kong people are doing are not opposing the Central Authorities, nor are they trying to seek separation. The Task Force should propose some concrete plans immediately, consult the public and strive to forge a consensus.

Madam Deputy, at the end of the day, only the Central Authorities know what they want to do. But should the SAR Government not do something to strive for democracy for Hong Kong people?

Finally, I wish to conclude my speech by reading out a rhyme:

You shall love the party with all your heart, ruling Hong Kong have you had a part

You must speak like a parrot in all that you do

You shall never make a visit overseas, says AN Min

While he frolics in his fiery flays on people's fathers

Of people like Martin who loves his country

And would never stop fighting for democracy

Fetters from those law experts are hard to break

Only people power can hope to save our place

I so submit.

MR HUI CHEUNG-CHING (in Cantonese): Madam Deputy, when Hong Kong holds discussions on the review of its constitutional system and development, there must be respect for the principles laid down in the Basic Law which form the cornerstone of the Hong Kong SAR of the People's Republic of China. The basic premise of "one country, two systems" must also be adhered to. So it is natural that the Central Government should participate in the constitutional development of the SAR. The views of the residents of the SAR should be conveyed to the Central Authorities and likewise the residents of the SAR should listen to and respect the views of the Central Authorities.

When the Hong Kong Progressive Alliance (HKPA) met with the Task Force on Constitutional Development headed by the Chief Secretary for Administration in end January, it proposed the idea that the constitutional review should be carried out with "one basis", "two principles" and "three steps". By "one basis" we mean the Basic Law, of which the concepts of "one country, two systems" and "executive-led government" cannot be changed by any constitutional reform. By "two principles" we mean "the actual situation" and "gradual and orderly progress" found in Article 45 of the Basic Law. When we review the methods of selecting the Chief Executive and returning Members of the Legislative Council, we have to look at the "actual situation" of Hong Kong. After we have examined various factors like the objective conditions and the wish of the people, and when after an actual need is ascertained, we must proceed with the reform in a gradual and orderly manner. All these are major principles and before any consensus is reached with respect to these major

principles, we cannot initiate any discussion on any concrete proposal or begin any procedure to revise the system.

In fact, any discussion related to the long-term development of Hong Kong should be conducted in a pragmatic manner. The people's views must be consulted. As Members of the Legislative Council, we should promote rational discussions. The HKPA has always held the idea that we should act in the interest of Hong Kong and our country. We should be united and never allow ourselves to run into any unnecessary disputes which will lead to division and instability in society, for these are not to the advantage of the SAR Government itself and the country. We propose that the Task Force should concentrate its work on the following three aspects.

First, the SAR Government must vigorously launch publicity on the Basic Law and provide more suitable opportunities for experts conversant with the Basic Law to express their views and interpretations of the Basic Law. When the people still lack a sufficient and correct understanding of the contents of the Basic Law and the legislative intent behind them, it is difficult to hold any rational and pragmatic discussion. Disputes and divisions which are unnecessary could well stem from incorrect understanding or ignorance. That should be avoided. Second, the SAR Government should undertake in-depth investigations and surveys, gauge public views and expectations on the socio-economic development of Hong Kong, people's living and democracy, conduct extensive consultations and collect opinions from all social strata. Third, the communication between the SAR and the Central Authorities must be improved for the principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" are all conferred by the Central Authorities. The Standing Committee of the National People's Congress has the final interpretation of the Basic Law. That is why the Central Authorities have the powers to lead and take part in the methods of returning the Chief Executive and the Legislative Council.

At present, there are different views in society on these issues. People from the business sector are worried that universal suffrage will lead to welfarism and a general hostility against the business sector. These will undermine the hard work done and investments made, as well as depleting our fiscal reserves. In Hong Kong as the tax base is narrow, an overwhelming majority of people from the grassroots do not have to pay any tax. Public

revenue hence relies heavily on the middle class and the minority of rich people. The middle class is in fact a sandwich class, for despite its heavy tax burden, it can only enjoy minimal welfare benefits. In a socio-economic structure where there is an imbalance between the rights and responsibilities of people from different social classes, will the introduction of an electoral system based on "one person, one vote" lead to any results contrary to public expectations? We think that a balance should be struck between the interests of different classes and that there is a need to respect different views and aspirations.

It has been more than six years since the reunification, we are keenly aware of the fact that our sustained development will hinge on the economic integration with the Mainland. That is why any constitutional reform done in Hong Kong must take into account the impact on the country. That is what we mean by the broad situation. As to whether or not the future rulers of Hong Kong hold such a broad perspective or that if they act truly to safeguard the interests of Hong Kong and the state, that is to say, whether they are patriotic and love Hong Kong, I would think that there is a cognitive process about it. Moreover, we need to further understand the various considerations and views of the Central Authorities of the domestic and international scenes from a macro perspective. So is there not a question of consulting the public on any concrete proposals of constitutional reform at the present stage? And the Task Force does not seem to have come up with any concrete proposal either. The HKPA therefore insists that any final plan on constitutional development in the SAR must be based on a general consensus in society and that it must be able to maintain the prosperity and stability of Hong Kong. Consent of the Central Authorities must also be obtained. Anything short of these will only be counter-productive. It will only stifle the growth of the budding sapling and pose obstacles to the gradual and orderly progress towards democracy in Hong Kong as desired by the State.

Madam Deputy, I so submit.

MR FREDERICK FUNG (in Cantonese): Madam Deputy, as I said during the vote of thanks motion debate on the policy address last month, the issue of constitutional reform in Hong Kong has become the talk of the town and the response to it by people from all walks of life is overwhelming. It is unfortunate that the recent discussions on constitutional development have become more and more unhealthy and not only are comments directed against

individual persons filling the air, there are some verbal abuses which border on personal attacks. Both the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I are very worried about and disappointed with this state of affairs, for we believe that these are not what the people of Hong Kong would like to see.

On the whole, there are two parts related to the issue of constitutional reform in Hong Kong. The first is about technical issues in terms of the legal basis, interpretation, application and amendment of the political structure of Hong Kong. Second, the political issues related to the actual progress and pace of constitutional reform. As a matter of fact, the source of these two major legal issues can be found in the relevant provisions and Annexes of the Basic Law which is a constitutional instrument *per se*. For example, in Articles 45 and 68 there are stipulations respectively on the methods to return the Chief Executive and the Legislative Council; and for the actual stipulations on the elections, they are found in Annexes I and II. All these legal provisions are clear and precise and so both the ADPL and I have always thought that the SAR Government only has to consult the people on concrete proposals related to these relevant provisions and that will comply with and meet all the requirements of the Basic Law as well as the principles espoused in it. As for other matters outside this scope, it would not necessary to deal with them, lest it will make the discussions out of focus and deviate from the original intention of the consultation exercise.

However, the present trend of discussions on the constitutional reform in Hong Kong is running farther and farther away from the above direction. At first there has been an eagerness to make one's stand known in the debate on what is meant by allegiance to the State and patriotism. Recently, this has entered the stage of personal attacks. Words like "clowns", "traitors" and "those who betray the country" have all emerged and a certain official in the Central Authorities even attacked people of their family history. This kind of comments which aim at settling old scores and determining the class elements of a person are completely out of touch with the requirements and principles found in the Basic Law mentioned by me just now. It is totally irrelevant to the agenda of democratization in Hong Kong, nor will it be of any use. Both the ADPL and I think that such acts of internal depletion will only serve to drag the discussions on constitutional reform into disputes which are unnecessary. It will only waste time and lead to serious social division and unrest. It will push the people into opposition of those in power and widen the gap between them.

In view of this, both the ADPL and I wish to remind the Administration and the Central Government that an overwhelming majority of the people of Hong Kong is rational and civilized. They are not a group of barbaric and anti-intellectual people. Extremist and irrational verbal attacks will only make the people of Hong Kong lose their confidence in the ruling authorities. For the SAR Government which is desperately in need of popular support, this is an act of self-destruction which goes against common sense. The ADPL and I would like to urge the Task Force on Constitutional Development to hold a pragmatic attitude and consult the public on concrete proposals related to the constitutional reform. The Task Force should also make it clear to the Central Government that Hong Kong people have long since forsaken vicious comments which are irrational and reminiscent of the Cultural Revolution. What we demand is a serious dialogue, not irrational suppression. In addition, if only the Task Force led by Chief Secretary for Administration Donald TSANG or the Central Government, or the officials from the Hong Kong and Macao Affairs Office of the State Council, can sit down and discuss with people from different political parties and factions in Hong Kong and those who hold different views, including those from the democratic camp, that would be most needed, desirable and constructive.

As for the amendment proposed by Mr TAM Yiu-chung, both the ADPL and I have reservations about the deletion of the words "to consult.....the public on concrete proposals of constitutional reform", for we think what should be discussed now are precisely concrete proposals of constitutional reform and what we should consult are precisely views on this. We also hope that the Task Force will continue to study and define the principles and procedure of constitutional development. Moreover, it should also begin its consultation work on the concrete proposals of constitutional reform. It is hoped that the views of Hong Kong people on the concrete proposals on electoral arrangements for the election of the Chief Executive in 2007 and all Members of the Legislative Council in 2008 by universal suffrage can be collected in a truthful and objective manner. Moreover, the amendment has deleted the sentence "the principles prescribed in the Basic Law shall be respected and complied with in implementing constitutional reform". Thus, it fails to express totally our insistence that discussions on constitutional reform should only revolve around the provisions of the Basic Law.

Madam Deputy, I so submit.

MS CYD HO (in Cantonese): Madam Deputy, after the opening of fire on the democratic camp by mainland officials and local pro-China people on the issue of patriotism, this week we have the mainland law experts coming again. They stressed the differences between the political cultures of the two places and push the other side to the farthest corner. They elevated the text of the Basic Law to the status of spiritual patriotism and labelled the majority of Hong Kong people who did not take to the streets as those holding the mainstream view of opposing constitutional reform. Irrespective of the reasons why these comments are made, the objective result is that these shocking comments will grow into emotive disputes during the process of constitutional reform in Hong Kong. They will divide society and pose obstacles to constitutional reform.

When comments made in society have reached such an irrational stage, the Task Force on Constitutional Development headed by the Chief Secretary for Administration must not shun away from the scene at this moment in time. There is in particular a need to do the best it can and change its attitude of meeting with people from different sectors in society and collecting their views in such a low profile. The Task Force should decide on the concrete proposals to realize the people's quest for a democratic constitutional reform and then consult the public. It should not just bring up some issues which are by nature principles and technicalities, or ask the public to answer true or false questions. There is a fundamental importance to point out a clear direction for the public and when after agreement is reached on this direction, we can then make concrete proposals of work in that direction. It is only in this way that the people will place their trust in the Task Force and stop believing that it is part of the propaganda machine or a stumbling block to development of democracy in Hong Kong. If the Task Force continues to act in such a low profile and mind its own business, then it is like giving a helping hand indirectly to promote this spreading of irrational remarks. It will only destroy the credibility of the Task Force itself.

Madam Deputy, even if the Government is powerless or unwilling to bring the discussions back to a rational perspective, the people of Hong Kong need not fear these stern remarks still. I hope the people of Hong Kong can remain calm and cool-headed. In particular, it is most imperative to identify clearly the task ahead and strive to get the support of the people and gain the trust of the Central Authorities. We know and we should tell all people that what we are going after is to improve the governance in Hong Kong and to protect the interest of every citizen. We are not sowing the seeds of discord, nor are we trying to win

in a battle of words and hurling invectives for no reason. We must respect the freedom of everyone to express their opinions. The freedom of expression is very important in particular. In the absence of this, our society will just be torn apart in this kind of sentiments reminiscent of the purges in the Cultural Revolution.

Hong Kong owes its success to its ability to tolerate the comments and views expressed by everyone and to let a hundred flowers bloom, so to speak. Even as these comments are made in an emotive and irrational manner, that is, branding people as traitors and making allusions to WU San-gui, dog biscuits and clowns, they will only make the eyes of the people all the more clearer and see the truth and reality behind all these invectives. For example, the allusion to WU San-gui has induced some recent historical studies and discussions on the role played by this man in the Manchu Empire and Chinese history, and whether or not he was really a traitor.

If and only if these comments do not escalate to such an extent as inciting violence among people holding different opinions, we can at least put our hearts at ease for the moment. But the people and the Government should be on alert and guard against the occurrence of violence. The people of Hong Kong must not be frightened by these remarks, so much so that society is engulfed in an atmosphere of terror and uneasiness. Mr SHAO Tianren said some time ago that the silent majority in Hong Kong did not want to see the pace of democratization going too fast. Actually, remarks like these will only spur more people to take to the streets and induce some emotive responses from those who support a democratic political system. This is not what we want to see. For we want to see discussions held in a rational manner.

My view is exactly the opposite of that held by Mr SHAO. The silent majority supports constitutional reform. Many opinion polls carried out by many academic institutions show that some 60% to 70% of the people in Hong Kong support universal suffrage. Remarks like these will only make more people demonstrate this fact with their feet in the march scheduled for 1 July this year. I hope the Government will realize that the more public opinion is suppressed, the greater rebound it will make.

As for the public, they should not be too worried about the stern stand of the mainland officials. I hope we can know that in a closed political system, whenever a political issue is brought up, people will want to demonstrate an

extremist stand in their bid for self-preservation. In showing their loyalty in public, they will take on the sternest stand in order to avoid inviting criticisms by other people on the Mainland. So even if the mainland law experts display a fierce look in front of the camera, so far I would still think that they are good-natured in their private life. Actually, we have heard many people say that many of the officials from the Xinhua News Agency stationed in Hong Kong might speak so passionately in front of the camera, they are gentle persons in their private life. If this is true, I would feel really sorry for these people, for they have to struggle so hard to survive under such a bad system, even to the extent of distorting their true selves. If the people of Hong Kong do not want to see the same thing happen to us, we must do our best now to protect our freedom of speech and our freedom of expression. Failing this, it would be tragic if there comes a day when we are deprived of even the freedom to remain silent.

Madam Deputy, the Task Force has a responsibility which it cannot evade and that is, it must make the best of its job. The Hong Kong and Macao Research Centre has come here to gauge public opinion. If our officials do not work hard enough, I am afraid it will only give leeway to that Research Centre to become the second centre of power in Hong Kong. Thank you, Madam Deputy.

DR YEUNG SUM (in Cantonese): Madam Deputy, recently the discussions on constitutional reform in Hong Kong has taken an emotive turn, filled with acrimony and personal attacks as a result of a dispute on patriotism. If this goes on, it would only serve to plunge society deep into a quagmire of dispute, division and instability. It would only jeopardize rather than foster the constitutional development. Mr James TO of the Democratic Party said earlier why the Government should rectify things, bring the discussions on constitutional reform back onto the right track, put forward concrete proposals to consult the public and make the discussions rational.

I am impressed by what the national leader said on the Second Session of the Tenth National People's Congress. Premier WEN Jiabao made reference in the press conference on the conclusion of the session to the importance of reform of the political system. He said that three goals should be set. The first goal is the establishment of a scientific and democratic decision-making mechanism, including a group decision-making system and consultations with experts and professional people, a public notice and notary system and a decision

accountability system. The second goal is to administer the country according to laws and build a government based on the rule of law..... The government should govern according to laws and in a rational manner, with sound procedures, fairness, efficient and convenient for the people, honest and trustworthy, and with uniform rights and responsibilities. The third goal is to accept supervision from every corner of society, including the supervision from the National People's Congress and the Chinese People's Political Consultative Conference. The government must hear and solicit opinions and views from the people and the general public.

Madam Deputy, I agree with the state leader in his speech. From this, it can also be seen that the new-generation state leaders hold a positive attitude towards democratic reform and think that reform of the political system of China should go in the direction of democracy. Premier WEN also called on Hong Kong people to take into consideration the broad situation and stated that the Central Government would do everything conducive to the prosperity and stability of Hong Kong and to the common development of Hong Kong and the Mainland.

As our state leaders also recognize the importance of democratic reform, Hong Kong as the window on China should therefore go a step ahead on the road to democratic reform.

During its consultation, the Task Force on Constitutional Development poses the "three major principles and five legal issues", including the ideas that the political system of the Hong Kong Special Administrative Region (SAR) must protect the stability and prosperity of Hong Kong and that the interests of all social classes should be taken into consideration. The Democratic Party thinks that to realize these principles, there should be universal suffrage to elect the Chief Executive in 2007 and to elect all Members of the Legislative Council in 2008.

The long-term prosperity and stability of Hong Kong hinges on the building of a sound and healthy system. In the recent discussions on constitutional reform, some people have raised the idea that the most important thing now is to maintain the long-term prosperity and stability of Hong Kong and that the most pressing task at hand is not the introduction of any constitutional reform. This view seeks to make democracy and universal suffrage incompatible with maintaining the long-term stability of Hong Kong. But the

experience of many countries shows that the development of democracy is conducive to the free flow of information, fair competition, and so on, and hence to economic development.

(THE PRESIDENT resumed the Chair)

During the past few years, Hong Kong has been undergoing economic restructuring and at last Hong Kong manages to get out of the predicament with the assistance provided by the Motherland. With support from the Motherland, in the form of measures like CEPA, the Individual Visit Scheme and the permission given to take Renminbi deposits, and so on, the economy of Hong Kong has managed to rebound within a short time. But as the per capita income of Hong Kong is a few dozen times more than that of the Mainland, so Hong Kong cannot expect to rely on the Motherland all the time for impetus to the economic growth of Hong Kong, nor can Hong Kong become a burden for the Motherland.

To maintain prosperity in the long-term, we must build a sound system. This would mean the building of a democratic, open and fair government and to uphold the rule of law so that international investors and the local people would have confidence in the system. Only by doing so can the prosperity and stability of Hong Kong be truly maintained, and that is really what is meant by taking into consideration the broad situation. Even if our economic foundations are solid, we should not forget that when the Government sought to enact legislation to implement Article 23 of the Basic Law, many people from the business and banking sectors expressed their worries. It can therefore be seen that, be they Hong Kong people, the business sector and international investors, they all attach great importance to an open and fair system. The building of a democratic government complements the efforts in building the above-mentioned system. Hong Kong people must strive for their own welfare, and they must start from the fundamental system and strive for the implementation of universal suffrage at the soonest. That is their only way to long-lasting peace and order.

Another point is that the political system of the SAR must carry the interests of all sectors and strata in society. We are of the view that this can only be achieved by full-scale universal suffrage. The present selection of the Chief Executive by a small circle and the existence of functional constituency elections to return seats to the Legislative Council are totally in breach of the

principle of balanced participation. This system of coterie election and excessive protection given to certain sectors has led to overrepresentation of the interests of certain sectors or classes in society, which is a breach of the principles of fairness and equity. The coterie election and the electoral system whereby certain groups are over-protected make the adequate representation of the people impossible. This is also the fundamental reason for the Government being handicapped in effective administration. A quality government has the abilities to provide leadership, meet the new challenges, spearhead social reforms and enable the people to lead a good living. To achieve this goal, the Government must command public acceptance and it must be capable of putting forward new thinking and suggesting new policies, and be able to gain the support of the Legislative Council. Frankly, the Government we have is way behind this goal, for it has a very low public acceptance and its policies fail to gain much support in the Legislative Council. If this continues, it will only aggravate the crisis in governance faced by the SAR Government. Not only will the SAR Government be unable to function effectively, to describe it aptly, it will also become a lame duck. So this is not conducive to the long-term prosperity and stability of Hong Kong at all.

Though democratic reform cannot be seen as a panacea, at least it can avert the present political crisis in governance. We have hopes in the open-mindedness of our state leaders and since they have on many occasions recognized the importance of democratic reform to the development of the country and that they have also proposed a concrete direction for reform, we hope that the more enlightened leaders will realize that democracy is urgently needed in Hong Kong indeed. We therefore hope that the Task Force on Constitutional Development will come up with concrete proposals on constitutional reform to consult the people of Hong Kong.

Madam President, I so submit.

MS EMILY LAU (in Cantonese): Madam President, a timetable for constitutional reform was expected when the Chief Executive delivered the policy address in January this year. Unfortunately, like a bolt from the blue, he told us that a quick halt was called for due to the serious concern expressed by the Central Government over the constitutional development in Hong Kong a few weeks before the delivery of his address. The Task Force on Constitutional Development (the Task Force) was subsequently established.

In fact, I believe many people are very unhappy that the Chief Executive has tried to keep them in the dark. We also see that the Task Force has done little since its establishment. The Chief Secretary for Administration has been fiercely criticized by all sides for weeks for his comment in his address to this Council after returning from China, that people ruling Hong Kong have to be patriotic. Verbal abuses can be heard everywhere, whether in the community, Hong Kong, Beijing, on television, radio, newspapers, or magazines. Many said charges should be pressed should they be able to afford to do so. I will not blame the Chief Secretary for Administration for the harm done. Yet there is no denying that the community has been dealt a serious blow, though the damaging effect can still not compare to those on the people during the Cultural Revolution. After all, the Chief Secretary should be responsible for what has happened.

However, Madam President, some people have behaved as if nothing has happened at all. This is what they said, "They deserve to be criticized. Everything will be fine. This is the way it should be." Could it be said that we have travelled backward to the '60s when the Cultural Revolution took place? I do not know what time and date it is for Hong Kong. Even the Task Force is convinced that nothing has happened, and the discussion on the principles and legislative process is still in progress. I believe Hong Kong people do not wish to discuss these matters. Instead, they wish to discuss the introduction of universal suffrage in 2007 and 2008.

We were recently told by the Premier that the Chief Executive had asked him for favours again. As a result, the Chief Executive was criticized by some for asking favours to benefit Hong Kong. Frankly speaking, Madam President, do you think the Mainland could have given us so many things if Hong Kong cannot benefit the Mainland in the first place? However, some will say, "You should keep your mouth shut as you have received so many benefits." Does it mean we have to give something in exchange for the economic gains and benefits? Yet I am often told by many that they have received no benefits at all and that they are still living in the abyss of suffering. I remember I once said that more than 200 000 families in Hong Kong are earning less than \$4,000 a month; yet Hong Kong is among the wealthiest economies in the world. Many are greatly puzzled by the fact that we still have to ask favours from the Mainland. After all, Hong Kong is one of China's richest cities.

Can the Mainland ask Hong Kong people to keep their mouths shut in exchange for these benefits? To a certain extent, it is right for the Mainland to do so. Madam President, as I said earlier, verbal abuses can be heard all over the place. Yet many have behaved like nothing has happened; they even tell others to keep their mouths shut and not to help certain people because they will be criticized should they say anything to defend those people. Their logic is like this: if they object to the views of certain people, they will definitely not agree that those people have the freedom to express their views. So, where is the freedom to which we are entitled under "one country, two systems? We may just as well not say anything if permission has to be sought in order to exercise the freedom to speak. I have no idea where the Task Force will lead Hong Kong. I was told that Mr ZHU Yucheng would visit Hong Kong. I truly do not know where he will lead the Task Force.

When I asked the Secretary on Monday if it was true that there were two centres of power, he just kept on asking questions, then switched to other topics. I could simply not figure out what he was talking about. I believe the people of Hong Kong are not accustomed to being watched by separate camps. Despite China's sovereignty over Hong Kong, it is still hoped that "Hong Kong people can rule Hong Kong with a high degree of autonomy" without being observed by different camps. In the final analysis, this demonstrates a lack of faith in the Chief Executive of the Hong Kong SAR. Madam President, it has even been suggested that the Chief Executive will be replaced, or the fight will not have become so fierce. However, the majority of the people of Hong Kong have no say; the fight is confined to just a handful of people who have suggested a list of candidates, including Henry TANG, to be the replacement next year. As for the Hong Kong people, they can only stand by and watch. Madam President, I am afraid I have to repeat what I have said before. Can someone ask the majority of the Hong Kong people to keep their mouths shut by offering economic gains to certain people? The answer is definitely no. Madam President, I would suggest you to look at the turnout of the rallies to be held on 4 June, 1 July, 12 September this year.

Madam President, I wonder if you have heard the Secretary say the day before yesterday that some citizens — some very enthusiastic citizens — had taken 400 000 application forms for voter registration. I repeat, 400 000 copies. I feel truly ashamed that I have only taken a few (only thousands of copies). I have no idea how many copies have been taken by others; I just hope every one of them will return the forms. How many copies according to the Secretary

should be distributed for registration purposes? The answer is 480 000. In other words, he only needs to deal with 80 000 registration forms. So, should the Secretary have his salary cut? At present, more than 1.6 million people in Hong Kong have not yet registered. The Secretary may say that the target this year is 100 000 or so new registrations, whereas 300 000 applications are related to change of address. I think this is not going to work. I believe the people will have something to say.

Madam President, some people may not dare to come forward and make their views known for economic or political reasons — I am not trying to provoke or confront anyone — but if given the chance, they will surely give you a big surprise. This Council might even have to be dissolved. I was told this would not be a problem, given the dissolution of the Legislative Council in 1997 and the establishment of the Provisional Legislative Council. However, it should be noted that the now-defunct Provisional Legislative Council was not elected for no election was held at that time. Madam President, some people said that would not be a problem — if it worked in 1997, why would it not work in 2004? We have to look at the big picture. I really hope the Secretary will do something to let the people see. How should we proceed? Or should we sit still every day and let others attack and insult us without having any idea how things will develop? I believe this is not going to do Hong Kong any good.

MS AUDREY EU (in Cantonese): Madam President, in the past few weeks, Hong Kong was engulfed by distressing controversies over "patriots ruling Hong Kong". The democratic camp has been under fire and subject to reckless flaks of "passing something off as another", "cutting the cake up", "secession", "endangering the country", "allying with foreign forces and betraying the country", "being a WU San-gui (traitor)", "clowns", "kowtowing to the foreigners", and so on. Some went so far as hurling invectives at the deceased father of someone. The ferocity of the words used reminds one of the days of disputes between China and Britain before the reunification.

All these incessant attacks are of course aimed at scaring off Hong Kong people, wishing that they would never harbour any extravagant hope in democracy and universal suffrage, that they must not cast a vote for the democrats in the September elections, and that they must know who are the black sheep. However, will this kind of intimidation work? The findings of the latest poll conducted by the University of Hong Kong show that the controversies

over constitutional reform have served to increase the percentage of people who are unhappy about it from 8% last December to 54% now. From this it can be seen that disputes like these would only be counter-productive and this is not something which the Hong Kong people would like to see.

The people of Hong Kong are in fact very determined in their fight for universal suffrage. According to a survey undertaken by the ADPL recently, despite the overcast by the "patriotic theory", as many as 77% of the people will support the election of the Chief Executive by universal suffrage in 2007 and the election of the Legislative Council by universal suffrage in 2008. Findings of a survey done by the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong in the middle of last month also show that close to 70% of the people agree that the Chief Executive should be elected by universal suffrage in 2007. SHAO Tianren, one of the four mainland guardians of the Basic Law pointed out some time ago that the silent majority in Hong Kong did not want too quick a pace of democratization. But no one knows how he could say anything on behalf of the silent majority in Hong Kong.

Premier WEN Jiabao said in a press conference the other day that Chief Executive TUNG Chee-hwa had made another request to the Central Authorities for a helping hand in the economic development of Hong Kong. Premier WEN said that the Central Authorities were seriously studying the issue. I would like to stress here that the strengthening of economic ties between the Central Authorities and Hong Kong is in fact mutually beneficial. In a show of gratitude, the Government of the Hong Kong SAR has described it as a gift from the Central Authorities. This is being self-disparaging, and it will only damage our self-image and may also affect the relationship between Hong Kong and other provinces and municipalities in China.

In any case, if there is any hope that economic concessions will make Hong Kong people feel indebted and thus abandon their aspirations for universal suffrage, that I am afraid, is only wishful thinking and nothing else.

That Hong Kong people hope that there will be universal suffrage is because of their love for Hong Kong. It is because of their consideration of the long-term interest of Hong Kong, that is, that the structural problem of insufficient public acceptance of the Government as found in the political system be solved. We do not want to become disobedient and quarrelsome. We do not want to take on the Central Authorities. We hope that the Central

Authorities will understand that people from all sectors in Hong Kong do have this demand and they hope that the SAR, especially the Task Force on Constitutional Development, can make the discussions rational and put them back onto the right track so that a consensus can be reached finally.

As a matter of fact, the Basic Law has clearly provided that the Chief Executive shall be elected in light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. Therefore, what the people from all sectors and strata should discuss at the present juncture is on what concrete proposals will accord with the principles of the actual situation in Hong Kong and gradual and orderly progress. What we should not do is to make personal attacks against certain politicians or to hold a grand trial based on people's thoughts and words. The actual form of the discussion may serve to promote rational discussions. That is really the crux of the original motion and so I cannot support the deletion of these words from the original motion by Mr TAM Yiu-chung.

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

MR MICHAEL MAK (in Cantonese): Madam President, it has been almost seven years since the reunification of Hong Kong with the Motherland. However, the constitutional development in Hong Kong has made no progress at all. It was not until early this year that the Chief Executive made a long-awaited announcement of setting up the Task Force on Constitutional Development (the Task Force) to study matters relating to constitutional development. Despite a lapse of three months since the establishment of the Task Force, the Government has not made any concrete proposals on constitutional development. Our continuous involvement in disputes unrelated to constitutional development will only impede the progress of constitutional development.

Having a direct bearing on the well-being of the community, constitutional development is closely related to every one of us. Every Hong Kong citizen is therefore entitled to participation. However, the Task Force has done nothing to fully grasp the public's sentiment in a comprehensive manner. Let me cite the website set up by the Task Force for collecting public views as an example. Apart from the small number of surfers, those who visit the website might not be

accustomed to expressing their ideas on the Internet. At least I would not do so. But then, we were told meetings would be arranged with people in the community. In this respect, I have expressed my concern to the Chief Secretary for Administration and the Bureau Director over how the Task Force can truthfully — I stress truthfully — reflect the people's views and ascertain the representativeness of these people. Therefore, the Government must pay attention to what it has learned from Article 23 of the Basic Law regarding how an extensive consultation can be conducted, as promised by the Government earlier. It must refrain from compiling a biased compendium that is full of errors, like what happened when it attempted to enact legislation to implement Article 23 of the Basic Law. I hope the Government will not repeat its mistakes, misjudge the public sentiment, and mislead the Central Government. Actually, the most effective way is, as previously suggested by me to the Chief Secretary and Bureau Director, to conduct a community-wide opinion poll. This will enable the Government to accurately grasp and convey the public opinion to the Central Authorities to reflect our aspirations.

A questionnaire survey was conducted by my office earlier to gauge the views of the constituents represented by me. According to the findings of the survey, approximately 74% of the respondents consider that the Chief Executive and the legislature should be elected by universal suffrage through geographical direct elections, and 85% consider it necessary for the Government to conduct a community-wide opinion poll on these two issues.

Madam President, it is very strange that some people still maintain that the 1 July march last year, the District Council Election and the New Year do not suffice to reflect the demand of the Hong Kong people for the return of the political power to the people. It was reported in *Sing Tao Daily* dated 19 February that Mr SHIU Sin-por, the head of the One Country Two Systems Economic Research Centre, had stated in a seminar held earlier that only a handful of people in the 1 July march strived for universal suffrage, that it was actually an attempt by the pro-democracy camp to take advantage of the march and public opinions to hijack — he used the word "hijack" — social discontents and various problems and focus the struggle on the fight for universal suffrage. Given the doubt over the determination of Hong Kong people to strive for universal suffrage, there is all the more reason for the Government to conduct a community-wide opinion poll to examine the arguments and dig out the true picture faithfully. People supporting or opposing universal suffrage should accept the outcomes of the investigation no matter what.

Since the announcement of the establishment of the Task Force by the Chief Executive in early January, many people have, by virtue of this topic, wilfully and unreasonably attacked and abused the pro-democracy camp, and provoked verbal disputes, thereby entangling Hong Kong in wars of words for three months. According to a report carried in *Ming Pao* on 6 March, Mr TSANG Hin-chi, a member of the Standing Committee of the National People's Congress, calling three Members from the pro-democracy camp "traitors", has urged this Council to sanction them. What he was trying to do is indeed a typical example of exaggerating mistakes to the maximum, making conviction by one's expression of opinions, and strangling the freedom of speech.

According to a survey conducted by the University of Hong Kong in early March, the latest figures reflecting the public's dissatisfaction with the political, economic and social conditions are 54%, 43% and 39% respectively, with the greatest dissatisfaction being expressed for the political environment. The growing public discontent with the political environment might be attributed to the public resentment against unreasonable attacks and unnecessary disputes. Constitutional development should be faithful to the principles prescribed in the Basic Law, not to the words of the elders. Rational and intellectual discussions on the Basic Law relating to constitutional development are called for. However, such discussions should be subject based, not personal. Given that harmonious, though diverse, views are permissible, personal attacks and unreasonable abuses are totally unnecessary.

Lastly, I hope the Government can expeditiously conduct a community-wide opinion survey on the concrete proposals of constitutional development, foster a consensus in the community, and prevent the community from polarizing and eventually going to extremes. I so submit.

MISS MARGARET NG (in Cantonese): Madam President, the Basic Law is a piece of constitutional law of the Hong Kong Special Administrative Region (SAR); it is therefore absolutely right and proper to respect and comply with the principles prescribed in the Basic Law. I agree entirely with Mr TAM Yiu-chung, who said with added emphasis that the principles had to be "strictly complied with". However, it was recently suggested that the legislative intent and spirit had to be taken into account in addition to the provisions. This has led to the suggestion that, in addition to the provisions of the Basic Law, "executive-led" governance and "patriots ruling Hong Kong" can serve to

manifest "the original intention". This suggestion is in my opinion out of line with today's question and amendment.

We have to differentiate between the "legislative intent" and "the law's original intention". The "legislative intent" is reflected in the provisions; while "the original intention" goes farther than that. In other words, the original intention can be added afterwards if one insists, even though it is not written into the provisions.

Even in an ordinary contract, the contracting parties cannot argue without a good reason that the contract has to be interpreted according to their original intention, even though it is not written in the contract. Even if there was really such a thing as original intention in the first place, if nothing was written out, that intention could not be binding on both parties.

It is all the more impossible to apply this to the Basic Law because of its supremacy over ordinary contracts. Not only does the Basic Law represent a proclamation of the Central Government to the world, it is also a solemn commitment to the residents of the Hong Kong SAR that they are entitled to upholding the principle of "Hong Kong people ruling Hong Kong" and enjoying "a high degree of autonomy" under "one country, two systems". The political system, and its future development, shall be implemented in accordance with the provisions of the Basic Law. Such a commitment must not be interpreted out of context, as suggested by Dr Philip WONG earlier, with "Hong Kong people ruling Hong Kong" to be interpreted as "Hong Kong is to be ruled by people the main body of which are patriots", and "a high degree of autonomy" interpreted as "a high degree of autonomy as conferred by the Central Authorities". Again, the constitutional system was interpreted differently from the way it should be under the Basic Law — it was interpreted as an "executive-led" government, which is not supported by any provisions. As a result, anything considered by the people in power as the "original intention" can be added to the Basic Law whenever they like, and the people can do nothing but accept. This represents a downright attempt of turning the rule of law into the rule of man.

In the spirit of the rule of law, enacted legislation must be implemented and observed in accordance with the law. Under no circumstances can the so-called "original intention" be added or deleted, regardless of whether or not this is reflected in the provisions.

It is internationally accepted for a purposive and generous approach to be adopted for interpretation of constitutional law. In other words, the objectives of the provisions must be established and interpreted in a generous spirit for the purpose of achieving the objectives. At the same time, the interpretation must not be made in isolation from the provisions or through a distortion of their meanings. Both the Central Authorities and the SAR must strictly comply with the Basic Law for a very simple reason — how can the public count on the Basic Law for protection if the meanings of the Basic Law can be added, deleted or re-defined at any time in the light of the political situation, without regard to its provisions? Can it be said that this constitutional instrument, which has gone through a serious drafting process of three rounds of consultation is no different from a piece of waste paper? Can it be said that it is actually impossible for the Basic Law to maintain the rule of law, despite its name suggests otherwise?

The Basic Law has clearly and fully provided for the SAR's constitutional status and political structure. These principles are widely accepted and totally indisputable. The disputes arisen over the past month or so have revolved mainly around concepts not found in the Basic Law, namely "patriots" and "executive-led governance", in an attempt to transform these concepts into the constitutional principles of the Basic Law. These disputes will damage the healthy, interactive discussions between various sectors of the community, local residents and the Central Authorities.

I cannot support the amendment because it has suggested to delete "consulting the public on concrete proposals of constitutional reform". This is because consultation on the concrete proposals should have started a long time ago. In fact, this is where discussion is most needed.

The election of the Chief Executive and this legislature by universal suffrage in 2007 and 2008, the highest requirement of the current constitutional reform, will in no way contravene the Basic Law as long as the election is held in the light of the "actual situation". As such, why do we not take concrete actions to examine and discuss the merits of various proposals in the light of the actual situation so that we can come up with the best possible option in terms of fostering the highest degree of consensus to expedite its easy passage according to the legislative process for eventual orderly implementation?

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

MR JASPER TSANG (in Cantonese): Madam President, Mr James TO has, in moving his motion, repeatedly emphasized the importance of rational debates and his opposition to emotional rhetoric. His view was echoed by many Members in their speeches. Several Members have even expressed their intense hatred towards acts of personal attack. I deeply share this feeling.

Madam President, I think I am qualified in some measure to say a few words about how it feels to be a target of personal attack. If the personal attacks targeted on me in the past, including the expressions of humiliating and unfounded censure made by Members earlier, are collected, they can be compiled into a special collection. Yet I dare not sing my own praises because, if all the humiliating remarks targeted on the Chief Executive and officials of the SAR Government, including those extremely vulgar expressions and abuses unleashed at their families, are collected, they can even fill a bookcase. Therefore, if we talk about those who are most skillful at launching personal attacks at others and know how to smear and humiliate others, we can find plenty of them in the so-called pro-democracy camp. A Western proverb has it that the pot should not call the kettle black. Some people have not only discredited others and laughed at them for being so black, but also told them not to do likewise. While I very much agree that rational discussions are essential, I hope Members proposing rational debates can practise what they preach and discontinue their practice of launching personal attacks at others in the first place.

Will the discussion on matters of principle relating to the Basic Law, including the heated topic of patriotism, definitely turn into an emotive dispute? It is undeniable that some emotive comments have been published. However, we cannot affirm that it is impossible for debates, such as those on patriotism, to be conducted rationally, just because some emotional rhetoric has been published. We have taken note of the message delivered by the Central Authorities by spelling out Mr DENG Xiaoping's criteria for defining so-called patriots alongside the re-publication of an article written by Mr DENG Xiaoping on "patriots ruling Hong Kong". These criteria have been frequently quoted by people, including those from the pro-democracy camp. According to one of the criteria, for instance, patriots refer to people who truthfully uphold China's resumption of its sovereignty over Hong Kong. Is this definition, which ought to be uncontroversial, worth exploration?

Let me cite another example. In his speech delivered at a hearing in the United States, Mr Martin LEE raised the point that the Democratic Party upheld

and supported China's resumption of its sovereignty over Hong Kong. However, some newspapers have rumoured that Mr LEE was forced to speak from a prepared speech drafted by several less westernized members of the Democratic Party and he found the speech not entirely natural after reading it.

In fact, I have discussed this issue with Mr LEE many times in some forums, whether before or after the reunification. An analogy drawn by Mr LEE between the return of Hong Kong to China by the British and the handover of Jews to Germany during the World War II was frequently quoted recently. Of course, he said the remark was made shortly after the 4 June incident when he was still emotional. However, in an American seminar held in 1996, less than one year before the reunification, to which some Americans were invited, Mr LEE began his speech by saying, "Can you imagine how it feels if Hawaii is to be returned to China in a year?" I immediately replied, "You are simply confused. How could you compare Hong Kong to Hawaii?" This is indeed the crux of the question. Reviewing the articles published by Mr LEE in some foreign publications over the past years, including the period after the reunification, it can be seen that he has repeatedly expressed resistance to Hong Kong's reunification with China. Such being the case, how can he say that he truthfully uphold China's resumption of its sovereignty over Hong Kong?

Mr SIN Chung-kai saw little difference since I once attended a seminar in Seattle too. His point is like this. Since Jasper TSANG could have gone to Seattle, the United States, to discuss matters of Hong Kong, why could Mr Martin LEE not go to the United States to talk about affairs Hong Kong? The DAB has on many occasions invited Americans, occasionally political or academic celebrities in the United States — though we cannot afford to invite those who are internationally-acclaimed — to deliver talks and host seminars in Hong Kong, and they have expressed great pleasure to come. I believe this Council has arrangements for such exchanges too. I have on many occasions received parliamentary members from foreign countries who were invited by this Council for a visit in Hong Kong. In their conversations, they did talk about the United States. But do you think United States Congressmen will come if we conduct a hearing in this Council because we are dissatisfied with the explanations given by the United States for waging a war against Iraq or with the handling of Iraqi prisoners of war by the Americans? Will the situation be the same? Are the hearings similar in nature?

Mr James TO has raised the question as to why several DAB members have failed to convene a press conference after their meetings with the state leaders in Beijing. This is because we have to observe the discipline enforced for the NPC and CPPCC sessions, and we were obliged to attend the meetings as Deputies of the NPC and delegates to the CPPCC. We were told that the meeting had to be held in a focused manner. We in the DAB will strive for another opportunity to visit Beijing to express our views on Hong Kong's constitutional development. In addition to a full account of the words of the leaders of the Central Authorities, we will give a full account to the people of Hong Kong and clearly state our views on constitutional development. We hope we can find a particular opportunity to do that in the near future.

Thank you, Madam President.

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

MR ALBERT CHAN (in Cantonese): Madam President, I am not too eager to speak because I see that Mr CHAN Kam-lam seems to be hesitant to speak. I have originally planned to speak after he has delivered his speech. Mr Jasper TSANG stated earlier that when it came to personal attacks, he and the Government and Chief Executive TUNG Chee-hwa had been the targets of flak. The attacks against him were so numerous that they could be compiled into a book, whereas those against the Government could even fill up a bookcase. If we look at the quantity, I guess the verbal criticisms launched by the left, particularly leftist newspapers and leftists, against Mr Martin LEE can fill up a library.

Today, the entire pro-China camp, including Mr Jasper TSANG, has been putting great emphasis on rational debate and condemning personal attacks. Perhaps this is the reason for Mr CHAN Kam-lam not being allowed to speak. It is because no one in this Council can rival Mr CHAN Kam-lam from the DAB when it comes to personal attacks. Perhaps the one in the second or third position is me.

Madam President, issues pertaining to love for China and Hong Kong, particularly love for the Motherland, can in no circumstances be determined on the basis of one year or two, or a couple of comments. I remember when I was a school student, I was fascinated by WANG Jingwei's life. Had a life sentence be imposed on him and had he died at a young age, he might have become a patriotic national hero. It is a pity that he was considered a traitor at the end. In my opinion, a person criticizing another person for being unpatriotic on the basis of a couple of incidents or comments must be having an ulterior motive, and his move must be politically motivated. I note that Mr Jasper TSANG has just walked out of this Chamber. I will not attack him for being unpatriotic on the ground that his wife has migrated elsewhere. During different periods or stages in history, people tend to make some judgements and comments characteristic of a particular stage in history. Insofar as the numerous accusations are concerned, I believe history pass make its judgement.

There are three key points to note in the question proposed by Mr James TO today: first, to respect and comply with the Basic Law; second, to review the constitutional reform in a comprehensive manner; and third, to adopt a pragmatic approach. I see that there can be little reason for objection.

The current political and social situation in Hong Kong has reminded me of some political developments of the Qing Dynasty. This is because numerous drama series, many of which are about the Qing Dynasty, have been produced by our Motherland over the last couple of years. During the early period of reign of Emperor Kangxi, Yinreng was made a crown prince. It can be said that Yinreng was provided with the best care, including the best opportunities to receive education and perform exploits. Despite his apparent obedience to Emperor Kangxi, Prince Yinreng committed all sorts of crime, abused his power, suppressed the people, got entangled with his followers, blackmailed officials, and even plotted a mutiny in a bid to seize the throne. All this has given rise to resentment among other princes. For instance, his eldest brother, Yinti, even cast a spell on him. However, other princes were forced to defend Yinreng on the surface because Emperor Kangxi hated to see them struggle for power and position. Eventually, Emperor Kangxi was forced to put up with Yinreng for more than two decades (in the case of Hong Kong, we have put up with TUNG Chee-hwa for six years). It was not until the 47th year of Emperor Kangxi that the crown prince was deposed officially for the first time. However, because of his great affection for Yinreng, Emperor Kangxi decided to crown him the

second time in November the same year. As the order was made by the Emperor, no princes, including Yinzhen (who succeeded as Emperor Yongzheng), who was desperate for power and position, dared to object. After his restoration, however, Yinreng again got entangled with his followers by conniving at their acts of corruption. He was even found to have committed adultery with a concubine of Emperor Kangxi. After putting up with Yinreng for another three years, Emperor Kangxi finally decided to depose him a second time and ordered that no prince would ever be crowned again. We can thus see from this example that the privileged need not be responsible for their own acts because they will always be protected and supported by the more powerful. We can also see how a privileged person under protection was allowed to do anything he liked for as long as three decades, albeit he was eventually deposed. From this case, we can see the importance of institutions, not personal preferences.

Back to the problems currently confronting Hong Kong. Why have so many Hong Kong people — up to 500 000 — taken to the streets? Why have so many Hong Kong people, including people from the business sector and those who used to be very conservative, recently started to pay attention to Hong Kong's constitutional review and support direct elections or direct elections in a disguised form, wary that the territory may be controlled and monopolized by a handful of people? This is because they know that disasters will eventually strike should a small number of people be allowed to gain control.

Madam President, a number of Members have talked about the problems currently confronting Hong Kong. The Central Authorities have been very kind to us by signing CEPA to speed up the recovery of Hong Kong economy. We are indeed very grateful to the Central Authorities for giving us limitless support. The Individual Visit Scheme has also stimulated tourism in Hong Kong. However, if we look at the Greater China, for instance, Tibet, some people will ask, "Why has China not allowed the scheme to be implemented in Tibet? There are bound to be complaints in other provinces and cities. Why should the Central Authorities show particular affection for a certain place?" In my opinion, the Central Authorities need not give us special treatment have we had a good system in place. Perhaps a popularly accepted system goes hand in hand with good government. This is precisely what the Task Force should do, though it appears that the Task Force has failed to function properly lately.

Thank you, Madam President.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, I speak today in support of Mr TAM Yiu-chung's amendment. Insofar as the issue of constitutional development is concerned, different concepts must be defined clearly and positions be compared before differences can be put aside in search of common ground. Mr TAM Yiu-chung's amendment has indeed greatly inspired the discussion on constitutional development. What we ask for is a state of democracy and stability. This is also the aspiration of the people.

Democracy and stability to Hong Kong is like a pair of legs to an entire body. A person losing one leg will fall on the ground. I hope Members can understand that these elements hold the key to the future of our constitutional development. Without a consensus, all discussions will only end up in endless wrangling and differences, and hardly can Hong Kong make progress in the development of democracy.

I believe the significance of democracy does not merely hinge on the manner of election. Democracy involves a country's constitutional history, social background and economic situation. It is a matter of great significance and complexity. We must not confine our discussion to minor details without clarifying constitutional principles. This is particular so as we are practising the concept of "one country, two systems". The issue is so complex that it can simply not be explained in a few lines.

Before discussing concrete proposals on constitutional reform, we should make renewed efforts to reinforce the major principles, given the reference to the Basic Law in both the original motion and the amendment. Functioning as a mini-constitution, the Basic Law comes out of the Sino-British Joint Declaration (the Joint Declaration). The essence of the Joint Declaration is that Hong Kong should adhere to the principle of "one country, two systems" and remain unchanged for 50 years! It is also stated in the preamble of the Basic Law that the "one country, two systems" has to be practised. As such, the wish of the Central Authorities must be respected.

It is a pity that the discussions on constitutional reform have recently tended to be overly simplistic, in detriment to Hong Kong's long-term interest. Under the concept of "one country, two systems", "one country" comes before "two systems". This is a matter of order, not importance: "one country" must

be manifested before "two systems" can be maintained intact. Otherwise, we can hardly expect to see a state of democracy and stability.

For these reasons, the Task Force must begin discussions with the Central Authorities in a constructive and interactive manner. While the views put forward by the Central Authorities are well-intentioned and proactive, it is also worthwhile for the people of Hong Kong to ponder over the principles proposed by the Central Authorities in respect of the constitutional system. Despite the practising of two separate social systems, the HKSAR remains part of the People's Republic of China. We are subordinated to the Motherland constitutionally.

The expressions "constructive" and "interactive" actually refer to mutual trust, not mutual attacks. The Central Authorities are keen to thoroughly implement the principle of "listening to one's words and watching his deeds". It is hoped that Members can keep calm and appreciate the position of the Central Authorities. The SAR Government should not be forced to alter its existing political system whenever there are diverse views. This is not going to make things better; neither is it wise to do so.

Only on the basis of mutual trust can we make progress in discussing constitutional development. Hong Kong's aspiration for democracy has all along been taken seriously and respected by the Central Authorities. The occasional disputes on constitutional matters have probably originated from different interpretations. Even in Hong Kong alone, opinions are divided. The Central Authorities naturally hope that we can start by discussing the principles, instead of ignoring the importance of the relationship between China and Hong Kong by heading straight to the method of election. In order to maintain the relationship between China and Hong Kong, the views of the Central Authorities must not be mistaken. I very much agree that the Task Force should liaise more closely with the Central Authorities in conveying the diverse aspirations of the people of Hong Kong to present the Central Government a clear picture of the territory. In the days to come, we expect to see a comprehensive proposal for the entire constitutional reform package.

Lastly, I hope Members in this Council can understand the objective circumstances and put forward practical proposals on constitutional reform. Only in doing so can the principle of "one country, two systems", as laid down in the Basic Law, be complied with.

I so submit.

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

MR LEE CHEUK-YAN (in Cantonese): Madam President, the Task Force is seeking to forge a consensus between the Central Authorities and Hong Kong people on the principles and legislative process. I believe that, when this task was handed to Chief Secretary Donald TSANG, the Task Force already knew it was a hot potato, or a "wok". Yet, the Chief Secretary vowed at that time he would not betray the interests of Hong Kong people, saying he had been drinking Hong Kong's water and the blood of Hong Kong people was flowing in his body. Yet a series of recent disputes on principle have made me fear that the Chief Secretary had been given blood of the Central Authorities after undergoing a blood transfusion in Beijing before he was allowed to return to the territory. While I have faith in the Chief Secretary, I feel that the Task Force is in a very dangerous position, given the current situation. Despite its pledge to forge a consensus between the Central Authorities and Hong Kong people, the Task Force is facing an unequal contest. Although I believe David would finally defeat Goliath, and David actually did, Goliath was undeniably much stronger than David. Insofar as the outcomes of the entire discussion are concerned, how can a consensus be forged ultimately? Will the wish of Beijing be considered more important than the wishes of Hong Kong people no matter what? I say this not because I want to make things difficult for the Chief Secretary; I am only telling the truth. In my opinion, the road before the Task Force is extremely difficult.

Why should the principles and legislative process be discussed first? It can be seen clearly from the timetable that discussions on concrete proposals should originally be commenced immediately and it was already stated in end December last year that consultation on the concrete proposals would commence this year. But why was there an abrupt brake? Though Mr TAM Yiu-chung has rejected the idea that this is a delaying tactic, I suppose no one in Hong Kong believes this is not a delaying tactic. The Government is obviously trying to adopt a delaying tactic. As for its second objective, I believe the Government is trying to do some work for the election to be held in September. The recent bombardment was, in my opinion, directed against the people of Hong Kong in the hope that they would be scared by politics and thus they would stop turning out to vote and refrain from making so much fuss from now on.

I see that the recent disputes were no longer confined to the democratization issue. The survival of Hong Kong is at stake too. We have recently heard a lot of name-calling by citing WU Sangui^{Note}, traitors to China, "running dog", people acting against China and stirring up troubles in Hong Kong, four categories of unpatriotic people, and the impossible dream of returning to the Mainland. Even the late father of Mr Martin LEE was mentioned. How about the fathers of other Hong Kong people if the father of Mr Martin LEE could be named in the disputes? This applies to the father of TUNG Chee-hwa too. The people of Hong Kong, after hearing such remarks, simply cannot understand why Hong Kong is in such a terrible mess.

To me, the recent fierce attacks by the "indigenous communists" on the pro-democracy camp seem like the relentless acts of blood-sucking by vampires as if they had entered the blood bank of a hospital. Why did they have to keep sucking blood? I believe it is because they have been under suppression for a very long time and, at last, they were set free by the Central Authorities to bite people, to vent their emotions. The attacks launched by them are undoubtedly suicidal and crazy. Why do I describe the attacks as suicidal? It is because they are like tying a bomb to their bodies and will end up killing themselves and others. This is not going to do themselves any good because it will lead to resentment among the people of Hong Kong. Neither is it good for the pro-democracy camp because democrats will be hurt too. Eventually, as I dread most, the survival of Hong Kong, not simply democracy, will be at stake, as I mentioned earlier. At the end of the day, the people of Hong Kong will be thrown into complete terror and desperation, seeing no prospects at all in their future. This is indeed worrying! From now on, the people of Hong Kong can only vote with their feet. Do we want another migration tide? Capable people will all leave Hong Kong come another migration tide. What will be left in Hong Kong? As such, the problem confronting us is not simply confined to the pursuit of democracy in Hong Kong, it concerns the survival of the territory as well. It is a pity that Hong Kong is in such a terrible mess, and the people of Hong Kong in a severe panic. The prosperity, stability, and interests of Hong Kong will certainly be jeopardized as a result.

The restraint and cool-headedness demonstrated by the Central Authorities during the 1 July march made me feel at that time that the people of Hong Kong

^{Note} A legendary Ming Dynasty general widely seen as a traitor in Chinese history.

were full of hopes. I felt that there would be hope for both China and Hong Kong. However, I have recently switched to another extreme as I find that nothing has really changed. Can there be hope for our country? How can Hong Kong talk about becoming an international city when we see that Mr Martin LEE has been badmouthed in this way? Hong Kong had better live in isolation. I feel that the people of Hong Kong have completely lost their faith in its prospects.

It was recently revealed by Premier WEN Jiabao that TUNG Chee-hwa had asked him for favours "again". Hearing the word "again", the people of Hong Kong felt terribly ashamed. To a certain extent, this is symbolic of Hong Kong's decline, and we must not allow this to happen again. As such, Chief Secretary Donald TSANG has a tall task on his shoulders. I believe no one would like to see Hong Kong's decline. Hong Kong people are now acting in a very calm and restrained manner. We want dialogues, not exchanges of abuses. However, we are constantly bombarded by a group of "indigenous communists" who are standing between the people of Hong Kong and the Central Authorities, thereby preventing us from holding dialogues. Dialogues can now be maintained only through the Chief Secretary for Administration. However, what I fear the most is, as I said earlier, the Chief Secretary was given a blood transfusion during his trip to Beijing. I hope he can take good care of himself. Thank you.

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

MR LEUNG FU-WAH (in Cantonese): Madam President, having listened to Mr LEE Cheuk-yan's speech just now, I think the comments made by Mr Jasper TSANG earlier are sufficiently proved to be founded.

Madam President, Mr Andrew CHENG proposed a motion three weeks ago to urge the Government to expeditiously consult the public on whether universal suffrage should be adopted for the Chief Executive election in 2007 and the Legislative Council election in 2008. Today, Mr James TO proposed a motion again to urge the Government to "consult the public on concrete proposals of constitutional reform". I think the motion proposed by Mr James TO today, like that by Mr CHENG three weeks ago, will eventually be negated. The reason is simple. It is because whether it is about universal suffrage in

2007 and 2008 or concrete proposals of the constitutional reform, the principles and procedure of constitutional development must first be set out before consulting public views. Otherwise, it is purely meaningless to discuss when universal suffrage should be introduced and how constitutional reform should be implemented before no principle whatsoever has been established! Meanwhile, we should not draw a conclusion before the process of inference, or else the discussion will only be meaningless and fruitless.

I agree very much with Mr TAM Yiu-chung that the Task Force should "expeditiously clarify with the Central Government the principles and procedure relating to constitutional development, and promote rational discussions among various sectors of the community, and establish positive and interactive discussions with the Central Government, with a view to formulating, on the basis of respecting and strictly complying with the principles prescribed in the Basic Law, a constitutional development proposal that fully implements the concept of "one country, two systems" whereby Hong Kong people rule Hong Kong with a high degree of autonomy, so as to develop a democratic and stable situation in Hong Kong". The principles and procedure should be set out before rational discussion can proceed on the basis of the principles prescribed in the Basic Law. This is the attitude and procedure for our discussion on constitutional reform.

In fact, judging from the present development, the discussion on constitutional development at this stage should be confined to the principles and the procedure, and should not proceed to the stage involving the electoral method and the number of seats. The so-called democratic camp has only cried out for the implementation of constitutional reform expeditiously, including the elections of the Chief Executive and all seats of the Legislative Council by universal suffrage in 2007 and 2008 respectively. What exactly are the principles and basis of constitutional reform? The so-called democratic camp has not paid attention to this at all. They put aside all the principles and the procedure, and only repeat their lame arguments over and over again, attempting to replace discussion on principles by technical discussion, in a bid to lead the entire discussion off the right track.

Today, the *Sing Tao Daily News* published an article written by the Executive Director of the Hong Kong Development Forum, Mr CHEUNG Chi-kong. He mentioned two points: First, democratic politics is a very good and yet very complicated system which must have regard for order and efficiency in

operation, or else it will be bad democracy; second, the forms of democracy, such as election, are important, but the contents and substance of democracy are equally important.

I entirely share Mr CHEUNG's views, because without order, even though in a place with plenty of democracy, it will be difficult to truly achieve democracy ultimately. If the operation of democracy lacks order, any claim that democracy will operate well and efficiently is only empty talk. Moreover, the actual substance or contents of democracy in each country or place is different. The same form of democracy, say, the electoral method of "one person, one vote", may not necessarily be suitable for application in any country or place. It is also necessary to consider whether a country or place has the social milieu for elections by "one person, one vote". If it is forced into implementation, it would be impossible for this country or place to develop an electoral system which is democratic both in form and substance.

Take the present circumstances in Hong Kong as an example. The so-called democratic camp has unceasingly cried out for the expeditious implementation of constitutional reform in the name of democracy, and they have been demanding that public consultation be conducted expeditiously on the concrete proposals of constitutional reform. I agree that public views can be consulted on such aspects, but I do not agree that the public be consulted before clear principles and procedure of constitutional reform are set out. I think this is turning a blind eye to the order that the operation of democracy should duly follow, and I cannot see how its operation will be efficient in the future. This is not the content of democracy that we should pursue.

Besides, I wish to add one point and that is, since Hong Kong is a Special Administrative Region of the People's Republic of China and part of China's territory, there must be participation from the Central Government in discussions on the principles and procedure of constitutional reform and development in Hong Kong. Only in this way can "one country, two systems" be realized and carried through.

Recently, Madam President, I have read two articles which I very much wish to share with Members here. Two signed articles by the Head of the Department of Economics of The Hong Kong Science and Technology University, Prof Leonard CHENG, were carried in the *Hong Kong Economic Journal* for two days in a row. In his articles, Prof CHENG made a detailed

analysis and pointed out that the Article 45 Concern Group in Hong Kong has, in its inference on the constitutional reform of Hong Kong, violated the basic laws of logic, confused right and wrong, and misled the public and so, he could not help but write articles to highlight it all.

The following is part of the contents of the first article written by Prof CHENG. He said to the effect that although Article 45 of the Basic Law does not describe "actual situation" as a principle, it is elevated to become an extremely important guiding principle in the submission, in a bid to override the principle of gradual and orderly progress which is clearly professed in Article 45. In his view, the Concern Group has sought to surreptitiously substitute "universal suffrage as the ultimate aim" in Article 45 with "universal suffrage anytime". Then, in his second article entitled "Conclusion before inference", he expressly stated that disregarding the reasons for the Concern Group having committed mistakes in logic, fallacies in logic are often the source of confusion of right and wrong.

I very much agree that in any discussion, a conclusion should never be drawn before the process of inference, and this is more so for discussion on constitutional reform and development. Now, the so-called democratic camp has made this serious mistake. For example, they have reached the conclusion that the Legislative Council shall be returned by universal suffrage in 2008, based on which they have inferred the number of directly-elected seats of the Legislative Council in the subsequent terms. Is this democracy? Is this the kind of logical thinking expected of professionals and politicians?

On the day before yesterday, Miss Margaret NG wrote in her column an article entitled "Making the legal profession the target". At first, I thought that she would, in her article, respond to the points made by Prof CHENG. However, it was very disappointing to find that she had avoided the important points but dwelled on the minor ones in her criticisms of Prof CHENG's reasoning, without arguing about the underlying logic.

I think most Hong Kong people will not just echo the views of others. They will have their own independent thinking, unlike some of those in the so-called democratic camp who reach a conclusion before the process of inference. As long as the Basic Law.....(*the buzzer sounded*) is strictly complied with, I believe the difficulties will be reduced.

PRESIDENT (in Cantonese): Mr LEUNG, your time is up.

MR LEUNG FU-WAH (in Cantonese): Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr James TO, you may now speak on Mr TAM Yiu-chung's amendment. You have up to five minutes to speak.

MR JAMES TO (in Cantonese): Madam President, I cannot support Mr TAM Yiu-chung's amendment, and the reason for this has been explained by many Members — he seeks to delete the most important point, that is, he seeks to remove the word "consult" from the expression "consult the public on concrete proposals of constitutional reform". Besides, he also seeks to delete the expression "avoid unnecessary arguments", thus leading people to think that the recent spates of arguments are wholly necessary. As a result, I cannot support his amendment.

Madam President, I wish to respond to the remarks of some Members.....

PRESIDENT (in Cantonese): Mr TO, if you wish to respond to other Members' remarks, you may do so later on when you give your reply. In the meantime, please speak only on the amendment.

MR JAMES TO (in Cantonese): Yes. Thank you.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, Mr James TO asked the Task Force on Constitutional Development (the Task Force) to consult the public on the specific proposals for constitutional development in a practical manner. In fact, since its establishment in January, the Task Force has been handling our work practically, but our views may not be the same as Mr James TO's interpretation of practical.

Before the Chief Secretary for Administration makes his overall reply to the debate, I would like to take this opportunity to make a few responses.

In the recent discussions relating to the Basic Law, someone asked whether the Constitution of the nation applies to Hong Kong, and what relationship there is between the Constitution and Hong Kong's constitutional development.

The Chinese Constitution provides the legal foundations for the nation and holds legal effect of the highest order. It symbolizes national sovereignty. The Basic Law provides in the Preamble that it was enacted in accordance with the Constitution of the People's Republic of China.

The National People's Congress (NPC) established the Hong Kong Special Administrative Region (HKSAR) in accordance with Article 31 of the Constitution; the NPC also decided on the systems of the HKSAR in accordance with Article 62 of the Constitution. In enacting the Basic Law, the NPC prescribed the systems to be practised in Hong Kong. This set of systems included the political structure of Hong Kong.

As the systems to be practised in Hong Kong, including the political structure, were determined by the Central Authorities in accordance with the Constitution, the Central Authorities clearly have powers and responsibilities in overseeing the development of the political structure of Hong Kong under the Constitution. The powers and roles of the Central Authorities in this respect are not limited to those specified in Annexes I and II to the Basic Law. The HKSAR can of course continue to take part in and handle the matters relating to constitutional development in accordance with the role conferred on the HKSAR by the Basic Law.

Some Members expressed that there were numerous discussions on the Mainland recently with regard to the issue of principles. Under such circumstances, could the Task Force still lead the discussion in society on constitutional development? Madam President, our answer is in the affirmative. In the last two months, the Task Force has certainly made progress in guiding Hong Kong society to think of and discuss the issues of principles and legal procedures.

During January, public discussion was mainly on legal procedures. In early February, after our visit to Beijing, the Chief Secretary for Administration made a statement in the Legislative Council, detailing the specific concerns of the Central Authorities and the message that the Central Authorities hoped that we could first handle the issue of principles. Since then, discussions in society switched to the principles aspect. This is exactly in line with the objective of the Task Force at this stage.

In addition, several Members asked today whether there was duplication of efforts between the Hong Kong and Macao Affairs Research Institute set up by the relevant departments of the Central Authorities and the Task Force. I believe this arrangement of the relevant departments of the Central Authorities in fact is to underline the importance which the Central Authorities attach to the future development of Hong Kong. As the Central Authorities care much about Hong Kong's developments, it is very natural that they would wish to conduct research through different channels. However, if there is any need to follow up the issue of constitutional development within Hong Kong, it will still be up to the SAR Government to take the matter forward. Hong Kong definitely will not have two centres of power. Leaders of the Central Authorities have over and over again reiterated their support for the Chief Executive to administer Hong Kong according to the law.

Today, several Members talked about Members of the Legislative Council going abroad to attend hearing, and to give evidence on the constitutional development of Hong Kong. They asked if such an act was appropriate. Madam President, the SAR Government has made clear the position that the constitutional development of Hong Kong is the internal affairs of our country. The Central Authorities and the SAR will address this issue in accordance with the principles and provisions of the Basic Law.

As Members, just as in the case of us Principal Officials, when assuming office, each Member of the Legislative Council present here must swear to uphold the Basic Law and swear allegiance to the HKSAR of the People's Republic of China. Therefore, we have difficulty in understanding why Hong Kong legislators should appear before a foreign legislature and give evidence on a matter which falls within our internal affairs. We consider their decision to do so to be inappropriate.

Madam President, I also hope to make some responses to the points raised by two Members.

Ms Emily LAU mentioned our voter registration campaign for this year. Since Ms LAU has her own way of dealing with figures, I need to clarify.

At present, we do not have 400 000 people who are enthusiastic to register as voters coming in person for the forms. Only scores of political parties and organizations have obtained these forms from our office. As to how many will successfully return the registration forms, we have no idea at the moment.

Moreover, the target we set for this year's voter registration campaign is that we hope we can have 480 000 registration forms, including those for updating addresses and for new registration. In fact, this target is already higher than that of 300 000-odd forms for 2003, and is also higher than the 440 000 forms which we had in 2000.

In 2000, we spent over \$40 million on voter registration. This year, we set the target of 480 000 forms, but we are only spending \$12 million. Thus, judging from the principle of value for money, the target we have today is positive.

Madam President, Miss Margaret NG asked if we should understand the legislative intent from the provisions of the Basic Law, or see what the underlying policy is for the legislative intent.

We brought up again the speech of Chairman JI Pengfei to the NPC when submitting the Basic Law (Draft). We consider that this can reflect the legislative intent. We also mentioned the long-term policy laid down by the Central Authorities in the '80s for Hong Kong. Under the common law system, there is also this theory of law. In a system where common law is practised, the speech by the minister in submitting a draft to the parliament very often reflects the legislative intent. Therefore, at the present stage, I think we cannot deny that while discussing the principles of the Basic Law, we can look into the legislative intent of the Basic Law, and we should conduct this study to ensure that we conform to this legislative intent and the long-term policy laid down by the country when sovereignty over Hong Kong was resumed. This is absolutely in accordance with the theory of law and the principles of constitution.

Madam President, in discussing the constitutional development of Hong Kong, we often tend to be more sensational, this is very natural. Nevertheless, as the SAR Government, we have all along urged Hong Kong society to be calm and rational when discussing the issue. It is only then that we can have the greatest chance of handling the issue most effectively.

Madam President, these are my remarks. I implore Members to support Mr TAM Yiu-chung's amendment and oppose Mr James TO's original motion. Thank you, Madam President.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, when President HU Jintao met the Chief Executive in December 2003, he expressed the great concern of the Central Authorities towards the constitutional development in the Hong Kong Special Administrative Region (SAR). On 7 January this year, the Chief Executive announced in his policy address the establishment of a Task Force with members including the Secretary for Justice, the Secretary for Constitutional Affairs and me to examine in depth the principles and legislative process in the Basic Law relating to constitutional development, and to consult the relevant departments of the Central Authorities and to listen to the views of the public on the issues. Against this background, it may not be far from truth to say that the local community has formally commenced the discussion on constitutional development since this January.

By now, political parties and political commentary groups are the most vocal in expressing their stances and opinions. Some organizations have also carried out opinion polls on relevant issues. The Task Force has adopted a frank, open and transparent attitude in listening to the views of different sectors of the community. Since its establishment in mid-January, the Task Force has reached out to a number of groups and individuals to listen to their views on the principles and legislative process relating to constitutional development. Relevant papers have also been uploaded on a dedicated website and placed in District Offices. A publicity drive has been carried out through various channels like TV, radios and the press to invite public comments.

Constitutional development is a complicated issue. It is not a simple proposal, nor merely a question relating to election methods. Rather it is an issue that goes deeper and touches some other matters, including the interests of different social sectors, the governance of Hong Kong in future, economic

prosperity, social stability as well as the relationship between the Central Authorities and Hong Kong. I hope Honourable Members as well as political groups and those involved in politics could help the public appreciate the complexities involved. Never shall we treat Hong Kong as a guinea pig by giving some sort of political systems a trial in the territory. Any constitutional development in Hong Kong has to comply with the Basic Law and be taken forward very cautiously.

Politics is never short of controversy. We expect to see diverse views and even disputes over our constitutional development in the community. Nevertheless, we hope all sectors in the community would be engaged in sensible discussion but not a display of hotheadedness. What the general public aspires for and needs is a rational and comprehensive discussion.

Members may recall that when the Task Force was established in January, it had expressed its intention to meet the relevant departments of the Central Authorities as soon as practicable to find out the specific concerns of the Central Authorities over the constitutional development of Hong Kong. Subsequently, the Task Force visited Beijing in early February this year under the arrangement of the Hong Kong and Macao Affairs Office (HKMAO). As promised, we fully reflected the views of the groups and individuals we had met to the relevant departments of the Central Authorities and also conveyed to them the general aspirations of Hong Kong people for an improved political system. I also related the concern of the Central Authorities to Honourable Members of the Legislative Council on 11 February. This is how the Task Force works as a bridge between the SAR and the Central Authorities. It also reflects the constitutional role of the SAR: Hong Kong is directly under the charge of the Central Authorities and is an integral part of our country under the "one country, two systems" and the Basic Law. While Hong Kong is free to discuss its constitutional development, it also has to consult the Central Authorities and secure its support.

As you are all aware, officials of the Central Authorities have repeatedly made it clear that "two systems" has to be implemented under the premise of "one country"; that "a high degree of autonomy" is to be exercised under the authorization of the Central Authorities; and that constitutional development, while being our internal affair, has to obtain the consent of the Central Authorities.

I trust the Central Authorities are keen to see that different sectors of our community respect and observe the principle that the Central Authorities enjoy the right and responsibility to scrutinize and give their consent to our constitutional development. This principle is subscribed to by groups and individuals met by the Task Force. I hope all of us can adopt a sensible attitude towards the whole process of our discussion with the Central Authorities according to this principle. As sectors in Hong Kong may hold different views on constitutional development, it is thus only natural that the Central Authorities may have their own views. However, it does not amount to a confrontation between us, or that we are in contention for something. The guiding principle of "one country, two systems" laid down by the Central Authorities is precisely introduced to preserve the long-term prosperity and stability of Hong Kong. Therefore, to put it in a nutshell, both the Central Authorities and Hong Kong share the same interests. I hope members of the public will make a judgement soberly on this issue.

Indeed, in accordance with the Basic Law, any proposal on amending the methods for selection of the Chief Executive and the formation for the Legislative Council must secure the approval of the Legislative Council, the Chief Executive and the Standing Committee of the National People's Congress. No amendment is possible without the support of any one of them. Therefore, the crux of the matter lies not only in who has the legal authority to move the amendment to the election method, but more importantly, a political consensus must be reached between the three parties through dialogues. This is the right way to take forward matters relating to constitutional development. This is precisely the real challenge that the Task Force, the Legislative Council and the community have to face in the future.

Some Members remarked that the principles now under discussion are too shallow and do not merit our time and efforts. They thought that all the problems now before us would be solved only if we care to turn our discussion directly to the possible options available for our constitutional development. Political operation, however, is not as simple as that, is it? I think we should take forward the matter cautiously.

First of all, for constitutional development, it is always the case that a set of principles must be established before the design of any specific systems. It is difficult to imagine that options could be worked out for public consideration and

selection without first going through the process of thorough discussion of some matters of principles for public consensus. "Principle" represents the generally agreed common interests while "option" means the choices upon such a foundation open to the public.

Besides, when the Task Force paid a visit to Beijing in early February, relevant departments in the Central Authorities clearly pointed out that discussion on the constitutional development of the SAR Government should first focus on the principles enshrined in the Basic Law. Proposals on constitutional development put forward in the course of discussion should also comply with the principles and legislative process in the Basic Law. This being the case, mutual understanding in this respect should be reached. Only on this solid foundation could constitutional development take the next step forward. If Hong Kong takes a shortcut by putting forward proposals hastily and unilaterally, it will breach its constitutional obligation that discussion on matters relating to constitutional development must be held with the Central Authorities. Moreover, in political reality, if concrete proposals put forward in future do not go in line with the principles of the Basic Law, it will deal a blow to the local community and give rise to more controversies. In the end, it is the people of Hong Kong who suffer.

While, on the surface, the principles relating to constitutional development might not seem to be as tangible as constitutional proposals, they have in practice a bearing upon the interests of the people and indeed the stability and prosperity of Hong Kong. For example, on the method of the two elections, the Basic Law stipulates that it shall be formulated in the light of the actual situation in the SAR and in accordance with the principle of gradual and orderly progress. Up to now, the views received by the Task Force on the issues relating to the "actual situation" as well as "gradual and orderly process" have been mixed. According to some, one need not look further than the performance of our governance or the mass demonstration last year to make a decision while others believe that we should examine both the popularity of our political parties and the availability of a pool of competent politicians. Any incongruity between our political hardware and software would be detrimental to the community.

In addition, in presenting the draft Basic Law and relevant papers to the 7th National People's Congress in 1990, Mr JI Pengfei stated that the political structure of Hong Kong must be formed in a way which would give due regard to

the interests of all sectors of the community and facilitate the development of the capitalist economy. In this connection, functional constituencies were introduced to the Legislative Council to realize the original intention of the principle of "balanced participation". Now if the two election methods are to be amended, then we must give due consideration as to whether this principle is adhered to. Some people hold that the public must see to it that their constituencies or sectors have the necessary muscles and are well represented in the Legislative Council, and that the formulation of public policies is in the interests of the capitalist economy as well as the prosperity and stability of Hong Kong.

In the course of the drafting of the Basic Law, it was decided as a result of in-depth discussion that "executive-led" governance had been a time-honoured and integral part of Hong Kong's political system and should be left intact. And this principle of "executive-led" governance had been since enshrined in the relevant articles of the Basic Law. For example, according to Article 48 of the Basic Law, the Chief Executive will lead the Government of the SAR and will be responsible for deciding government policies and appointing and removing holders of public office, while the Government will be responsible for preparing budgets and initiating bills.

Furthermore, the Chief Executive also plays an important role in the legislative process. The bills passed by the Legislative Council have to be signed and promulgated by the Chief Executive before coming into effect. In case where the bills passed by the Legislative Council, in the opinion of the Chief Executive, are not in line with the overall interests of the SAR, he can return the bills to the Legislative Council within three months for reconsideration.

"Executive-led" has become the main principle underlying the constitutional design of the SAR. It serves to promote administrative efficiency and maintain effective governance. Moreover, the relevant departments of the Central Authorities have also pointed out that, in accordance with the "Basic Law", the Chief Executive is accountable to the Central People's Government as well as the SAR. As such, to perform the dual roles at the same time, the "Executive-led" principle must be upheld.

Therefore, when considering whether it is necessary, or how, to change the method of selection of the Chief Executive and formation for the Legislative

Council, we should carefully study whether the proposals would affect our executive-led political system framework as well as in what ways it can be perfected and strengthened.

The groups and individuals that the Task Force have met so far only made a few comments on this principle. As such, I wish all of us could give this principle more thought for in-depth discussion.

There has also been intense debate lately over the principle that "Hong Kong people ruling Hong Kong" should mean the administration of Hong Kong affairs with patriots forming the main body of administrators. I hope the community can deal with this issue in a calm and mature manner. The administration of Hong Kong affairs with patriots forming the main body of administrators has been the long-term policy governing the rule of Hong Kong introduced by our country since 1980s. The fact that now the Central Authorities reiterate this policy amid discussion on constitutional development in the SAR is to tell us that this policy or position is not going to change.

As I have mentioned time and again, the public at large understands that it is in the best interest of our community if Hong Kong is ruled by Hong Kong people who will harm neither the interests of our nation nor that of Hong Kong. Though Hong Kong had been historically separated from our Motherland for a period of time, we know well at the bottom of our heart that it is our own country which safeguards Hong Kong's interests and comes to our help instantly in times of difficulties, be it during the financial turmoil or the outbreak of SARS, with unreserved support and unflagging attention, and without expecting anything from us in return. Members of the community also take pride in our nation's remarkable achievement.

Our love for our country comes from our hearts and is manifested in our deeds. I believe that Hong Kong people will form their own judgements on their administrators. As we all know, our elections have all along been held in accordance with the election legislation stipulated in the Basic Law.

Hong Kong people are reasonable and sensible. They act in a pragmatic and down-to-earth manner, and prefers to take a rational and middle-of-the-road approach. I hope you all will endeavour to help the public thoroughly analyse and rationally discuss issues relating to constitutional development in accordance

with the Basic Law, while bearing the long-term prosperity and stability of Hong Kong in mind. It is already stipulated in the Basic Law that universal suffrage is the ultimate goal. Now what is left for us to consider are the pace of and the arrangements for the ongoing constitutional development.

The Task Force will complete its exercise to gather views from organizations and individuals in the community in late March. We will then brief Members again on the views the Task Force has collected. Moreover, copies of submissions, except those made by respondents who have expressed wishes for anonymity, will continue to be deposited in the Public Enquiry Service Centres (PESCs) of five District Offices for public inspection. We will at that stage also liaise with the HKMAO of the State Council to make the necessary arrangements for meeting the relevant departments of the Central Authorities to reflect the local sentiment.

I must stress here that both the Central Authorities and the SAR Government will handle constitutional development fully in line with the principle and legislative process in the Basic Law. And in fact, since the reunification, the Central Authorities have strictly upheld the principle of "one country, two systems" whilst the SAR Government is also running Hong Kong in accordance with the Basic Law. I hope Mr James TO would take note of this.

I believe the Central Authorities, with its selfless care and support for Hong Kong, will work with us to map out the best possible arrangement for our constitutional development, which will maintain the lifestyle of the local people, as well as the stability and prosperity of Hong Kong.

With these remarks, I urge Honourable Members to vote against Mr James TO's motion, and support Mr TAM Yiu-chung's amendment. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr TAM Yiu-chung to Mr James TO's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

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

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

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

Functional Constituencies:

Mr Kenneth TING, Dr Raymond HO, Dr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Henry WU, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted for the amendment.

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted against the amendment.

Geographical Constituencies and Election Committee:

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted for the amendment.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 19 were in favour of the amendment and five against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 10 were in favour of the amendment and 15 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

PRESIDENT (in Cantonese): Mr James TO, you may now reply and you have three minutes.

MR JAMES TO (in Cantonese): To begin with, Madam President, the Chief Secretary for Administration has advanced a number of arguments, namely executive-led governance, patriots ruling Hong Kong, and the view that the people and political parties are not sophisticated enough, and so on. In fact, the people of Hong Kong do have their own ideas. I believe the people know it only too well the situation of freedom in Hong Kong and the conditions required before universal suffrage can be introduced. It appears to me that their evaluation, understanding, and conclusion of the whole issue has remained unchanged. In the most recent opinion survey, which was conducted by the Hong Kong Association for Democracy and People's Livelihood, more than 70% of the respondents maintained, after considering the numerous principles mentioned earlier, that they still hoped universal suffrage could be introduced in 2007 and 2008. It is therefore hoped that the Chief Secretary can make it clear when conveying the people's views that this aspiration of the people, having considered all the principles, has remained unchanged. I hope he can reflect this to the Central Authorities in practical terms and come up with a concrete proposal to consult the public on how universal suffrage can be implemented in

2007 and 2008, not whether it is advisable for universal suffrage to be introduced. No one can tell the people of Hong Kong what is more or most beneficial for them.

Having failed to find fault with the speech delivered by Mr Martin LEE in the hearing, Mr Jasper TSANG switched to a tactic of smearing, discrediting and dividing, alleging that Mr LEE had been forced to read from a speech not drafted by himself. Mr LEE has indeed taken part in the entire process, from the preparation of the first draft by me and my assistant after my acceptance of the invitation to visit the United States to the subsequent discussion held among us. Moreover, he agreed to address the matter with a more positive attitude for we believed the new generation of leaders could truly enable us to share their international vision. Their views on the value of modern civilization appeared to be different from that of their predecessors too. This was indeed the line we have adopted.

Taiwan is part of China. We will definitely not treat a request made by Premier WEN on the United States President to intervene in the Taiwan issue the same as a request on the United States to intervene in the internal affairs of China. Similarly, President HU Jintao requested in his address to the Australian Parliament the Australians to oppose Taiwan's independence. It was against this background that we decided to attend the hearing to make people better understand the situation in Hong Kong so that they could bear in mind the best interest of the SAR and understand the situation in the SAR when formulating policies for others, thus preventing them from affecting the development of the SAR by making a wrong decision. So, in what way has the interest of the SAR been violated? In what way has our oath be broken? I can absolutely not see any difference.

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

(Members raised their hands)

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

(Members raised their hands)

Mr IP Kwok-him rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Kwok-him has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr SIN Chung-kai, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK and Dr LO Wing-lok voted for the motion.

Dr Raymond HO, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Dr Philip WONG, Mr WONG Yung-kan, Mr Henry WU, Mr LEUNG Fu-wah and Mr IP Kwok-him voted against the motion.

Mr Kenneth TING, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat and Ms Miriam LAU abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, 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 CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr NG Leung-sing, Mr

YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 10 were in favour of the motion, eight against it and six abstained; 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.

PRESIDENT (in Cantonese): Second motion: Corporate social and environmental responsibility.

CORPORATE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

MISS CHOY SO-YUK (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

The concept of corporate social and environmental responsibility (CSER) originates from an organization named the Global Compact, the establishment of which was advocated by the United Nations. This organization has set out nine principles requiring corporate compliance in three aspects, namely, human rights, labour and environmental protection. As for the so-called CSER, according to the definition drawn by the World Business Council for Sustainable Development, it means corporations' commitment to observe moral principles and contribute to economic development, and to improve the quality of life of employees and their families and the local community. Issues derived from this include human rights, employees' rights, environmental protection, community involvement, supplier relations, supervision, and public rights.

Madam President, this motion proposed by me today will not, as some people worry, affect Hong Kong's business environment or the long-term

interests of corporations. On the contrary, the objective of the Democratic Alliance for Betterment of Hong Kong (DAB) is to call on the Government to adopt effective incentive measures to consolidate Hong Kong's position as an international financial and business centre and at the same time increase the international competitiveness of corporations in Hong Kong and also their operating return.

The concept of CSER has become a bandwagon in foreign investment markets and the most rapidly developing investment concept. This type of morals-based investment strategy is known as sustainable and socially responsible investment (SRI). SRI will take into consideration some non-financial factors in designing the investment portfolio or in the selection of stocks. For example, SRI will not invest in companies which exploit workers, neglect human rights, damage the environment and create unnecessary pollution.

Here, Madam President, I wish to declare an interest first. I am a non-salaried consultant of a socially responsible investment fund in Hong Kong named Kingsway Asia S.R.I. Fund.

It has been proven that SRI has been the fastest growing investment portfolio in the world for years in a row. According to a marketing report, assets managed by SRI in the United States considerably increased from US\$600 billion in 1995 to US\$23,400 billion in 2001. Besides, over the last decade, the SRI index, that is, the Domini 400 social responsibility investment index, has registered an annual return of 14% on average, outperforming the 13% of the Standard and Poor's 500 stock index.

These statistics clearly reflect an absolute need for the Government and corporations to closely follow the international trend and actively implement CSER, so that the local business sector can attract the inflow of global funds. This is also a path that Hong Kong must take in order to entrench its status as an international financial and business centre.

On the other hand, vigorous implementation of CSER will enable corporations to attract investors more easily. It can even help enhance their international competitiveness and expand the scale of sales of their products.

In recent years, as more importance has been attached to the concept of rational spending, consumers no longer only ask for quality products at

inexpensive prices. Rather, the corporations' underlying business philosophy, their sales approach, and whether their production process is socially and environmental responsible have become focus of consumer attention. Therefore, corporations must actively face this trend, or else their products or services would be boycotted by the public and they will suffer losses beyond estimation.

In fact, the many indices for assessing CSER performance have found increasing acceptance by international corporations and gradually developed into a set of universally recognized benchmarks.

Among them, SA 8000 is the most widely known. It is a benchmark for social accountability standard certification, and its role has become increasingly prominent. Before 1998, there were only seven corporations or organizations which had passed the SA 8000 certification. But by August 2003, the number of corporations or organizations conforming with SA 8000 increased to 259, spreading over 36 countries and territories. In fact, suppliers, including those in Hong Kong and the Mainland, must meet the SA 8000 standards before they can stand a chance of receiving orders from these international corporations.

Madam President, it can thus be envisaged that the urge for corporate compliance with CSER will surge with sweeping momentum in the international community. Unfortunately, the Government of the Hong Kong Special Administrative Region (SAR) has obviously failed to make sufficient preparations to rise to this challenge.

Given the SAR Government's inactive and passive attitude, the penetration of CSER has remained on the low side in Hong Kong. According to an opinion poll conducted by the DAB last week, over 85% of the respondents stated candidly that they knew nothing about it or they knew only something about it. Only 10% said that they had a good understanding of it.

On the other hand, the local corporations' knowledge of CSER is still at an initial stage. According to a survey conducted by the University of Hong Kong, while corporations in Hong Kong are generous in charity donations, they lack a systematic approach and a clear direction, remaining very much at a level of speaking of morals and virtues only after making profits. No wonder the survey of the DAB shows that nearly 30% of the people are dissatisfied with the

performance of local corporations in fulfilling their social responsibilities, particularly in respect of environmental protection.

Madam President, the Budget published not long ago and the policy address delivered early this year have slightly touched on this issue, and the Government has undertaken to earmark \$200 million for the promotion of CSER. Regarding the Government's proposal, I did have some expectations of it initially, but when I looked at it more closely, I found the so-called promotion a mere simplification of CSER to mean encouraging corporate donations. Now I know that to the SAR Government, all the important concepts covered by CSER are confined only to charity donations. Such vision and perception are indeed a laughing stock.

We, being laymen, do not have many resources to study this major issue in depth. But we can put forward some concrete views and proposals as follows. We find it strange indeed as to why the SAR Government, with such huge resources and so many experts, cannot come up with more creative and effective proposals.

The DAB suggests the SAR Government to, firstly, study the formulation of a set of internationally recognized standards for assessing corporations' social and environmental responsibility; in fact, there are already many criteria to which we can make reference, such as the SA 8000 mentioned earlier and so, the Government can set such standards very quickly (as long as the Government is willing to do so). Secondly, to consider drawing up guidelines to require listed companies to make public their actions taken to meet their social and environmental responsibilities every year; in fact, in western countries, basically there are guidelines requiring listed companies to compile such reports and on a voluntary basis, of course; but we do not even have such guidelines. Thirdly, to encourage listed companies in Hong Kong to set aside a sum of money as funds for research and development (R&D), in order to fulfil their social and environmental responsibilities. Madam President, many countries have required their large-scale corporations to inject a certain proportion of their profits into R&D, but not a least bit of work in this area is done in Hong Kong. I have mentioned this to my friends and they said that it is because there are many real estate corporations in Hong Kong and these corporations are in no position to carry out R&D. This is not true. Real estate corporations can also conduct studies on environmentally-friendly construction and building practices or on social responsibilities, just that there is no such requirement in Hong Kong.

Fourthly, to encourage more corporations to incorporate into the policies of their operation the criteria of CSER, such as compliance with laws on equal opportunities and family status to eliminate discrimination on the ground of sex, race, age and sexual orientation, adopting more environmentally-friendly products, reducing unnecessary pollution, participating in community activities, and making the utmost effort to protect resources on earth; and in the meantime, it is also necessary to provide employees with education and guidelines in this regard. Fifthly, to encourage universities to organize CSER-related courses to train more professional managers in this respect. The University of Hong Kong has, in fact, provided these programmes and degree places. But in respect of other academic institutions, we hope that the Government can encourage more institutions to provide training in this area. Sixthly, to study the setting up of a non-enforcement agency, like the Consumer Council, to handle complaints relating to CSER. Seventhly, to encourage large-scale corporations in Hong Kong, banks and supermarkets to take the lead to implement the concept of CSER. In foreign countries, many banks will, in approving loans, consider whether a corporation has fulfilled its CSER, and if the corporation's performance in this aspect is particularly good, concessions will even be offered in respect of the loan. A similar case goes to supermarkets. Whether some products can be put on the shelves, that is, whether they can be sold in a supermarket will depend on whether the relevant products are manufactured in an environmentally-friendly manner, and such products also must not cause unnecessary pollution. Only when these requirements are met that the products can be given priority for sale in the supermarket. Eighthly, to encourage corporations to offer concessions in respect of the price or loan to business partners, corporate customers and suppliers who have fulfilled their CSER or to sign service contracts with them; and ninthly, to enhance co-operation with other organizations and organize more activities similar to the Caring Company Campaign organized by the social work sector, in order to promote the implementation of CSER by corporations through encouragement.

To achieve these objectives, the SAR Government is duty-bound to instruct such public corporations as the Hospital Authority, Airport Authority, Kowloon-Canton Railway Corporation, and so on, to take the lead to implement CSER, in order to set an example for other corporations to follow. In this process, the SAR Government has to expeditiously develop a partnership relationship with the business sector, public organizations and voluntary agencies, and to discuss with them to jointly formulate effective ways to implement the concept of CSER, so that they can work together to build up a harmonious

society. At the same time, I hope that through extensive education and publicity, the public will be encouraged to bring their power as consumers into play and press corporations to further implement CSER.

As for the implementation of CSER in respect of labour rights and in other aspects, other Members of the DAB will speak to express our views.

Finally, Madam President, I hope Members can speak on this topic enthusiastically, so that by putting our heads together, we can work to enable CSER to take root in Hong Kong early.

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

MISS CHOY SO-YUK moved the following motion: (Translation)

"That, in order to enhance Hong Kong's international image and its position as a financial centre and achieve sustainable development, this Council urges the Government to expeditiously develop a partnership relationship with the business sector, public organizations and voluntary agencies, etc, and to discuss with them to jointly formulate effective ways to implement the concept of corporate social and environmental responsibility; at the same time, the Government should direct the public sector to take the lead in implementing the relevant actions and, through extensive education and publicity, raise the public's awareness of corporate social and environmental responsibility as well as give impetus to the corporations concerned to shoulder their responsibility."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Miss CHOY So-yuk be passed.

MR BERNARD CHAN: Madam President, as the Chairperson of the Hong Kong Council of Social Service (HKCSS), I am well aware of the growing importance of the private sector's role in the wider community.

Over the years, Hong Kong has seen a major expansion of government involvement in welfare provision. This is largely in response to the public's expectations. As living standards rise, people expect some redistribution of

wealth towards those in need. However, with public finances running a deficit, it is obvious that we cannot sit back and expect the Government to do everything.

There is no likelihood of major increases in public welfare provision in the foreseeable future. The Government is currently cutting the subventions given to welfare organizations. And, despite economic recovery, we still have serious welfare problems.

We have an ageing population. We have more unskilled newcomers arriving from the Mainland. We have more unskilled young people leaving school. We have various groups in the community who face discrimination in employment and in other areas.

In many cases, people are marginalized from the rest of the community. This can lead to bigger problems — such as crime and sickness — which inflict costs on all of us. So, the rest of the community needs to pick up where the Government leaves off.

As many Members probably know, the HKCSS oversees the Caring Company Scheme. This programme matches companies of all sizes with welfare organizations. The idea is to build partnerships which help in their own small ways to create a more inclusive and fairer society.

Nearly 500 companies are currently involved. It is not about donating money. It is about sharing resources and ideas with welfare organizations. In many cases, companies' employees go out into the community and get personally involved. The idea is to build lots of small bridges among different parts of our divided society.

There are two important things about this Caring Company movement. First, it is purely between the private sector and the non-government organizations and their clients. The Government is not involved. Second, it is not centrally organized. The HKCSS acts as a clearing house. But the organization and the creative ideas about how people can help each other come from the partners themselves.

This scheme is not unique. There are several other broad initiatives encouraging the corporate sector to play a greater role in the Hong Kong

community. Of course, there are also many small-scale voluntary activities going on which we have never heard about.

It is important that we in Hong Kong develop this movement — and not just because the Government cannot do everything. We need a less-divided and more-united society.

In the long run, we cannot have prosperity where the business community, the middle class and the grassroots simply want to take from each other. We cannot have a stable society where the people on the fringes, with no voice, are simply ignored and left behind.

If we are going to have a more democratic system in the future, we need a society in which people ask what is in the interests of "us" rather than "me". We need an environment where people want what is the best for the community, rather than simply for their industry or their social class.

To get there, we need to build bridges across the divide. We need individuals from different parts of society to make contact, to help each other and to learn from each other.

I support anything the Government can do to support such a movement. But I would point out that at the end of the day, this is an area where members of the community must look to themselves. It is people — not governments — who build a decent, civil and united society. Thank you.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I would like to talk about the issue of electronic waste and information technology enterprises.

In this age of information technology, myriads of new electronic products will come on to the market every day and consumers who have the means may often buy new models of these products. Those products with a greater resale value such as mobile phones, MP3 players, and so on, will be absorbed by the second-hand market, but certain computer hardware such as motherboards and monitors, for their little resale value, will be sent to the landfills where they will release toxic substances and cause environmental pollution.

Of course, no one wants to see the environment being polluted, but we cannot slow down the advances in science and technology simply because of this reason. The practice in overseas countries is that certain measures will be introduced to require the information technology enterprises to shoulder a certain extent of responsibility with respect to the issue of electronic waste.

In the United States, the Corporate/Producer Responsibility Scheme requires the manufacturers of electronic products to set up an effective and transparent mechanism to recover products discarded by consumers. The European Union also passed its first resolution on electronic waste last year to require manufacturers to bear responsibility for the entire life cycle of their products, including that of dumping. The resolution also requires manufacturers to set up product recovery plans the latest by 2005 to collect discarded products from consumers direct or to hire other independent institutions to carry out such work.

Recently, the mainland authorities have begun to be concerned about the problem of electronic waste and plan to require manufacturers to be responsible for electronic waste created by the disposition of their products. However, it is obvious that there is not much we can do to urge the enterprises to shoulder their social and environmental responsibility if we just rely on the initiative of enterprises and the efforts of voluntary agencies.

What the Government can do is to take the lead to forge co-ordination efforts, make laws and regulations or provide financial incentives and support policies to the enterprises, and so on. In any case, the role played by the Government is indispensable. As to the question of whether or not Hong Kong should draw reference from the United States or the European Union to adopt such measures as to require the enterprises to recover their electronic waste, this can be discussed by various sectors across the community.

At present, the methods used in Hong Kong to tackle the problem of electronic waste are dumping in the landfills or recovery. This applies especially to used computers. Schemes in this regard are often initiated by voluntary agencies and there is only limited participation on the part of the Government. These schemes include the PC Rebirth Program organized by Green Power and the Caritas Computer Recycle Programme organized by Caritas Hong Kong and assisted by the Environmental Protection Department.

The Project CompuAid organized by the Hong Kong Council of Social Service, Salvation Army, *Ming Pao*, Commercial Radio and Microsoft has been in operation for three years. Even though the organizers worked very hard on the project, only 1 500 to 1 800 computers were recovered and sent out as gifts to the needy every year. When this is compared to the electronic waste which is mainly consisted of computers and dumped at the landfills in the region of some 2 600 tonnes in 2000 and 1 900 tonnes in 2001, this can be said to be just a drop in the ocean.

Madam President, I know that most of the information technology enterprises support these computer recovery projects organized by voluntary agencies, for they hope to contribute their part to the community. However, what these projects are most lacking are space to keep these recovered computers and manpower to sort and assemble these computers and send them to those in need. From this it can be seen that if only the Government can be more proactive and work with these voluntary agencies and enterprises, then the problem can be solved.

I suggest that the Administration should provide places for those voluntary agencies which host computer recovery programmes to store the computers and carry out maintenance and repairs, for some of these organizations cannot even afford the rents. The Government can also help by giving some subsidies to these organizations to hire some young people who have had some information technology training so that they can take up some technical work in sorting and assembling the computers. This will solve the problems in finding space and manpower. To put it simply, some kind of start-up funding should be given to make the programmes start running.

In promoting a sense of responsibility among enterprises, encouragement can be given to them on providing some maintenance, technical support or software resources so that the computers recovered can be brought up-to-date to meet the needs of users. This plan can help promote CSER and create jobs and working experience for the young people so that they can find jobs in the private sector more easily in future.

Madam President, apart from computer hardware, there is also the issue of toner cartridges. These toner cartridges are of high value in foreign places. Some companies will offer a high price to recover used toner cartridges and recharge them, that is, to refill them with toner. I think work should be done in

this area. For example, the Government should take the lead to collect these used toners and send them to the voluntary agencies so that they can resell these toners. Or some co-ordination work can be done to call in organizations like the Business Environment Council to carry out the recovery work. That will reduce the waste to be dumped at government landfills and that will also add another source of funding for the voluntary agencies.

In sum, with respect to the issue of electronic waste, the voluntary agencies and the information technology enterprises are both willing to offer their help and if only the Government will do something to link them together, that will be very powerful in addressing the environmental problem while benefiting those in need. I so submit.

MS AUDREY EU (in Cantonese): Madam President, Miss CHOY So-yuk mentioned in her speech earlier that she had conducted a survey for the purpose of today's topic of "Corporate social and environmental responsibility". She told me earlier that only two reporters had attended the press conference convened by her on this survey. I think this is very much regrettable, because today's topic is indeed a very important topic.

In fact, as early as during World War II, an American academic, Prof DODD already advocated the concept of "Corporate Citizen" in the United States. He said that corporations, being members of society, should shoulder the same social responsibility as that of ordinary citizens, and such responsibility shall cover employees, consumers and society as a whole. To fulfil their social responsibility, corporations sometimes may even have to sacrifice part of their economic benefits.

The company law in Hong Kong originates from that in Britain, which is different from that in the United States. Traditionally, Britain considers that the role of corporations is to seek the greatest economic benefits for shareholders. But following reforms of the Companies Act in Britain in recent years, the British Government has confirmed that other than seeking profits, corporations should at the same time fulfil their social responsibility. The BLAIR Administration published a consultation document in 2002, proposing *inter alia* a draft new Companies Act in which it was mentioned that apart from considering the interest of all shareholders, corporate directors, in making decisions, should

have regard for the relations with employees, suppliers and consumers, and also the possible impact of the decision on the community, environment, and so on.

The Government of the Hong Kong Special Administrative Region has also introduced reforms to the Company Ordinance in recent years, with a view to upgrading the standard of corporate governance. However, the reforms seek mainly to step up monitoring of listed companies and protection of shareholders' rights and interest, enhance directors' accountability, and prevent conflict of interest on the part of shareholders, intermediaries and other relevant parties. Little has been mentioned in respect of the fundamental issue of the role and aims of corporations in society.

Concerning the need for corporations to fulfil social responsibility, I believe no Member will raise objection to this, not even Members from the business sector. Nevertheless, what exactly is the social responsibility of corporations and what is the scope of such responsibility? Views are diverse, and different people may hold different views. Some employers may think that they have fulfilled their social responsibility by only making more donations or encouraging their employees to take up voluntary work.

In fact, the social responsibility of corporations is not confined to actions for charity causes. Rather, it covers an extensive domain. To put it simply, corporations, being members of society, must consider whether their business activities will adversely affect society and the environment. For example, the production or manufacturing process of corporations may produce a large amount of waste, which will be hazardous to the environmental ecology. Another example is the Hong Kong Jockey Club, a non-profit-making company. Will its practices of operation boost the gambling trend and encourage the public to gamble in an irresponsible manner? In all these aspects, corporations have the duty to take appropriate measures to minimize the adverse effects.

Besides, corporations also have a part to play in training talents. To be responsible corporations, they should provide internal training to their employees and encourage, through subsidies or other means, their employees to pursue external studies in order to upgrade their knowledge and skills. With regard to their responsibility towards consumers, corporations should endeavour to improve the quality and safety of their products, and they should avoid putting up misleading or untrue advertisements for publicity purposes. Moreover, many employees now have to work for long hours in an environment with poor air

quality. Employers are duty-bound to ensure the physical and mental health of their employees.

The Financial Secretary said in the Budget that \$200 million would be earmarked to promote the development of a tripartite social partnership comprising the Government, the business community and the welfare sector, and to encourage corporate involvement in helping the disadvantaged. Furthermore, the Secretary for the Environment, Transport and Works has recently expressed her wish to co-operate with property developers in nature conservation. More participation from the business sector in social and environmental activities is certainly a good thing. However, it is most important to bring about changes in perceptions. If the business community still gives priority to pecuniary or business interests, without understanding or recognizing the need to fulfil their own social responsibility, their participation in social activities will be sheer publicity aiming to upgrade the corporate image, which will produce very limited effects in the long run.

I, therefore, absolutely agree with Miss CHOY So-yuk's original motion which urges the Government to raise the public's awareness of corporate social and environmental responsibility through education and publicity. When members of the public have more understanding in this regard, they can make assessments on corporations and use them as indices for their business or spending choices. I hope that the corporations, driven by the people's power, can attach greater importance to social responsibility.

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

MR LEE CHEUK-YAN (in Cantonese): Madam President, I speak in support of today's motion. I hope that my support is not the "kiss of Death", because some people say that LEE Cheuk-yan will have demands on corporations. This is not the case. My support is in fact a very general kind of support. I do not have any specific demand in mind.

The topic under discussion today is corporate social and environmental responsibility. Actually, there have been many discussions on this topic in the world, but seldom is it discussed here in Hong Kong. So, when Miss CHOY So-yuk said that 10% of the people here had heard of it, I do have great misgivings about the survey.

I think the social responsibility of corporations has seldom been discussed in Hong Kong, and more in-depth discussion on the specific contents of corporate environmental and social responsibility is even less. It is a perception of Hong Kong people that corporations are considered to have fulfilled their social responsibility by making donations to charitable organizations. However, this is being discussed in much greater depth now in the world, and it is considered that if human beings strive for sustainable environmental development and ensure sustainable development of the earth, corporations must shoulder certain responsibilities.

I often come across some investment funds of trade unions in the United States. Workers in the United States will invest their pensions in these funds. In fact, all these funds will observe a criterion and that is, it is a must to meet environmental and social responsibility. We all know that workers' pensions in the United States are a monstrous amount and they therefore have great influence on corporations. This has actually become a tool to push for actions by the corporations and also promote human rights and the environment in all parts of the world.

Miss CHOY So-yuk also mentioned earlier that there is now a global contract which was proposed by ANNAN in 1999 and established in 2000. This contract is known as the "UN Global Compact" in which nine major principles are set out. I wish to specifically speak on these nine principles because, from these nine principles, we can see the level and areas of concern in the world.

These nine principles cover three major aspects, namely, human rights, labour, and environment. In respect of human rights, the first principle is that corporations should support and respect the protection of international human rights within their sphere of influence. The second principle is that corporations must make sure that they are not complicit in human rights abuses. The wording used here is actually very strong. That is why actions are underway in the world to urge all corporations to withdraw their capital from Myanmar. This is mainly because the militarist government in Myanmar has all along disrespected human rights and there is also the problem of forced labour in Myanmar. Therefore, corporations actually have the responsibility to avoid complicity in human right abuses.

There are four principles in respect of labour. The first is that corporations should support the freedom of association and effectively recognize the right to collective bargaining. This has been suggested by me for years and I hope this is not the "kiss of Death". However, I must still tell Sir Gordon WU this, for he always opposes the right to collective bargaining advocated by me. He said recently that a can of worms would be opened if Cathay Pacific has to negotiate with the trade union on no-pay leave for staff, because in that case, how could the company meet the challenge of SARS? I wish to share with him and with Members this: Cathay Pacific did negotiate with the trade union on no-pay leave and the trade union finally told the company that they supported the no-pay leave arrangement. This is the result of collective bargaining. It is not the case as described by Sir Gordon WU in the newspaper that negotiation would open a can of worms. Negotiation is indeed very important.

The fourth principle is the elimination of all forms of forced and compulsory labour. The fifth principle is the effective abolition of child labour. The sixth principle is the elimination of discrimination in respect of employment and occupation. Regarding the sixth principle which has to do with discrimination, while there are anti-discrimination laws in Hong Kong, the biggest problem we have not resolved is discrimination on the ground of age and race. The authorities have already prepared to legislate to solve the problem of racial discrimination. But in respect of age discrimination, if workers are asked what their biggest problem is in employment, they will say that it is very difficult for them to land a job as soon as they reach their prime years. In this regard, although there is no legislation in place, I hope corporations can make improvement.

There are three major principles in respect of the environment. Firstly, corporations should support a precautionary approach to environmental challenges; secondly, they should undertake initiatives to promote practices of greater environmental responsibility; and thirdly, they should encourage the development and diffusion of environmentally-friendly technologies. I hope that corporations all over the world can have regard for the existing environmental hazards in the interest of environmental protection.

I hope that all corporations worldwide can participate in the implementation of these nine principles on a voluntary basis, and their participation should not be made compulsory. In fact, more than 1 000 corporations have signed up to implement these nine principles, undertaking to

support these nine principles. We very much hope that Hong Kong can start the discussion in this regard. I do not know if the Government has ever considered how to lead such discussion. Egypt has just started the discussion in this area. If many other countries have begun to react positively and when Hong Kong seems to be lagging behind, it would give the impression that Hong Kong is not part of the international family. In that case, how can Hong Kong become an international city? In this connection, we must have the vision of an international city before we can make continuous improvement. So, I very much hope that the Government can take this area of work forward.

But as I said just now, Hong Kong has a very narrow scale of corporate responsibility and so, I will propose a very narrow corporate responsibility of a very low level. That is, I hope that banks can provide more Automatic Teller Machines (ATMs) at more places in the territory. This is what we have not yet been able to achieve, and we have received many complaints in this regard. For example, not even one ATM is provided in a housing estate with over 20 000 residents. Some banks have closed all the branches patronized by many elderly citizens who brought with them their passbooks to carry out banking transactions, and these branches have now been turned into financial management centres. These financial management centres really have nothing to do with the elderly. In this regard, I think I must put forward a demand in respect of corporate responsibility at a low level. I hope that banks will at least provide ATMs to Hong Kong people, let alone not to relocate a substantial part of their operations northwards.

Thank you, Madam President.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, corporate social and environmental responsibility means that the duty of corporations is not only to seek profits for shareholders, but also to consider the relevant interests in various aspects. Among these interests, employees' interests are the most direct and important component of corporate social and environmental responsibility.

To pay wages to employees on time is the most fundamental duty of corporations towards workers. A few days ago, several construction workers sat dangerously on a working platform at a height of over 10 ft on a construction site under the Home Ownership Scheme in Ngau Tau Kok. They were not

giving a performance. Rather, they were demanding the principal contractor to make payment for their outstanding wages. Members may think that this piece of news is trivial with nothing special, because employees recovering their outstanding wages is but a common scene in Hong Kong. According to the statistics of the Labour Department (LD), there were 445 cases of summonses resulting in conviction for defaulted payment of wages last year. This figure, which is 1.2 times higher than that in the year before last, is an all-time high.

It is indeed saddening to note these statistics. We feel sad not only for workers who cannot obtain the wages due to them for their sweat and toil. We feel sad also because Hong Kong, being a prosperous international city, would outrageously allow corporations to neglect even this very fundamental social responsibility. I think this is indeed a laughing stock. To maintain the international image of Hong Kong, the Government must adopt more active policies and measures to encourage corporations to fulfill their responsibilities towards workers, in order to ensure that employees enjoy "reasonable and legitimate" labour protection. In the meantime, the Government must conduct a review to ascertain whether there are loopholes in the systems of various trades and industries and make every effort to plug any such loophole.

Last year, when we proposed the motion question of the protection of labour rights and benefits for discussion, we asked the LD to step up enforcement against employers in breach of the Employment Ordinance. The LD has revamped the Labour Inspection Service this year, increasing the number of special enforcement teams from five to 12, with a view to enhancing enforcement and curbing the rising trend of wage offences. We welcome these initiatives and hope that the additional manpower resources deployed can effect earnest enforcement and clamp down on irresponsible corporations more effectively.

The working hours in Hong Kong are so long that we are among the top three in the world. The working hours here are even the longest in Asia. According to a survey just published by the University of Hong Kong, 24 of the 30 large companies interviewed stated that they do not encourage their staff to work long hours. However, employees of 14 companies often have to take up unpaid overtime work. According to a survey published by The Chinese University of Hong Kong early last year, among the 545 employed interviewees, 12% have to work for 12 hours or more daily, and 1% of them even have to work for over 15 hours daily.

Despite the recent pick-up in the economy and increased employment opportunities, there has been no improvement to the imbalance in the labour market. At a large-scale employment fair held some time ago, some jobs, such as Site Engineers, Computer Draftsmen and Production Line Workers, are offered a salary between \$5,000 to \$6,000 for an average 54-hour week. In an opening for a Laboratory Assistant and Production Line Worker, the successful candidate will have to work from 7.30 am until 7.30 pm daily, which means as many as 72 hours per week, and to work shifts without fixed rest days, but the salary offered is \$5,000 only.

Reasonable working hours is an important measure taken by corporations to fulfill their social and environmental responsibility. The Government should step up its effort to inculcate this concept in corporations, educate corporations to pay attention to employees' working hours and encourage corporations to minimize the hours of overtime work for their employees. The Government should at the same time study the making of legislation to protect employees' rights in respect of their rest time. Appropriate rest time for employees will enable them to perform more efficiently at work. This is a win-win measure for both employers and employees.

The provision of equal opportunities in employment is another corporate social and environmental responsibility of great importance. There was a report earlier that a cleaning service contractor of the Food and Environmental Hygiene Department (FEHD) was suspected to have discriminated against and exploited recovered mental patients and mentally-retarded employees by paying them less than \$4,000, which is far lower than the rate of \$5,081 as prescribed by the FEHD. We believe this incident is only the tip of the iceberg. In fact, many corporations still practise discrimination in employment and occupation, depriving workers of their due rights. The Government should encourage more corporations to incorporate social and environmental responsibility into their company policies, such as compliance with the laws on equal opportunities and family status to eliminate discrimination on the ground of sex, race, age, and sexual orientation, when plotting their directions of development. Meanwhile, the corporations should provide education to their employees in this respect.

Following China's reform and opening up and also its accession to the World Trade Organization, over two thirds of the 500 large corporations in the world have already set up companies in China. The corporate social and

environmental responsibility campaign has begun a gradual development in China. Multinational corporations, such as McDonald, Walmart and Nike, have begun to launch social responsibility campaigns underpinned by labour standard inspections and compliance with production rules and regulations in respect of their suppliers and contractors in China. Corporate social and environmental responsibility is set to become a must for corporations to establish a foothold in the international market. Corporations in Hong Kong are no exception. Therefore, the Government should promote this concept in Hong Kong as early as possible to encourage and assist Hong Kong corporations to fulfil their responsibility, thereby enhancing the global competitiveness of Hong Kong corporations.

Madam President, I so submit.

MS MIRIAM LAU (in Cantonese): Madam President, in European countries and the United States, corporations have been expected to meet their corporate social responsibility and environmental responsibility for about 20 years. But still, a clear or standardized definition of corporate social responsibility has been lacking in the international community. Anyhow, the business sector in Hong Kong has become increasingly aware of the development of this world trend in recent years.

First of all, I wish to talk about corporate social responsibility. I think we may perhaps make reference to the practices adopted by the "Community Business" which was established in Hong Kong early this year and is linked with Britain's "Business in the Community in UK" (BCUK) specifically responsible for promoting corporate social responsibility in Britain. They seek to fulfil the responsibility expected of them to society mainly in two ways, namely, corporate community investment and diversity in workplace.

Madam President, regarding the practices of the Community Business, if we interpret them as initiatives to participate in activities in the interest of the community, I believe no one will be a stranger to this, because corporations in Hong Kong have all along been devoted to community and charity activities, making donations to a great many organizations. To name a few, the Tung Wah Group of Hospitals, Po Leung Kuk and the Community Chest are among the many beneficiaries.

Another example is that during the SARS outbreak last year, the tourism, retail and catering industries took the initiative to launch a "We Love Hong Kong" campaign. Over 2 500 merchant outlets supported the campaign, offering \$70 million-worth concessions and prizes. Apart from providing relief to the local economy which was suffering badly then, it also served as a force to unite Hong Kong people to play a part to care for Hong Kong. The Liberal Party even took the lead to set up the Business Community Relief Fund for Victims of SARS, encouraging donations to provide relief to people affected by SARS and families of the deceased. Numerous corporations have participated or organized various community and charity activities or encouraged their employees to take part in recreational or charity activities. It shows that entrepreneurs in Hong Kong have been committed to giving play to the spirit of mutual support in the community, the spirit of loving and helping each other and also to caring for the community.

Regarding employees' rights, employers in Hong Kong have been very co-operative as they have consistently contributed innovative ideas to the labour laws in Hong Kong, continuously making improvement to them. A case in point is the contributory Mandatory Provident Fund schemes implemented since 2000, under which the great majority of employees in Hong Kong can enjoy the 5% contribution by their employers and are hence provided with additional protection for their living after retirement. Another example is the Occupational Safety and Health (Display Screen Equipment) Regulation, which has greatly enhanced the protection of employees' occupational safety and health in the use of computer equipment.

In recent years, the establishment of the Equal Opportunities Commission has facilitated the enactment of legislation to protect people being discriminated against on the ground of sex, disability and family status. This has enabled employees to enjoy even greater protection in employment for they can lodge complaints against unfair treatment to strive for fair and reasonable treatment. Employers also agreed on the making of legislation and provided support to enhance the protection of employees in employment.

In respect of environmental responsibility, we agree that corporations should be encouraged to use more environmentally-friendly raw materials and efforts should also be made to develop recycling methods. The authorities can make reference to the policies adopted by Germany and Finland and provide

incentives for the recovery of usable materials to induce more corporations to take part in waste recovery or recycling.

Madam President, in citing all these examples, I only wish to point out that local corporations, whilst pursuing profits, have not neglected their social and environmental responsibility. However, if it is suggested at this stage that some rigid standards be set or even legislation be enacted to require corporations to fulfil various responsibilities, then it would tarnish the beauty of spontaneity. It would also create an additional burden on corporations, which is not conducive to their development. The most important point is that, insofar as local legislation is concerned, the labour and environmental laws have already prescribed numerous requirements. That said, we do agree that corporations with sufficient financial resources can do more than what they have to do to meet the basic requirements in law. The Government can also give more encouragement to organizations in the private or public sector, so that they can promote and fulfil their responsibility in these two areas in accordance with their respective operating conditions. Therefore, regarding the original motion in which the word "direct" is used, while this targets only on the public sector, it still carries an obligatory sense and so, the Liberal Party has reservations about it.

With these remarks, Madam President, the Liberal Party will abstain in the vote on the motion.

DR LAW CHI-KWONG (in Cantonese): Madam President, in fact, the concept of corporate responsibility is a very new concept indeed. So, it is not surprising that some people do not understand it or know little about it. However, I feel that there are actually some differences between the situations before and after 1997. Before 1997, there was indeed very little discussion on this issue, because many corporations in Hong Kong then adopted the attitude of a passer-by. They were like "frogs fording a river", as they had been "stretching out their hands to grab money" on the one hand and "sticking out their feet to get away" on the other. But after 1997, on many occasions when I discussed social responsibility and environmental responsibility with the business sector and corporations, I felt that there were more listeners, as we all sense the political reality in Hong Kong after 1997. We have, therefore, gradually worked to establish our social responsibility and we have thought about where the social responsibility lies. So, I think while the discussion on this issue seemed to

attract no listener before 1997, the number of listeners has increased quite a bit after 1997. This is a good thing.

I think a multinational corporation or a local corporation, for want of building up a stable corporate image in the community, must make people feel that it is part of society. So, building up the image that the corporation is committed to the local community and a responsible corporation is naturally an important public relations strategy. The motion proposed by Miss CHOY So-yuk mentions that the Government should "through extensive education and publicity, raise the public's awareness of corporate social and environmental responsibility as well as give impetus to the corporations concerned to shoulder their responsibility". Not that I disagree with this. But I think this may not necessarily be the most effective way, for it is more of an indirect approach. We must educate the public that corporations have a responsibility. Therefore, I think work should be carried out at two levels. For one thing, it is necessary to educate corporations on their responsibilities, and for another, if Hong Kong people are very concerned about social responsibility and if they are very concerned about the environment, they will naturally have demands on the corporations. So, if members of the public attach importance to environmental protection, corporations cannot neglect environmental protection, or else their performance in public relations will leave a lot to be desired. Therefore, basically, public education on environmental protection will naturally exert pressure on corporations in respect of public relations. For this reason, in order to promote corporate responsibility, the most effective way is to educate the public to pay attention to the social responsibility of individuals. When members of the public are taught how to look at corporate responsibility or environmental responsibility, they will naturally have demands and expectations of the corporations. In that case, corporations cannot neglect the transformation and changes in the local culture in their operation in Hong Kong. Therefore, there is a close relation between them.

Although what I have said appears to be rather utilitarian for it seems I am equating this to purely a question of public relations, this is, in fact, a practical way of participation. Is "making money" the sole duty of a corporation in its operation in a place? Speaking from the angle of modern management, if a corporation acts in a way that all the community knows is that it aims purely to make money, this corporation will not obtain the trust of the community. Nor will it obtain the trust of consumers. Therefore, to every corporation, its

commitment to society has become an indispensable element of the mission required of the it.

However, what practical actions should be taken? As I mentioned just now, the Government must, on the one hand, educate the public on, say, environmental responsibility and social responsibility. But what about actions directed at the corporations? Miss CHOY So-yuk's motion also mentions tripartite co-operation among the business community, public organizations and voluntary agencies. I believe this tripartite co-operation is obviously very important. For example, a simple avenue to this end is to set up a simple organization similar to a working group, comprising the Government, the business community and voluntary agencies for purposes of implementing the corporate responsibility scheme. This organization should be tasked to draw up work principles in respect of corporate social and environmental responsibility, such as preparing the responsibility agreement or contract, the signature campaign, and so on, for subscription by corporations to show their acceptance of and commitment to certain principles. Besides, some guidelines can also be drawn up to, say, explain the meaning of social responsibility. This is very abstract. Why was it that only two reporters attended the press conference convened by Miss CHOY So-yuk? The reason is that corporate responsibility is, after all, a very abstract concept. What exactly should be done in substance? What sort of corporate behaviour can achieve this objective? All these require concrete, instructive information, so that corporations can tell the community that they have made an effort to fulfill their social and environmental responsibility. But what concrete actions should be taken? What can be done is to formulate guidelines through a corporate responsibility scheme to help these corporations or institutions to master and substantively implement the scheme.

Apart from this, there are apparently some concrete initiatives, including the environmentally-friendly company election organized by the Environmental Protection Department. This is one of such initiatives. Certainly, when we speak of social responsibility, we are talking about something of a broader nature. I, therefore, think that when implementing the concrete responsibility scheme, tripartite involvement will provide a more efficient impetus to this area of work. Thank you, Madam President.

MS CYD HO (in Cantonese): Madam President, the motion today can actually be divided into two parts for debate, one of them being about international

enterprises. In this regard, Miss CHOY So-yuk raised quite a number of concepts on green investments a moment ago. I immediately browsed some of the relevant websites and noticed that the appreciation potentials of green funds were really very enormous. As a financial centre, Hong Kong may indeed make some efforts in this respect. But I believe the thrust of the debate today should not be the making of any window-dressing efforts in the pursuit of economic benefits. Rather, it is hoped that while we discharge our responsibility for the local community, we can also fulfil our duty as inhabitants of the global village, so as to protect people of the Third World against any exploitation and pre-empt any damage to their environment.

Frankly speaking, consumers can provide the strongest drive. In my past occupation, I encountered many such situations. Madam President, I wish to talk about the very nasty story behind a brand name fashion designer's efforts to discharge his social responsibility. This particular brand name often boasted itself of being environmentally friendly, and glass bottles were ground to make the buttons of its fashion products. Members can imagine how much grinding was needed before some broken glass could be turned into buttons that did not cut the hand. But this was not the most exploitative aspect. The production plant of this brand name fashion was located in Haiti, a place recently battered by political upheavals. Since the local workers there had been engaged in the manual job of farming, their hands were too coarse to distinguish between the face and back of a button. The local foremen then thought up an extremely sickening method, telling the workers to lick every button, in the belief that one's tongue should be more sensitive than one's fingers. So, on the one hand, the manufacturer bragged about its environmental efforts, but on the other, it showed absolutely no respect for the dignity of the workers at the workplace.

Therefore, when we talk about investments in green funds to protect the Third World, we should bear in mind that there must be a sound monitoring mechanism to go with such investments, a mechanism comprising independent media which are brave enough to challenge capitalists and political establishments and publicize the facts, so that consumers can take concerted actions to penalize or reward the corporations concerned. There was another brand name fashion designer who was suspected of making racist remarks, and the sales of his products plummeted immediately in that particular season. This is something that all consumers as a whole can do after gaining an understanding of the issue. However, if we do not put in place such a sound monitoring

mechanism, thinking that we can already discharge our duty as an inhabitant of the global village simply by following fund managers' advice on purchasing certain funds and investing in certain production lines, I am sure that very often, when we learn of the truth, we will certainly be very angry.

Locally, if we wish to project a world image that can attract international investors, we must start with ourselves. We notice that many local retail chains are not very environmental in their practices. They simply use too many plastic bags, leading to a huge wastage of resources. Hong Kong consumers are not entirely without any social awareness. One example of such an awareness is Fair Trade Coffee, which has been much discussed recently. We all know that many coffee manufacturers have been exploiting the Third World, and this accounts for the emergence of Fair Trade Coffee recently. Consumers are always ready to reward corporations which have fulfilled their social responsibility. However, on the other hand, local corporations are just moving very, very slowly in this direction. I think this has something to do with people's awareness; all of us must come together as a consumer community with strong solidarity, in which everybody is perfectly aware that his or her own consumption behaviour will definitely induce corporations to adopt desirable practices. When everybody is aware that we must all discharge our social responsibility, local corporations seeking to pursue their own interests and maintain their profits and sales will voluntarily act likewise even without the enactment of any legislation. A fine example, Madam President, is about the mass media. In the past few years, whenever we criticized the mass media for damaging the ecology of news reporting and for publishing irresponsible views and news stories, whenever discussions turned heated, we would boycott the newspapers and magazines concerned. At these times, the newspapers concerned would exercise some measure of discretion. Therefore, in the case of corporate social responsibility, I hope members of the public can also realize that consumers will constitute the prime impetus, the greatest impetus, to induce corporations to discharge their social responsibility.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, the issue of corporate social and environmental responsibility is linked to the principles of sustainable development. In recent years, we have taken a number of steps aimed at raising awareness of these principles, both within the Administration and in the broader community. I welcome this opportunity to review progress in this area, and I have heard wonderful views on how we might further develop a culture of corporate sustainability and responsibility from Members this evening.

"Corporate sustainability and responsibility" is commonly referred to as "CSR". Although to many people, the concept of sustainable development might appear to be something very abstract and idealistic, in essence, it boils down quite simply to safeguarding the well-being of this and future generations. In other words, while looking to improve the quality of our lives, we should also look to ensure that we make provision for our children and grandchildren to enjoy an equal, if not higher, standard of living.

In his 1999 policy address, the Chief Executive made it clear that in order to achieve sustainable development for Hong Kong, we would need: "Every citizen, every business, every government department and bureau..... to start working in partnership." It is widely accepted that sustainable development cannot be achieved by the Government, or by civil society, or by the business sector working alone. I agree fully with the Honourable CHOY So-yuk that we need to foster partnerships among the business sector, public organizations as well as voluntary agencies in order to bring about a real change in mindset which will enhance our city's sustainability.

In 2001, we established the Sustainable Development Unit under my own office, with the aim of putting into practice the policies for sustainability set out in the 1999 policy address. Our initial focus was on building awareness within the Administration, training colleagues in departments and bureaux to take account of sustainability considerations, and putting forward new programmes and policies. Since 2002, we have extended the scope and initiated a number of programmes and activities aimed at promoting wider public education and establishing a dialogue with business and community organizations. Examples of these initiatives include:

- the organization of an interactive roving exhibition in the territory on sustainable development;

- an international symposium and workshop on "Sustainability and the City"; and
- a School Outreach Programme involving secondary schools throughout Hong Kong.

All of our programmes contain one common yet unique feature, that is, partnership with the community. We have collaborated with organizations such as the Business Environment Council, the Hong Kong Council of Social Service (HKCSS), the Business Coalition on the Environment and other non-governmental organizations (NGOs) in organizing these activities.

The Chief Executive highlighted the importance of this partnership-based approach by appointing the Council for Sustainable Development in March 2003. The Council provides a forum for the exchange of views on issues related to Hong Kong's long-term sustainability. Its membership includes people with experience and expertise in the environmental, social and business sectors — among them the Honourable CHOY So-yuk — as well as the directors of relevant government bureaux. Although it has been in existence for just one year, the Council has already tendered valuable advice on two key initiatives, both of which are crucial for enhancing the building of partnerships within the community and broadening awareness of the principles of sustainable development.

The first initiative is building an open and participatory process aimed at engaging the wider community in preparing together a sustainable development strategy for Hong Kong. Through this process, we hope to encourage a wide-ranging dialogue on key issues which will have an impact on the sustainability of our city. We have already begun preparatory work, and in the coming months, we will seek to engage the public in expressing their aspirations for specific issues including renewable energy, solid waste management and sustainable urban living environments.

The second initiative is to make optimal use of the Sustainable Development Fund, launched in September last year, to support community projects which are put forward by organizations in the business, schools and other non-government sectors aimed at promoting the awareness and implementation of sustainable practices in Hong Kong. Initially, we plan to

make about \$10 million available annually for such projects, the first of which will be getting underway within the next few months.

Although these initiatives will involve engaging the business sector, we accept that we do not target specifically at raising levels of corporate sustainability and responsibility. To begin with, we are aware of the growing international trend towards corporate sustainability reporting and the benefits which this can bring both to individual companies and to the wider communities. We also recognize the responsibility that governments generally have to set an example for good "corporate citizenship".

In Hong Kong, the private sector is always quick to react to new trends likely to have a positive impact on the business environment. In this regard, the trend towards creating business models and reporting practices which adopt the principles of sustainable development is no exception. Some of our leading corporate institutions have already become involved in the establishment of frameworks for sustainable practices and reporting, and in doing so, they are working hand-in-hand with civil society groups. Relatively new organizations, such as the Hong Kong branch of the worldwide Global Reporting Initiative, the Association for Sustainable and Responsible Investment in Asia, and the Community Business are now active in raising corporate awareness of the importance of addressing social and environmental issues in ensuring long-term business sustainability. Some of our well-established institutions are also taking a lead in this area. For example, the Association of Chartered Certified Accountants, in initiating an award scheme for sustainability reporting, has recently published an "Introduction to Sustainability Reporting for Organisations in Hong Kong". The Business Environment Council will shortly launch its Hong Kong Business Guide to Sustainable Development. I have personally endorsed both these publications, which I see as a valuable, corporate-led contribution to creating a more sustainable business environment in Hong Kong.

I do believe that these private sector-led initiatives will, over time, achieve what Miss CHOY has proposed on establishing CSR index appropriate for Hong Kong, as well as corporate compliance reporting.

I mentioned just now the importance of governments taking concrete action in this area, and I would like to outline here a few examples which demonstrate this Administration's commitment to promote socially and environmentally responsible practices in our own work.

On the environment side, recognizing that the private sector has an important role to play in this area, the Environmental Campaign Committee organizes the annual Hong Kong Eco-Business Awards to promote environmentally-friendly practices among companies. In addition, the Environmental Protection Department has developed partnership programmes with four trades, namely, the construction industry, vehicle repair workshops, property management companies and restaurants. These programmes aim at increasing the environmental awareness of people in these businesses, and encouraging them to adopt effective environmental protection measures which go above the legal requirements.

With regard to social responsibility, the Social Welfare Department actively promotes corporate volunteer activities through the Steering Committee on Promotion of Volunteer Service. The Department is subventing a Caring Company Scheme run by the HKCSS. The Scheme is to cultivate corporate citizenship and nurture strategic partnerships between businesses and the social welfare sector. Last year, about 500 companies were recognized under the Scheme for their contributions in areas such as employee volunteering, employment of vulnerable social groups, mentoring of social service organizations and providing support networks for employees' families. Furthermore, under the Health, Welfare and Food Bureau, the Community Investment and Inclusion Fund promotes joint efforts among community groups, corporate bodies, professional groups and the Government to work towards building a strong, caring and harmonious community. The Chief Executive announced in his policy address this year that we would further enhance this tripartite relation partnership among the Government, business sector and the third sector in consultation with the Social Welfare Advisory Committee and the Community Investment and Inclusion Fund Committee.

Together with the Committee for the Promotion of Civic Education, the Home Affairs Bureau will start promoting the concept of "corporate citizenship" this year, having regard to the impact of good corporate practices on the behaviour and values of employers, employees, consumers and members of the community generally. Furthermore, just last week in the Legislative Council, the Financial Secretary proposed in his Budget to earmark an additional \$200 million on a one-off basis to promote the development of a tripartite social partnership comprising the Administration, the business community and the welfare sector, and to encourage corporations to take part in helping the disadvantaged. We will consult the community on how best to use these funds.

For instance, we will consider whether to use a matching grant or other modality to incentivize corporate participation, and to encourage the business sector to take up a share of social responsibility.

As regards the Administration's own corporate governance for sustainability, Honourable Members will be aware that for over two years now, we have had in place a system for assessing and ensuring the sustainability of our major policies and initiatives which are put to the Executive Council or the Policy Committee. In addition, each department has a "green manager" in charge of promoting environmentally-friendly practices. Furthermore, since the year 2000, all bureaux and departments have been required to report annually on their environmental performance, and we have also developed procurement guidelines which promote "green purchasing" to prevent waste and promote recycling and energy efficiency.

Madam President, in closing, I would like to draw Honourable Members' attention to an important aspect of the promotion of corporate sustainability and responsibility which is key to the continued growth of environmental and social awareness in the business sector. That is, if I may borrow a phrase from my colleague the Financial Secretary: the "market leads and the Government facilitates". We will continue to support corporate social and environmental awareness through partnership-based schemes. We will also explore further ways of ensuring that our own governance is consistent with the principles of sustainable development. However, it is not our place to dictate a path for business to take in adopting sustainable and responsible practices. As many in the corporate sector are quickly becoming aware, taking a socially and environmentally responsible approach is not only good for the image of the company and the morale of its employees, but is also a key factor in ensuring a vibrant and sustainable business development. Thank you.

PRESIDENT (in Cantonese): Miss CHOY So-yuk, you may now reply, you have one and a half minutes.

MISS CHOY SO-YUK (in Cantonese): Madam President, I have to thank eight Honourable colleagues for presenting their varied suggestions on this subject from various aspects, not least a detailed explanation on CSER.

Just now, as I listened to the response by the Chief Secretary, I found it quite similar with the one he delivered last year in response to a motion on sustainable development moved by me. I agree with the Chief Secretary that this subject is one of the components of sustainable development. However, basically, the principles involved are distinctly different. Sustainable development does cover a wide spectrum, but it is the social and environmental responsibility to be undertaken by corporate that the subject is all about. In the reply of the Chief Secretary, only CSR was mentioned, the factor "E" was omitted. Madam President, I have to emphasize particularly that when the concept was first put forth in the international community, it was specified as "CSR", but now the factor "E" has become very important.

In the debate, many Members have mentioned the report of the Council for Sustainable Development, but utterly no comments are focused on CSER. The Democratic Alliance for Betterment of Hong Kong has put forth nine specific opinions. I hope the Chief Secretary may draw a comparison of or give specific responses regarding these opinions in future reports. I also hope that Honourable colleagues will support this motion. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Miss CHOY So-yuk 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.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 24 March 2004.

Adjourned accordingly at ten minutes past Ten o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Mr SIN Chung-kai's supplementary question to Question 1**

As regards whether the charges laid against the offenders in the seven cases of clandestine photographing involving the use of camera functions in mobile phones heard in court in 2003, viz Loitering, Disorderly behaviour in public places and Outraging public decency, were premised on provisions in statutory laws or were common law offence, we understood from the Security Bureau that the offences of Loitering and Disorderly behaviour in public places are respectively specified in section 160 of the Crimes Ordinance (Cap. 200) and section 17B of the Public Order Ordinance (Cap. 245). Outraging public decency is a common law offence. In the prosecution documents of the Department of Justice, the Chinese term of the offence "Outraging public decency" is "作出令公眾憤慨的不雅作為".

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Dr TANG Siu-tong's supplementary question to Question 2**

As regards the cost of the additional noise enclosure for sections of Route 5 Extension near Discovery Park if such installation is to be carried out after the construction of Route 5 Extension has been completed, the cost for constructing an additional 80 m long semi-enclosure over the bridge structure to the east of Discovery Park and replacing the 120 m long, 4 m high noise barrier to the west of Discovery Park with a semi-enclosure is estimated to be \$8.9 million and \$13.9 million respectively. The total estimated cost will be \$22.8 million.

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Security to Mr CHAN Kwok-keung's supplementary question to Question 6**

As regards the routes, losses and injuries involved in the relevant robbery cases, according to police records, in the case where passengers of a public light bus (PLB) were robbed collectively in October 2003, the PLB concerned ran between Mong Kok and Sheung Shui. In respect of taxi robberies, no particular route pattern has been observed.

In the robbery cases, the culprits usually robbed the passengers or drivers of their personal belongings, like mobile phones and wallets. Cases with injury were very rare.