

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 4 April 2001

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, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.
THE FINANCIAL SECRETARY

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

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

MR CHAU TAK-HAY, J.P.
SECRETARY FOR COMMERCE AND INDUSTRY

MR GORDON SIU KWING-CHUE, J.P.
SECRETARY FOR PLANNING AND LANDS

MR NICHOLAS NG WING-FUI, J.P.
SECRETARY FOR TRANSPORT

MR DOMINIC WONG SHING-WAH, G.B.S., J.P.
SECRETARY FOR HOUSING

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

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

MR LAM WOON-KWONG, G.B.S., J.P.
SECRETARY FOR HOME AFFAIRS

MR STEPHEN IP SHU-KWAN, J.P.
SECRETARY FOR FINANCIAL SERVICES

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

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

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

MR LEE SHING-SEE, J.P.
SECRETARY FOR WORKS

MRS CARRIE YAU TSANG KA-LAI, J.P.
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MRS FANNY LAW FAN CHIU-FUN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, J.P., 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>
Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice.....	76/2001
Tax Reserve Certificates (Rate of Interest) (No. 4) Notice 2001	77/2001
Hong Kong Tourist Association (Amendment) Ordinance 2001 (3 of 2001) (Commencement) Notice 2001	78/2001

Other Papers

No. 76 — Estimates for the year ending 31 March 2002
General Revenue Account Summaries and Revenue Analysis by Heads and Subheads

No. 77 — Hong Kong Broadcasting Authority
Annual Report 1999-2000

Report of the Bills Committee on Hong Kong Science and Technology Parks Corporation Bill

Report of the Bills Committee on Employment (Amendment) (No. 2) Bill 2000

Report of the Bills Committee on Education (Amendment) Bill 2000

WRITTEN ANSWERS TO QUESTIONS

Tenants Purchase Scheme

1. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding the sale of public rental housing (PRH) units under the Tenants Purchase Scheme (TPS), will the Government inform this Council:*

- (a) *of the number of PRH units sold and the revenue so generated in each of the first three phases of the Scheme; the respective numbers of cases in which the purchase prices were paid in lump sum and those in which the flats were bought with mortgage loans;*
- (b) *whether it plans to continue with the TPS in 2004 and beyond; and*
- (c) *whether PRH units which were completed before 1982 will be sold; if so, of the details; if not, the reasons for that?*

SECRETARY FOR HOUSING (in Chinese): Madam President, as at 23 March 2001, a total of 57 883 PRH flats were sold in the first three phases of the TPS, generating gross receipts of \$11,534 million. A breakdown by phase is as follows:

<i>Phase</i>	<i>Number of rental flats sold</i>	<i>Proceeds from sales \$ million</i>
1	20 272	4,152
2	18 398	3,808
3	19 213	3,574
Total	57 883	11,534

According to information provided by banks participating in the TPS, 27 497 mortgage loans were granted to purchasers as at 30 September 2000, representing about 55% of 50 010 flats sold at that time. Recent figures are not available.

The Housing Authority (HA) will continue to sell public rental flats and will discuss later this year details of the sale in 2004.

In selecting estates for sale, the HA will take into account the age, geographical distribution, maintenance condition, and interest and financial capability of existing tenants. The HA has not ruled out the possibility of selling rental flats built before 1982.

Security of PRH Estates Included in Comprehensive Redevelopment Programme

2. **MR JAMES TO** (in Chinese): *Madam President, with the inclusion of most blocks of Shek Kip Mei Estate into the Comprehensive Redevelopment Programme (CRP), the Administration is now rehousing the residents there and demolishing the blocks concerned. I have received complaints from residents of the Estate about drug addicts frequenting the Estate and allegedly causing law and order problems. In this connection, will the Government inform this Council, in order to ensure the safety of the households in the Estate who have yet to move out, whether it will consider installing temporary iron gates at the ground floor lobby of each housing block expeditiously; if not, the reasons for that, and of the other measures to safeguard the safety of the households?*

SECRETARY FOR HOUSING (in Chinese): Madam President, the redevelopment of Shek Kip Mei Estate is implemented in phases. Blocks covered by the initial phases are being demolished and the sites have been hoarded up to prevent unauthorized entry or criminal activities. Redevelopment for the remaining blocks has not been announced, and rehousing of tenants have not started. Entrance gates will be installed upon announcement of redevelopment of these blocks.

To enhance security, night patrols by estate security guards have been introduced. Uniformed patrols (including vertical beat patrols inside estate buildings), operations against drug offenders, vehicle checks and crime prevention publicity are carried out by the police. The Housing Department also maintains close liaison with the police and residents to provide early solutions to security concerns raised.

Operation of Container Terminals

3. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, regarding the operation of container terminals, will the Government inform this Council of:*

(a) *the respective expiry dates of the land lease of each container terminal; and*

(b) *the plans to introduce new container terminal operators?*

SECRETARY FOR ECONOMIC SERVICES (in Chinese): Madam President,

(a) There are at present eight container terminals in Hong Kong. They are operated by four companies, viz. Hongkong International Terminals Limited (HIT), Modern Terminals Limited (MTL), CSX World Terminals Hong Kong Limited and COSCO-HIT Terminals (HK) Limited. It was stipulated in the land leases granted to these companies that they could only operate their business of providing container terminal service within the designated areas. All these land leases will expire in 2047.

(b) The Container terminal 9 (CT9) is currently under construction and its land lease will also expire in 2047. The CT9 is jointly developed by HIT, MTL and Asia Terminals Limited (ATL). The CT9 will consist of six berths and the first one is expected to come on stream in May 2002. The development of the whole terminal is planned for completion in November 2004. ATL is a new operator in the container terminal industry.

Back Tax Recovered by Field Audit Group of Inland Revenue Department

4. **MR ERIC LI** (in Chinese): *Madam President, will the Government inform this Council, in respect of the cases which have been audited by the Field Audit Group of the Inland Revenue Department, of the respective amounts of back profits tax and salaries tax recovered in the assessment year 2000-01?*

SECRETARY FOR THE TREASURY (in Chinese): Madam President, the amounts of back profits tax and salaries tax recovered from cases audited by the Field Audit officers of the Inland Revenue Department in the 2000-01 year of assessment (as at the end of February 2001) are \$520 million and \$50 million respectively.

Tobacco Companies Promoting Tobacco Products Indirectly

5. **MR FREDERICK FUNG** (in Chinese): *Madam President, the Smoking (Public Health) Ordinance (Cap. 371) prohibits the publication, displaying and broadcasting of tobacco advertisements, but not those of non-tobacco products or services carrying brand names of tobacco products. In this connection, will the Government inform this Council of the measures in place to prevent tobacco companies from promoting their tobacco products indirectly through advertisements of such non-tobacco products or services (such as watches and group tours); if there are no such measures, of the reasons for that?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Madam President, the Government's policy on tobacco control is to discourage smoking and to prohibit, as much as possible, the advertising and promotion of tobacco use. Section 14(1) and (2) of the Smoking (Public Health) Ordinance (Cap. 371) specifies the meaning of tobacco advertisement. Generally speaking, if an advertisement contains inducement to purchase or smoke any tobacco product, or promotes or encourages the use of any tobacco product; or includes any trade mark or brand name of any tobacco product, it is deemed to be a tobacco advertisement. On the other hand, section 14(3)(a) of the said Ordinance states that if an advertisement or a publicity displayed object is used exclusively for a non-tobacco product or service, it is not regarded as a tobacco advertisement.

Advertisements containing brand name of tobacco products but claiming to be used exclusively for the promotion of non-tobacco products or services, such as the promotion of watches or package tours, must satisfy that the advertisements in question are genuinely and exclusively intended to be used for promoting such products or services before the exemption clause in section 14(3)(a) can apply. Each case has to be considered individually to ascertain whether there has been violation of the statutory prohibition on tobacco advertisement, having regard to the facts of the case.

There have been very few public complaints lodged in relation to section 14(3)(a) of the Ordinance. Over the past two years, we have received only two complaints on such alleged contravention. Subsequent legal advice confirmed that neither of them was found to have violated the prohibition on tobacco advertisement.

Reception Problem of RTHK's Putonghua Channel

6. **MISS CHOY SO-YUK** (in Chinese): *Madam President, in view of the poor reception of Radio Television Hong Kong (RTHK)'s Putonghua Channel programmes at many places in Hong Kong, which are now broadcast by amplitude modulation (AM), will the Government inform this Council:*

- (a) *whether it has assessed if the reception problem has hindered the promotion of Putonghua in Hong Kong; if the assessment result is in the affirmative, of the improvement measures; if the assessment concludes otherwise, the justifications for that; and*
- (b) *of the measures to solve the problem, including whether it will consider switching the Putonghua Channel to frequency modulation (FM) broadcasting?*

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

- (a) Enabling our students and workforce to be biliterate and trilingual is one of the Government's policy objectives. The Government spares no efforts in promoting Putonghua at different levels and through various channels. For example, the Curriculum Development Council has made Putonghua a core subject in primary and junior secondary classes; the Language Fund and the Quality Education Fund have held promotional activities and programmes on Putonghua.

The Putonghua Channel of RTHK also plays an important role in the promotion of Putonghua. Apart from broadcasting Putonghua programmes, RTHK seeks to optimize the functions of the

Putonghua Channel through organizing different kinds of promotional activities such as regional seminars on Putonghua programmes, inter-tertiary institution Putonghua debates and Guangdong-Hong Kong-Macau Putonghua competition.

Due to the limitation of the FM spectrum, the Putonghua Channel is now broadcast on AM. In view of the technical constraints of AM broadcasting, RTHK has taken active measures to improve its reception (please refer to part (b) of our reply for details).

- (b) Technically speaking, frequencies currently available for FM broadcasting can accommodate at most seven radio channels for territory-wide coverage. Of these service channels, three have been allocated to RTHK and two to each of the two commercial radio stations.

The three FM channels allocated to RTHK are used by Radio 1 (FM 92.6 to 94.4 MHz), Radio 2 (FM 94.8 to 96.9 MHz) and Radio 4 (FM 97.6 to 98.9 MHz) respectively. Radio 1 mainly provides news and current affairs programmes; Radio 2 provides youth programmes and programmes on social service activities; and Radio 4 provides classical music, arts and cultural programmes.

FM broadcasting does perform better than AM broadcasting in terms of reception quality. However, since all FM frequencies available for territory-wide coverage have been allocated, no spare spectrum is left for the Putonghua Channel to provide territory-wide FM broadcasting service.

To improve the reception quality of AM broadcasting, RTHK launches "Easy Reception" services regularly every year by sending out engineers to help AM channel audience solve their antenna problems. In addition, RTHK has been liaising with the Office of the Telecommunications Authority to examine the feasibility of installing localized FM transposers in areas with reception difficulties so as to provide AM channel audience in these areas with FM broadcasting services. Currently, the audience in Happy Valley and Causeway Bay can tune in to RTHK's Putonghua Channel programmes through FM (FM 100.9 MHz).

International Human Rights Treaties Applicable to HKSAR

7. **MISS CYD HO** (in Chinese): *Madam President, it has been reported that the Government of the Hong Kong Special Administrative Region (SAR) has proposed to the Central People's Government the removal of the reservations made by the Government of the United Kingdom in respect of the International Covenant on Economic, Social and Cultural Rights (ICESCR) when it was extended to Hong Kong in 1976. Regarding the ICESCR and five other international human rights treaties applicable to the SAR, will the Government inform this Council:*

- (a) *of the reservations made in respect of the ICESCR that have been proposed for removal; if only some of the reservations have been proposed for removal, when it plans to propose the removal of the remaining reservations; if it has no plan to remove all the reservations, of the reasons for that;*
- (b) *whether it will propose that the Central People's Government, on behalf of the SAR, remove the reservations made in respect of the other five international human rights treaties applicable to the SAR as well; if so, when it will put forward such a proposal; if not, of the reasons for that; and*
- (c) *as the Standing Committee of the National People's Congress made a declaration with respect to subparagraph 1(a) of Article 8 of the ICESCR when ratifying it at the end of February this year, stating that the Chinese Government would handle, in accordance with relevant legislation, matters concerning the right to freely form and join trade unions, whether it has assessed if the declaration is applicable to the SAR; if it is applicable, of the measures it will adopt to ensure that the right to form and join trade unions as enjoyed by Hong Kong people will not be affected?*

SECRETARY FOR HOME AFFAIRS (in Chinese): *Madam President, taking the Honourable Member's question *seriatim*:*

- (a) *Following a review of the Reservations and Declarations under the ICESCR we advised the Central People's Government that:*

- (i) the reservation against Article 6 provides the Government with the necessary flexibility in formulating measures to protect the interests and employment opportunities of local workers. There are no plans to withdraw this reservation;
 - (ii) the reservation against Article 7 reflects the position at the time when the Covenant was extended to Hong Kong (1976). It no longer has practical effect because the Sex Discrimination Ordinance now provides for the right to equal pay of men and women for equal work in the private sector. We have proposed to withdraw this reservation; and
 - (iii) the reservation against Article 8 also reflects the situation in 1976. Trade unions are now free to form federations within the SAR and to affiliate with organizations of workers, employers and relevant professional organizations in foreign countries following the amendment of the Trade Union Ordinance. In the light of that amendment, we have proposed replacing this reservation with an interpretative declaration;
- (b) The position regarding the other five human rights treaties is as follows:

International Covenant on Civil and Political Rights (ICCPR): we shall review the reservations and declarations under this Covenant — and notify the Central People's Government of the outcome — in due course. We understand the Central People's Government will lodge any reservations in respect of the SAR with the United Nations when it ratifies the Covenant.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): the only reservations are those in relation to Articles 20 and 30 (paragraph 1). These are of national application and are therefore a matter for the Central People's Government.

Convention on the Rights of the Child (CRC): there are two interpretative declarations and four reservations:

- the interpretative declarations concerning live births and the definition of "parents" explain our understanding of the application of the Convention. We shall maintain them for the avoidance of doubt;
- the reservation relating to the entry of those who do not have the right to enter and remain in the SAR is to protect immigration policies that are in place for the purposes of immigration control and safeguarding the interests of the local workers;
- we are reviewing the reservation on children seeking asylum. Should we conclude that it is no longer necessary, we will advise the Central People's Government of the outcome in due course;
- the Occupational Safety and Health Ordinance already provides adequate protection for the safety and health of employees, including young persons. We intend to maintain the reservation against Article 32(2)(b).
- the reservation against Article 37(c) is to cater for the rare occasions where it may not be practical to guarantee the full separation of children from adults in penal institutions under all circumstances, given the prison overcrowding. In practice, young offenders are kept apart from adults at all times in all penal institutions. In rare cases where it is necessary to admit young prisoners to adult prisons, they are also kept separate from adults.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): the reservation against Article 22 is of national application and therefore a matter for the Central People's Government. The declaration against Article 6 — concerning "reparation and satisfaction" — explains our understanding of the application of the Convention. We intend to maintain it for the avoidance of doubt.

International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): we are reviewing our reservations and declarations under this Convention. Should we

conclude that any of them are no longer necessary and/or that any of them may be modified, we will advise the Central People's Government in due course. The reservation against Article 29(1) is of national application and is therefore a matter for the Central People's Government.

- (c) The following declaration in the Central People's Government's instrument of ratification of the ICESCR applies to the SAR Government:

"In accordance with the official notes addressed to the Secretary-General of the United Nations by the Permanent Representative of the People's Republic of China to the United Nations on 20 June 1997 and 2 December 1999 respectively, the International Covenant on Economic, Social and Cultural Rights shall be applicable to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China and shall, pursuant to the provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China, be implemented through the respective laws of the two special administrative regions;" .

Implementation of Chiropractors Registration Ordinance

8. **MR LAW CHI-KWONG** (in Chinese): *Madam President, regarding the implementation of the Chiropractors Registration Ordinance (Cap. 428) (the Ordinance) and the composition of the Chiropractors Council, will the Government inform this Council:*

- (a) *why some provisions of the Ordinance, which was enacted in 1993, have not yet been put into operation; whether a timetable has been drawn up for implementing these provisions; if so, of the details; if not, the reasons for that; and*
- (b) *whether it has assessed if the five chiropractors serving as members of the existing Chiropractors Council can sufficiently represent the chiropractic profession; of the expiry dates of their appointments; and whether there are plans to appoint as members of the Council*

chiropractors affiliated with various trade associations or organizations when the opportunity arises, so as to enhance the Council's representativeness?

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

- (a) The Ordinance provides for the regulation of the practice of chiropractic through a system of registration and disciplinary control of chiropractors and the establishment of a Chiropractors Council as the regulatory authority. Those provisions of the Ordinance relating to the establishment of the Chiropractors Council and the regulation-making powers have been brought into operation. The Council was set up in 1993 and has been making preparation to enable the registration of chiropractors. Provisions of the Ordinance relating to the registration and disciplinary procedures will be brought into operation once the Council has worked out the registration arrangements.

Following protracted discussions, the Council has prepared a Code of Practice for Chiropractors and recently finalized the Chiropractors (Registration and Disciplinary Procedure) Rules (the Rules). Accordingly, on 6 April 2001, we will gazette the Chiropractors Registration (Fees) Regulation and the Chiropractors Registration Ordinance (Commencement) Notice 2001 (which will bring into force relevant provisions of the Ordinance in April and June 2001), for tabling at the Legislative Council on 25 April 2001. A Legislative Council brief on the Notice and the Regulation has been issued to Members on 3 April 2001. The Council also plans to enact the Rules shortly.

Subject to Members' views, the subsidiary legislation mentioned above will enable the Council to implement the registration system for chiropractors with effect from the second half of this year. By then all the provisions of the Ordinance will have become effective, except for section 24(h) and (i), which prohibit the practice of chiropractic by persons other than registered chiropractors with valid practising certificates. The latter provisions will come into force at a later date after the completion of the registration exercise.

- (b) All the unofficial members of the Chiropractors Council are appointed in their personal capacities and on their own merits. We are of the view that the five chiropractors currently appointed to the Council are broadly representative of the chiropractic profession. Given the small number (50) of practising chiropractors in Hong Kong, these five members account for one tenth of the entire profession. Their terms of appointment will expire on 31 July 2001. We will, as usual, consider all suitable candidates when making future appointments.

Supply and Demand of District Open Space and Local Open Space in Kwun Tong and Wong Tai Sin Districts

9. **MR FRED LI** (in Chinese): *Madam President, regarding the supply-and-demand of District Open Space and Local Open Space in Kwun Tong District and Wong Tai Sin District, will the Government inform this Council:*

- (a) *of the current population and the respective areas designated for these two types of space in each of these two districts, and the geographical statistical breakdowns by:*
- (i) *the regions for which various Area Committees under the Home Affairs Department are responsible (HAD regions); and*
 - (ii) *the zones as delineated by Approved Outline Zoning Plans (planning zones);*
- (b) *according to the Hong Kong Planning Standards and Guidelines (HKPSG), the respective areas of the two types of space that should be provided in these two districts, their HAD regions and planning zones;*
- (c) *of details of the supply-and-demand situation in the next 10 years regarding the two types of open space in these two districts, their HAD regions and planning zones; and*

- (d) *if the provision of the two types of open space in these two districts, their HAD regions or planning zones are below the relevant standards set in the HKPSG, of the long-term measures in place to meet the shortfall?*

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

(a), (b) and (c)

As the planning for provision of open space is made according to planning zones but not HAD regions, it is not appropriate to analyse the supply and demand of open space on the basis of HAD regions.

The supply and demand of open space in Kwun Tong District and Wong Tai Sin District is detailed in the tables below.

Local Open Space

<i>Planning Zone</i>	<i>Population in 2000</i>	<i>Design population in the long term</i>	<i>According to the population in 2000</i>		<i>According to the design population in the long term</i>	
			<i>Planning Standard (hectare)</i>	<i>Actual Provision in 2000 (hectare)</i>	<i>Planning Standard (hectare)</i>	<i>Planned Provision (hectare)</i>
<i>Kwun Tong District</i>						
Ngau Tau Kok and Kowloon Bay	179 500	216 200	17.95	18.02	21.62	21.97
Kwun Tong (South)	322 300	366 600	32.23	29.61	36.66	38.58
Kwun Tong (North)	-	57 900	-	-	5.79	5.75
Cha Kwo Ling, Yau Tong, Lei Yue Mun	76 900	206 400	7.69	10.26	20.64	24.53
Total	578 700	847 100	57.87	57.89	84.71	90.83

<i>Planning Zone</i>	<i>Population in 2000</i>	<i>Design population in the long term</i>	<i>According to the population in 2000</i>		<i>According to the design population in the long term</i>	
			<i>Planning Standard (hectare)</i>	<i>Actual Provision in 2000 (hectare)</i>	<i>Planning Standard (hectare)</i>	<i>Planned Provision (hectare)</i>
<i>Wong Tai Sin District</i>						
Wang Tau Hom and Tung Tau	145 900	158 700	14.59	13.33	15.87	15.40
Tsz Wan Shan, Diamond Hill and San Po Kong	210 500	269 600	21.05	21.79	26.96	30.59
Ngau Chi Wan	89 100	91 000	8.91	8.77	9.10	10.07
Total	445 500	519 300	44.55	43.89	51.93	56.06

District Open Space

<i>Planning Zone</i>	<i>Population in 2000</i>	<i>Design population in the long term</i>	<i>According to the population in 2000</i>		<i>According to the design population in the long term</i>	
			<i>Planning Standard (hectare)</i>	<i>Actual Provision in 2000 (hectare)</i>	<i>Planning Standard (hectare)</i>	<i>Planned Provision (hectare)</i>
<i>Kwun Tong District</i>						
Ngau Tau Kok and Kowloon Bay	179 500	216 200	17.95	9.15	21.62	31.91
Kwun Tong (South)	322 300	366 600	32.23	10.58	36.66	20.11
Kwun Tong (North)	-	57 900	-	-	5.79	1.80
Cha Kwo Ling, Yau Tong, Lei Yue Mun	76 900	206 400	7.69	5.60	20.64	15.29
Total	578 700	847 100	57.87	25.33	84.71	69.11

<i>Planning Zone</i>	<i>Population in 2000</i>	<i>Design population in the long term</i>	<i>According to the population in 2000</i>		<i>According to the design population in the long term</i>	
			<i>Planning Standard (hectare)</i>	<i>Actual Provision in 2000 (hectare)</i>	<i>Planning Standard (hectare)</i>	<i>Planned Provision (hectare)</i>
<i>Wong Tai Sin District</i>						
Wang Tau Hom and Tung Tau	145 900	158 700	14.59	21.62	15.87	21.62
Tsz Wan Shan, Diamond Hill and San Po Kong	210 500	269 600	21.05	7.96	26.96	22.25
Ngau Chi Wan	89 100	91 000	8.91	-	9.10	4.08
Total	445 500	519 300	44.55	29.58	51.93	47.95

The supply and demand of open space in the two districts in the next 10 years will depend on the progress of the construction works of the public and private housing projects and related open space development within the districts.

- (d) Both Kwun Tong and Wong Tai Sin are old built-up areas. In the long run, additional open space will be provided as far as possible through redevelopment and urban renewal projects within the districts, such as the two major "Comprehensive Development Areas" in Yau Tong Bay and Yau Tong Industrial Area. In addition, the proposed South East Kowloon Development will straddle Kwun Tong, Wong Tai Sin and Kowloon City Districts. Additional open space will be reserved in the South East Kowloon Development Area to increase the total supply of open space in the three districts.

Parking Problem at Beach Road

10. **MR HOWARD YOUNG:** *Madam President, I have received complaints that tourist coaches bound for Repulse Bay Beach cannot find enough parking lots in the vicinity and have to park along the narrow Beach Road, and that the wooden boards now enclosing the construction works alongside the Lido section of Beach Road are very unsightly. Given that Repulse Bay Beach is a popular tourist spot and in view of the upcoming swimming season, will the Government inform this Council whether it will take measures to improve the parking condition there and the streetscape of Beach Road?*

SECRETARY FOR TRANSPORT: Madam President, to meet the demand of coaches in the vicinity of the Repulse Bay Beach, the Transport Department has designated picking up/setting down area and on-street parking spaces along Beach Road where road conditions permit. At present, there is a 45 m long lay-by at the northern kerbside of Beach Road near the Lido development for the exclusive use of coaches between 7.00 am and 7.00 pm for picking up and setting down of passengers. Opposite to this lay-by is a coach parking area, which could accommodate about 12 20-seater or six 40-seater tourist coaches. In addition, the Transport Department plans to provide three additional coach parking spaces to the north of Beach Road near South Bay Path by trimming part of the existing footpath. This proposal is currently under consultation and is expected to be implemented in a few months' time.

The wooden boards at the Lido redevelopment are erected by the private developer as a temporary measure to fence off the vacated site. These temporary hoardings will be replaced by permanent ones in about two months' time after the hoarding plan in respect of the redevelopment has been approved by the Buildings Department. We will urge the developer to provide decent and good-looking permanent hoardings during the redevelopment period.

Cross-border Infrastructural Projects

11. **DR RAYMOND HO** (in Chinese): *Madam President, with regard to cross-border infrastructural projects, will the Government inform this Council:*

- (a) *of the number and average frequency of meetings held by the Hong Kong and Mainland Cross-Boundary Major Infrastructure Co-ordinating Committee (ICC) since the reunification, as well as the date of the last ICC meeting; and*
- (b) *whether, in comparison with Hong Kong, the relevant mainland authorities make faster progress in constructing cross-border road and railway links; if so, of the reasons for that and the names of the infrastructural projects involved; as well as how it plans to expedite the works on the Hong Kong side?*

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

- (a) The ICC was established and held its first plenary meeting on 16 October 1997. Since then, 17 formal meetings have been held by the various panels/expert groups under the ICC and over 10 informal working meetings on different topics have been conducted by experts from both sides. On average, the experts met around 10 times annually in the past three years.
- (b) The cross-boundary infrastructural projects being considered by the Government of the Hong Kong Special Administrative Region and the relevant mainland authorities include the Shenzhen Western Corridor linking Shekou in Shenzhen and Hong Kong, and the Huanggang — Lok Ma Chau Passenger Crossing. The construction works of these two projects have not yet commenced. We shall continue to co-ordinate closely with the relevant mainland authorities to ensure the good progress of the relevant construction projects.

Proximity of Refuse Collection Vehicle Depots to Residential Premises

12. **MR ALBERT CHAN** (in Chinese): *Madam President, the Food and Environmental Hygiene Department's (FEHD) refuse collection vehicle depot in Yuen Long has long daily operation hours and generates stench and noises, causing serious nuisances to the residents of Tin Wah Estate in Tin Shui Wai,*

which is less than 20 m away. In this connection, will the Government inform this Council:

- (a) of the solution to the above problem;*
- (b) whether it will consider relocating refuse collection vehicle depots which are quite close to residential premises; and*
- (c) how the relevant authorities will avoid such problems when planning for land uses in the future?*

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

- (a) The Yuen Long Vehicle Depot under the FEHD is used for parking, repair and cleaning of refuse collection vehicles and other vehicles of the department. Since the implementation of the following measures to minimize the impact of noise and odour resulting from the operation of the vehicle depot, the situation has been significantly improved:
 - (i) Direct that all refuse collection vehicles be parked at the southern part of the depot so that they are further away from Tin Wah Estate;
 - (ii) Instruct drivers to avoid revving of vehicle engines during engine ignition as far as possible to prevent unnecessary noise;
 - (iii) Prohibit the use of public address system before 8 am, and lower the volume as far as possible when it is in use afterwards;
 - (iv) Avoid cleaning the floor of the depot and refuse collection vehicles at the same time to avoid excessive noise;

- (v) Arrange to clean the refuse collection vehicles before leaving the landfills and clean them further after returning to the depot. The floor of the depot will be cleaned thoroughly afterwards, and the drains will be kept unobstructed to avoid emission of odour from water accumulated; and
 - (vi) Plant trees and flowering plants around the depot to beautify the surroundings and lower the noise level.
- (b) Among the 10 vehicle depots under the FEHD, only Yuen Long Vehicle Depot, Sai Yee Street Vehicle Depot in Mong Kok and Whitfield Vehicle Depot in North Point are relatively closer to residential areas. Since the overall development of the Tin Shui Wai and Tuen Mun New Towns have largely been completed, it is very difficult to find another suitable site to relocate the Yuen Long Vehicle Depot. As regards the other two vehicle depots, the FEHD is now studying the feasibility of further contracting out the refuse collection and street cleansing services, the result of which will affect the size of the vehicle fleet as well as the demand for vehicle depots in future. Therefore, the FEHD will not consider relocating these two vehicle depots for the time being. Nevertheless, it will continue to take appropriate measures to minimize the impact caused to nearby residents.
- (c) The Hong Kong Planning Standards and Guidelines (HKPSG) have already set out standards for planning facilities that may cause pollution of air, noise, and water. The Government will make reference to these guidelines in the planning for land use. We will also consult departments concerned and solicit public views through the District Councils in future planning of similar facilities, and take abatement measures to ensure that no nuisance will be caused to the environment and residents in the vicinity.

Search for Missing Persons

13. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding the search for missing persons, will the Government inform this Council of:*

- (a) *the number of reports to the police on person missing in each of the past three years, together with a breakdown of the missing persons concerned by sex and age group (each covering five years);*
- (b) *the number of missing persons found in each of the past three years;*
- (c) *the usual channels for the Administration to search for missing persons; and*
- (d) *the circumstances under which the Administration will pass information about missing persons to the relevant mainland authorities, and request their assistance in searching for these persons?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) and (b)

The required statistics on missing persons and the number of missing persons located in the past three years are at Annex.

- (c) Upon receiving a missing person report, the police will obtain all relevant details about the missing person including his/her name, identity card number, alias(es), photograph, contact method, physical description, special characteristics, time and place last seen, usual haunts, names and address of associates, and so on.

The police will promptly commence action and inquiry in accordance with established procedures in tracing the whereabouts of the missing person. Officer receiving the report shall immediately:

- conduct a check against the police "Enhanced Police Operational Nominal Index Computer System" to find out if the missing person has been arrested, is a wanted person, or has been reported missing;

- carry out a check with the hospitals' Accident and Emergency Wards and the Police Traffic Accident Investigation Unit to see if the person has been admitted to hospital;
- if the missing person is an adult female, check with Harmony House to establish whether the subject person has taken refuge there.

If the missing person cannot be located as a result of the actions above, the police will consider organizing search operations where appropriate with a view to locating the missing person. Personal data of the missing person and the report details will be broadcast immediately via the Police Communications Systems to all outdoor patrol officers. All searching actions will be co-ordinated by the Regional Command and Control Centres. There are dedicated Missing Person Units established in each Police Region, which conduct follow-up inquiries into each missing person report.

- (d) The police have in place operational guidelines on the passing of information to the Mainland law enforcement agencies. When circumstances so warrant, for example, if family members of the missing person indicated that the latter might have gone to the Mainland before his disappearance, the police will inform the relevant Public Security Bureau and request for assistance to locate the subject missing person in the Mainland. There are also established channels of communication between the Liaison Bureau of Police Headquarters and Public Security Bureau in the Mainland to allow regular exchange of information and discuss cases of mutual interest.

Number of Missing Person Reports in 1998 to 2000

	<i>Under 2 years</i>		<i>2 to 6 years</i>		<i>7 to 15 years</i>		<i>16 to 20 years</i>		<i>21 years and over</i>		<i>All</i>		<i>Under 16 years</i>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
2000														
Missing	11	11	54	34	1 129	1 939	424	697	1 884	1 401	3 502	4 082	1 194	1 984
Located	10	10	48	27	1 115	1 933	410	685	1 594	1 151	3 177	3 806	1 173	1 970
											(91%)	(93%)	(98%)	(99%)
1999														
Missing	10	9	46	33	1 029	1 680	364	692	1 933	1 217	3 382	3 631	1 085	1 722
Located	6	6	38	31	999	1 688	349	652	1 594	1 036	2 986	3 413	1 043	1 725
											(88%)	(94%)	(96%)	(100%)
1998														
Missing	7	8	59	49	992	1 746	342	577	1 652	1 140	3 052	3 520	1 058	1 803
Located	7	7	55	42	963	1 661	321	547	1 297	933	2 643	3 190	1 025	1 710
											(87%)	(91%)	(97%)	(95%)

Note:

- 1) The police do not maintain a breakdown of missing person reports for age groups of every five years.
- 2) The number of missing persons located in a particular year can exceed the number of reports in the same year as certain number of missing persons may have been located in the subsequent years.

Closed Aqueduct being Constructed in Guangdong Province

14. **MISS EMILY LAU** (in Chinese): *Madam President, in 1998, the Government provided an interest-free loan of HK\$2,364 million to the Guangdong Provincial People's Government to help finance the construction of a closed aqueduct in Guangdong Province for conveying potable water from Dongjiang to Hong Kong. The construction project commenced in August last year and is expected to be completed in 2003. However, some Hong Kong deputies to the National People's Congress have recently raised queries on the project, claiming that the water quality of the lower reaches of Dongjiang will deteriorate upon the commissioning of the aqueduct. In this connection, will the executive authorities inform this Council whether:*

- (a) they know the details of the queries mentioned above and whether they have examined if such queries are well founded;*
- (b) they know the current progress of the construction project; and*
- (c) to prevent the pollution of Dongjiang water, they will propose to the relevant mainland authorities suspending the construction project and, in its place, building adequate sewage treatment works along the mainstream and tributaries of Dongjiang?*

SECRETARY FOR WORKS (in Chinese): Madam President,

- (a) We value very much those opinions and suggestions on the closed aqueduct project and have raised them for discussion with the Guangdong side. In fact, when appraising the closed aqueduct project, the Guangdong side has taken into account the need to maintain the quality of the raw water conveyed to Hong Kong and also studied the pollution problem of the catchment of the Dongjiang tributaries. Based on the findings, the Guangdong side has concluded that the best solution to protect the quality of Dongjiang water supplied to Hong Kong is to implement the closed aqueduct project in parallel with pollution control schemes for the catchment area.

The Guangdong side has also advised that in addition to the closed aqueduct project, they would step up efforts to protect the water quality and tackle the sources of pollution within the catchment of the Dongjiang tributaries to ensure the discharged water meets the specified standard. As such, the pollution problem of the catchment of the tributaries will not be transferred to the lower reaches of Dongjiang, preventing the deterioration of the water quality of the lower reaches.

The Guangdong side has also stressed that when they selected the Taiyuan pumping station as the intake point of Dongjiang water, they have carried out many hydraulic modelling tests to ensure that the discharged water from the Dongjiang tributaries would not be drawn by the pumping station.

As regards water supply to the catchment of the Dongshen Water Supply System (Shima River), a number of tapping points have been included in the design of the closed aqueduct project to supply water to towns along Shima River for domestic use. Besides, adequate amount of water has also been reserved for irrigation purpose.

- (b) As revealed by the Guangdong side's report and the Hong Kong side's site inspection, the closed aqueduct project has made good progress since its commencement on 28 August 2000. The construction works are divided into 16 tenders, 14 of which have already been started. The remaining tenders will soon commence in mid-2001. The whole project is expected to be completed in 2003.
- (c) Both the Guangdong side and the Hong Kong side consider that in addition to the implementation of the closed aqueduct project, the long-term solution to the pollution of Dongjiang water is to construct sewage collection systems and sewage treatment works. A number of major sewage treatment works have been established at Tangxia, Yantian and Pinghu during the past few years. Similar sewage treatment works are also currently under construction at Huizhou, Dongguan, Shenzhen and other areas. The Hong Kong side will, through various channels, continue to liaise with the Guangdong side to discuss the strategies for the improvement of the

quality of Dongjiang water and monitor their effectiveness to prevent the pollution of Dongjiang water.

Breakdowns of Revenue on Profits Tax and Salaries Tax in 2000-01

15. **MR ERIC LI** (in Chinese): *Madam President, will the Government provide this Council with the following breakdowns of the revenue on the profits tax and salaries tax, estimated to be \$41.2 billion and \$25.5 billion respectively, in the 2000-01 assessment year:*

- (a) *the respective amounts of taxes levied on the assessable profits and income earned in that assessment year;*
- (b) *the respective amounts of provisional profits and salaries taxes levied on the assessable profits and income estimated to be earned in the following assessment year;*
- (c) *the respective amounts of back taxes levied in respect of past assessment years; and*
- (d) *the amounts of protective assessments made in respect of cases under investigation?*

SECRETARY FOR THE TREASURY (in Chinese): Madam President, the requested information in respect of assessments of profits tax and salaries tax made in 2000-01 (up to 28 February 2001) is set out in the following paragraphs.

- (a) The respective amounts of taxes levied on the assessable profits and income earned in the 1999-2000 year of assessment, after deducting the 1999-2000 provisional taxes levied in 1999-2000, are as follows:

<i>Tax Type</i>	<i>\$ (in million)</i>
Profits Tax	7,100
Salaries Tax	4,700

- (b) The respective amounts of 2000-01 provisional taxes are as follows:

<i>Tax Type</i>	<i>\$ (in million)</i>
Profits Tax	34,700
Salaries Tax	23,400

- (c) The respective amounts of back taxes levied by Field Audit and Investigation officers of the Inland Revenue Department in respect of past assessment years are:

<i>Tax Type</i>	<i>\$ (in million)</i>
Profits Tax	1,700
Salaries Tax	300

- (d) The respective amounts of protective assessments made in respect of cases under investigation by Field Audit and Investigation officers are:

<i>Tax Type</i>	<i>\$ (in million)</i>
Profits Tax	960 ¹
Salaries Tax	130

It should be noted that the above figures reflect the Commissioner of Inland Revenue's assessments of profits tax and salaries tax made rather than revenue collected. They do not tally with the 2000-01 revised estimates of \$41.2 billion for profits tax and \$25.5 billion for salaries tax, which refer to the revenue estimated to be collected in 2000-01. This is because the revenue collected in any year is influenced not only by the assessments made during the year but also by payments of tax assessments in the past years, including arrears. Moreover, part of the tax amount assessed in a year would not be payable until the following year, or even later if in default.

¹ Out of \$960 million, some \$560 million are related to two large cases, each of which involves a group of companies where protective assessments were required in respect of different members of the group.

Assistance to Hong Kong Businessmen Operating in Mainland

16. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, at the meeting of the Panel on Commerce and Industry of this Council on 8 January this year, the Administration advised that the relevant mainland authorities were considering posting representative(s) of the Mainland's Customs General Administration to the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region to assist Hong Kong businessmen in reflecting matters about the enforcement of law by customs authorities of the Mainland. In this connection, will the Government inform this Council whether it knows the progress thereof, including the specific responsibilities of the representative(s) concerned?*

SECRETARY FOR COMMERCE AND INDUSTRY (in Chinese): Madam President, we understand that the matter is still being considered by the relevant authorities in the Mainland.

Conviction Rate of Pick-pocketing Offences

17. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it has been reported that last year saw a substantial increase in the number of cases in which tourists were pick-pocketed in Hong Kong, as compared to the preceding year. In this connection, will the Government inform this Council of:*

- (a) the conviction rate on pick-pocketing offences last year, and the conviction rate in those cases in which the victims were tourists; and*
- (b) the measures in place to boost the conviction rate in respect of those cases in which the victims were tourists, such as by simplifying the prosecution procedure and shortening the time for setting down the cases for trial?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) According to police figures, there were 93 reported cases of pick-pocketing involving tourists in 2000, compared with 92 cases in

1999. The increase was therefore very marginal and by no means substantial.

Figures of conviction rate in 2000 are only available for the first half of the year. In the first half of 2000, 99 defendants of pick-pocketing offences were prosecuted and all of them were convicted, representing a 100% conviction rate. This compares with a conviction rate of 99.1% in 1999 with 223 defendants prosecuted of which 221 were convicted. Breakdown for the conviction rate of cases in which the victims are tourists is not available.

- (b) It is the common policy of the police, the Department of Justice and the Court to expedite the processing of cases of pick-pocketing in which the victims are tourists.

The prosecution may apply for the listing of the trial for hearing in one or two days so that the tourist victim is able to give evidence during his or her stay in Hong Kong.

The police may also bring the tourist victim to standby in court upon the plea of the defendant. If it is allowed by the Court, the victim is called to give evidence immediately after the defendant pleads not guilty, on the same day.

It is also a general practice that the Court makes special arrangements and fixes the earliest possible trial date or allows the tourist to testify first so that the tourist victim may leave early.

Comprehensive Redevelopment Programme for PRH Estates

18. **MR FRED LI** (in Chinese): *Madam President, regarding the Comprehensive Redevelopment Programme (CRP) for public rental housing estates, will the Government inform this Council:*

- (a) *of the time lapse to date since the site at Lam Tin Estate became vacant after Blocks 1 to 4 were demolished under the Programme, and the reasons for that; as well as the details and timeframe of the development plan concerned;*

- (b) *of the number of CRP sites which have been left vacant for more than one year in the past three years, and the locations of such sites as well as the reasons for individual sites being left vacant; and*
- (c) *whether it has formulated policies or internal guidelines on the progress of the redevelopment programme and the maximum permissible period for such sites to be left vacant and so on; if it has, of the details?*

SECRETARY FOR HOUSING (in Chinese): Madam President,

- (a) Blocks 1 to 4 of Lam Tin Estate were demolished in August 1999. The site has since been left vacant owing to a change in development strategy. In order to maximize site potential, the original layout featuring standard block design using the existing phase boundary has been dropped in favour of a new site-specific design covering adjacent sites as well. As a result, more time is needed for redesigning the project and discussion with other concerned departments on site swapping and layout of facilities to be included, namely, a Home Ownership Scheme project, a primary school, an indoor recreation centre, a bus terminus and a light goods vehicle park. Construction will commence in March 2002 for completion in 2006.
- (b) In the past three years, no site under the CRP, apart from Lam Tin Blocks 1 to 4, has been left vacant for more than a year.
- (c) Our normal policy is to commence site formation and construction work soon after a site is cleared.

Employment of Disabled Persons

19. **DR RAYMOND HO** (in Chinese): *Madam President, with regard to the employment of disabled persons, will the Government inform this Council:*

- (a) *whether it has conducted statistical surveys on the employment situation of disabled persons in the past three years, with specific*

reference to the first year after they graduated from or dropped out of school; if so, of the details;

- (b) whether government departments provide employment specifically for disabled persons; if so, of the details; and*
- (c) of the measures in place to assist the disabled in finding employment?*

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

- (a) In conducting the General Household Survey, the Census and Statistics Department in general does not collect information on whether the interviewees are disabled and their year of graduation. It is likely that employment surveys are conducted for disabled graduates by individual organizations. For example, regular surveys on the employment status of skill centre graduates are conducted by the Vocational Training Council. According to the information provided, in 1999, graduates of the centres had a placement rate of 64% while 7% of the graduates continued their studies.
- (b) The Government has always been concerned with the employment of the disabled and has encouraged various departments to employ the disabled with suitable abilities. The Government's policy is to allow the disabled to take up suitable posts as far as possible. By assisting the disabled in securing jobs and hence enabling them to be integrated into the society, it is hoped that they will make full use of their potential on employment, social and economic settings. It is our established policy to give an appropriate degree of preference to the disabled when they apply for government posts and are found suitable for appointment. A disabled person found suitable to carry out duties of a particular post may be recommended for appointment even though he/she may not be able, on account of his/her disability, to perform the duties of every post in the same rank.

By the end of last year, a total of 3 847 disabled persons were employed by the Government, representing 2% of the total number of civil servants.

- (c) The Selective Placement Division of the Labour Department is tasked with assisting the disabled in securing jobs. Apart from providing disabled job-seekers with employment counselling, job matching, job referral and post-employment follow-up services, placement officers of the Division also actively pay visits to employers of public and private organizations so as to secure more vacancies for disabled job-seekers. To promote public acceptance of people with disabilities, and to enhance their opportunities of open employment, the Division regularly organizes various public education and promotional activities, including talks, exhibitions, seminars held jointly with employers' associations, presentation of awards to enlightened employers and outstanding disabled employees, and production of radio programmes.

The Division also continues to introduce new measures to promote the employment opportunities of the disabled. The Trial Placement Scheme for People with a Disability, first launched in September 2000, aims at encouraging employers to give a trial placement to the disabled. This will enhance employers' understanding of the working abilities of the disabled, thereby encouraging more employers to employ them voluntarily. Moreover, the Scheme allows the disabled to develop a sense of achievement, hence dignity and respect, through their integration into society with their own abilities. Initial result of the Scheme has been satisfactory, with 73% of the disabled trial workers being offered full employment by the employers after the trial period.

A Self Help Integrated Placement Service (SHIPS) will be developed and implemented by the Division this year. The programme is designed to enhance disabled job-seekers' job searching skills through group counselling and to encourage them to be more proactive in the search for jobs by making use of computer facilities and career information provided in the offices to search and apply for suitable jobs on their own initiatives.

In recent years, the Division has greatly enhanced the efficiency and effectiveness of the placement service for the disabled through various measures. The placement rate of the disabled rose significantly from 40% in 1998 to 53% last year. The number of people receiving assistance grew to 3 800 and those who got employment exceeded 2 000.

Protection of Private Domestic Flat Owners from Wilful Defaults on Rent Payments by Tenants

20. **MR ALBERT CHAN** (in Chinese): *Madam President, regarding the protection of owners of private domestic flats from tenants who wilfully default on rent payments, will the Government inform this Council:*

- (a) of the measures in place to protect the owners from defaults on rent payments; and*
- (b) of the timing to introduce amendments to the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) with a view to strengthening the protection of owners' rights?*

SECRETARY FOR HOUSING (in Chinese): Madam President, default of rental payment is a breach of contract. Landlords may seek civil remedies, such as applying to the Court for repossession of premises or distress for rent, in accordance with the Landlord and Tenant (Consolidation) Ordinance. Where the arrears of rent is less than \$50,000, landlords may seek to recover the amount through the Small Claims Tribunal.

Since 2 April 2001, the Rating and Valuation Department has extended its advisory service to landlords who wish to take legal action against defaulting tenants. The Department and the Registry of the Lands Tribunal also distribute information and forms to familiarize landlords with the statutory repossession procedures.

We plan to introduce the Landlord and Tenant (Consolidation) (Amendment) Bill within the 2000-01 legislative session. The Bill will expedite present procedures for repossession of domestic premises on the ground of non-payment of rent.

BILLS**First Reading of Bills**

PRESIDENT (in Cantonese): Bills: First Reading.

ATTACHMENT OF INCOME ORDERS (AMENDMENT) BILL 2001**BANKING (AMENDMENT) BILL 2001**

CLERK (in Cantonese): Attachment of Income Orders (Amendment) Bill 2001
Banking (Amendment) Bill 2001.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

ATTACHMENT OF INCOME ORDERS (AMENDMENT) BILL 2001

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I move that the Attachment of Income Orders (Amendment) Bill 2001 be read the Second time.

The purpose of the Bill is to relax the circumstances in which attachment of income orders can be made so as to enhance the effectiveness of the Attachment of Income Order Scheme (the Scheme) in addressing the difficulties encountered by some divorced or separated persons in collecting or enforcing maintenance payments.

An Inter-departmental Working Group reviewed the law and administrative measures affecting maintenance payees and published a report in May 2000. The recommendations in the report have been accepted by the Administration and the present Bill is to implement an important recommendation contained in the report.

An attachment of income order (AIO) is a court order that requires an "income source" (such as the employer or tenant of the maintenance payer) to deduct maintenance payments from the maintenance payer's income and to pay the deductions direct to the maintenance payee. It enables the maintenance payee to receive punctual payments without being subject to the payer's mercy. The Scheme commenced operation in April 1998. In the past two calendar years, however, only 35 AIOs were issued.

After studying the Scheme, the Working Group concluded that it had not been more widely used mainly because the circumstances in which an AIO could be issued were restrictive. At present, the Court can issue an AIO only where a maintenance payer has failed to make any payment without reasonable excuse. Such restriction has undermined the effectiveness of the Scheme. The Working Group recommended relaxing the circumstances in which AIOs could be made.

On the other hand, when considering AIO applications, the Court now has to comply with the elaborate procedures laid down in the Attachment of Income Order Rules. In some cases, such requirement has unnecessarily protracted the time taken to make an AIO. The Working Group recommended that the Court be given flexibility in applying the Rules.

In view of the above, we propose to amend existing ordinances to enhance the effectiveness of the Scheme in addressing the difficulties encountered by the concerned parties in collecting or enforcing maintenance payments.

The Bill seeks to amend three ordinances that provide for maintenance payments, namely the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance, and the Matrimonial Proceedings and Property Ordinance. The Bill proposes that, subject to the conditions that there is income capable of being attached and a maintenance order is in place, an AIO can be made where:

- (a) the Court is satisfied that the maintenance payer has without reasonable excuse failed to make any payment pursuant to a maintenance order; or

- (b) the Court has reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with a maintenance order; or
- (c) the maintenance payer and payee agree to make an AIO.

The Bill also stipulates that an AIO may in future be made in the same hearing in which a maintenance order is made or varied. It may also be made by the Court on its own motion or on the application by the maintenance payer, or payee, or both.

In addition, the Bill provides that the Attachment of Income Order Rules may empower the Court to dispense with or relax any procedures or abridge any time limits specified in the Rules, when the Court is satisfied that it is fair and reasonable to do so in the circumstances of a particular case.

All in all, the Bill seeks to relax undue restrictions imposed upon the Scheme by the existing legislation and to give the Court flexibility in applying the relevant legal procedures, in order that the Scheme can more effectively assist maintenance payees in addressing the problem of maintenance arrears.

With these remarks, Madam President, I recommend this Bill to Members.

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

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

BANKING (AMENDMENT) BILL 2001

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

The Bill seeks to ensure that the Hong Kong Monetary Authority's (HKMA) supervisory regime can keep abreast of the latest developments of the banking industry in respect of places of business, Internet advertisements for deposits and management structure and so on. The main amendments introduced by the Bill include provisions that: (i) enhance the Monetary Authority's (MA) oversight of places of business of authorized institutions (AIs); (ii) strengthen the provisions relating to advertisements for deposits posted on the Internet or disseminated through other new technological means; (iii) update the definition of "manager"; and (iv) introduce requirements for AIs to notify the MA of the appointment of managers and to maintain adequate systems of control to ensure that such managers are fit and proper.

In recent years, some AIs have, in addition to full service branches, established alternative outlets, such as "lending offices" at which loans are made but no deposits are taken, places of business which function predominantly as sales and service outlets, or personal banking centres at which financial advice is provided. The nature of such businesses does not involve deposit taking or impose liabilities on AIs. Therefore, they are not covered by the definition of "local branch" under the Banking Ordinance (the Ordinance). The MA does not have control over the establishment and maintenance of these places of business. However, we consider that these places of business may commit an AI to financial risk, and hence it is necessary to give the MA powers of control over them.

The Bill proposes to extend the definition of "local branch" to cover any place of business in Hong Kong at which an AI carries on any business which involves the incurring of financial exposures as specified under section 81(2) of the Ordinance.

The Bill also introduces the concept of "local office" which covers any place of business from which any business of an AI is promoted or assisted. The AI is required to notify the MA at least seven days before commencing business at an office.

Under section 92 of the Ordinance, no person is permitted to issue advertisements that contain an invitation to members of the public to make any deposit in Hong Kong other than with an AI. Since the section was drafted primarily with physical forms of advertisements in mind, some uncertainties may arise when it is applied to the Internet. With the advancement of technology, it

has become increasingly popular for financial institutions to promote services through the Internet. To ensure effective regulation of advertisements for deposits placed on the Internet and adequate protection of the interests of depositors, we propose to amend section 92 of the Ordinance to cover the situation where advertisements for deposits are provided by new technological means, in particular the Internet.

Given the rapid developments in the banking industry, AIs have adopted various organization structures and management practices to facilitate business development. The existing definition of "manager" based on "reporting line" is outdated. The term may not be able to capture persons who exercise important managerial functions. On the other hand, it can bring in persons whose functions are not central to the safety and soundness of AIs.

The Bill proposes to re-define "manager" as any person, other than a director or the chief executive, who is principally responsible for the conduct of key businesses. Under this definition, only those people who are in charge of the businesses specified in the new Fourteenth Schedule will be regarded as "managers".

As a result of globalization of financial markets, deregulation and technological advancements, the banking environment has become increasingly sophisticated. It is not just directors and the chief executive of an AI, but also its "managers" as discussed above, who can exercise significant influence on the conduct and well-being of the AI. Therefore, apart from clarifying the definition of "manager", it is also important to ensure that the person who is a "manager" is fit and proper.

The initial thinking was to introduce an approval requirement for the appointment of "managers". This would allow the MA to carry out the necessary vetting process to verify the fitness and properness of the individuals seeking to become a "manager". However, during consultation with the banking industry, some banks queried the need for this new process. They argued that it was the primary responsibility of the directors and the chief executive of AIs to ensure the quality and integrity of their management teams. They were concerned that the proposal might impinge upon AIs' autonomy in the recruitment of staff.

We have considered different options to address these concerns, without compromising the objective of ensuring the fitness and properness of AIs' managers. A viable alternative to the approval requirement, which is the current proposal in the Bill, is to require AIs to maintain adequate systems of control to ensure the fitness and properness of their managers. The Hong Kong Association of Banks has indicated that they had no objection to the new proposal.

The MA will issue a guideline to set out the key elements that AIs' systems of control for recruitment of senior executives should comprise, including details of what constitutes "fit and proper" in the context of manager positions. We also propose to introduce a requirement on AIs to notify the MA when a person becomes or ceases to be a manager of an AI.

Madam President, the purpose of the Banking (Amendment) Bill 2001 keeps the banking regulatory framework abreast of the latest development of the industry, helps to ensure that the interests of depositors are protected and promotes the stability of the banking system. I hope that Members will support the Bill. Thank you, Madam President.

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

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

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Appropriation Bill 2001. The public officers concerned will speak first and the Financial Secretary will reply.

APPROPRIATION BILL 2001**Resumption of debate on Second Reading which was moved on 7 March 2001**

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, since the Financial Secretary delivered his Budget for 2001-02 almost a month ago, the general verdict seems to be that the Budget is prudent and balanced: an appropriate response to the gradual revival of our economy, amidst the external uncertainties facing us in the next 12 months. I note from reports in the press and the speeches in this Council last week that both the wider community and Members of this Council approve of the overall approach and support most of the proposals in the Budget. I would like to thank Members for their understanding and support.

Members would appreciate that we have been making particular efforts to step up our communication with the community at large. We have also taken every opportunity to enhance our working relationship with Members of this Council. Consultation during the annual budgetary exercise best illustrates our efforts in this regard.

Over the years, the Financial Secretary has greatly expanded the pre-Budget consultation process. Indeed, for the purpose of the Budget this year, we have conducted 32 meetings with media representatives, commentators, academic economists, analysts, professionals, businessmen, District Councils and Members of this Council. Our consultation with this Council started as early as June 2000 when we sought Members' view on spending priorities. This was followed by another round of consultation with Members last October on the revenue aspects of the Budget. We firmly believe that early consultation not only enables the Administration to know at an early stage the views and expectations of the community with regard to the budget, but also allows Members to play an active role in the formulation of our budgetary proposals. In this way, we hope to turn out a product which enjoys the support of the community and Members alike.

We have taken careful note of Members' views, the majority of which had been positively addressed in the Budget. However, I hope Members would acknowledge the difficulty in meeting all expectations both within and outside this Council, particularly where these expectations are conflicting. The entire

consultation process, if it is to work, must involve some "give" and "take" from all sides. As a responsible government, we have, at all times, to bear in mind the overall long-term interest of the community, and prioritize and strike a balance among competing demands. This is what the Financial Secretary has achieved in his Budget.

I appreciate the concerns of some Members with regard to certain specific proposals in the Budget. But I must stress that last minute demands coupled with a threat of voting against the Budget if such demands were not met defeats the whole purpose of our time-honoured consultation process. The Financial Secretary cannot concede without upsetting the careful balance which he must strike if his Budget is to address the overall good of the community. I hope Members will reflect seriously on the consequences of such action.

I now turn to a number of key points raised by Members in the debate last week.

Our Civil Service is internationally recognized as one of the best civil services in the world. My colleagues and I are proud to be members of this great team. Yet, we have been mindful not to sit on past laurels. We need to be proactive and innovative in order to cope with changes in the community and respond to the rising expectations of the public.

The Civil Service Reform we proposed in 1999 aims at modernizing the management of civil servants to bring in additional flexibility and openness. Following several rounds of comprehensive consultation and in-depth study, we have systematically implemented most of the proposed initiatives, including the new entry system and terms of employment for new recruits, and a new package of pay and fringe benefits for them, which is more in line with that offered in the private sector.

Civil servants have to keep pace with the rapid advancement of technology and upgrade their skills to meet the latest service needs and the challenges that lie ahead. We need to promote a new culture of "lifelong learning" in the context of the Civil Service Reform.

In the next three years, we will allocate an additional \$50 million for training and development of civil servants. We will pay particular attention to the training needs of front-line staff and those in the Voluntary Retirement

Grades, encouraging them to upgrade their skills and adapt themselves to the new working environment.

We are considering a performance-based reward system and a civil service provident fund for new recruits. This year, we will launch a pilot scheme to reward service teams with outstanding performance. At present, more than 10 departments have indicated their interest in joining the scheme. We will carefully review the results of the pilot scheme to see if it should be extended to other departments.

On the civil service provident fund scheme, our consultant has completed a report on its first phase study and recommended the introduction of a civil service provident fund scheme to provide retirement benefits for new recruits. The proposed arrangement is in line with the community-wide mandatory provident fund scheme. It is also compatible with the pension schemes of most public and private organizations in Hong Kong. The level of benefits, as suggested by the study, compares favourably with the best pension scheme offered in the private sector. We are proceeding with consultation, and the initial public response to the report has been very positive. The consultation period will expire at the end of April. Based on the views received, we will embark on the second phase study and work out the details of the implementation plan.

To enhance civil service efficiency, the Financial Secretary and I set a target last year to contain the size of the Civil Service by deleting 10 000 civil service posts within three years. With excellent co-operation from all departments, the civil service establishment has been reduced from 198 000 in last year's Estimate to 190 000 as at the end of March this year. We expect that in the next two years, departments will be able to delete another 9 000 posts, bringing our total establishment to 181 000. Resources saved will be used for enhancing service standards and providing additional services.

I must make it clear that in the course of containing the size of the Civil Service, we have not lowered the standards of our services, nor have we resorted to forced redundancy. Deletions have been achieved by cancelling accumulated vacancies and new vacancies arising from staff leaving the service or joining the Voluntary Retirement Scheme. In approving voluntary retirement applications and arranging the departure of successful applicants, departments will take appropriate measures in staff redeployment, re-engineering of operation of

outsourcing of service, in order to ensure quality of service. Thus, those who remain in the Civil Service will not be overburdened.

Improving the management system and mode of operation of public service to increase efficiency has always been one of our priorities. The proposed corporatization of the Survey and Mapping Office aims at providing better service to the general public and the commercial sector by adopting a more flexible mode of business operation. When implementing the scheme, the Administration will allow staff to opt to retire voluntarily or to retain their civil servant status and work in the new organization by way of secondment. Those who opt for voluntary retirement may join the new organization under its terms and conditions of employment.

We believe that the arrangement will not only facilitate more flexible use of resources, but will also look after the interests of civil servants now serving in the Survey and Mapping Office. We hope that following further consultations, the corporatization plan will receive support from the public, Members of this Council as well as the affected staff.

In the past few years, managers in departments have built up their experience and established a system and culture of strictly containing staff size and monitoring the use of resources. Therefore, the Financial Secretary and I have decided to resume the recruitment of civil servants from April onwards. Nevertheless, the two resource bureaux will continue to take appropriate actions to monitor and control the growth of the Civil Service.

Despite various challenges, the Civil Service will continue to provide a high standard of customer-oriented service. Since 1999, the Civil Service Bureau has been organizing the "Customer Service Award Scheme", which has been well received by both management and staff. This year, a total of 20 teams received awards. The outstanding performance of these front-line staff should set an example for the entire Civil Service to follow.

The various initiatives we have taken in recent years will give Hong Kong a lean, efficient and well motivated Civil Service whose members take pride in serving the community. Coupled with maintaining the core values of integrity, impartiality, openness and transparency, the Civil Service will be well positioned to face the challenges of the 21st century.

It has always been our aim to improve the efficiency of the public sector and ensure that the services we provide meet today's needs through modern management practices and up-to-date technology. I am at the same time fully conscious of the fact that changes in the way we operate can cause concern, both to our clients and to the staff involved. We will continue to address these concern with understanding and sincerity.

It is, nevertheless, clear to everybody that we cannot stand still if we wish to achieve our aspiration of making Hong Kong a world class city. With regard to government services, there are some services that are commercial in nature or can be provided more efficiently by the private sector. With a view to reducing the burden placed on taxpayers, we must continue to explore various options, including corporatization, to ensure that the Government remains efficient and cost-effective. That said, I wish to reassure Members that we will proceed carefully, bearing in mind the wider interest of community and the legitimate concerns of staff.

Madam President, several of my colleagues will respond specifically to some of the remarks and suggestions made by Members before the Financial Secretary winds up the debate with his observations.

In line with the clear wish of the community, I urge all Members to vote in support of our proposals in the 2001-02 Budget.

Thank you, Madam President.

SECRETARY FOR JUSTICE: Madam President, the examination of the estimates and the debate on the Appropriation Bill are, of course, as relevant to the Department of Justice as to other government organs. Our duty is to account to the legislature both on specific funding proposals and on our overall vision for achieving high quality, cost-effective public law services.

I have, therefore, taken careful note of all Members' speeches during this debate.

Underlying many of the important economic, socio-economic and fiscal points made by Members is the fundamental assumption that Hong Kong will continue to be governed by the rule of law. As Secretary for Justice, I am

acutely aware of the importance of this legal bedrock. The Department of Justice in all its work will be guided by an unconditional commitment under the Basic Law to uphold the rule of law and the independence of the Judiciary. We will continue our efforts to promote those vital concepts, and to enhance confidence in the legal system.

We are also committed to providing efficient and effective legal services to the Government of the Hong Kong Special Administrative Region, and in this connection, I should like to respond to the issues raised by the Honourable Miss Margaret NG in her speech regarding the delivery of prosecution services in the magistrates' courts. Miss NG's concern is that most of the prosecution cases in magistrates' courts are prepared and presented by Court Prosecutors who are, for the most part, not barristers or solicitors. Whilst Miss NG did not criticize the actual performance standards of Court Prosecutors, she nevertheless argued that independent prosecution of a high standard is central to the rule of law and that maintaining a system of Court Prosecutors is unjustified while qualified lawyers are in good supply.

In reply to Honourable Member's concerns, may I first assure her and Members that I share her concern for high standards of prosecution work in the magistrates' courts. I also agree with her that prosecution work must be independent, in the sense of being free from any interference, as provided for in Article 63 of the Basic Law. However, I am firmly of the view that the Court Prosecutor system is indeed achieving the necessary high standard of service, is free from interference, and is considerably more cost-effective than briefing out to barristers or solicitors in the private sector.

As to the standards of Court Prosecutors, I can assure Miss NG that Court Prosecutors receive intensive training. New Court Prosecutors must satisfactorily complete a nine month full-time training course, including advocacy, rules of evidence, court procedure, prosecutorial ethics and substantive criminal law. They must pass a written as well as a practical examination before they are appointed to conduct prosecutions. They then receive structured continuing legal education through attending seminars on such subjects as fraud, copyright and expert evidence, as well as refresher courses on trial advocacy and recent developments in the criminal law. At present, all Court Prosecutors have at least three years full-time experience. Since they appear in court almost every day, their level of practical experience, coupled with their intensive continuing training programme, ensure a high quality

prosecution service in the magistrates' courts. Although legal qualification is not a job requirement, many of the fine young men and women amongst our Court Prosecutors have acquired academic achievements whilst in service: nine of them have been called to the Bar, 23 obtained law degrees, five are studying for the Postgraduate Certificate in Law (PCLL) Course and 20 others are currently studying for law degrees.

Prosecutorial skills apart, I must also reassure Miss Margaret NG on the cost effectiveness issue. Miss NG argued that the true cost per court day for Court Prosecutors should include the cost of 19 Court Prosecutors who provide administrative and supervisory duties for the approximately 214 000 cases annually in the magistracies. However, there is no doubt that for such a substantial caseload, these administrative and supervisory services would still be essential even if these cases were all briefed out to the private sector. The average cost of a Court Prosecutor is \$3,020 per court day inclusive of accommodation cost, whilst that of a counsel prosecuting on general fiat is \$5,670 per day.

We do indeed have a policy of briefing out a certain proportion of magistrates' court cases to junior barristers and solicitors to provide them with some exposure to criminal prosecution work at summary level. However, our primary obligation is to provide a high quality, efficient and cost-effective prosecution service. The Court Prosecutor system delivers exactly that. For example, if all the 14 860 court cases to be conducted by Court Prosecutors in 2001 were briefed out to private counsel, the cost to the public purse would be \$84 million, which is 87% more than the \$45 million cost for Court Prosecutors. It may be true that junior members of the Bar and solicitors are willing to do magisterial work. The question is whether they are prepared to do it at the salary of \$14,000 to \$15,000 per month.

Members and Miss NG will no doubt understand if I do not go into further detail on this matter today. But I hope that I have said enough to demonstrate that we respect the Honourable Member's views on the Court Prosecutor system, even though we do not share them. We are, of course, continually examining ways to improve all our public law services and we always value comments, criticisms and suggestions from Members as well as from the community generally.

Thank you.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I wish to thank Members for expressing their views on the budget proposals and would like to take this opportunity to respond in relation to welfare services.

As I have said before, welfare is a requisite for the well-being of any society. To this end, we seek to build a caring community so that everyone can develop their full potential and contribute to society. In developing this theme, the Chief Executive has said that our social policies, as reflected in our policy commitments, seek to enable socially disadvantaged groups to access opportunities for economic and social participation.

In the coming year, we propose to spend \$30.2 billion on recurrent welfare services. This represents 13.8% of total recurrent public expenditure. In real terms, it is a 9.3% increase over last year and clearly demonstrates our commitment in caring for and helping the disadvantaged members of our community.

In terms of family services, the family remains a vital component in our society. It is the basic unit which provides reciprocal physical, psycho-social and financial support and care for all its members, enabling its members to overcome problems, develop resilience and self-reliance necessary for effective family functioning. In the midst of rapid social changes, it is important to preserve the strengths and capabilities of the family and to enhance its functioning. In doing so, the role of the Government is not to serve as a substitute for the family, but rather to provide the necessary environment to facilitate members to develop their capacities, assist them to cope with difficulties and to become self-reliant and contributing members of society. Promoting the well-being of individuals and harmony of families is a prerequisite for social stability, social cohesion and the foundation of our society's future.

However, with the passage of time, it is inevitable that traditional family structures will change. Nevertheless, the Administration continues to believe in the importance of the family unit and family values in our society. Whilst the nuclear family remains dominant in Hong Kong, it is becoming readily apparent that the number of other types of families is increasing. Today, we see more single parent families, more split families, more step families and so on. Some will experience unique problems and we need to be sufficiently flexible in terms of our welfare service provision in order to help them overcome these. The

problems manifest themselves in different forms ranging from divorce, domestic violence, extra-marital affairs to behavioural problems in their children.

In our view, children and young people are integral members of a family and are cared for by their families. The development of a comprehensive family policy takes account of the needs of, and services required for children and young people. In terms of service provision, much is already being done and in the new financial year, we estimate recurrent expenditure in excess of \$1.7 billion in this policy area. But services must continue to evolve to meet the current day needs of families and the Administration is committed to this. In particular, we must better integrate our services so as to provide a more holistic, multi-disciplinary and wherever possible, a one-stop service for families in need.

Young people are the future of our community. In terms of youth services, our aim is to assist and encourage young people, including the more vulnerable youth, to become mature, responsible and contributing members of society. As such, we must ensure that we give all of them every opportunity to develop their full potential and achieve self-reliance. To achieve this is not easy with the family providing the primary support system assisted by the collaborative efforts of teachers, social workers, the media and other groups in the community.

Indeed, we also recognize the challenges faced by parents today and have therefore injected additional resources into parent education activities and other relevant family welfare service.

On the subject of resources, we have earmarked an additional \$84 million in 2001-02, rising to about \$180 million a year by 2003-04, to launch a comprehensive programme of support services for youth-at-risk. With this, recurrent welfare expenditure for young people in 2001-02 will be in excess of \$1.2 billion, an increase of over 7% on last year.

Inevitably, some young people encounter problems in growing up and the causes can be many and varied and hence solutions are complex. In Hong Kong, a three-pronged approach to helping youth-at-risk is adopted, namely, early identification, timely support and where necessary, proactively steering marginal youth back onto the right course.

This year's Budget included a number of funding proposals designed to enhance our work in this area. To identify youth-at-risk, we intend to introduce a screening tool into 200 secondary schools by 2003-04 and to eventually extend the service into primary schools. This will facilitate the provision of a primary preventive programme for students who exhibit various risk factors.

In terms of providing timely support, Members will be aware that a number of services are already available including children and youth centres, the outreach social work service, the school social work service and integrated team service. Since August 2000, we have implemented a policy of providing one school social worker in each secondary school and enhancing the availability of community-based resources to schools. To step up our efforts, we intend to form additional integrated teams which have proven to be a more effective means of providing service to young people. Additional funds will be provided for this purpose. Police liaison work in schools will also be strengthened. In this way, we will be able to provide more support and counselling to young people, especially those at risk.

Whilst our preventive and development work is extensive, a small number of young people inevitably fall prey to bad influences. We must do all we can to reach out to these marginal youth and give them the needed support. In addition to our existing programmes, we will provide additional recurrent funding to non-governmental organizations (NGOs) to employ an extra 30 outreach social workers devoted solely to helping young night drifters. We will also increase the number of Community Support Service Scheme teams so that coverage is territory-wide. In this way, we will be able to provide timely and effective rehabilitation services to school dropouts, unemployed or underemployed young people roaming the streets at night, and delinquent adolescents committing minor offences, with a view to steering them in the right direction and integrating them back into mainstream education or preparing them for employment. They must not be forgotten.

In terms of elderly services, care for older persons remains a priority area of concern to the Government. To ensure that older persons receive care services tailored to their needs, we conduct a comprehensive care need assessment based on which a care plan can be prepared for each frail older person. We are introducing the concept of continuum of care to both residential care homes and home and community care so that frail older persons can be better served. Additional resources are also being allocated to strengthen

medical support for residential care homes and the enhanced home and community care services.

In the five years commencing April 1997, an additional \$1.8 billion has been earmarked to improve direct welfare services for older persons, an increase of 125%. The bulk of this money will be spent on care for frail older persons, either in increasing the supply of subsidized residential care beds or providing home and community care for those living at home :

- 26 000 subsidized beds will be provided by March 2002, an increase of 68% compared with April 1997; and
- 31 000 elderly cases will benefit from a range of home and community care services, including home help, home care, day care or enhanced home and community care services with resources allocated in 2001-02.

In terms of rehabilitation services, people with disabilities also received considerable attention in the Budget. As with other vulnerable groups we seek to protect and facilitate their independence and nurture the development of their full potential. We must help them to be self-reliant.

To provide greater support for people with disabilities, we have earmarked \$219 million in 2001-02 to implement a package of measures to address their day-care, residential and employment needs. Taken with new resources already earmarked, an additional 5 100 day and residential places will be provided over the next five years. In addition, innovative employment assistance packages including on-the-job training programmes and seed money for NGOs to create new employment opportunities for people with disabilities will be funded.

In conclusion, I wish to reiterate that this Budget will bring about many new opportunities to help the socially disadvantaged gain self-reliance, upgrade themselves and improve the quality of their lives. Our ultimate goal is for the community to optimize its human resource potential and to maximize its social capital. To achieve this, we must ensure that all members of our community can participate and are included whatever their problems, rather than excluded.

Thank you, Madam President.

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, during the Budget debate, some Members have expressed views and concerns about the Government's competition policy. They urged the Government to attach importance to a fair business environment, and even introduce an all-embracing competition law.

First of all, I have to reiterate that the Government has all along been committed to promoting competition. Our objective is to enhance economic efficiency and promote free flow of trade, thereby also benefiting consumer welfare. Hong Kong is a free economy. We believe that allowing free market operation is the best way to promote competition. Following the principle of keeping intervention to the minimum, we should not adopt legislative control lightly, unless there are market distortions in individual sectors which impair economic efficiency or free trade to the detriment of the overall interest of Hong Kong.

Before formulating our present competition policy we have made thorough analysis and wide consultations on the pros and cons of an all-embracing competition law. A general and all-embracing competition law is likely to be an overkill, it creates uncertainty in the business environment, and compromises free and open trade principles. There will also be enforcement problems, for example, protracted court cases may not be beneficial to our business environment.

To be more positive, we should review Hong Kong's competitiveness and see whether there is a reasonable level of competition in the market.

Hong Kong is one of the freest markets in the world. This is recognized by some internationally renowned institutions, such as the International Monetary Fund (IMF), the Heritage Foundation, the Harvard Institute for International Development, the World Economic Forum, the International Institute for Management Development and the *Fortune* Magazine. Their reports have repeatedly spoken highly of our legal system; independent Judiciary; efficient administration; the free flow of news and information, capital, goods and services; openness to international trade; and fair business environment.

In respect of business environment, all local and foreign businesses, big or small, are treated equally in Hong Kong. We have no entry barrier to the market. Businesses, big or small, all have room for development here, and can compete on a level playing field.

More importantly, we have to recognize that the objective of promoting competition is not targeted at certain market phenomena, trade practices, or market allocation. It is to enhance economic efficiency and free trade. That is why we should not determine whether or not a business is anti-competitive on the basis of its scale of operation or market share *per se*. Instead, we have to understand the more fundamental situation, for example, whether the business has abused its dominant market position, limit market accessibility and contestability, thus giving rise to economic inefficiency or obstruction of free trade to the detriment of the overall interest of Hong Kong. This principle is applicable to assessing the level of competition in different sectors, including supermarkets, telecommunication, and port facilities as Members have mentioned. Apart from considering administrative arrangements to promote competition, if we find that an individual sector requires legislative regulation, we would pursue it seriously.

I also want to clarify certain allegations about Hong Kong's business environment in last year's European Parliament's Hong Kong Report as cited by some Members. The author of that Report had publicly clarified, during his visit to Hong Kong last year, that the allegation about individual sectors being controlled and led by a few consortia was the view reflected to him by some people in Hong Kong. It was not the view of the European Parliament. In fact, the Report carried positive comments on various aspects of Hong Kong. Separately, some Members have mentioned the comments made by the IMF on competition in Hong Kong. The IMF's Report in 2000 reminded us to pay close attention to competition in our local market, and urged the Administration to take the most appropriate measures to ensure high transparency and a level playing field. However, the introduction of a competition law was only regarded as one of the options to be considered in the Report.

Of course, we should not be complacent. Instead, we should keep under review the existing competition environment, adopt appropriate measures, and examine areas for improvement in our framework for policy implementation. That is why we issue a report on the work of the Competition Policy Advisory Group (COMPAG) annually to inform the public of the various measures adopted by bureaux and departments in response to the COMPAG's request to promote competition in different sectors. This year, we will also engage a consultant to study competition-related issues in other economies and offer advice to us.

During the Budget debate, several Members commented on how Hong Kong should be developed into a transportation and logistics hub in the region. I would like to thank the Honourable Mrs Miriam LAU, the Honourable Ambrose LAU and the Honourable Kenneth TING for their support of our efforts in this regard.

In fact, the Commission on Strategic Development has identified "Trade, Transportation and Logistics" as one of the seven key areas to support Hong Kong's long-term growth. Although Hong Kong is currently the world's busiest container port and international air freight centre, we must continue to strengthen our competitiveness in these areas, actively expand our transport links with the rest of the world, provide more logistics facilities, and develop associated supporting services.

On the air transport side, we have signed 45 and initialled six air services agreements. In the past three years, we also reviewed 33 air services arrangements. We will continue to proactively expand Hong Kong's air services network. The Airport Authority (AA) has also been taking forward a series of measures to enhance the competitiveness of the Hong Kong International Airport (HKIA). For example:

- the marine cargo terminal on the airport island has commenced operation since 28 March this year. It will facilitate the development of sea-air inter-modal transportation services between the airport and the Pearl River Delta;
- in February this year, the AA granted a sub-lease for the development of a logistics centre. Upon completion, the centre will help to attract more cargo to go through the HKIA to other places; and
- the airport cargo area will have eight more aircraft stands in 2001, bringing the total number of stands for freighters to 21;

The AA is conducting a Strategic Overview of Major Airport Developments (SOMAD) study. The study will recommend strategies for the development of our airport, including a second passenger terminal and additional cargo handling facilities.

On the port side, as Members are aware, construction works for the new Container Terminal 9 have started last year. We expect that the new terminal will be commissioned in phases between 2002 and 2004.

The Hong Kong Port and Maritime Board (PMB) has conducted the "Port Development Strategy Review" with a view to mapping out a plan for future port development. In parallel, it is studying the strategy to consolidate Hong Kong's position as the premium transportation and logistics hub in the region. These two studies, together with the SOMAD study in respect of the HKIA, will be completed in the second half of this year. By then, we can formulate a set of comprehensive development initiatives, taking into account recommendations of the various studies.

Logistics services span over sea, air and land transport, and involve various policy areas. To ensure a "through train", they also require the support of the private sector at different stages of the supply chain. Recognizing this point, in the past nine months, the Committee on Logistics Service Development (CLSD) under the PMB has studied the necessary measures to strengthen the three pillars for logistics development, namely physical infrastructure, human resources and cyber and regulatory infrastructure. It will also examine the necessary changes to the existing institutional arrangements so as to facilitate the development of logistics services. In the past year, we have also enhanced liaison with our mainland counterparts with a view to strengthening the air, sea and land transport links between Hong Kong and the Pearl River Delta.

In addition, we consider that there is a need to step up our efforts to promote Hong Kong's position as the premium transportation and logistics hub in the region. With this objective in mind, the PMB and representatives of the transport sector have been organizing overseas tours to promote our developments in port and logistics. The PMB has also been liaising closely with other organizations, such as the Trade Development Council, the AA and the Invest Hongkong, in working out joint promotion plans.

Thank you, Madam President.

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese):
Madam President, I would like to thank a number of Members, together with the parties and organizations that they represent, for their comments on

environmental issues. Over the past two years or so, more and more members of the community understand that the quality of our environment is a crucial factor in the economic and social prospects for our city. This understanding is reflected in Members' speeches.

A Member remarked that a quality environment is important to attracting quality talent to Hong Kong. That is certainly so. But it is only part of the reason why a better environment is good for Hong Kong. Clean air is important for everyone's health. A clean harbour is an asset for everyone in the city. Effective waste management is essential for everyone's enjoyment of his home.

The recurrent expenditure allocated to the Environment and Food Bureau in the new financial year has been increased by 7.1% in real terms, reflecting the importance the Administration attaches to improving the environment and food safety.

But my colleagues and I are well aware that what counts is not how much resources we could get, but how well we use our resources to provide quality service. As a few Members have remarked, we have to provide well-planned and cost-effective services. I am determined to ensure that this is the case for the Environment and Food Bureau as well as the three departments under it.

As a matter of fact, we are making good progress in implementing the Enhanced Productivity Programme and expect to be able to achieve the target of making a 5% productivity gain as scheduled by 2002-03. The Agriculture, Fisheries and Conservation Department will reach that target a year earlier, within this financial year.

The progress report that we presented to this Council's Panel on Environmental Affairs in January this year set out the substantial improvement in water quality and waste management achieved over the last decade. During the past two years or so, thanks to support from this Council, we have also made good progress in reducing vehicle emissions.

During the new financial year we will be fully commissioning the Stonecutters Island treatment works, thus more than doubling the volume of sewage this is given a high level of treatment throughout the territory. It will bring major improvements to harbour water quality. With the introduction of

greater efficiency, the unit cost for operating this plant, at 69 cents a cubic metre, is less than half the average unit cost of treating sewage at older plants in the territory.

Although much has been done, we are conscious of the need to do more. We have learned from past experience how to deliver services better. We also have to develop new infrastructure and programmes to meet the needs of this rapidly changing city. However efficient we are, it is inevitable that these new investments and programmes, which are needed to clean up the consequences of past actions, will require greater financial commitment.

In his Budget speech, the Financial Secretary raised the subject of "green taxes" and called on Members and the community at large to discuss objectively how the recurrent consequences of that commitment will be met. This is obviously an area requiring much more attention and debate by the community. The more discussion on the subject, the better it is for the formulation of effective, comprehensive and co-ordinated policy and measures, including fiscal measures, on environmental protection necessary to realize the policy objectives.

I welcome the range of support that has come from Members for adopting a "stick and carrot" approach. So far we have seen many carrots but very few stick. While Members who have spoken generally endorse the implementation of measures that will make the polluters pay for cleaning up, I note the caveats and cautions that they have put forward.

Let me explain the range of financial instruments that can be used by the Government to influence the behaviour of individuals and businesses to reduce the damage done to the environment.

To realize the "polluter pays" and "stick and carrot" approach supported by Members, there are three types of financial instrument, namely, rewards, charges for services and deterrents that we can use to improve our environment in an effective and sustainable way.

By rewards, I mean measures such as adjusting existing taxes, duties or charges to encourage environmentally friendly behaviour. Let me cite a few examples: In 1991, a lower duty was set on unleaded petrol to encourage the use of this more environmentally-friendly alternative by drivers; since 1994, we have exempted electric vehicles from first registration tax; in 1999, we announced that

no duty would be charged on liquefied petroleum gas (LPG) for use in motor vehicles; and a year later duty on ultra-low sulphur diesel was reduced to encourage switching from conventional diesel.

In addition, in the last couple of years, concessions have also been made on land allocation, including special arrangements for LPG filling stations and for waste separation and recovery businesses, to facilitate the implementation of environmental policies.

But rewards alone cannot achieve all our environmental objectives. Furthermore, they are a drain on the public purse. At present we spend a huge amount of money to provide environmental services.

The second type of financial instrument the Administration can use is to make people or businesses that produce the waste or pollutants pay for these services through user charges. Not only would such charges encourage efficiency, they would also provide strong incentive for waste producers to conserve resources and find new ways to avoid waste and pollution.

Up to now we have made relatively little use of user charges for environmental services. The burden for providing such services has therefore fallen unfairly on taxpayers. There is a charge for chemical waste treatment, but this recovers only 33% of the variable operating cost of the treatment plant. Yet, it has been effective in encouraging waste producers to introduce cleaner technology, thus helping to reduce both the volume of chemical waste needing treatment and the volume of chemicals going into the local environment. Besides, the sewage charge that we have introduced since 1995 recovers only about half of the operating costs of sewage services. In addition, we levy a charge on 30 trades and industries that produce strong effluent. This reflects the extra costs incurred in cleaning the public sewers and treating the effluent. It is the only existing charge that can recover the full operating cost.

I appreciate the concerns that members of the restaurant trade have about the cost of appealing for adjustment of the charge in individual cases. We are committed to resolving these concerns and have made proposals for simplifying the procedures to reduce the cost for appeals. I hope that the trade can adopt an equally positive attitude in our discussions, so that an agreement can be reached on a revised appeal mechanism quickly.

The "polluter pays" principle is not being applied to the treatment of municipal and construction waste. Experience elsewhere has shown that user charges for waste are one of the most effective instruments to encourage the community and specific sectors to reduce waste and to support programmes for separating, recovering and recycling useful material. However, before we consider user charges for waste, there have to be sufficient services and facilities to handle the separated materials, so that waste producers do have real alternatives for the treatment of waste. We must also ensure that the separated materials are handled properly. We are addressing these issues. I will shortly be announcing a comprehensive action plan to step up the reduction, separation and recovery particular of domestic waste.

With the hard work of all parties concerned, our efforts in reducing waste and encouraging waste separation and recovery have borne some fruits. I am pleased to note a slight reduction in the amount of municipal waste sent to the landfills last year, 55 000 tonnes less compared with 1999; and there is also an increase in the amount of materials recovered for recycling from 1.54 million tonnes in 1999 to 1.76 million tonnes in 2000. But over 6.5 million tonnes of waste material were still put into the landfills last year. Therefore, we need to make more progress, particularly in the area of separation and recovery of domestic waste.

Some Members urged us to present an early proposal for levying landfill charges for construction and demolition waste. Last year 2.7 million tonnes of such waste were sent to the landfills, about 20% of which was inert material that could have been used as public fill if separated from the waste. Much of the remaining waste could have been avoided through better construction methods. We are working on a package of measures to reduce and re-use such materials. To work out an effective system for administering landfill charges, we have had a number of meetings with the construction industry and the middle men involved in handling such waste, such as the truck drivers. We will consult Members on the scheme once the proposal has been finalized.

The third type of financial measure is to levy a surcharge on environmentally unfriendly products or emissions, so as to provide strong financial deterrent to using such products or producing such emissions. We have so far not launched any such initiatives in Hong Kong. Elsewhere, there are levies on plastic bags and other packaging materials, and taxes on sulphur dioxide emissions from industries or power companies. We need to examine

the feasibility of such measures as we take our environmental protection effort forward.

Madam President, in closing I would like to express my thanks again to Members who have spoken in support of the "polluter pays" principle. In all aspects of protecting the environment, it is easy for us to agree on the general principles. We want clean air, a clean harbour, less waste. In order to achieve those objectives, bold actions, including both rewards and deterrents, have to be taken. Sadly, my experience has been that any fee-charging proposal is likely to face opposition, and there are always people finding excuses to oppose our proposals or ask us to target at other aspects first.

As always my colleagues and I will listen carefully and respond where we see genuine need or difficulty. We have a duty to protect the health of this city and the quality of the environment that we live in. I know that many in this Council share my sense of urgency, that we must act more extensively, more effectively and in a more sustained manner to improve our environment. I look to your full support in this financial year for all the spending and other measures that we will propose.

Thank you, Madam President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese):
Madam President, regarding the 2001-02 Budget, I would like to thank Members for their constructive comments and valuable views on education and manpower matters. Now I am going to address Member's main areas of concern.

Developing in Hong Kong's human capital is on the top of the SAR Government's agenda. The difficulty we are facing now is by no means unique to Hong Kong. During a television interview, the new Secretary of Labour of the United States stated outright that the greatest challenge in her term would be tackling the mismatch between manpower demand and supply. In Hong Kong, to solve the problem in the long term, we have to adopt a two-pronged approach. On the one hand, we must implement education reform. On the other hand, we must promote lifelong learning and encourage and help our workforce upgrade their skills so as to meet the needs arising from our economic restructuring.

On education, our emphasis is on pre-primary and basic education. In particular, more resources will be allocated to kindergarten and primary schools. In the new financial year, recurrent expenditure for pre-primary education will increase by over 30%. But as the base figure is small, it represents only 2% of the total expenditure on education. Nevertheless, the Government is committed to improving the quality of early childhood education, and enhancing the professional development of kindergarten teachers is the prerequisite to achieving this. We are actively exploring ways to expand the training capacity with a view to upgrading the academic qualifications of kindergarten teachers as soon as possible. However, at present over 8 000 serving kindergarten teachers in Hong Kong only possess an education at Secondary level or below, and qualified kindergarten teachers only account for 70% of the total. In light of this, it is impossible to upgrade kindergarten teachers to university graduate level all at once. The Government will continue to allocate resources to enhance their training. Just like all of you, we are very concerned about the pressing need for enhancing the professionalism of kindergarten teachers.

With the progressive upgrading of the qualification of kindergarten teachers, the Government is reviewing the Kindergarten Subsidy Scheme and the Kindergarten Fee Remission Scheme to ensure that children of the relevant age group, in rich or poor families alike, have the opportunity to receive quality pre-primary education. The review is expected to be completed within this year. We will report to Members and consult the sector concerned in due course.

On vocational training, the Government has invested heavily in recent years on the provision of various kinds of training and placement services for school leavers, the employed and unemployed and low-skilled workers. In 2001-02, the recurrent expenditure of the Vocational Training Council (VTC) amounts to over \$2 billion, and a total of over 120 000 training places will be provided. Our recurrent subvention to the Employees Retraining Board (ERB) which has an annual training capacity of about 100 000 places amounts to \$400 million. In addition, \$400 million has been set aside for trade-specific skills upgrading training. A training fund of \$300 million will be established to subsidize SMEs' training initiatives. An extra \$72 million will be allocated over the next two years to provide subsidies for educational institutions and non-profit-making organizations to run practical adult education courses to help new adult arrivals and local residents deprived of schooling in their early lives to upgrade their academic qualifications and skills. These initiatives aiming to provide appropriate and focused training to cater for different needs of the

workforce demonstrates the great importance the Government attaches to vocational training.

Some Member have expressed concern over the effectiveness of training courses currently run by the VTC and ERB, and question whether the current allocation of resources is appropriate. In an era of lifelong learning, the demarcation between pre-employment training, in-service training or retraining is becoming indistinct. We need to conduct a comprehensive review of the existing organizational set-up for the provision of training, the mode of delivery and division of work amongst existing bodies in order to strengthen collaboration and to reduce duplication, so that resources can be optimized and the training can better meet the needs of the market and the trainees. We envisage that the review will be completed by the end of this year. Meanwhile, the Education and Manpower Bureau will study the qualification accreditation framework in respect of vocational training with a view to ensuring that the courses provided are practical and useful to the trainees.

Education is a long-term investment and there is no shortcut to retraining or skills upgrading. In an IT-led world economy which is becoming increasingly knowledge-based and globalized, professionals are being recruited by economies all over the world to boost their economic development. Manpower shortage of this category is inevitable and changes in the economic environment have been unexpectedly rapid. Whilst we have to enhance training for local talents on the one hand, we have to resort to admitting professionals on the other with a view to solving the short-to-medium term manpower shortage problem.

According to the analysis of the "Report on Manpower Projection to 2005", manpower requirement in the IT sector is projected to grow at an annual rate of 11.8% to over 98 000 in 2005. The results are similar to the findings of the "Consultancy Study on the Manpower and Training Needs of the IT Sector" completed by the Education and Manpower Bureau in February last year and the report on the "Manpower Survey" conducted by the VTC's Committee on Information Technology Training and Development in March 2000.

As regards manpower requirement in the financial services sector, it is projected to grow at an annual average rate of 3.7% to 220 000 by 2005. Within this sector, the manpower shortage projected for banks, insurance companies and other financial institutions is as high as 16 800 by 2005. In its

first report submitted to the Government earlier, the Advisory Committee on Human Resources Development in the Financial Services Sector also pointed out that more talents had to be admitted to alleviate the manpower shortage problem.

The community generally endorses there is a need to admit mainland professionals but views on the implementation details are diversified. Members have suggested that a ceiling should be set for the Scheme. In fact, we have been importing foreign professionals without a quota. What we are doing now is only to expand the scope to cover professionals from the Mainland. Despite the large labour market in the Mainland and our geographical proximity, there is no need to worry about an influx of professionals into Hong Kong as one of the prerequisites is that these professionals must possess skills, knowledge and experiences which are useful to but are in shortage in Hong Kong. Besides, their pay and conditions must be broadly commensurate with the market level. Moreover, under the present Scheme, we are bringing in mainland professionals only in two specific disciplines which are in great demand everywhere else in the world. It is believed that the number of mainland professionals coming to Hong Kong under the Scheme will be far less than our anticipated manpower shortfall. Thus, adopting the manpower requirement as the ceiling for the Scheme is not very meaningful. If we set the limit at too low a level, we would be tying our own hands as it would not only dampen the will of mainland professionals to come and work here, but would give others an impression of adopting protectionism.

We understand the concern of Members about the impact on employment of local professionals. Employment statistics show that in 2000, 99% and 98.3% of the local university graduates majoring in information technology and financial service disciplines respectively either continued further studies or entered the job market. Hence, admission of mainland professionals is not likely to pose a threat to the employment prospect of local students. To dispel the anxieties of the public towards the admission of mainland professionals, we will report regularly to the Legislative Council about the admitted professionals, including their number, pay, categorization by skills, and so on. We will also formulate an appropriate review mechanism and will pay close attention to the employment situation of local professionals to ensure that they will have priority in their job placement.

Some Members are concerned that the Admission of Mainland Professionals Scheme may be abused. The Government will consider

Members' views carefully. In working out the implementation plan, we need to ensure that the Scheme is not abused and will avoid excessive administrative procedures which would undermine the effectiveness of the Scheme. I believe that the Immigration Department, with its sound experience in handling the admission of overseas professionals and mainland talents over the years, will be able to strike a reasonable balance between the two.

Some Members have criticized that it was inconsistent for the Government to admit professionals on the one hand, and reduce funding for universities on the other. Also, some Members worried that the quality of tertiary education might deteriorate as a result. I urge Members and the tertiary education sector to look at funding for universities objectively from a historical perspective. During the 10 years from 1990 to 2000, the Government's recurrent grant to universities has increased by 324%. As tertiary education has entered a consolidation stage and in view of the public's demand for enhanced productivity in the public sector, the University Grants Committee (UGC) agreed with the institutions in 1996 that there would be a total of 5% funding reduction within the six years from 1998-99 to 2004-05. The institutions have six years to embark on work process re-engineering and resources redeployment to enhance productivity.

Notwithstanding this, the number of university places has not decreased. The number of First-Year First-Degree (FYFD) places remains at 14 500 per annum and the number of postgraduate places will even have a 20% increase in the next triennium. In light of the change in student mix, the Government has in principle agreed to review the formula of calculating the student unit cost as soon as possible and to consider granting supplementary provision in the next triennium subject to the availability of resources.

Some Members have suggested that more university places should be provided in the next five years to cope with the shortfall of professionals, and others have demanded an immediate increase in FYFD places to bring the age participation rate to 18%. I must emphasize that this percentage is only a planning target. Whether university places are to be expanded depends on the number of eligible candidates, the teaching and learning conditions in universities as well as the demand and supply of manpower. The provision of 14 500 places every year already covers 95% of the candidates who fulfil the minimum admission requirements. To allow some healthy competition and to maintain the quality of the student intake, 14 500 FYFD places is a reasonable number. In fact, in addition to the UGC-funded institutions, other institutions

such as the Hong Kong Academy for Performing Arts and the Hong Kong Open University also provide over 1 000 places every year for young people who have the ability and are willing to further their studies.

Notwithstanding this, we will closely monitor the situation and changes in the standards of students. Consideration will be given to increasing the number of FYFD places when appropriate. Members have also asked for the provision of more first-degree places for the IT and financial services sectors. It can be seen that subsidized FYFD places in IT and business/management/financial services have accounted for 13% and 25% respectively, making up a total of 38%. In order to ensure a balanced academic development for the universities, it is very difficult to further increase the number of FYFD places for these two sectors, given that the overall number of first degree places remains the same. However, the Open University and extra-mural departments of other universities provide for the IT sector a total of over 3 000 training places at the tertiary level every year. In addition, the VTC also offers IT introduction courses for university graduates of other streams, thus helping to fill in the gap of manpower shortage in this field.

To strengthen IT manpower training, the Information Technology and Broadcasting Bureau has set up a Task Force comprising representatives from the industry and training providers to examine and come up with training initiatives. The recommended measures include:

- bringing in world-renowned IT training providers to provide internationally recognized training programmes for local students;
- inviting well-established multinational IT companies, such as Microsoft and Sun Microsystems, to organize short-term professional training for secondary school students in Hong Kong; and
- examining the feasibility of providing subsidies for local IT talents to participate in training and attachment programmes offered by overseas IT training providers and companies.

The Government is committed to providing IT training for local people. But I hope Members would appreciate the fact that it takes time to make preparation in developing a new system and opening up new horizons.

To tackle the shortage of professionals, we need to have a sound long-term manpower strategy together with the provision of education and training. This is a formidable long-term task. Nurturing talents is of utmost importance to the development of Hong Kong for which we will spare no effort. But most important of all, we must build up a lifelong learning community so that we can keep pace with social and economic changes and be well-prepared for future needs.

Members representing the labour sector are concerned that the contract adopted for outsourcing government services has not provided sufficient protection as regards reasonable wages and working conditions. On this issue, the Government's stance is that it will try not to intervene in the labour market operation. We have no intention to legislate for the minimum wage or maximum working hours. Nonetheless, the Government will not tolerate any employers acting against the law, exploiting workers by cutting back their wages or leave. On the premise of not upsetting the principles of free market and fair competition, the Finance Bureau and the EMB are actively looking into means to improve the arrangements for outsourcing government services.

We plan to ask departments which are considering outsourcing low-skill services to require tenderers to set out clearly in the work proposal of their tender submissions the planned number of employees, wage levels, working hours and so on. In assessing a tender submission, the government departments concerned would consider, apart from the tender price, whether the conditions of employment offered by contractors to their employees are reasonable and whether they can ensure quality service. We would request the departments concerned to develop an objective merit points system to ensure an appropriate balance between the quality of the tender proposal and the tender price.

We would also require all successful tenderers to carry out the undertakings set out in their tender submissions and would make provision that unauthorized departure would constitute a breach of contract. For monitoring purpose, we would require contractors to sign written contracts with all employees, except temporary leave reliefs, specifying their wages and other major terms of employment such as rest day arrangement, so that employees may fully understand their rights and benefits.

The new arrangements will still be market-oriented instead of the Government laying down rigid regulations on minimum wage, maximum working hours, and so on. Under the merit points system, consideration will be given to the arrangements and conditions of work set out in the tenders and tenderers must comply with their proposals in the tenders. We believe the new arrangements can provide a flexible and effective mechanism to prevent the employees from being exploited by unscrupulous employers.

We are currently consulting related departments on the new arrangements and will announce the details in one to two months' time. In the meantime, the Labour Department and other departments concerned will continue to carry out inspections and take enforcement actions to safeguard the reasonable rights of the employees as provided by the law.

I hope the foregoing would help Members understand that we have common goals as regards enhancing the quality of education and of our workforce. Given our consensus on the fundamental principle and direction, divergence of views over the details of implementation can be removed through discussions and consultations. The Government will continue to invest heavily in urgent and essential areas, but we must ensure that resources are used properly.

PRESIDENT (in Cantonese): I now call upon the Financial Secretary to speak in reply.

FINANCIAL SECRETARY (in Cantonese): Madam President, I would like to thank Members of this Council, the representatives of various business and community organizations, the media and the public for their comments on my Budget for 2001-02. The views offered have been many and varied, but the aspirations are identical: all look for continuous economic growth for Hong Kong and an improvement in our standard of living. My objectives are no different. I must ensure that public finances remain healthy and can sustain Hong Kong's continuous prosperity and stability.

Many have noted that this Budget contains neither shocks nor sweeteners. The more complimentary have called it prudent, steady, cautious and balanced. The less appreciative have labelled it as dull, overly conservative, short on initiative and evasive. I was fascinated by the observation that the Budget is a good measure of Donald TSANG as a person. Then am I prudent? Or am I dull?

With years of experience in the public service, I have realized that our society places a high value on prudence and stability. These are all important when it comes to the management of public finances. We must be straightforward with both feet firmly planted on the ground. There is no room for extravagance or rashness. A good budget must reflect the economic, financial and social aspirations of the community. As our economy has returned to normal growth, the Budget should contain no surprises. Our budgetary principles should be well-established and unwavering. Our strategies for economic development should not change from year to year. Otherwise Hong Kong could lose direction.

The preparation of the Budget for this year was not an easy task. The key, I believe, is to do the right thing at the right time. Had our public finances yielded tens of billions of dollars in overall and operating surpluses as they did in 1996-97 and 1997-98, I would not have hesitated to return some of the accumulated wealth to the community. Alternatively, had the economy been in dire straits, as it was in 1998-99, I would naturally have resorted to deficit-budgeting as a stimulus. Or if the beginnings of economic recovery were only just becoming apparent, I would have been content with a "do nothing" approach.

But our choices this year are not so straightforward. Uncertainty is a key word in the forecast for our economy, in the livelihood of our people and in our fiscal fortunes. I must also observe the long-held fiscal disciplines that are defined in the Basic Law. One consequence is that we cannot rush to head off the years of successive operating deficits through hefty increases in taxes or reductions in expenditure. That would stifle economic growth and impair the community's living standards. Nor, on the flip side, can we offer major tax concessions or allow expenditure to grow higher in order to boost personal popularity or to concede to never-ending political demands. To do so would be most unwise. It would also be most irresponsible at a time when our fiscal balances are challenged. As the economy returns to normal, I can see no reason

to deploy further fiscal stimulus, nor should I turn a blind eye to our operating deficits.

The current circumstances have dictated I should steer a prudent course. On the expenditure side, I have stayed within the expenditure guidelines. My revenue proposals are for modest adjustments to seven taxes and charges to foster development and increase revenue. The increases involved will not stifle economic growth nor hurt people's livelihood.

Perhaps because my revenue proposals are so mild some people have dismissed them as negligible and not essential. I cannot subscribe to these criticisms. In trying to meet the needs of the community and improve our financial position we have very little room to manoeuvre. Precisely because of this, each and every proposal, whether on the revenue side or the expenditure side, has significance and contributes to our efforts to achieve fiscal balance. In drawing together the Budget, we have not looked for "big bangs". Our responsibility is rather to propose what is appropriate and reasonable. It would be a failure on our part to hold back such proposals simply because the sums involved are not huge.

Some Members have criticized the revenue proposals on the basis that they would harm people's livelihood. I am a little disappointed with this reasoning. I understand that the well-being of our community is close to Members' hearts, just as it is to ours. But the term "livelihood" appears to have taken on a wider and wider meaning in recent years. One example is the protracted debate between the Administration and this Council on the level of certain fees and charges, whose existence is scarcely known to most of the community, let alone capable of having any impact on their daily lives.

Another example is the increase I am proposing in certain taxes and charges. I cannot agree with some Members that alcohol or even cigarettes come into the category of daily necessities. Nor can I agree with the proposition that duty increase in liquor and tobacco will target the grassroots. Regular driving licences are due for renewal only once every 10 years. Increases in vehicle licence fees will cost the owners of private cars from a few hundred dollars to slightly over a thousand dollars more over the course of a year. It stretches credibility to regard such fees as daily living expenses. On-street parking meter charges could come into that category for some drivers. But will it help them if they are unable to find a parking space to meet their short-term

needs because, relative to off-street car parks, meter charges are too low? The Air Passenger Departure Tax is levied only on passengers who depart Hong Kong on business or for leisure by air. This has nothing to do with livelihood. The tourism industry finds the proposed increase generally acceptable. I ask Members to examine my expenditure and revenue proposals in their entirety and with objectivity.

Some have criticized the earmarked real growth in government expenditure for 2001-02 as being overly conservative. I do not deny having charted a cautious course on expenditure and in the Budget speech I have explained my reasons. Let me emphasize, yet again, that we must address the problem of successive years of operating deficits. In overall terms, we may be able to achieve broadly-balanced budgets over the next four years. But this is only because in the overall budget figures we also count non-recurrent revenues, such as from land sales and the Mass Transit Railway privatization. If we look at recurrent revenue and expenditure alone, we can see our operating accounts continuing to pile up deficits. In 2001-02 we expect an operating deficit in excess of \$16 billion. So, there may be a structural problem with our public finances. More important, the Government has been consuming more and more economic resources in recent years. This is reflected in our expenditure as a percentage of Gross Domestic Product (GDP) which is now at an all-time high. As many economists and analysts have rightly pointed out, for a market-led economy like Hong Kong, big government would in the long run hamper economic growth and they have strongly urged us to rein in expenditure.

But it is simply untrue to claim that the Government is miserly and is lacking compassion for the grassroots or the disadvantaged. We are determined to encourage sustained economic growth because this is in the best interests of the whole community. For 2001-02, we have budgeted for an increase in expenditure of \$26.6 billion, representing a real growth rate of 10.8% when compared to the revised estimates for 2000-01. To cite a few examples, we will spend \$2.7 billion more a year on social welfare and \$1.3 billion more a year on medical and health services. These are substantial increases that will benefit the community. We have also earmarked sufficient funds to implement the series of measures announced by the Chief Executive in his 2000 policy address to improve the community's well-being. If we did not care about the disadvantaged, would we have proposed in the Budget additional expenditure initiatives to help the disabled, the youth at risk and those with a low standard of education? As an additional commitment, I have also said that starting in

2002-03 we plan to increase government expenditure by 4% a year in real terms in line with the trend GDP growth rate. Despite the many obstacles, we have done our best to address the community's needs.

I know many owners of property with negative equity have been disappointed that the Budget contains no specific measures for mortgage relief. Some consider the Government is not sympathetic to the plight of the people. But it is an inescapable fact in the management of public finances that sympathy is a poor substitute for principle. Any asset, be it property, stock or mutual fund can fall as well as rise in value. All investors have to accept this and be ready to take the associated risk when making a purchase. Expecting the Government to make good any loss in asset value amounts to asking the Government to take that risk on behalf of individual investors. Not only would that be totally unfair to others in the community, but it would set a bad precedent as well, placing an unmanageable burden on our public finances. The implications are far-reaching and we cannot afford — literally — to be imprudent.

Over the past six months, we have also taken various steps to work towards a more stable property market by minimizing government interference in this sector of the economy. Our supply of land and public housing has become more transparent; we offer land for sale on the basis of market demand; and we have abolished property sale restrictions that are no longer necessary. Our firm objective is to lower investment risks by neutralizing the unhealthy volatilities that previously plagued the property market due to imbalances between supply and demand. We believe that with recent signs of stabilization in the market, lower interest rates and a steady improvement in the economy, the financial situation of the middle-income group will gradually take a turn for the better.

But we are not oblivious to the situation facing people in the middle-income group. In the course of budget consultations, we heard suggestions to increase salaries tax and profits tax and to reduce various allowances in line with deflation. There were also suggestions for the Government to levy a tax on employers of foreign domestic helpers. After careful consideration, we decided not to pursue any of those suggestions, primarily because we wished to avoid putting more financial pressure on the middle-income group.

I realize that some Members and individuals in the community will still find it difficult to accept what I have just said. In their eyes, the Government with its huge accumulated fiscal reserves can afford to be more generous in its budgeting. It is a matter of individual judgement whether or not \$430 billion is an excessive amount to retain in the fiscal reserves. If they are not used, they may certainly appear to be too large. But if we had to run down the reserves to meet urgent needs, we would probably find that we needed to accumulate more. In the absence of any universal standard, we need to instil a sense of discipline in the accumulation and disbursement of our fiscal reserves. It is precisely for this reason that I specified guidelines for the upper and lower limits of these reserves in my 1998-99 Budget speech.

Before 1997, our fiscal reserves did not include the balance in the Land Fund. Some people have remarked that as we were able to cope with fiscal reserves of only \$180 billion in those days, we should be able to manage today with a similar level. The weakness of this argument lies in its assumption of no changes in the international economic arena since those days. Such an assumption is unrealistic. The world economy today is totally different from that prior to 1997. With increasing globalization, we are faced with greater and more frequent volatility in external markets. If we were to resort to outmoded standards in managing our public finances, we would fall behind and our domestic economy and the livelihood of our people would suffer.

Some have commented that the Government not only holds \$400 billion or so in the fiscal reserves, but more than \$500 billion in assets with the Exchange Fund. There seems to be some confusion here between fiscal and foreign reserves, so I will try to clarify the point further. Our fiscal reserves are placed with the Exchange Fund as deposits. Together with the monetary base^{Note} and accumulated surplus of the Exchange Fund, these deposits are then invested in assets, primarily in foreign currency. The foreign currency assets constitute Hong Kong's foreign reserves. But we should remember that under the Exchange Fund Ordinance, the primary purpose of the Exchange Fund is to maintain stability in Hong Kong dollar exchange rate and Hong Kong's currency and monetary systems. The Government cannot, in normal circumstances, use the assets of the Exchange Fund itself to meet its operational needs, or bring relief to the community or stimulate the economy. If necessary, the

^{Note} The monetary base includes Hong Kong currency in circulation, the aggregate balance of the banking system in Hong Kong, and Hong Kong currency Bills and Notes issued by the Exchange Fund.

Government can of course exercise its right to withdraw its own deposits, namely the fiscal reserves, from the Exchange Fund for financial purposes. This would lead to a corresponding decline in the volume of assets in the Exchange Fund, currently amounting to some \$1,000 billion. It is not only factually incorrect, but also dangerous to confuse the fiscal reserves with the assets of the Exchange Fund or with foreign reserves. This would send the wrong signal to investors that the Government was freely using assets that should have been used to stabilize the Hong Kong dollar and the monetary system. The consequences of this could be very serious indeed.

Other people have questioned the need to keep Hong Kong's foreign reserves at their present level, suggesting that the Government should withdraw part of its fiscal reserves from the Exchange Fund to stimulate the economy and improve people's livelihood. Past experience has shown that it is definitely in the interests of Hong Kong for us to accumulate sizeable foreign reserves. Our monetary policy is built on a currency board system. Conceptually, the system requires the monetary base to be backed up only by a corresponding amount in foreign currency. But given the volatility of international finance, it is necessary to hold reserves in excess or well in excess of the size of the monetary base before we can withstand challenges posed by speculators in the market. It was precisely because we wanted to strengthen the Exchange Fund that we chose originally to place our fiscal reserves with the Fund. A strong Exchange Fund helps to increase investors' confidence in Hong Kong's monetary system.

Just think back to the extraordinary events in 1998 when I had to use a huge amount of reserves in only 11 trading days to make incursions into the stock and futures markets. The incident vividly demonstrates that in extraordinary circumstances the demand on the reserves can be huge. In fact, the challenge we faced in 1998 was relatively small compared to the crisis that hit our neighbours in the Asian region. During that time, Korea used up almost all of its foreign reserves of over HK\$230 billion. Thailand actually exhausted its foreign reserves of nearly HK\$290 billion and had to call on the International Monetary Fund for assistance. I believe, prior to 1998, no one could have imagined that foreign reserves as sizeable as these would be insufficient defences against a challenge from international funds.

Let me also point out that the management and use of the Exchange Fund is, by law, subject to stringent regulation. It is also monitored by the Exchange Fund Advisory Committee which includes representatives of the three note-

issuing banks and other outside experts. The Director of Audit also scrutinizes the Fund's annual accounts. These arrangements ensure that the management of the Fund is direct, professional, transparent and free from political influence. I believe the mechanism is appropriate and in no way inferior to the checks and balances that exist in managing the Government's own finances. Indeed, economies around the world have all emphasized the need for professional, independent monetary management systems. They are only too well aware that any political interference, be it from the legislature or the executive, would affect investors' confidence in the stability of the systems. In my Budget speech, I mentioned the need to improve Hong Kong's monetary management system, precisely because I would like to ensure that the Hong Kong Monetary Authority continues to manage the Exchange Fund and to carry out its other duties with a high degree of professionalism, fairness and transparency, and without political interference.

Let me now respond to the comments on the size of the fiscal reserves. In my 1998 Budget speech I set the upper and lower limits to our fiscal reserves in recognition of several factors. Specifically, we need sufficient fiscal reserves to meet seasonal and cyclical deficits in our accounts without having to borrow. We need to allow for flexible deployment of fiscal measures to address the needs of the community during economic downturns, and to provide additional cover for exchange rate stability. Currently, there are no internationally accepted standards for what is the right level of fiscal reserves. In 1998, drawing on our experience in public finance I made the best judgement I could on the appropriate level for Hong Kong in the light of the prevailing economic and fiscal conditions. I still consider the 1998 guidelines reasonable, but we in the Government, including myself, the Financial Secretary designate and colleagues in the Finance Bureau would be happy to listen to and examine specific proposals from Members and the rest of the community. But such proposals must always take into account the factors which I have outlined and avoid the need for us to borrow.

In the meantime, I must stress that the Government's concern is not only with the size of the fiscal reserves, but also with successive years of operating deficits in our accounts. In our present financial position, it would be unwise to rely on our fiscal reserves rather than raising revenue to fund additional expenditure items. Nor do our fiscal reserves lie idle. On the contrary, we have been making good use of them to earn investment income, one of the Government's major sources of revenue. And the money is being spent for the

benefit of the community. Taking 2000-01 as an example, we expect income of \$23.3 billion from the investment of our fiscal reserves. This income accounts for some 10% of the government revenue, and helps to finance our recurrent expenditure. Accordingly, drawing down the fiscal reserves would aggravate the problem of operating deficits on both the expenditure and revenue sides. First, we would be spending more without raising new money. Second, we would be reducing our assets that earn investment income and weakening our revenue flow.

We must take a comprehensive look at our fiscal position and bear in mind the need for financial discipline. We must realize that international credit rating agencies and investors look not only at the size of our fiscal reserves and the volume of assets in the Exchange Fund, but also to see whether the Government is making appropriate use of these assets in meeting various demands.

Let me now turn to the scheme on admission of mainland professionals. A while ago, the Secretary for Education and Manpower responded to Members' comments on our proposals. I simply wish to reiterate that the scheme is vital if Hong Kong is to remain competitive and if we are to sustain economic growth. Without an adequate supply of manpower in the market, businessmen would think twice before they set up their businesses here and may even move their investments or operations out of Hong Kong. This would dampen or prevent economic growth and would be against the interests of all, including local professionals and graduates.

The admission of outside professionals is a common practice around the world. And for Hong Kong, the admission of mainland professionals is nothing new. In proposing to revive the scheme, we have already taken a conservative approach. We have decided to bring in these professionals only to address shortfalls in the labour market. We have also proposed that the scheme should apply only to specific disciplines. We have built in these restrictions despite the fact that the arrangements are not entirely in line with the free flow of professionals advocated by many economies and the less restrictive approach we have adopted in admitting foreign professionals. We should avoid putting too many controls over the scheme, as this would undermine its effectiveness and would leave investors with a negative impression of Hong Kong as a protectionist society.

I understand that Members and the public generally support or see no objection to the scheme in principle, but are concerned with how it is to be administered. And, I thank Members for having made many useful comments on this during the Budget debate and at meetings of the Panels on Security and Manpower. We will consider these comments carefully when we draw up the administrative details. We will ensure that the scheme will not affect the job opportunities and conditions of service for local professionals and graduates. We will also guard against abuse.

Of course, I agree entirely with Members that bringing in professionals from outside is only a supplementary measure to address the acute shortage of professionals in certain sectors in Hong Kong. Concurrently we must train and groom our own people. For many years, education has accounted for the largest portion of government expenditure, amounting to some 22% in 2001-02. Recurrent expenditure alone has increased by \$3 billion over the revised estimates for 2001-02, representing a real increase of 5.5%. This is itself over the forecast GDP growth rate for 2001. We are well aware that education is a long-term investment and that it takes time to see the results of training. We will continue to invest additional resources in education, and at the same time ensure maximum cost-effectiveness in the deployment of those resources.

In this connection, I would like to pay tribute to our local universities which have successfully reduced costs without compromising quality over the past three years. In the face of criticisms from some quarters that we are cutting university funding, let me repeat that upgrading the quality and quantity of tertiary education remains a key policy objective of the Government. We have not cut university funding outside the guidelines as agreed with the tertiary sector. We have proposed to let universities keep a larger amount of reserves to give them more flexibility in the deployment of resources to meet educational needs. While the Special Administrative Region Government will not reduce its commitment towards tertiary education, our universities may wish to follow a worldwide trend among top universities in tapping non-government resources for expanding their student admission or other academic programmes. This is also consistent with the recommendation of the Education Commission.

According to figures released last month, our unemployment rate has risen by 0.2 percentage points to stand at 4.5%. This slight increase, coupled with our announcement on admission of mainland professionals, has once again raised public concerns over unemployment in Hong Kong. We believe the latest

figure reflects the usual market situation following the Lunar New Year. We also believe one single figure cannot be taken to reflect a general deterioration in unemployment. That said, however, the Task Force on Employment will continue to monitor the situation closely. It will actively encourage training in the labour market and, if necessary, further expand measures to promote employment. With the admission of mainland professionals scheme in place, we believe businesses will develop and more job opportunities will be created in the local labour market. We will review the scheme on a regular basis to ensure that our objectives in introducing it are met.

While on the subject of human resources, I should mention that another priority is to protect the interests of our labour force and to ensure that employees can give their best under reasonable conditions of service. The Secretary for Education and Manpower has already announced that the Government will implement a series of measures to improve the arrangements for letting government contracts. These measures should help to improve service standards and encourage contractors to offer their employees remuneration packages that are reasonable and in line with market rates. I believe this particular government decision will set a good example for the private sector and promote the introduction of a management culture that emphasizes employees' benefits.

The volatility in stock markets around the world last month underlined the uncertainties in the global economy. The slowdown in the United States economy is affecting our external trade, with exports of goods in January and February this year registering a growth of only 4.2% in nominal terms, far below the double-digit growth for last year. Given the rapid changes in the United States market, investors around the world are becoming so sensitive these days that even the slightest speculation over the United States economic outlook led to a drop in the Hang Sang Index of over 1 000 points in little over a week. I believe Members are aware that some economic analysts have adjusted downwards their forecasts of Hong Kong's economic growth in 2001 after taking into account the prevailing uncertainties in the market. As our present forecast of a 4% GDP growth rate for the year has already factored in the slowdown in the United States, we believe this forecast should remain valid for the time being. We will review the situation as we release the economic report for the first quarter of 2001 which will be towards the end of next month. And we must be prepared for further volatilities in the global economy, as they can deal a blow to our performance in 2001.

Having considered the state of the economy and our financial position in the short-to-medium term, I have decided to err on the side of caution in drawing up the 2001-02 Budget. I consider this a responsible move. Some have said that I have chosen a minimalist approach just to play safe during my last few months as Financial Secretary. I do not think this is the case. Indeed, if I had really wanted to leave a good name for myself, I would have been distributing largesse in my final budget, not insisting on being prudent.

Having gone through a painful economic recession, I hope we, as a community, can bounce back to focus on Hong Kong's future directions. And in line with the Budget's theme, "hone our strengths and strive to excel" in the interests of Hong Kong. We must all work together if we are to capture successfully the opportunities arising from China's accession to the World Trade Organization, to upgrade our human capital and to advance our position as an international financial and high-value-added services centre. In the process, the Government will also work closely with the private sector.

Madam President, I have served as Financial Secretary for the past six years, so it is only natural that I have developed a special affinity for the job. Although I feel much honoured to be called the "God of Wealth" while holding the post of Financial Secretary, I am not, and never can be, that omnipotent hero in Chinese legend. I have had to face the limitations of real life and, on occasions, I have disappointed many. There were times when I was knocked off the godly pedestal and condemned as a "crying wolf", as well as being rebuked and forcibly "re-educated" by Members during many a budget debate. *(Laughter)* Then there have been the opportunities to appear more human and even to be described as the hero who saved Hong Kong's market only to be brought back to earth to be censured as the miser of all time. Looking back on all the praise and criticism, achievements and faults, I believe as the Chinese saying goes: "You can never please all, but you must always be loyal to your conscience".

Finally, let me take this opportunity to express my deepest gratitude to Members of this Council and to the Hong Kong community for their co-operation and support for the past six years. In my new position I will continue to give of my best to serve the interests of Hong Kong. Thank you.

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

(Members raised their hands)

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

(Members raised their hands)

Miss Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Miss Emily LAU has claimed a division. The division bell will ring for three minutes.

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

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

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Eric LI, Dr David LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Ms Audrey EU voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-Chi and Mr Frederick FUNG voted against the motion.

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

THE PRESIDENT announced that there were 60 Members present, 41 were in favour of the motion and 18 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Appropriation Bill 2001.

Council went into Committee.

Committee Stage

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

APPROPRIATION BILL 2001

CHAIRMAN (in Cantonese): We are to consider the schedule first in accordance with Rule 68 of the Rules of Procedure.

I now propose the question to you and that is: That the sums for the following heads stand part of the schedule.

CLERK (in Cantonese): Heads 21 to 31, 35, 37, 39, 40, 42 to 51, 53, 55, 56, 58, 60, 62, 63, 70, 72, 74, 76, 78, 79, 80, 82, 90, 91, 92, 94, 95, 96, 98, 100, 106, 110, 112, 114, 115, 116, 118, 120, 121, 130, 136, 142 to 155, 160, 162, 163, 166, 168, 170, 173 to 177, 180, 181, 184, 186, 188, 190 and 194.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the sums for the heads stated stand part of the schedule. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Head 122.

MR JAMES TO (in Cantonese): Madam Chairman, I move that head 122 be reduced by \$61,849,000 in respect of subhead 000, as set out in the paper circularized to Members.

First of all, I would like to explain that head 122 is the expenditure of the Police Force while subhead 000 is the operating expenditure. Why \$61,849,000? It is a deletion in full of the provision for staff costs of the Complaints Against Police Office (CAPO).

I have held discussions with the Government over the problem of the CAPO for many years and the crux of the problem is whether the CAPO can become independent of the Police Force. Back in 1993, the former Legislative Council passed a motion to urge the Government to make the CAPO independent of the Police Force.

The problems with the CAPO are both institutional and with the man. As regards the institutional side of it, members of the public do not think it is fair for policemen to investigate policemen. Concerning the problems of man, Members will know the situation if they have ever lodged complaints with the CAPO. Of course, the test will not work if they lodge complaints in their capacity as Members of this Council because they may not see the real picture of the CAPO if the CAPO staff know that the complainants are Members. If, after the receipt of a complaint, an ordinary staff member of a Member's office is asked not to reveal his identity and to disguise as the friend or relative of the complainant and to accompany the complainant in lodging a complaint with the CAPO, the Member will then become aware of the attitude of the CAPO staff in receiving the complaint. A complainant is in fact reporting a case, similar to a person who lodges a complaint against bribery with the Independent Commission Against Corruption (ICAC) or a person who lodges a complaint against smuggling with the Customs and Excise Department. If the complainant is the victimized party, although he is a victim, he will invariably feel like an arrested person being cross-examined like a suspect when he gives evidence. Of course, an investigation is necessary, but a complainant to the CAPO has a different impression from a complainant against bribery to the ICAC as a result of the attitude of the staff of the CAPO.

The Government may say this is impossible because the process will be video taped. Members should not forget that video recording does not start at the very beginning. The staff of the CAPO will state a lengthy preamble at the very beginning and video recording will not start immediately, but only when oral evidence is given. The staff will explain to the complainant that the police may need to do so in the relevant case. But before the complainant finishes recounting the case, the staff will interrupt and explain to the complainant that that is the general practice of the police. They may tell the complainant that the police have a hard job to do, and they may also question the complainants if they have seen what happened clearly and whether there are witnesses. If the witnesses are the relatives of the complainants, they will tell them that they may be queried if they are not giving independent opinions. The attitude of CAPO staff appears as though they are antagonistic to the complainants. They seem to think that the complainants' evidence is unreliable and they require the complainants to understand the police procedures and the difficulties encountered by the police in enforcement. A fair and objective complaint mechanism should not be anything like that.

Many people blame the CAPO for not conducting an investigation immediately on a complainant who is involved in another case. As far as I understand it, from a legal perspective, if a complainant involved in a certain case does not want to disclose his defence or evidence too soon since it may prejudice his case, he has the right to do so. But if the CAPO is outside the establishment of the Police Force, the oral evidence disclosed by a complainant to an independent complaint mechanism may not be handed over to another department of the police. The complainant's interest may be prejudiced if a prosecution is initiated against him because his evidence may have been known beforehand, or his evidence will be used to facilitate preparations prior to his cross-examination. All these problems originate from the fact that the complaint mechanism is not independent.

However, even if a complainant insists on an investigation and if he is willing to disclose his evidence after he has sought legal advice, not fearing the implications on his interest in another case, and if he is willing to bear the risks, the CAPO will not conduct an investigation very often. Procrastination will affect the administration of justice and impede the collection of a lot of evidence. Actually, more and more civil proceedings have been initiated against the police for abuse of power because the people think that they have been denied fair investigations by the CAPO and there is procedural and material injustice.

The United Nations Human Rights Committee has urged the Government of the Hong Kong Special Administrative Region time and again to give due attention to the fact that the absence of an independent mechanism for investigating the abuse of power by the Police Force is a violation of human rights and improvements should therefore be made.

Some colleagues may ask if there will be a lack of complaint mechanism if the CAPO is abolished. Previously, judgement was given in favour of the complainants in respect of a few complaint cases every year, but there will be none of such cases after the abolition. Members should understand that this is the way things are going. If a majority of Members agree to abolish the CAPO today, it signifies that they want the Government to make thorough improvements and essentially improve a system that cannot command trust from the public. If Members vote in support of deleting the provision for the CAPO, I do not think the Government will say that there will not be any complaint mechanism in future and the Police Force will be allowed to abuse power for it does not matter any more. I definitely do not believe a responsible government will do so.

The major argument presented in the Government's letter lobbying Members is that if changes are made in an orderly and progressive manner rather than a radical manner, we may obtain actual results more easily. I am aware that some Members support this argument for orderly and progressive changes. Yet, firstly, I think it is after all a waste of resources to make changes to a system that lacks credibility and is basically not trusted by the public. Secondly, if the Government is willing to pledge that this complaint mechanism will ultimately become independent, just like the provision in the Basic Law that a democratic system will ultimately be adopted, we can say that we are taking orderly and progressive actions. Nevertheless, the Government has not made such an undertaking.

Thirdly, if the proposal made by the Independent Police Complaints Council (IPCC), appointed by the Chief Executive to monitor the CAPO, that the highest leader of the CAPO should be a civilian is not accepted, can we describe this as an orderly and progressive process? If the proposal made by the IPCC to establish an independent secretariat — we discussed the issue in 1996-97 — is not accepted, can we describe this as an orderly and progressive process? If the proposal made by the IPCC to appoint some senior legal professionals rather than ordinary citizens as monitors or observers is not accepted, can we describe this as an orderly and progressive process? If the proposal made by some former Vice-Chairmen of the IPCC and the IPCC to deploy investigators on their own if the report of the CAPO is rejected by the IPCC is not accepted, can we describe this as an orderly and progressive process? The report drafted by the IPCC did not accept the conclusion of the CAPO, including the incident in 1997 in which Mr LEE Ming-kwai, Senior Assistant Commissioner of Police, broadcast Beethoven music. The incident was reported to the Chief Executive, but he only returned and neglected the issue. Yet, nobody from the IPCC resigned and the incident was accepted without any protest. Can the continuation of such a system be described as an orderly and progressive process?

Come to think about this. If they really think that the existing system only needs minor adjustment to become a system that is fair, trusted and effective, they can continue to vote against the motion at ease, otherwise, I wonder if Members can express their views, or at least abstain from voting so that the Government will be more determined to carry out a reform. Please do not give the public a false hope while they will actually continue to be "teased" by the

CAPO. I may have used a rather vulgar term but a lot of people really have this strong feeling after they have gone through the lengthy complaint process.

Without a thorough reform and a credible mechanism, I do not think over \$60 million is a value for money provision. If approved by this Council, the provision will be used to employ more than 100 policemen for the continuation of the system to give the public a false hope. Hence, I have proposed this amendment.

Mr James TO moved the following motion:

"That head 122 be reduced by \$61,849,000 in respect of subhead 000."

MR LAU KONG-WAH (in Cantonese): Madam Chairman, I have listened attentively to the Honourable James TO's speech just now and read his letter to Members carefully. One point in the letter is "abolishing the Complaints Against Police Office (CAPO) which lacks credibility". Since its establishment, the CAPO has dealt with many cases of varied significance. In handling complaints lodged by the public, I have also referred many cases to the CAPO. Is the CAPO totally lacking in credibility? I am not so sure. In fact, the CAPO has dealt with a number of cases to the public's satisfaction and succeeded in substantiating some complaint cases. Thus, I do not think it is fair to dismiss the CAPO's work completely or argue that the complaint mechanism lacks credibility if it does not become independent.

In recent years, the complaints lodged with the CAPO had a relatively low success rate. This may be due to two factors: first, the CAPO did not investigate the cases wholeheartedly or was partial to some people; the other possibility is that some members of the public might have lodged complaints frivolously. Thus, it may be due to various reasons. But the success rate may not necessarily reflect the real situation. If we delete this provision as a whole, it would mean dismissing the past work of the CAPO altogether and their operation would be affected all at once. We cannot accept this.

Madam Chairman, over the past few years, Mr TO has tried to force the Government to take this issue seriously through this tactic, that is, by demanding to delete this provision altogether. While we admire his perseverance, is it really necessary to force the Government to succumb to this through such drastic

action? The Honourable Eric LI is also here. In the Public Accounts Committee, we are often dissatisfied with many government departments and we use a lot of sharp words to criticize them, such as accusing them of "negligence", "dereliction of duty" or "censuring", and so on. However, it does not mean that we can only force the Government to improve by deleting the provisions of the relevant departments.

Madam Chairman, I certainly do not think that the CAPO is perfect. It has inadequacies and some areas that warrant improvement. It is still open to question whether the complaint mechanism should become independent. I have read the Secretary for Security's letter carefully, which expresses the hope that the Independent Police Complaints Council will be given statutory status and reveals that the Independent Police Complaints Council Bill will be tabled in this Legislative Session. I hope the Secretary will be explicit about when the Bill will be introduced when she responds later. In fact, the sooner the debate over this statutory organization or the Bill begins, the better. I hope the Government will introduce the Bill to the Legislative Council this year and give clear guidelines on how the mechanism for handling complaints against the police can be improved, so that Mr TO will not need to propose this motion for debate next year.

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

MRS SELINA CHOW (in Cantonese): Madam Chairman, we are definitely not unfamiliar with the amendment proposed by Mr James TO today. We are very clear about the position of Mr TO and his views on the IPCC and the CAPO; therefore, it is not strange at all for him to propose this amendment. He has just put forward a hypothesis in a sincere manner — his hypothesis is that complaints are generally not handled impartially by the CAPO and objective investigations are not conducted, and the IPCC fails to perform its functions effectively. And according to this hypothesis, given that the whole system is bad, we should convey to the Government the clear message that this Council will not approve of the provision, and the Government must change the relevant system according to the views of this Council. The Liberal Party does not subscribe to this view as we have expectations of the IPCC all along and we think that the IPCC does serve certain functions.

Mr TO said that he had accompanied the complainants in lodging complaints with the CAPO and he found the attitude of the staff of the CAPO bad and the complaints were not handled impartially. I wonder if Mr TO has referred these complaints to the IPCC which has the responsibility of investigating these cases. I have a word of advice for Mr TO. He can resort to this channel if his amendment is not passed today. However, according to his hypothesis, the IPCC will not conduct an investigation and I believe he will not do so.

Concerning the IPCC, we can see that a lot of people who are concerned about this issue have worked very hard in the past. I have also asked people including the Honourable Mrs Miriam LAU who used to be a member of the IPCC if the CAPO is really devoid of any merit as Mr TO has alleged. From a more objective and impartial angle, the CAPO is actually another unit in the Police Force and it is responsible for handling complaints. Does the CAPO not have any credibility? I believe the situation is not as bad as that described by Mr TO. What about the IPCC? The reports of the IPCC are tabled every now and then, and its Chairmen (Mr Denis CHANG was the former Chairman and Mr Robert TANG is the incumbent Chairman) are respectable senior barristers. Will they act in collusion with the CAPO? We can definitely not simplify the matter that way or take a lopsided view of the issue. It will be unfair to those in the IPCC who spend time and efforts to serve the community.

We have discussed this issue before and we all know that the IPCC has made some improvements to the system. These may not entirely answer our demands but it at least demonstrates that the Government is not unalterable or unwilling to change. As we know, the IPCC will later introduce a bill to regularize the existing arrangement and give it a statutory status. In fact, this system can be improved and Members can express their different views when this Council discusses the bill. If Mr TO does not think that the IPCC should exist, he may not express any positive views because he just wants the abolition of the IPCC.

Regarding the investigation function, the complaints against many disciplined forces in the world, regardless of whether they are police forces or military forces, are handled by an independent unit of the relevant force. The ICAC is certainly one of such forces. How can the public be fully confident in these complaint mechanisms? We cannot just demand the independence of such mechanisms because the functions may overlap. If we establish a mechanism to handle complaints, and another mechanism to investigate into the mechanism,

how many independent systems will be considered enough? If we demand credibility, I believe the monitoring system, recognition by the public and their response are the most important. Regardless of the system to be adopted, the Government has the responsibility to feel the pulse of public opinion from time to time. If the public's views are worthy of adoption, the Government should try its best to accommodate their views so as to improve the system.

The Liberal Party supports the existing system under which the CAPO conducts investigations and is monitored by the IPCC, therefore, we will not support the amendment.

MISS CYD HO (in Cantonese): Madam Chairman, I rise to speak in support of the amendment proposed by Mr James TO. I will focus on one of the arguments given in the Government's letter lobbying us to oppose Mr TO's amendment. The Government argues that we must proceed in an orderly and gradual manner with this issue. But as Mr James TO asked earlier: Have we proceeded gradually and how much progress have we made?

Considering the reforms implemented by different democratic countries in recent years, the mechanism for handling complaints against the police in Hong Kong obviously lags far behind. For instance, in December 2000, Britain already carried out consultations and proposed to establish an independent commission for complaints against the police, which would be empowered to investigate complaints about the use of arms by the police against persons in custody or cases of death of some persons in custody. The commission would have members who are non-police officers and could initiate public disciplinary proceedings. On 28 February, the relevant British authorities completed the process of collecting views and decided to carry out reforms in this direction. Similar work has also been done in Hong Kong, albeit by the IPCC. In March this year, a seminar was held and the relevant personnel from New York City and Victoria, Australia were invited to the seminar to share their experience. At the seminar, we learned that the mechanisms for handling complaints against the police in New York City and Victoria, Australia have independent powers and many non-police officers among their members to join in the investigations. In contrast, little can be done in Hong Kong at the moment, even though we have the IPCC. In 2000, only eight of the 25 recommendations made by the IPCC to improve the work procedures were adopted. In the same year, only 118 of the 194 recommendations of the IPCC to revise the classification of accusations by

the CAPO were adopted. Just now, the Honourable Mrs Selina CHOW said we need not fear, since the relevant bill would be tabled in the Legislative Council for deliberation. But according to my information, the bill on the IPCC is not included in the 35 bills to be tabled in the Legislative Council by the Government in this Session. Since the colonial government withdrew the relevant bill before the Third Reading in 1997, the Government has still not resubmitted the bill after procrastination for a long time, much to our regret.

Madam Chairman, today, Mr James TO has again proposed an amendment to the Appropriation Bill. While I certainly admire Mr TO for his quixotic spirit, it also shows up the inadequacies in our political structure. What power does the Legislative Council have? Bills are subject to restriction under Article 74 of the Basic Law. Bills that are considered to go against government policy or relate to public expenditure may not be introduced. Some people say that we can monitor the Government through discussions in the panels of the Legislative Council. While all colleagues in the Legislative Council make a lot of effort in discussing the issues, we are merely talking to ourselves. If the Government does not respond positively, it will just do things its own way, regardless of what we say. Actually, as Mr TO knows, we do have some powers. One of these powers is to follow up cases. This is what we do most and our most strenuous task, because resources are so limited. If we follow up each case, it would be very hard work. We wonder why we cannot make fundamental policy changes, so that the executive authorities, the various representative councils and the public can all follow the rules, without having to exercise discretion over each individual case. When some Members follow up certain complaints vigorously, the people concerned would be better taken care of. But this is not the proper way. What is the last power at our disposal? It is the veto that can be used against the Appropriation Bill 2001. Some Members think it is wrong to use a sledge hammer to crack a nut, that is, vetoing the whole Bill. But if the executive authority wants to lead and refuses to respond to this question positively year after year, what other recourse do we have except to exercise this power? I wish to say to Members of this Council that we should exercise the powers we have, instead of telling people that we have responsibilities but no powers. We do have a power, that is, to exercise the veto against the Appropriation Bill 2001. By exercising this power, we can force the Government to consult with us again on how to improve the relevant policy.

Madam Chairman, I support Mr James TO's amendment. Thank you.

MR AMBROSE LAU (in Cantonese): Madam Chairman, the Hong Kong Progressive Alliance thinks that although the CAPO does not operate independently of the Police Force, it has been subject to a certain degree of effective monitoring. This includes the referral of all cases under investigation to the IPCC for deliberation. If necessary, it will put forward questions to the CAPO, demand access to information and documents and to meet witnesses for the purpose of clarifying any points of doubt or even demand that a fresh investigation be made into the complaint. In addition, under the related Observers Scheme, surprise visits can be made to observe the investigation work carried out by the CAPO. With the multiple control mechanisms and the checks and balances in place, the CAPO cannot possibly do things arbitrarily, nor protect those bad elements who tarnish the reputation of the Police Force.

In our opinion, we should not categorically deny the effectiveness of the CAPO and demand that its provision be deleted simply because the Government refuses to make it an independent body. If we refuse to provide funding to government departments because their work has not been satisfactory, it is very likely that few funding applications can be approved by the Legislative Council today. So I think we ought to be more positive in this issue and stop being negative. If we think that certain departments are not doing their jobs good enough, we ought to urge them to make improvements and we should put in more efforts in striving to monitor the work of these departments. I trust that Honourable colleagues will continue to oversee the work of the CAPO closely so that the complaints made by the public against the police will be handled in a fair, just and reasonable manner.

With these remarks, Madam Chairman, I oppose the amendment moved by Mr James TO.

MR ERIC LI (in Cantonese): Madam Chairman, when he spoke earlier on, the Honourable LAU Kong-wah mentioned that I was the Chairman of the Public Accounts Committee; he may not know that I am also a Vice-Chairman of the IPCC. In fact, all the three Vice-Chairmen of the IPCC now are incumbent Legislative Council Members. Perhaps, it is really true that it always takes time for the effects of any reforms to be felt. Over the past four years, that is, since I became a Vice-Chairman of the IPCC, the Chairman and the rest of the Vice-Chairmen have all been replaced, and I am the only Legislative Council Member who still serves on it.

Since I have disclosed that I am a Vice-Chairmen of the IPCC, I do not think that it is appropriate for me to "sing my own praises". I wish only to present some facts and the progress of reforms. The fact is that although the Chairman and some of its Vice-Chairmen and members have been replaced, I am sure that many members of the IPCC are still of the view that the existing set-up of the IPCC warrants further improvement. As for the kind of improvements required, we certainly hope that the Government can introduce a bill to turn the IPCC into a statutory body, and we also hope that the IPCC can be given more powers to review the work of the CAPO. The work of making improvements has not achieved all the desired results, but, to be fair, quite a number of improvements have already been made over the past few years, ever since Mr James TO and all of us started to keep an interest in the work of the IPCC. I believe Mr James TO should still clearly remember the internal consultancy reports of the police, in which a series of improvement recommendations were made. Some of these recommendations have been accepted and implemented, some examples being the introduction of the Observers Scheme, the independent status of the IPCC secretariat and the allocation of additional resources for the purpose of holding meetings to communicate with members of the public. Over the past few years, many improvements have been made, and the progress of reform is by no means stagnant.

When it comes to the work of the CAPO, though in many areas, the views of the CAPO and the IPCC are different, we certainly do not think that the work of the CAPO is worthless or ineffective. Whenever we have any disagreement with the CAPO, we can actually exercise our independent authority, and we have never hesitated to exercise such authorities, which, among other things, enable us to request the CAPO to reconsider its decisions until a consensus is reached. Naturally, both sides may not be able to reach any consensus on all cases, and in some past cases, we did inform the Chief Executive that we disagreed to the classifications by the CAPO. We also held some press conferences to state our different views openly. Moreover, every year, we will submit a report to Legislative Council Members, informing them of the various issues over which the IPCC and the CAPO held different views.

The Honourable Miss Cyd HO mentioned a seminar held in March. If she had sat through the whole seminar, she would have known that Dr the Honourable LO wing-lok and I actually hosted the last part of the seminar. At that time, I heard many different views from people coming from different countries. I cannot possibly sum up all these views here in just a few words,

but I still wish to point out several of them. Each country will actually adopt its own approach in the light of its unique circumstances and institutional arrangements, but they are all trying to do their best in this respect; and because different institutional arrangements are involved, there are huge differences among the costs incurred by individual countries.

Concerning this annual ritual of Mr James TO, I can only respond as follows. First, even if Mr James TO really succeeds in removing this allocation of several dozen million dollars from the Budget today, it does not necessarily mean that the money can then be allocated to the IPCC or any other body; this does not necessarily mean that the problem can be solved. From the perspective of costs, we can see that even if the IPCC is really turned into an independent body, and even if it can thus get the \$60 million, it does not necessarily mean that it will be able to achieve what it is right now capable of. A different set-up may require new costing in terms of resources. I can perhaps say that even if the IPCC is allocated \$60 million today to handle the work of the CAPO, it cannot possibly achieve any good results immediately. The reason is that the set-up of the IPCC must be appropriately revised, and so must the relevant legislation. Besides, there are also the needs to recruit new staff and put in place new personnel arrangements. Even if the amendment of Mr James TO can really be passed today, we must inevitably attend to many practical issues. That said, I must add that I do appreciate the efforts made by Mr James TO over the past few years, because his efforts have produced constant monitoring effects on the IPCC, propelling it to make improvements. Unfortunately, he has resorted to the approach of negating the Appropriation Bill 2001, and my way of handling the matter is so different from his. But I still very much look forward to further co-operation with Mr James TO. In particular, when the Government finally submits the long-awaited bill, I hope that Mr James TO can turn his grief into power and continue to work with us to turn the IPCC into an independent statutory body with stronger powers to review the work of the CAPO. Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): Madam Chairman, I do not think that I have to repeat the point that the work of the CAPO had been severely criticized and denounced by members of the public. There may well be a handful of substantiated cases among the several thousand of complaints received by the CAPO, but if this is already all that it can achieve, I must say that its performance is indeed far below our expectation, especially when we look at the

opinions given by those Members directly involved in the relevant work and information obtained from the complainants we have contacted.

People may perhaps say that though the CAPO can only achieve 1%, 2% or several percentage points of our performance requirement, it has not performed too poorly after all; it is still worth its existence and there is a point in retaining it. But does such a complaint mechanism really deserve this Council's approval to vote such an enormous provision for its operation? The Honourable Ambrose LAU said earlier on, "If we refuse to provide funding to government departments because their work has not been satisfactory, it is very likely that few funding applications can be approved by the Legislative Council today." I am not sure if he was in fact saying that many government departments were performing as poorly as the CAPO. This might have been what he wanted to say. Honestly speaking, I really do not know whether he was speaking for the Government or simply mocking it. *(Laughter)* To be frank, given its performance, we simply do not think we should retain the CAPO at all, let alone allocating millions of dollars every year to support its operation. Under the Financial Secretary's principle of fiscal prudence, is it worth the while to spend so much public money on such a mechanism, which is nothing but an embellishment, and which is capable of achieving so little? The answer is "no". The Honourable LAU Kong-wah said that as long as there is some kind of achievement, however little it is, we should still give the CAPO funding support. But I do not agree that this should be a justification for supporting the funding request.

Some may well say that there is a possibility, a possibility that given time, the CAPO may make improvements on its own. But are there really any such prospects for the CAPO? Madam Chairman, no, there are not, because the so-called orderly and gradual approach is nothing but an empty slogan; it has never set down any target and timetable, not even an agenda for discussions. Therefore, since it has not even worked out any agenda, does it make any sense for us to wait for its progress? What kinds of improvements can it make? The Government has never given any clear explanation on this.

In the past, we did give our views on those areas that warranted improvements. For example, when we scrutinized the legislation on the IPCC years back, I demanded the incorporation of a provision that could empower the IPCC to receive and handle minor complaints (such as those against uncivic

manners). In the end, the legislation was passed, but the Government refused to incorporate the provision into the ordinance. Can there be any improvements? My answer is "no".

That being the case, what can we expect? We have before us an organization which is capable of attaining just 2% to 3% of its performance indicators, but which costs us millions of public money annually; worse still, it even gives people a false impression that we have a sound complaint mechanism. Does such an organization deserve our continued funding support? Mr LAU Kong-wah advised us not to be so extreme, saying that denunciation was already enough, and that we often denounced others anyway. I do not know whether this is really the style of his political party — while denunciation can be made, it should not be taken into account when voting comes. If this is really its style, I must express my disagreement.

I think once we have made any denunciation, we should really exercise our powers — limited as they are, as you, Madam Chairman, should know only too well. We are just trying to voice our strong discontent; how can this be described as extreme? How can our responses be described as extreme when we remember how they voted against the Government's land resumption compensation policy last week? Do they think that such extreme responses should only be shown just once in a while? So, since our powers are so limited, we have no alternative but to exercise our power of voting against the appropriation bill, as a means of showing our strong discontent once again. We need to put across such a message regardless of whether or not the motion can be passed.

No doubt, in the IPCC, there are indeed some people who sincerely wish to do the best they can to handle complaints against the police. But I have to say that they really cannot achieve much despite their good intention. Successive Vice-Chairmen of the IPCC have said to me, "There is indeed so little I wish to do." — I am sorry, I mean, they told me that they wanted to do many things, but could only achieve very little. *(Laughter)* My Goodness, I cannot even express my thoughts clearly now. *(Laughter)* According to these Vice-Chairmen, some cases in the past were classified as substantiated in the reports, but they had to keep everything confidential, including the reasons for their substantiation, the actions and follow-up actions taken. And, they could not have access to the case reports. Members of the IPCC cannot release any case information to us, for everything must be kept confidential. The IPCC has in fact put forward

many recommendations, but none of them have been accepted. For all these reasons, even though members of the IPCC may have very good intention, and even though they are determined to make improvements, they can still do nothing.

I wish to emphasize that the only thing the Legislative Council can do is to bring up this matter for discussion today and try to delete the subhead. We have done all we can to put our message across by bringing up the matter in the relevant Panel of this Council, in motion debates and even in the United Nations Human Rights Committee. But all our words seem to have fallen on deaf ears, and we have never received any encouraging feedback.

Lastly, let me conclude my speech by saying that as long as the CAPO continues to exist in its present form, it will stand in the way of our progress. I am convinced that if we can veto this provision and drive the CAPO out of existence, then, like it or not, the Hong Kong Government must somehow reconsider how it should re-establish a genuinely independent police complaint mechanism that can command credibility and the acceptance of the public and Members. Therefore, I urge Members to support the motion moved by Mr James TO. Thank you.

MR ALBERT CHAN (in Cantonese): Madam Chairman, when the inside of an apple is rotten, no matter how its surface is polished by waxing, it will still be a rotten apple. Similarly, when the roots of a tree are rotten and dead, no matter what nutrients are added to it, the tree will never grow any dense canopy again. These examples can be cited as an apt description of the existing CAPO.

Mr LAU Kong-wah and Mrs Selina CHOW seemed to be saying that if we did not vote in support of the provision, we would fail to do justice to the past achievements or performance of the CAPO. When it comes to fairness, we must start our discussions by looking at the whole situation. They asked whether our proposed action was fair to the staff of the CAPO and the IPCC. But why have they not asked whether the continued appropriation of fund was fair to the general public? On and on these two Members talked, but they never commented whether the continued appropriation of fund would be fair to the general public. I do not know whether this is the new approach of the Democratic Alliance for the Betterment of Hong Kong (DAB); DAB members often behave very bravely and fearlessly in their constituencies, but when they

vote in the Legislative Council, they at once become very timid and hesitant. The number of public complaints lodged with the CAPO now stands at 3 000 to 4 000 cases a year, and most of the complainants are grass-roots people such as professional drivers and even youngsters. Many complainants may also approach the offices of District Council (DC) members and Legislative Council Members for assistance. I am sure that many elected Members should have come across hundreds of such complaints.

I have been a DC member for more than a decade, and in my constituency, people practically never stop lodging such complaints, but in the end, 99.9% of them would be unsuccessful. Mr James TO has already clearly described how the CAPO handles the complaints it receives. Some of the complaints received by me even involved frame-ups. In one case, a teenager was dragged by police officers into an alley where a bag of pills was squeezed into his pocket; then, he was charged for drug possession. There are also many other types of complaints. For example, some people complained that following their disputes with police officers, or others with unusual background, they were taken to a police station where they were beaten up until they "confessed". I am sure that there are countless such cases. But we can easily imagine that an ordinary citizen (especially a grass-roots person) who lodges a complaint with the CAPO will not have too much knowledge about the law. So, if the staff of the CAPO do not have any intention of helping the complainant, if they want to mislead the complainant, or if they deliberately lead him away from providing any information that is against the interests of the police, then the investigation findings may not necessarily be favourable to the complainant. Therefore, whether or not the CAPO really wants to adopt an approach that can help the complainant is very important. This is precisely one of the reasons for setting up the Independent Commission Against Corruption. When it comes to corruption, especially corruption cases connected with the police, is investigation by the police an effective solution? The society of Hong Kong is still plagued with corruption problems, and the situation is especially serious among front-line officers. I am sure that Members should be well aware of these cases. That is why I am really shocked by the remarks of Mr LAU Kong-wah. I hope that the residents of New Territories East, especially those of them who were treated unfairly by the police in the past, can remember what the relevant Members said earlier on. When people talk about fairness, they must bear in mind the actual experiences of people instead of simply focusing on fairness to the police. The people should also be treated fairly.

Madam Chairman, some Members talked a lot about institutions, and they said that investigations of any kind must be conducted under their respective mechanisms. In response, I wish to talk about the substandard piling works cases connected with the Housing Authority (HA). Do we not agree that there are many investigation reports on these cases? The Government conducted its own investigation, and so did the HA; there are at least three investigation reports, but why has the Legislative Council still decided to set up a select committee on these cases? The reason is precisely that the Legislative Council considers these reports not comprehensive and reliable enough. That is why it thinks that it must set up an independent committee to investigate the cases. So, many Honourable Members now have to spend at least one or even two days a week on attending meetings of the Select Committee, summoning witnesses, scrutinizing the relevant information and conducting an independent investigation. All this is precisely because they believe in the importance of independent investigation.

We all want to set up an independent committee on investigating the substandard piling works cases connected with the HA, but when it comes to the abuse of power and dereliction of duty of the police, I fail to understand why there is not yet any independent investigation mechanism despite our many years of struggle. Therefore, I hope that when Members look at this matter, they will not focus only on police or government authority; rather, I hope that they can pay attention to the unfair or unjust treatment received by the people. The reason for this is that there are 3 000 to 4 000 complaints a year, and this already means more than 10 cases a day. These figures only cover those people who actually lodge their complaints with the CAPO; they do not cover those who have been treated unfairly, but who think it is useless to complain to the CAPO due to a total loss of confidence.

Therefore, I hope Members can do justice to the people. I hope that they can support the appeal of Mr James TO. Even if they have no courage to face the problem, or even if they do not dare to cast a negative vote, they should at least leave this Chamber, or even go to the restroom. No matter what they do, they must at least try to exert some pressure on the Government, telling it that we cannot accept the existing arrangement, because the matter has dragged on for many years. The Financial Secretary remarked that we should be true to our conscience. I hope that Members can really behave in this way. I think if Members allow this problem to drag on, then in the future, if any of their

relatives or friends are unfairly treated by the police, they should be ashamed of themselves for having cast a negative vote on Mr James TO's motion today.

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

MISS EMILY LAU (in Cantonese): Madam Chairman, when I served as Duty Roster Member a month or two ago, I met a scholar from Washington, D.C. of the United States who was a member of the think tank there. Members from different parties and lines were present and he delightedly asked us some questions on the budget and he also asked if we could vote against the budget. A Member from a certain party said that we could certainly not do so as it would contravene the Basic Law and if we voted against the budget, the situation would go out of hand. When I asked him about the situation in Washington, he told us that it would be strange for the budget to be passed on schedule in Washington because the budget is not passed every year. Madam Chairman, I am not saying that you are "not all right", but that the Budgets are not passed. (*Laughter*) Since the budget arouses heated arguments in Washington every year, they will think we are dinosaurs when they see what happens here in Hong Kong. Some colleagues who consider the Budget sacrosanct should really look at some foreign examples — it may be rather sensitive to mention the United States now and I will not rashly talk about the United States here otherwise I shall be accused of toadying to foreign powers. However, we should first consider the practice of foreign parliaments. The United States is often outstanding indeed — there is a wrestling ground there and congressmen and the government will wrestle whenever a government motion is moved in the Congress. Yet, Members of this Council seldom do so and we do not mix up matters. Some said the United States is like a Christmas tree. Can we take the middle road? Some colleagues have remarked that I can vote against the Budget for all the discontents I harbour against it. Madam Chairman, I voted against the Second Reading mainly because I did not agree to the way the Financial Secretary handled the reserves and I was not pleased with the fact that he failed to tell us why the reserves was used to purchase office premises for the Hong Kong Monetary Authority. But I will not discuss the issue again.

Some colleagues have just said that it will take very long to do what I said because it will involve making amendments to the law. How can we do so in time? Madam Chairman, I believe you can still remember that when we

discussed the motion of no confidence in the Chairman of the Housing Authority (HA) and the Director of Housing during the last term, a lot of things happened after the Honourable Fred LI had given advance notice that he would propose the motion. What happened when the Government knew that the motion would be passed? Madam Chairman, the Chairman of the HA resigned before the passage of the motion. Therefore, we definitely have reasons to believe that if this Council has a chance to vote against such a significant issue as the Budget, Members will propose motions relating to the CAPO and the increase in funding for education and services for children as soon as possible. Members will still propose such motions even if the motions cannot be passed at once and there may be a few months' delay. Madam Chairman, I think this will happen sooner or later.

Therefore, we must first have such a mindset. If this Council rejects the Budget, we will be in tune with a lot of democracies in the world and we will show others that we are really smart in knowing how to use our powers. We can only use such powers when we have the strength of unity but not as individuals.

Madam Chairman, when we held discussions on political reforms in Conference Room A a month or two ago, Dr DEGOLYER of the Baptist University urged us to vote against the Budget. He thought that we had no choice and were helpless but we were actually very powerful for we could vote against the Budget. Some Members were really shocked at hearing his remark, as though they had never heard or thought so. I noted that Mr Rafael HUI had recently told the DAB that they should not fear opposing the Government, so, the DAB voted against the relevant motion last week. It is true that we should not fear raising objection for the sky would not collapse.

Madam Chairman, Members certainly should vote according to their conscience. But if we ask the public, those who have not got in touch with the police or the CAPO will certainly think that the mechanism is fine. However, most of those whom the police have beaten or who lodged complaints after being wrongfully treated will cast a vote of no confidence in the existing system. I have once told the new Commissioner of Police, Mr TSANG Yam-pui, that the relevant problems must be tackled. On 8 March, the International Working Women's Day, I attended a seminar hosted by the IPCC and I sat there throughout the whole seminar. Representatives from South Africa, Australia and New York invited to attend the seminar pointed out that in an overwhelming majority of countries, the police forces were monitored by laymen. This mode

was very successful and accepted by many people. As many policemen were also present, I rose to ask a question so that the representatives would tell our policemen that they need not be afraid, because it was a highly civilized practice, being both reasonable and advantageous to the police, to have an independent organization monitoring them. Let us look at the Ombudsman. As the Ombudsman made judgement against a lot of complainants, some of them would feel aggrieved but most of them accepted the independent judgement. In comparison, nobody is willing to accept the existing practice in which the public is considered wrong after policemen have conducted an investigation on policemen.

Madam Chairman, what happens today is really interesting. A few Members keep praising Mr TO (Madam Chairman, I am talking to you) but they object to his amendment. I wonder if they said one thing but meant another. Madam Chairman, it is better to be frank and I believe many of us are frank and they like to be frank. It is better for them to object directly instead of raising their objection after praising the Member. I do not think Mr TO's amendment will be passed today, but it strikes home a very important message — the CAPO issue is trifling, and the most important issue at stake is that we should object to the Budget together in the future so that people will become aware of our strength.

I so submit.

DR LO WING-LOK (in Cantonese): Madam Chairman, I know many colleagues are waiting for the vote. I beg their indulgence in making a few more remarks.

I was recently appointed as the Vice-Chairman of the IPCC. But as I am still green on the relevant work, I am not in a position to comment on the merits and demerits of the CAPO or the IPCC.

In the past few months since I have engaged in the relevant work, I have raised objection to the classification systems with respect to several types of complaints and my objection has been dealt with in a positive manner. I only wish to state that the police complaint mechanism is not completely independent. Nor are the police allowed to handle the complaints entirely on their own. There are reasons for this. It is actually a management process if we can allow the police to face complaints lodged against them or let them investigate complaints targeting at them because this can enable the police to discover their

internal problems, address those problems and deal with them. What we need to regulate is whether or not such an internal management mechanism is fair and impartial. The IPCC can actually play this role or even be given greater powers. In my opinion, there are definite justifications to allow the police to investigate the complaints.

This is all I wanted to say. Thank you, Madam Chairman.

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

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, the Government strongly opposes Mr James TO's amendment which proposes that head 122 be reduced by \$61,849,000 in respect of subhead 000 (the operational expenses of the Police Force), in order to delete the provision for the Complaints Against Police Office (CAPO).

I am not in the least convinced by the reasons put forward by Mr James TO, Mr Albert HO and Mr Albert CHAN earlier for deleting the provision for the CAPO in its entirety and in a broad-brush manner. Nor am I convinced that the deletion will help improve the police complaints mechanism or the mechanism monitoring complaints against police officers. The reasons advanced by Mr TO and the other two Members boil down mainly to two points. First, credibility; second, performance.

In respect of credibility, some Members said that the public has no faith in the CAPO at all. I think this is far from the truth. The number of complaints received by the CAPO has increased steadily year after year. If this complaint mechanism is totally useless, why is there a steady increase in number year after year, and why are there more and more people using this mechanism? This is the first point.

Besides, earlier on a number of Members, who have participated in the Independent Police Complaints Council (IPCC), expressed their observations from their practical experience, stating that the work of the IPCC cannot be said as futile and that the IPCC has actually been playing a very important and positive role.

The second point I wish to state is that members of the IPCC are absolutely independent. When Mr Denis CHANG, S.C., former Chairman of the IPCC, left the IPCC, I sought his views on the performance of the CAPO, and I think his reply is fair. As Members may know, Mr CHANG supports the setting up of an independent IPCC, but he said that the CAPO has been doing a better job, and that making it completely independent is just a matter of formality. On this point, we can have further discussions but from the experience of Mr CHANG, the CAPO is absolutely not a useless institution that will only arouse public indignation.

The second reason put forth by Mr Albert HO is that the CAPO has shown poor performance, and that its work has failed to attain the performance indicator and is below par. What is his performance indicator? Does Mr HO have an indicator in mind? Is it that he will be satisfied only when 50% of the complaints are accepted and substantiated? Why has it to be 50%? Can it be 70%? What is the indicator in his mind? What criteria does he base in this indicator? What is his purpose? Does it follow that the more complaints being received and the more police officers being punished, the more successful the CAPO will be? Is that considered an independent CAPO? Firstly, is this indicator of his correct and what are the objective criteria? Secondly, what positive purpose will this indicator serve? Let us take a look at the facts. Why are there so many unsubstantiated complaints against the police? Last year, for example, 40% of the complaints were either withdrawn or considered not pursuable. Why? It is because of the nature of complaints against police and the extensive contacts between the police and the public. In a seminar organized by the IPCC on 8 March, I remember that Mr TSANG Yam-pui, the Commissioner of Police, pointed out that the police has 14 000 contacts with the public daily. This figure shows the magnitude and extent of contacts between the police and the public. Judging from the number of complaints received, there is only one complaint in every 1 400 contacts. Last year, most of the complaints against the police (35%) were allegations of improper manner and use of offensive language, which were mainly complaints about impoliteness of police officers; 25.3% were about neglect of duty on the part of police officers; and allegations of unnecessary use of authority, fabrication of evidence and use of threat by police officers accounted for some 20% only. To pursue these allegations, the criminal investigation powers under the Police Force Ordinance may have to be invoked. This is not something that a civilian body without criminal investigation powers can do.

Members mentioned that the CAPO has failed to meet the indicator. We hope Members will appreciate that many complaints have actually been withdrawn, or are, by nature, allegations of impoliteness and use of offensive language. This phenomenon is, in fact, similar to that in overseas countries. As Members who attended the IPCC seminar on 8 March, especially those who stayed until the end of it, will know, experts present on that day pointed out that in many places elsewhere in the world, an overwhelming majority of complaints involved allegations of police officers being impolite, using offensive language and being frivolous, which are not serious complaints. However, Mr Mark A. GISSINER, from Ohio, United States and former President of the International Association for Civilian Oversight of Law Enforcement, said that after looking at the operation of a myriad of watchdogs worldwide, his conclusion was that whether it be independent or non-independent investigation, there is not a big difference in the proportion of cases that are substantiated and hence accepted. That is, whether independent or non-independent investigation is conducted, cases that can be accepted are actually very small in number. Take last year's figure in Hong Kong as an example. Disregarding those 40% of cases not pursuable or withdrawn, only 12.5% of the complaints were accepted by the IPCC. Earlier in the debate, a Member mentioned that an independent civilian agency is set up in New York to monitor complaints against the police. New York is a very good example, for we all know that the crime situation in New York are very serious and we often hear cases of abuse of power by the police, and citizens there have strong views about it. Last year, 7.5% of the complaints were accepted by this independent investigation agency. Compared with our system under which complaints handled by the CAPO are subject to review by the IPCC, we still have a greater percentage of complaints being accepted, which accounted for 12.5%. In other words, the setting up of an independent investigation agency does not necessarily mean a higher percentage of complaints being accepted.

Moreover, will Members please think about this: What is their objective in saying that the work of the CAPO is below standard and that the indicator must be met, and so on? Is it our objective to demand a police complaints system that can "nail" and punish as many police officers as possible? This is absolutely not the way it should be. In the seminar organized by the IPCC on 8 March, a number of experts pointed out that for any police complaints system, its ultimate and principal objective should be positive. It should aim to encourage the police to refine its internal management culture and values, and also to have greater respect for human rights and public aspirations. Some experts even

pointed out that in many cases of complaints against the police, the required response is not "investigative response", but "management response". So, it has been pointed out by many experts that setting up a department under the Police Force to investigate complaints against the police will have many advantages. Apart from those that I have described above, there are indeed many other advantages. But in order to save time, I do not intend to explain them in detail here. I believe I will have the opportunity to debate this issue in future. In a nutshell, we consider it totally unacceptable to scrap the CAPO in a broad-brush manner for reasons put forward by the Democratic Party.

Some Members asked what actions the Government has taken, whether we have made progress in a gradual and orderly manner, and how many of the 40 recommendations have been accepted. I can tell Members here that in the early 1990s, the Government already visited overseas countries to study police complaints mechanisms worldwide and subsequently drew up 48 proposals for improvement. I do not know from what sources the Honourable Miss Cyd HO obtained the information that we have completed only eight of them. Our records show that we have already completed most of the 48 improvement proposals. The CAPO is responsible for investigation, whereas the IPCC is responsible for monitoring the work of the CAPO. Although the IPCC does not have independent investigative authority, its powers are actually very extensive. What powers does the IPCC have? It certainly has the power to require the CAPO to submit any information and documents pertaining to any complaint for its examination. It can interview witnesses to seek clarifications. Members of the IPCC can observe the investigation of the CAPO in person. If the IPCC is in any way unsatisfied with the investigation of the CAPO, it can put questions to the CAPO demanding further explanation. Moreover, if the IPCC is unsatisfied with the disciplinary actions proposed by the CAPO, it can make recommendations to the Chief Executive. Therefore, while the IPCC does not have any independent investigative authority, its powers have actually been growing in recent years.

Furthermore, there are also other improvement measures, which include opening some of the IPCC's regular meetings with the CAPO to the public. The Serious Complaints Monitoring Committee under the IPCC has required the CAPO to submit monthly progress reports on selected serious cases. Since September 1999, the Observers Scheme has been further expanded in that former members of the IPCC and other community leaders are appointed as observers, who will observe in person CAPO investigations, including its interviews with witnesses, complainants or complainees, through pre-arranged or surprise visits.

At present, the number of observers has increased to over 70. In other words, while we have yet tabled the relevant bill at the Legislative Council, we have continuously taken improvement measures in recent years to enhance the powers and credibility of the IPCC. Incidentally, according to our experience from the IPCC seminar on 8 March, even in overseas countries where independent investigation is conducted, not all of their complaints will be investigated independently, and independent investigation is conducted only into the most serious complaints. A case in point is the State of Victoria, Australia for their ombudsman investigates only the most serious complaints.

What about the disciplinary mechanism? Earlier on some Members cited New York as an example. While New York has an independent civilian association that investigates complaints against the police, the consequential disciplinary actions to be taken solely rest with the Police Commissioner. Therefore, it is definitely not the case that an independent police complaints system is the world trend and a model adopted by a great majority of overseas countries, as some Members have asserted. I entirely share the views of the experts who attended the seminar, that the ultimate objective of a police complaints system and a complaints monitoring system is not as simple as to punish the police officers only. Police officers who have committed mistakes will certainly be subject to disciplinary actions and even criminal sanctions, but it is most important to improve the management culture of the Police Force. All in all, I can assure Members that the Security Bureau will table a bill at the Legislative Council this year, that is, within 2001, not the term of the present Legislative Council, to confer a statutory status on the IPCC. Therefore, I urge Members to support the Government and vote against Mr James TO's amendment. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Madam Chairman, I would like to tell Members a true story before giving my response.

Six people, including a dentist, an architect, an engineer and their wives, went to a karaoke for entertainment when some police officers happened to be there in the karaoke for licence inspection. One of the officers entered their room and requested them to produce their identity cards. With an abrupt manner, the police constable was a hot-tempered guy like us probably because he was quite young. As a result, the dentist made a verbal remark and asked him to improve his manner. Consequently, the dentist was brought outside the room

and beaten up so badly that two of his teeth were gone. After the dentist was bailed out in that evening, he called one of his friends, a former roommate in the Ricci Hall of the University of Hong Kong (HKU) and now a serving superintendent, and told him what had happened. The superintendent asked: How could this happen? He then promised the dentist he would ask the police officer concerned to apologize by serving tea to him. When the dentist asked whether it was necessary to complain to the CAPO, the superintendent told him that he would not receive any apology if he did so. Moreover, his complaint would not be dealt with fairly. Members should bear in mind that the dentist was told by his friend, the superintendent, also his former roommate at the HKU, that the CAPO would be unable to do him justice. Nevertheless, as pointed out by the Secretary, there would be management response. In other words, justice will not be done if one insists on conducting an investigation. Just because the superintendent knew the team leader of the Emergency Unit concerned, he could tell the leader that his team member had gone too far and that he should not have beaten up his friend who was hurt so badly that two of his teeth were gone. The superintendent even indicated that he could ask the police constable to apologize to the dentist.

I cited this example because I want to illustrate that what the public wants is not management response. What the public really wants is justice is done after an investigation. I can tell Members that police officers generally find the CAPO very disturbing. Some of them are even deeply beleaguered by it. In a very tragic case, a police officer was so disturbed that he killed himself when the investigation against him was still in progress. Actually, I was once requested by a family member of a police officer to look into a case in which the police officer killed himself because he was subject to an investigation conducted by the CAPO. Nevertheless, it is the general belief among police officers that it is better to preserve the CAPO intact than making it independent. Why? It is because they can be given protection at the end even though the CAPO investigation may give them some trouble.

Surprisingly, there might be other ways to follow up cases that the CAPO might not be able to establish. If the dentist chose not to complain to the CAPO, his friend, the superintendent, would surely follow up the matter for him. The superior of the police constable concerned would likely give the police constable a dressing down for having beaten someone up so badly and tell him to beat up people in a smarter way next time. This is also a management response. But the crux of the question lies in whether justice will be done in the end.

Just now, the Secretary questioned Members the purpose of setting an indicator and asked Members whether it is aimed at "nailing" a certain number of police officers. Actually, we do not have such an intention. Faced with the current system, if a large number of people, or the vast majority of the public, do not believe their complaint cases (particularly those involving assault) will eventually be established, can we consider the system perfect? If the system were really operating in such a perfect manner, we, as Members of this Council, would not have made such a request.

A Member who is now present in this Chamber once made a causal remark that when the relevant authority encountered more of these cases and accumulated certain experience, it would not believe in the relevant police officers easily. At least, it would interrogate the officers or make an attempt to cross-examined them. In other words, after accumulating substantial experience, the relevant authority will have a rough idea of to what extent a complaint is true. How can some political parties think in this way? I was once requested by a member of the south sub-region of a political party (I do not wish to name that party) to look into a case in which his son was assaulted by someone. When he told me afterwards that he was actually a member of a certain political party, I was astonished and asked him why he had not sought assistance from Legislative Council Members belonging to his political party. However, he requested me to drop this question. If Members have had the experience of listening to complaints lodged by the public, and if Members have accumulated certain experience, they will naturally be able to make certain judgement. For instance, I will expect Dr LO Wing-lok, after serving on the IPCC for some time, to become smarter and, with the accumulation of more experience, be able to make a more thorough analysis and predict the outcome of a case.

We are not seeking to "nail" as many policemen as possible. We only want to eliminate the black sheep from the Police Force. I do not want them to think that they will eventually be protected by the complaint mechanism after being scolded by their superiors or superintendents. If policemen generally believe this is going to be the case, how will members of the public feel? There will be no divergence of views if the public considers it fair and police officers consider it good too. Why should policemen be afraid of having an independent complaint mechanism in place? I can tell Members that the culture preserved by the police in conducting investigation has indeed seen some slight

improvement. However, front-line police officers, particularly police constables working in the front line, will still consider themselves the most likely suspects since they are responsible for taking statements and obtaining evidence, and no one will suspect police inspectors or superintendents to do such things. This explains why they have the worst fear. Although it is essential for this culture to be radically changed, how far have we done?

Earlier on, the Secretary mentioned the seminar many times. I do not know whether the Secretary is aware that policemen are responsible for investigating policemen (and I quote their wordings) in many places. In the United Kingdom, for instance, policemen are investigated by policemen. Why? It is because policemen are divided into more than 60 forces in the United Kingdom, where some very serious cases had taken place before. However, it is possible for policemen from one county to be deployed to investigate policemen of another county in the United Kingdom. Even the Scotland Yard, the elite group, can be deployed to investigate such cases. As for the United States, it has a large police force. One of its measures is to ask policemen from another state to investigate or forward the case to the Federal Bureau of Investigation for investigation. However, there is nothing we can do for we cannot take this measure.

Do we have other solutions? If we really want to improve the situation, can we propose conducting independent investigations into the most serious cases instead of all cases? Let us not mention the most serious cases. Has the Government ever proposed giving the IPCC the power to investigate cases of a more serious nature? What happened in 1996 and 1997? The relevant bill was subsequently withdrawn at that time. Although the then IPCC supported the proposed measure, the Government still insisted on withdrawing the bill. I do not know whether Members will agree giving the IPCC such power when the bill is tabled at this Council later. As a gesture to make a reconciliation and concession, I will agree to let the IPCC, as a trial, to investigate cases rejected by the CAPO instead of investigating every case received. However, judging from the Government's attitude in the previous term, we realized that the Government dared not table the bill after counting the votes. Eventually, the Government chose to blow up the whole thing by withdrawing the bill. What sort of courage does the Government have for it has been scared of putting the bill to vote by groups over the past three years? How can improvement be made? What determination is lacking for the Government has been unable to table the IPCC bill even after a lapse of three years?

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong, Miss LI Fung-ying and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU

Wong-fat, Mrs Miriam LAU, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Miss Margaret NG abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Ms Audrey EU voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Frederick FUNG, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, five were in favour of the amendment, 20 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 14 was in favour of the amendment and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

MR JAMES TO (in Cantonese): Madam Chairman, I move that head 122 be reduced by \$103,466,000 in respect of subhead 103, as set out in the paper circularized to Members.

Madam Chairman, perhaps let me do some explaining first of all. This is the second term of the Legislative Council. As in the previous discussion, head 122 is about the police, while subhead 103 refers to rewards and special services. Let me quote from the speech of the Secretary for Security made in 1999 in response to my request for a reduction of the subhead. She said that this was not a one-off but recurrent expenditure and the Government and Members would be discussing this in the Legislative Council the following year and would still be facing the same problem. She said she could assure Members that there would be dialogues and hoped that the Government and Members could study the issue together in order to find out how to enhance the accountability of such confidential work in the long run. So, in her reply, she agreed there should be accountability. In other words, the \$100 million-odd has to be accounted for. At the time, she said she would study the issue with Members.

Now, two years have elapsed. Some of the Members have since left this Council, of course. To those who are still with us, I must ask: Has the Secretary held any discussion or conducted any study with them? The Secretary has not even discussed with me, mover of the motion then. Did she mean what she said? If she makes the same remark later, does she really mean it? Is the Secretary mindful of finding out how to enhance the accountability of such confidential work in the long run? If she is not, does it then mean that Members who sat in this Chamber last year would find a good reason not to support the Secretary, though they cannot oppose the motion this year? Honourable Members, can they please voice their opinions on reforms to the accountability of the confidential work or at least somehow respond so that the Secretary cannot ignore the duty of the Legislative Council to monitor the Budget?

What are rewards and special services? From the letter addressed by the Secretary to Members, they include cash rewards, informer's fees and money for purchasing and maintaining certain equipment. I must go on to ask: What are rewards? Are payments for informers all related to criminal offences? If the Secretary said they were not just related to criminal offences but they were related to security as well, then what kind of security work would that be? Is political infiltration involved? What equipment is to be purchased? Is the equipment for interception of communications or surveillance? Is the equipment for interception of communications or surveillance used purely for issues of a criminal nature? Is the collection of criminal intelligence targeted at law-breakers? Members may recall that under existing law, eavesdropping and interception of communications require no application to court. The Chief

Executive can use a very simple reason — public interest — to approve eavesdropping or interception of communications. No one knows how long the approval for eavesdropping will last or whether the approval can be extended. No code for the approval is provided. But I can tell Members that they may obtain from the Internet the code for eavesdropping and for handling informers in the United Kingdom because it has been uploaded by the Secretary of State for the Home Office. All British citizens and people outside the United Kingdom may view the code on the Internet. However, if we ask our Government about the issue, the answer is, "It is highly confidential and cannot be disclosed." In the case of an order for surveillance or eavesdropping in the United Kingdom, which starts with a period of two months, it is possible to apply to the Secretary of State for the Home Office for an extension but only one extension is possible and the extension period is set at four months. If further extensions are requested, application will have to be made anew. In addition, it must be stated whether the order is used on purely criminal matters. If not, to what other use can the surveillance or eavesdropping be put?

\$100 million is not a small amount, but no one told me the entire sum is used for informer's fees. I asked the Government for a breakdown of the \$100 million into a ratio between manpower and equipment. Despite my repeated demand for an answer for six years, I have not been able to obtain an answer. The response from the Government has been that if the ratio is disclosed, criminals may be put in an advantageous position. That means if it was disclosed that \$40 million would be spent on manpower and \$60 million on equipment, someone might be benefited by the disclosure. Why would a disclosure like that affect police operations? I have not been able to obtain an explanation from the Government. The Government just said, "This would affect police operations."

Members may refer to the practice of a number of overseas organizations. Of course, I am not saying our Security Wing or Technical Services Division are just like intelligence organizations; but, for the sake of comparison, let me provide information of some national security organizations which work with an even higher degree of confidentiality than our organization. For instance, MI5 in the United Kingdom publishes its annual report stating how many hundred million pounds in funding application it has made. A breakdown for the expenditure is provided: 30.5% for the prevention of terrorist activities in Northern Ireland, 22.5% for the prevention of international terrorist activities, 20.5% for anti-espionage activities, 7% for the prevention of serious crimes, 3.5% for anti-nuclear proliferation work, and so on.

In the case of the Canadian intelligence organization, the number of warrants for eavesdropping can be found on the Internet direct. The information released includes: 85 warrants were issued in 1994-95, 32 in 1995-96 and 125 in 1996-97. All these are clearly set out. The intelligence organization also makes known annually in a table its expenditure, including the number of personnel, the amounts of capital expenditure and other expenses.

Another example is the Australian intelligence organization, which even states the work it has carried out for the year. Figures for 1999-2000 are: 342 security analysis for the 2000 Olympic Games, 34 for national security and 164 for the security of some consulates. The information was provided in considerable detail. I think it would be a great surprise if the Hong Kong Police Force can provide similar details. All that the Government has said is that such information is confidential and it is so confidential that it cannot be monitored by anyone from the outside.

Why are we so concerned about the cash rewards and special services? Indeed, there is a story about this item. When Hong Kong was under the rule of the British Hong Kong Government, money spent by the Special Branch once reached its highest point at \$400 million to \$500 million. Then it dropped to \$300 million. Later, the Special Branch was dissolved and the annual expenditure under this head remained at around \$100 million, which is all used up by the Branch. I am not saying the Government is spending the \$100 million set aside for the Branch to keep watch over the people, but has the Government thought of reorganizing the Branch? After the implementation of Article 23 of the Basic Law, how are the relevant laws enforced? There have been some recent rumours in this regard, which the Government has denied. Nevertheless, let us hear what the Commissioner of Police, Mr TSANG Yam-pui, said in reply to questions posed by Mr Allen LEE, host of a radio programme. Mr LEE asked Mr TSANG a clearly stated question: What will Hong Kong do after the implementation of Article 23 of the Basic Law, bearing in mind there is a Ministry of State Security in China and is there a need to reorganize the Special Branch? The Commissioner's answer was: The Security Bureau was considering the issue and when the time came, Hong Kong would know what role to play. But the police made a statement last night to the effect that the Commissioner, in referring to Article 23 of the Basic Law, did not mean the Security Bureau was considering a reorganization of the Special Branch. Thus, Members might figure out for themselves what was brewing.

Why did I broaden my discussion to such an extent as to cover the delay by the Government on the implementation of the Interception of Communications Ordinance? This is because an order authorizing the interception of communications has to be applied with the Court. The review to be conducted by the Government on the interception of communications that may lead to an infringement of privacy has been postponed for a number of years now. This is not the first time the Government admits that. Last year, however, the Government provided a rather new answer, saying it would study the matter further with Members and account for the issue after reviewing the Interception of Communications Ordinance. I cannot help asking whether the \$100 million is related to the interception of communications. No one said the money is related, but does the position of the Government imply they are related? Why was it said that some of the mysterious \$100 million had been used as informer's fees while the rest had been used for unexplained purposes? Why has the interception of communications been linked to the expenditure?

The Government reported that the item has been audited by the Director of Audit and there were other surprise audits. I can tell Members that in the closed-door briefing session held in April 1999 — we know we must not disclose the details of the meeting, but I am not disclosing any secret because the Government has released what I am going to say, which was specifically mentioned at the meeting and then mentioned by the Government afterwards — it was said the Government was able to monitor the expenses. However, we must ask: What is meant by "monitor"? Madam Chairman, Mr Eric LI has served on the Public Accounts Committee for many years and he should know best. According to Mr LI, the major criterion for justifying an item of expenditure is that the purpose for which money is spent must fall within the intended policy objective and area. If the \$100 million is used on one aspect of security work, such as surveillance on some people who are active politically or are active in terms of their behaviour (using the words of the Government, they are people who assertively expressed their opinions) and if surveillance on their behaviour is part of security work, then any expense on surveillance meets the value for money criterion and falls within the ambit of the policy objective.

But for now, we need to ask this question: Irrespective of whether the money used for surveillance is consistent with the intended policy objective, do these policy objectives or expenses represent work truly in public interest? Or do they represent work that runs against the well-being of our people or even work that involves spying on our people or work that is in contravention of

human rights? Maybe, we will in the future discuss the manpower needed for the implementation of Article 23 of the Basic Law and the departments, job duties or even legal issues involved. I suppose the \$100 million is not applied to work in this respect. Indeed, the \$100 million we are talking about is not for the 400-odd personnel at the Security Wing or the hundred or two Technical Services Division staff specializing in bugging and breaking in houses. Moreover, the money used by some Intelligence Bureau staff (commonly known as "paparazzi") for the purchase of high-security communication systems does not count towards the \$100 million. Why? Because in the past we found that they needed extra funding for such purchases, and the several hundred million dollars they needed were all supplementary provisions. So, what is the \$100 million for? I do not think the Government can dodge this issue as it did in the old days by saying this is confidential. Given that the use to which the \$100 million is put is confidential, can we agree on a description, after negotiation, to shed some light on what the use is about so that Members may monitor this item of expenditure, thereby discharging their duties to ensure that funds are properly allocated?

The Government said, in 1999, that it would maintain dialogue with Members and study the issue together with them. It has been two years since that promise was made, and now I would like to invite whoever among us that had had a discussion or dialogue with the Secretary for Security on the issue to stand up. I pose this invitation as a challenge to every Member present. If the Secretary should say that she has had a discussion or dialogue with any Member on the matter of accountability for this part of the expenditure, please say no.

Mr James TO moved the following motion:

"That head 122 be reduced by \$103,466,000 in respect of subhead 103."

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

MRS SELINA CHOW (in Cantonese): Madam Chairman, I would like to say a few words on how the Liberal Party looks at the amendment. In fact, we stated our position clearly with respect to a similar amendment last year.

We do not oppose the idea of ensuring a reasonable degree of accountability of the Government or the Police Force. However, we have to accept the fact that all police forces must strike a balance from the angle of public interest because their work must embrace certain elements of confidentiality. If they are not given any protection, their work will be affected. Members of the public include many people. Even criminals are part of the public. Therefore, if the police are not allowed to make some confidential arrangements or given protection, their effectiveness of cracking down on crime will be affected in a negative manner. For these reasons, we will definitely not support reducing this subhead of expenditure.

Notwithstanding this, we also hope the Secretary for Security can continue to discuss with us the issue of accountability. Although we agree that the discussion should go on, it does not mean that we want to force the Government to do this by making use of such tactic because this will only jeopardize the work of the Police Force.

MR ERIC LI (in Cantonese): Madam Chairman, to a certain extent, I share the speech delivered by Mr James TO earlier.

Just now, Mr James TO mentioned the Public Accounts Committee (PAC). Of course, if the Director of Audit had not tabled the report, we would not be able to discuss the matter. If the PAC is really allowed to hold discussions, the several Honourable Members will definitely be pleased to discuss with the Secretary for Security to see how the work can be done better.

Mr James TO has greatly impressed me with his gentleman-like manner. Frankly speaking, the Secretary for Security has not discussed with me to see how transparency can be enhanced. On the contrary, Mr James TO made a last-ditch effort to lobby me to support his argument today. He has been working very diligently for he has even referred to the record of 1999. In a speech I once delivered, I commented that, under the situation at that time, it would be far from satisfactory in terms of accounts monitoring if the minimum amount of information required with respect to expenditure could not be provided. It was reported in the newspaper only yesterday that several Members would make an attempt to reach a consensus. Perhaps Mr James TO is aware of the news for he has not lobbied me until today. But it seems a bit too late for I will definitely not desert.

During the previous discussion in 1999, we expected that more useful information could be provided through the holding of closed-door meetings. I also expected that "explanation" could be given in the same manner. Now two years have lapsed, it seems that not much progress has been made. To a certain extent, the Government is testing the patience of Members. In this aspect, I really want to listen to the comments and explanation of the Secretary for Security. Insofar as a budget is concerned, it is understandable if the Secretary is unable or unwilling to tell us how the money is going to be used, or considers that the execution of work will be impeded if a disclosure is made. In other words, we have no valid reasons to ask the Secretary to tell us in advance how the money is going to be spent or distributed.

Nevertheless, I would like to analyse the matter from another angle. In overseas parliamentary assemblies, a lot of sensitive information can be made public and members of the assemblies can be provided with analyses of certain data or information after the lapse of a certain period of time. I am not sure whether this can, to a certain extent, help Mr James TO feel more relieved over this matter. I wonder if the Secretary for Security can inform this Council whether it is possible for the Government to analyse the relevant information according to its classification or nature and then report the outcome to Members in this Council after, say, three years or even five years, when the money is completely used up so that execution of work should not be impeded. Will it pose an obstacle to government security or the execution of work by the Government? If this is possible, Members will be able to access some historical data so that they will understand that the Government has a genuine need to spend the money. In doing so, will the Government be able to give a better account and will Members be able to play a better monitoring role? I would really like to listen to the views of the Secretary.

Having said that, I hope Members can bear with the Government and give it more opportunities so that it can give us a better explanation, as I said earlier in the debate. Today, I feel extremely sorry for I cannot support Mr James TO's amendment for the time being.

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

MISS EMILY LAU (in Cantonese): Madam Chairman, I rise to speak in support of Mr James TO's amendment. First of all, I have to point out that the

Secretary for Security has not discussed the matter with us despite there is an absolutely need for her to give us an explanation. If she made some promises but eventually fail to fulfill them, she would be considered as lacking accountability, so to speak. She should have explained to us though actually she has not done so.

In my opinion, we should pursue accountability of enhanced transparency. Both Mr LI and I are members of the PAC. Actually, no one can instruct the Director of Audit to do anything for he works independently. I hope the Chief Executive will not instruct him to do anything. Actually, the Chief Executive is not allowed to do so too. Nevertheless, Madam Chairman, we may make proposals. We can suggest the Director of Audit to look at the relevant information. The Secretary for Security was obviously serious about the matter for she has used the Director of Audit as a "shield". Indeed, the Director is not only required to look at the information. He is required to prepare a report too. This becomes really interesting for, Madam Chairman, the report will be presented to you in due course and you will then forward the report to us. However, all the documents must be sealed because all data must be kept confidential. I have no idea whether Honourable Members, PAC members and other Honourable colleagues will be allowed to read the report. I am sure Members will demand access to the report prepared by the Director after the President has finished reading it. Madam Chairman, I believe that will become the biggest joke in the world. What should we do if Members are not allowed to read the report prepared by the Director or the PAC can only conduct closed-door hearings in the basement and no one is allowed to read the reports compiled with respect to the hearings? The whole incident is extremely ridiculous indeed.

Actually, we are not asking the Government to disclose national secrets. We only want to know the amount of rewards, the contents of special services, and the amount of money spent. I can absolutely not accept the explanation given by the Secretary for Security, that such information cannot be disclosed. If she concedes that the Director can access such information, this means that the Director is allowed to compile a report. And as the PAC can hold public hearings, it can prepare relevant reports after the hearings as well. If that is not the case, the Secretary will have to explain to us why the Director can access the information but not compile a report, or he can only compile the report but not present it to this Council, or the President can only read the report in her own office without letting Honourable Members read it, or even Members are

allowed to read it, but they cannot disclose any contents relevant to the report. Is this going to be the case?

Presenting the Director as a "shield", the Secretary for Security was actually trying to hold the Director responsible for the matter. I consider this unfair unless the Director can really do what he should do and, at the same time, he is allowed to disclose all information.

First, I hope the Director is listening to our debate and will consider this matter after hearing our remarks because this is a matter of great concern to all of us. Second, I hope the Secretary for Security can explain to us why she made such promises at that time and eventually failed to fulfill them. Third, I hope the Secretary can state clearly what she will do next time so as to bring some progress to the issue or tell us she will raise the matter with the Panel on Security for discussions.

With these remarks, I support the amendment.

THE CHAIRMAN'S DEPUTY, MRS SELINA CHOW, took the Chair.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, I rise to speak today in support of the view of Mr James TO. I support him not because I am a member of the Democratic Party, thus the obligation to support him because of the same political affiliation. I support him because his demand is realistically sensible and reasonable.

I have been working with Mr James TO for more than 10 years. Each year, Mr TO would raise the same question of how the \$100 million is going to be spent. As Honourable Members are aware, the comments made by Mrs Selina CHOW and Mr Eric LI with respect to this issue differ greatly from those they made last year. In the past, they thought that the Government should have some reservations in making disclosure. Today, however, they have begun putting it strongly that the matter should be ultimately resolved. After all, we must seek a sound solution and identify a proper way to disclose information. We can simply not let the matter drag on forever or remain unchanged for 50 years.

Insofar as this issue is concerned, Mr James TO can virtually make no more concessions in questioning the Government. Let me explain what concessions Mr TO has made in connection with this issue of disclosure. First, concerning the utilization of the \$100 million, he said he would accept the Government making disclosure in a confidential manner. If the Government is not willing to do so, it can choose to disclose to Members how the \$100 million is spent in a closed-door meeting. If the Government is not willing to do so, he will be willing to sign a declaration of secrecy before giving audience to the Government's explanation of how the \$100 million is going to be spent. If the Government cannot do so, he is prepared to accept a disclosure on the usage of the \$100 million in a very restricted manner. Failing this, the Government can choose to disclose information about the usage of the \$100 million and major breakdowns behind closed doors in a very restricted manner. The Government can even say that the major breakdowns only cover certain people, certain informers, and certain people working as political watchdogs. To be more extreme, the Government can even describe these people as playing the role of a spy. Because of certain security requirements, Mr TO should be told that such things are happening, and such items and figures are involved. People who know Mr TO well would have realized that it is not his character to make such concessions. It is because he has run up against cold walls in pursuing this matter for more than 10 years. This is why he has made such a big concession today. In the end, it boils down to an important issue: Does the Government trust Members of this Council and believe Members will leak information to outsiders after the disclosure? I would like to cite two examples. Many of those who are here in this Chamber should have first-hand knowledge of them.

This Council once conducted hearings in respect of two incidents related to Alex TSUI and LEUNG Ming-yin, in which a huge amount of confidential information was involved. As Members are aware, both incidents involved confidential investigations conducted by the Independent Commission Against Corruption, court cases and possibly certain unlawful procedures. Today, everything is settled. Even the Court has made its due judgement. When many legislators read the newspapers about the Court's judgement, they would find that the newspapers contain much information they already knew, but have they leaked such information to outsiders? The answer is in the negative. In fact, the President's Deputy who is present in this Chamber today also attended and chaired the hearings conducted in connection with these two incidents. *(Laughter)* We have not disclosed anything to outsiders even though we have

not signed declarations of secrecy at that time. So are we trustworthy? The Government should be even more convinced that we would not disclose anything should we have signed the declarations.

What does Mr James TO actually hope for? What he hopes for is very simple. Although he is a Member of this Council, he knows it very well that he actually has no idea how the \$100 million is spent and that he can only speculate on its usage without knowing what the major breakdowns are. Given that the Government needs to seek approval from this Council, it should, for the sake of fairness, let the Honourable Member know what it is all about before he gives his endorsement. However, the Government considers it impossible even to do so! Why should we set aside \$100 million as a mysterious expenditure, an empty space or a black hole? This is unfair. If we look up the speeches delivered by each Member, we will find that they made the same remarks every year. This is indeed too much. How much longer are we going to spend discussing this matter?

With respect to this issue, I hope the Government can seriously consider Mr James TO's view. Furthermore, it should put forward its view and justifications if it cannot accept the Mr TO's proposed arrangement of informing him of the items included under this expenditure subhead before he gives his endorsement. Otherwise, I can only say that the Government is completely unreasonable and that it has a plot, though I dare not say what plot it has in mind. For instance, will it be necessary for the Government to re-establish the Special Branch, will the \$100 million be required to sponsor certain activities carried out by the Special Branch, and will the Government be required to increase funding for such activities? Will it be necessary for the Government to strengthen its surveillance work with respect to the act of subversion as stated in Article 23 of the Basic Law whereas it is impossible for the Government to state the relevant charges in public and therefore it is necessary for such charges to be included in the \$100 million or for such funding to be increased? Although I can make a lot of speculations that may trigger off public discussion in private, I do not wish to do so. This also explains why the Honourable Member has always insisted the Government to discuss the matter in an open and fair manner, even though he has finally accepted the arrangement whereby the Government can give explanations in closed-door meetings. For these reasons, I support Mr James TO. Surely he is very much concerned about this issue. Even though he has transformed from a frustrated young man into a frustrated middle-age person, a reply which

he, enduring great insults and humiliations, expects the Government should at least give him, is still not forthcoming. *(Laughter)* This is unfair!

I hope the Government can express its view on this issue. I know the Government will still reject the demand made by the Honourable Member this year. I would like to ask the Government this question: Are we going to have the answer next year? Even though we are Members of the Legislative Council, we are not even given the minimum access to information. We can only say that the Government does not trust us, even if we are willing to sign declarations of secrecy. At this juncture, may I appeal to the Government to refrain from saying such things as the relationship between the executive and the legislature, or a basis of mutual understanding again! Thank you, Madam Deputy.

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

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Deputy, the Government strongly opposes the amendment moved by Mr James TO to delete the entire provision of some \$130 million under the subhead in the Estimates for rewards and special services in the Police Force. In fact, I stated our grounds for opposing this last year and the year before. I have done the same in my recent letter to Honourable Members, so I do not wish to repeat them here. However, I should like to respond to some of the issues raised by Honourable Members earlier.

Some Honourable Members have asked me to explain whether the Government has the sincerity to examine with Honourable Members the issue of transparency in respect these items of expenditure. Did we not discuss the issue with Honourable Members over the past couple of years? Do we not have the sincerity to do so? I am glad to explain to Honourable Members and that is something which is not so difficult to explain at all. With regard to this kind of work of a confidential nature, such as the intelligence work of MI5 and MI6 in Britain which is on a more macro side, and the more micro kinds of work such as the interception of communications, and so on, or the special services of the police, they do have a certain degree of confidentiality. That applies to all places over the world. It remains of course that with the changes and progress

made over time, many countries are slowly making their work public to a certain extent. Take MI5, which Honourable Members love so much to mention, as an example, I recall I made a response to that last year. I still recall how Mr James TO and Miss Cyd HO talked so convincingly that the kinds of work undertaken by MI5 and various items of expenditure can be viewed on the computer. Mr James TO talked about the subheads in the expenditure of MI5 again earlier. As I mentioned last year, please do not forget that it is only after so many years that Britain, a country which so many Honourable Members admire, discloses only a small fraction of its work to the public. It is only after 80 years' of clandestine operations since its establishment in 1909. All these are done in the name of national security and operational needs. It was only in 1989 that Britain passed the Security Service Act and from that time onwards, reports on MI5 were published. In fact, these are not annual reports because they are not published each year, but every few years. In the reports, the expenditure of MI5 as a whole is disclosed, but only in a brief manner. However, on micro kinds of work such as interception of communications or those akin to the special services payable from our rewards, I have not heard of the listing of such expenditure under these subheads. I should be glad to have a look at them if Mr James TO could find any of these. If there are really subheads of such a fine division of services like ours which are made public and can be found by Mr TO, I think he would have said that a long time ago already. But he cannot find any of these at all. We often hold discussions with officers from intelligence and security organizations of foreign countries and they tell me that they are very careful about such information for national security reasons. They will not disclose any of the details of their operations to the public.

Some Honourable Members also question if the Government does not trust the Legislative Council and ask when it will discuss the issue of transparency with them. I would like to assure Honourable Members that we do attach much importance to that and we have been trying to learn from foreign countries, studying their practices and laws. As I said last year, we do not wish to link this subhead with the interception of communications. In the past, Honourable Members liked to link this issue to the interception of communications, and Mr James TO is most interested in and concerned about the issue of interception of communications. I would like to point that it is very sensitive and complicated to disclose information of such a confidential nature. Foreign experience shows that it is only after decades of study that such information can be finally made public. So we need to make a thorough and well-thought study to see how the

interception of communications can be made more transparent and accountable. We will make an overall study, and conduct public consultations before the matter can be made public.

Now I would like to tell Honourable Members of the progress made in this respect. As I said before, with respect to the Interception of Communications Ordinance, it is not possible for us to implement this Ordinance which was passed before the reunification, for we have discovered many loopholes in it. These show that there is a total ignorance of the enforcement needs. Once this Ordinance is put into force, it will greatly damage our efforts in safeguarding law and order. So in this connection, we set up a working group on the Interception of Communications Ordinance in 1999 to study the related issues. We have held a number of meetings. The issue is very complicated. For we need to consider the changes in law and technology in various places in the world and the fact that technology in the interception of communications and telecommunication is making tremendous progress. We notice that in 1999 and 2000, Australia and Britain made in-depth reviews of this. We should consider the findings of these reviews before making any recommendations. At the present rate of progress, it is expected that by the end of 2002, the working group should be able to come up with some preliminary conclusions on the provisions which should be in place in the Interception of Communications Ordinance and how a balance can be struck between confidentiality and the enhancement of transparency. We hope to begin public consultations in 2003 and at the same time, we can consider other efforts of a confidential nature, such as expenditure on rewards and special services and to see how transparency can be enhanced.

I have explained in my letter and I also did the same in the past, and the Commissioner of Police has also explained in a special meeting of the Finance Committee recently, that expenditures under the provision for rewards and special services are related to confidential operations undertaken by the police. These include operations to crack down on serious crimes and drug offences, and security matters. Mr Eric LI asked if expenditure on these can be made public from time to time as practised in other countries. I should like to respond to this request by citing the example of the Federal Open Market Committee (FOMC) of the United States. The FOMC will not make public any decisions on the interest rate immediately, but it will do so after a few months. It is because by that time any analysis made on interest rates will have become

outdated. Since the economic data have become historic data, it would not matter if they are made public. But the case with security work is different. As the Commissioner of Police has said, if we make the information public without a thorough consideration of how we can have greater transparency while not doing any damage to our security capabilities, then after some time, those people with the intention to break the law will analyse the mode of expenditure in the next few years and may come up with some conclusions or they may be able to detect some weaknesses in our law enforcement efforts and hence may do something to our disadvantage. That is why even up to the present we cannot make any information regarding these expenditures public. However, I can assure Members that we will study how a balance can be struck between security work and transparency and accountability. I believe when the study on the Interception of Communications Ordinance is complete, that is by 2003, when a review has been made of the issue together with a host of others, there will be a chance where I can discuss with Honourable Members on how to do better in this area.

I implore Honourable Members to support the Government and vote against the amendment moved by Mr James TO.

THE CHAIRMAN resumed the Chair.

MR JAMES TO (in Cantonese): Madam Chairman, at last there is good news, since we have just heard that our demand may be met by 2003. However, let us not talk about the question of timing first. I wish the Government to know that I am not unfamiliar with these matters. I had studied the issue of covert operation for four years without saying a word. I had done research on how to lock on targets, launch operation and monitor and what the monitoring mechanisms in other countries are like. Only then did I talk to the Independent Commission Against Corruption about what proactive actions shall be, what the objective aims should be, how targets should be selected and what the monitoring systems should be.

I can tell Members that I have dealt with some complaints lodged by informers. Why do I feel that the Government does not trust Members? Let me illustrate this with one example and respond to Mr CHEUNG Man-kwong's remarks. But I have to say that I did not tell him about this matter before. Six

or seven years ago, I was Chairman of the Panel on Security. As I wanted to learn something about general criminal investigation, I called on an Assistant Commissioner of Police. I knew they had a document called CID Criminal Investigation Manual and asked if he could give me a photocopy. He said it was no problem, since I was Chairman of the Panel on Security. From the time I read that document until now, I have never leaked its contents. The document is now outdated, since it is a version from the '90s. However, the ridiculous thing is that several weeks after I obtained the document, somebody asked me if I was on the wanted list. I asked why I was wanted. He said the Commissioner of Police had issued a memorandum to ask those who had the information to immediately report the person who had given the Criminal Investigation Manual to James TO. This means I was treated like a thief. I was very much surprised and those in the Police Force were also surprised. The simple truth is that the police, the security forces and the Secretary for Security have the strange notion that such information should be restricted to the police and not be given to anyone else.

In response to the remarks of Secretary for Security, I can tell Members that I have many friends who are members of parliament overseas responsible for such affairs. In monitoring such issues, they can obtain a lot of information. But of course, they have to maintain secrecy or are given such information behind closed doors after signing a declaration of secrecy. As for the information they can obtain, in the United States, for instance, the most extreme example is that their Intelligence Committee and Senate may obtain information on future military actions in advance. This is the top level of access to information. However, I have to reiterate that this is the most extreme example. Not every country would allow this. So the Secretary for Security should not say that many countries do not disclose their information. But nor am I saying that the information should be disclosed to everyone. As representatives of the people, Members should urge the Government to strike a balance between undertaking tasks on behalf of the community and accountability. Otherwise, many of our commissions of inquiry would not have to maintain secrecy, such as the Select Committee on substandard piling works which is operating now. As Mr CHEUNG Man-kwong said, when we investigated the Alex TSUI incident, we knew why the Commissioner of the Independent Commission Against Corruption was so reluctant to speak. It was because many major cases were involved. However, a precedent was set at the time, that is, no matter how important the information was, such as the details of operations, the actions that were being taken and the names of suspects, disclosure would be made behind closed doors. So far, no one, including former Members of the Legislative

Council, has disclosed any of the information involved. Of course, there is no point in disclosing it now, since all the cases have been dealt with by the Court and the information is no longer important. In any case, the security work has been well done and our Secretariat has done a very good job in this respect. Thus, I hope that the Government will not wait until 2003 to come to a decision.

The year 2003 was named not without reason. In 2003, issues related to Article 23 of the Basic Law will be considered in a package. Such issues include whether application must be made to the Court for the interception of communications and the relationship between the National Security Bureau of the Mainland and Hong Kong. This latter aspect includes such issues as whether the Special Branch should be restored, on what level they should co-operate, the division of work, legal issues and resources. Of course, I am not so ignorant as to say that Hong Kong needs not engage in national security work. But in practice, we should consider how it can be done to command public trust and make them feel secure. We should catch real spies and people who really threaten national security and jeopardize the interest of society, rather than picking on people who actively express their dissenting views. It is important to make this distinction.

So far, I can only say that as a Member, I do not think this provision of \$100 million is justified in principle, either in terms of its amount or its use. That is why I have no choice but to introduce this motion again.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

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

CHAIRMAN (in Cantonese): Have Members cast their votes? Will Members please be quiet?

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Dr Raymond HO, Mr Eric LI, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Miss Margaret NG abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Mr WONG Sing-chi voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Frederick FUNG, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

Ms Audrey EU abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, four were in favour of the amendment, 21 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 29 were present, 14 was in favour of the amendment, 13 against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the sum for head 122 stand part of the schedule.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the sum for head 122 stand part of the schedule. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the schedule stand part of the Bill. This question is neither amendable nor debatable.

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

(Members raised their hands)

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

(No hands raised)

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

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

CLERK (in Cantonese): Clauses 1 and 2.

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

(Members raised their hands)

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

(Members raised their hands)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

APPROPRIATION BILL 2001

FINANCIAL SECRETARY (in Cantonese): Madam President, the

Appropriation Bill 2001

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Appropriation Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

Dr YEUNG Sum rose to claim a division.

PRESIDENT (in Cantonese): Dr YEUNG Sum has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): 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 David CHU, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Eric LI, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Ms Audrey EU voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted against the motion.

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

THE PRESIDENT announced that there were 55 Members present, 36 were in favour of the motion and 18 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Appropriation Bill 2001.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Hong Kong Science and Technology Parks Corporation Bill.

HONG KONG SCIENCE AND TECHNOLOGY PARKS CORPORATION BILL

Resumption of debate on Second Reading which was moved on 20 December 2000

PRESIDENT (in Cantonese): Mr Kenneth TING, Chairman of the Bills Committee on the Hong Kong Science and Technology Parks Corporation Bill, will now address the Council on the Committee's Report.

MR KENNETH TING (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Hong Kong Science and Technology Parks Corporation Bill, I would like to report on the deliberations of the Bills Committee.

The Bill seeks to incorporate a statutory body by the name of Hong Kong Science and Technology Parks Corporation to replace the Hong Kong Industrial Estates Corporation (HKIEC), the Hong Kong Industrial Technology Centre Corporation (HKITCC) and the Provisional Hong Kong Science Park Company Limited.

In the course of scrutinizing the Bill, we discussed in detail the composition of the new Corporation, its role and functions, mode of operation, financial arrangements, as well as the service fees to be charged.

Members agree that the merger will help to improve the existing technological infrastructural support framework in Hong Kong and enable the provision of strategic and comprehensive support services to industries. We also support the purposes of the Hong Kong Science and Technology Parks

Corporation. As prescribed in the Bill, the Corporation is set up to establish or develop premises (such as industrial estates, incubation centres and science parks) in support of technology-based companies and activities, to facilitate the research and development and application of technologies in industry in Hong Kong, and to support the development, transfer and use of new or advanced technologies in Hong Kong.

Nevertheless, we are concerned that since the new Corporation shall conduct its business according to prudent commercial principles, in order to generate financial returns it may charge clients fees for its services at a level higher than the costs incurred. This will not be of benefit to the industries concerned and will serve to defeat the purposes of establishing the new Corporation.

According to the Administration, the new Corporation will need to operate in accordance with prudent commercial principles, otherwise regular subsidies from the Government will be required, and, in turn, will affect the service quality and create other competition-related problems. With regard to the public mission of the new Corporation as set out in clause 6 of the Bill, the Administration has assured the Bills Committee that, as always, that there would be no question of it derogating from its commitment in this respect. When determining the level of service fees, the new Corporation will flexibly formulate different charging standards for the various types of commercial tenants and the newly formed companies participating in its incubation programmes in the light of the Corporation's financial condition, the kinds of services to be provided and the different needs of the clients concerned.

We have also examined the possibility of the new Corporation gradually developing into a monopolized body that would eventually compete with the private sector for profits. The Administration's advice is that monopolization should not arise as similar services provided by the private sector are also available in the market.

We note that the Administration has drawn reference from the provisions of the Hong Kong Industrial Estates Corporation Ordinance and the Hong Kong Industrial Technology Centre Corporation Ordinance and made improvements to the relevant provisions in the light of operating experience, so that the new Corporation can operate with sufficient flexibility to respond efficiently to the needs of a changing new economy.

Regarding the supervision of the new Corporation in the future, we consider it necessary to clearly define its duties and powers to facilitate supervisory efforts seeing that the new Corporation will remain a publicly-funded organization with an important public mission. As regards the financial arrangements, the net assets of the three organizations will become the authorized capital of the new Corporation. The new Corporation will be required to submit to the Government its annual estimates of income and expenditure, statements of accounts and reports of activities. It shall also appoint a professional auditor to audit its statements of accounts. The audited statements of accounts and annual reports shall be tabled at the Legislative Council.

We welcome the Administration's decision to accept a number of suggestions made by the Bills Committee and to move Committee stage amendments (CSAs) accordingly. These CSAs cover technical amendments and improvements to various provisions in the Bill. They include mainly an amended provision to enable public access to information on interests declared by members of the Board or a Committee and the provision to provide for a general description of the duties of the Chief Executive Officer, so that the relationship between the Board, the Chairman of the Board and the Chief Executive Officer can be made clearer and more explicit.

We support the Hong Kong Science and Technology Parks Corporation Bill presented by the Administration and the relevant CSAs it proposes to the Bill.

Thank you, Madam President.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance (HKPA) I express our support for the passage of the Bill to merge the HKIEC, the HKITCC and the Provisional Hong Kong Science Park Company Limited to form the Hong Kong Science and Technology Parks Corporation. In addition to streamlining the structure, the merger will also help to maximize the synergy among the three existing organizations concerned to provide a comprehensive and versatile one-stop service for the development of innovative technology in Hong Kong and the transformation into high value-added industries.

In order to avoid relying excessively on subsidies from the Government, the new Corporation will need to conduct its business according to prudent commercial principles upon establishment. This should give no cause for criticism. Nevertheless, the HKPA holds that the new Corporation must make every effort to avoid developing into an independent body competing with the private sector for profits. Indeed, given that the purpose of the new Corporation is to promote the development of technology-based industries in Hong Kong, its mode of operation and fees charging policy must always be in the interests of the sector concerned (particularly small and medium-sized technology firms). Besides, the Board of the new Corporation must keep abreast of technological developments and the market trend, as well as cater fully to the needs of the sector. In the event of the new Corporation making any profit, all such profit must be spent on service improvement as far as practicable to contribute to an even better business environment for the sector, with a view to enhancing more effectively the competitiveness of Hong Kong in the global arena of technological development.

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

PROF NG CHING-FAI (in Cantonese): Madam President, a seminar entitled "The World of High Technology in Hong Kong's Industrial Development" was held by the Society of Hong Kong Scholars in 1986. During the seminar, the idea that we must consider establishing a science park in Hong Kong if we were to enable our industries to achieve further progress was first brought up by Dr S K TSO. Six years later, the Society held another seminar, which was entitled "Hong Kong Science Park — An Investment in Our Future", to further discuss the urgency and viability of a science park in Hong Kong. In making his concluding speech at the seminar, Prof Kenneth YOUNG expressed the hope that he would not have to wait for another six years to see the Science Park.

This is now 2001, and we can finally see the materialization of the Hong Kong Science Park. By the time we can really move into the Park, some 10 years will have lapsed since the second seminar. Sometimes we just cannot help wondering whether fate conspires against us. Why should Hong Kong need to take so many years to materialize such a meaningful thing? If the then Government could adopt a more proactive attitude and establish the Hong Kong Science Park four to five years earlier, would we be able to see some initial achievements made by our technology-based industries; would we still be lagging far behind our neighbours in technological development?

But then again, Madam President, as many people of Hong Kong love to say, "It's better late than never". We are still very glad that the Science Park can finally take in its first batch of clients. We are also glad to see that the preparatory work for the Applied Science and Technology Research Institute is well underway. With these two new facilities in place, and the support and co-operation of the existing facilities and the various tertiary institutions, I believe we will be seeing a brand new picture of Hong Kong's innovative technology sector in some five to eight years' time. I hereby wish the Hong Kong Science Park every success in commencing its work and in giving full play to its role in promoting the development of technology industries in Hong Kong.

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

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

(No Member responded)

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I wish to thank the Honourable Kenneth TING, Chairman, and members of the Bills Committee for supporting the merger and for offering constructive advice to improve the Bill. Their advice helped make the public role of the Hong Kong Science and Technology Parks Corporation (the Corporation) clearer, its operation more transparent, and enable it to provide quality support services to industry in a more effective manner. After discussion with the Bills Committee, the Government will propose amendments to certain provisions of the Bill at the Committee stage.

During the process of discussions at the Bills Committee, some members pointed out that the Corporation had to deliver its public mission on the one hand, and had to conduct its business according to prudent commercial principles on the other. They were concerned that such requirements may prompt the Corporation to raise its fees level in order to generate financial return, thereby running against its original objective of providing support to industry.

On this point, I would like to reiterate that based on the operating experience of the HKIEC and the HKITCC, conducting business according to prudent commercial principles is an attainable goal. Besides, upon completion

of the merger, the assets of the existing three organizations will be vested in the Corporation. The Corporation will therefore have sufficient resources to make flexible arrangements to provide services to industry. It is definitely not our intention to encourage the Corporation to set its goal on making profit. Rather, we hope that while operating with the guiding principle of promoting and supporting the development, transfer and application of technologies in industry, the Corporation will exercise financial prudence and determine the appropriate level of fees, taking into account services of different nature, the needs of various users and the financial condition of the Corporation.

Under this principle, the Corporation will continue to provide support services at reduced fees or even free of charge to companies in need, such as its incubatees. For business services provided to ordinary companies, fees set at the appropriate market level will be charged. We undertake the Government's commitment to the delivery of the Corporation's public mission will not derogate.

The Bills Committee also considered that the Corporation should widely publicize its scope of services. We fully shared this view. The Corporation will offer services required by industry in a timely manner, taking into account the needs of industry, as well as changes in market conditions and technological developments. The Corporation will also embark on marketing and promotional activities to publicize its services widely for the benefit of industry.

In addition, the Bill has provided for a control mechanism to ensure the Corporation's accountability to the public. In this regard, the Bill stipulates that the Corporation shall submit its annual reports and audited statements of accounts to the Government every year, and that the Government shall table these documents at the Legislative Council. This mechanism will ensure effective monitoring of the business and financial conditions of the Corporation, and can facilitate the Legislative Council and the public to assess the performance and effectiveness of the Corporation in providing support to industry.

Madam President, I hope Members will support the Hong Kong Science and Technology Parks Corporation Bill and the Committee stage amendments that I will move later, so that the Corporation can be established early to provide services to industry. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Hong Kong Science and Technology Parks Corporation Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Hong Kong Science and Technology Parks Corporation Bill.

Council went into Committee.

Committee Stage

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

HONG KONG SCIENCE AND TECHNOLOGY PARKS CORPORATION BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Hong Kong Science and Technology Parks Corporation Bill.

CLERK (in Cantonese): Clauses 1 to 5, 7, 8, 9, 11, 12, 13, 15 to 32 and 34 to 40.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 6, 10, 14 and 33.

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendments to clauses 6, 10, 14 and 33, as set out in the paper circularized to Members.

The Hong Kong Science and Technology Parks Corporation will continue the existing policy of the three organizations to serve both manufacturing and service industries. We propose amending clause 6 to clearly reflect this policy intention.

The Bills Committee considered that members of the public should have access to information regarding the interest disclosed by Board members of the Corporation. We share the concern of the Bills Committee. We therefore suggest amending clause 10 of the Bill by adding a provision to stipulate that the Corporation shall enter in a register the interest disclosed by Board members and that the public can inspect the register.

The Bills Committee also suggested defining the role of the Chief Executive Officer of the Corporation so that the relationship between the Board and the Chief Executive Officer would become clearer. Accordingly, we propose to amend clause 14 to specify that the Chief Executive Officer is the administrative head of the Corporation and is responsible, subject to the direction of the Board, for the administration of the Corporation.

The proposed amendments to clauses 10(1) and 33 are technical in nature. The objective is to make the provisions and the legislative intent clearer.

The above amendments have been discussed and endorsed by the Bills Committee. I hope Members will support and pass the amendments. Thank you.

Proposed amendments

Clause 6 (see Annex I)

Clause 10 (see Annex I)

Clause 14 (see Annex I)

Clause 33 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 6, 10, 14 and 33 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 2 and 4.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 3.

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendment to Schedule 3, as set out in the paper circularized to Members.

The proposed amendment to Schedule 3 seeks to specify that all the books, documents, and so on relating to the Hong Kong Industrial Estates Corporation, the Hong Kong Industrial Technology Centre Corporation and the Provisional Hong Kong Science Park Company Limited shall be delivered to the Hong Kong Science and Technology Parks Corporation, in order to facilitate smooth transitional arrangements.

The above amendment has been examined and endorsed by the Bills Committee. I hope Members will support and pass the amendment. Thank you.

Proposed amendment

Schedule 3 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 3 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

HONG KONG SCIENCE AND TECHNOLOGY PARKS CORPORATION BILL

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, the

Hong Kong Science and Technology Parks Corporation Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Hong Kong Science and Technology Parks Corporation Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Hong Kong Science and Technology Parks Corporation Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Interest Rates (Miscellaneous Amendments) Bill 2001.

INTEREST RATES (MISCELLANEOUS AMENDMENTS) BILL 2001

Resumption of debate on Second Reading which was moved on 14 March 2001

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 and that is: That the Interest Rates (Miscellaneous Amendments) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Interest Rates (Miscellaneous Amendments) Bill 2001.

Council went into Committee.

Committee Stage

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

INTEREST RATES (MISCELLANEOUS AMENDMENTS) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Interest Rates (Miscellaneous Amendments) Bill 2001.

CLERK (in Cantonese): Clauses 1 to 13.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 11.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

INTEREST RATES (MISCELLANEOUS AMENDMENTS) BILL 2001

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

Interest Rates (Miscellaneous Amendments) Bill 2001

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Interest Rates (Miscellaneous Amendments) Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Interest Rates (Miscellaneous Amendments) Bill 2001.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Employment (Amendment) (No. 2) Bill 2000.

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 2000

Resumption of debate on Second Reading which was moved on 13 December 2000

PRESIDENT (in Cantonese): Mr Andrew CHENG, Chairman of the Bills Committee on the Employment (Amendment) (No. 2) Bill 2000, will now address the Council on the Committee's Report.

MR ANDREW CHENG (in Cantonese): Madam President, I would like to first report on the deliberations of the Bills Committee on Employment (Amendment) (No. 2) Bill 2000 in my capacity as Chairman of the Bills Committee.

The Bill seeks to clarify certain provisions of the Employment Ordinance, in particular provisions prohibiting employers from dismissing a pregnant employee or an employee on paid sick leave.

Section 15(1) of the Employment Ordinance prohibits an employer from dismissing a pregnant employee by notice under section 6 of the Ordinance or by payment in lieu of notice under section 7. As for employees on paid sick leave, similar protection against dismissal is provided under section 33 of the Ordinance. The purpose of these provisions is to prohibit employers from dismissing pregnant employees or employees on paid sick leave, except in circumstances where summary dismissals are justified under section 9. Section 9 of the Ordinance provides that an employer may terminate a contract of employment without notice or payment in lieu of notice if the employee has committed serious misconduct, such as fraud or dishonesty or habitual neglect of duties.

However, because of the way in which sections 15(1) and 33 is written, the provisions can be interpreted as only prohibiting dismissal of employees during pregnancy or on paid sick leave under section 6 or 7, without covering wrongful dismissals which are not justified under section 9. That means once an employer claims that he has dismissed a pregnant employee or an employee on paid sick leave summarily under section 9 of the Ordinance, he cannot be prosecuted for contravention of section 15(1) or section 33, even if the summary dismissal is subsequently proved to be unsubstantiated. Since this is not consistent with the policy intent of the Administration, the Bills Committee agrees that there is a need for the relevant provisions to be amended to make it

clear that unless an employer has justifiable reasons to dismiss an employee summarily under section 9 of the Ordinance, he is prohibited from terminating the contract of employment of a pregnant employee or an employee on paid sick leave.

The deliberations of the Bills Committee focused mainly on the wording of proposed amendments in the Bill to clarify the provisions under sections 15 and 33 of the Ordinance and the presumption therein.

Madam President, members of the Bills Committee noted that under the proposed amendments in the Bill, if an employer dismissed a pregnant employee or an employee on paid sick leave, the termination would be deemed to have been made otherwise than in accordance with section 9. Members were concerned that this presumption might create undue pressure on the Government to initiate prosecutions against the employers concerned and would therefore cause undue hardship to employers.

The Administration's explanation was that without the presumption, the prosecution would have difficulty to establish that an employer dismissed an employee otherwise than in accordance with section 9. It also pointed out that the proposed amendment has already provided a defence for employers acting in good faith. In practice, no prosecution will be initiated if the employer concerned can demonstrate that he dismissed a pregnant employee or an employee on paid sick leave under section 9 and that at the time of the dismissal he had sound reasons to believe he could do so.

However, to address the Bills Committee's concern, the Administration has agreed to amend clauses 5(b) and 8(b) of the Bill to specify that the presumption that an employer has dismissed his employee otherwise than in accordance with section 9 would not be invoked for the purpose of prosecution if he can prove that:

- (a) the termination was made in accordance with section 9; or
- (b) he purported to terminate the contract in accordance with section 9 and, at the time of termination, he reasonably believed he had a ground to do so.

Madam President, the Bills Committee supports the Second Reading of the Bill and the Committee stage amendments to be moved by the Secretary for Education and Manpower later on.

Madam President, I have made the above remarks in my capacity as Chairman of the Bills Committee. Now I should like to speak a few words on behalf of the Democratic Party to render support to the Employment (Amendment) (No. 2) Bill 2000. For its part, the Bureau has so far been able to answer Members' queries and address their concern on a co-operative and reasonable basis. That is why I always say I very much hope that we can co-operate earnestly to deal with the legislation relating to occupational safety in much the same way as we did in scrutinizing the Bill. Should that be the case, I believe the relevant bills committees on a number of occupational safety-related bills would be able complete their work in several meetings, as did the Bills Committee on this Bill. Thank you, Madam President.

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

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I have handled countless cases of pregnant employees being dismissed by their employers, and that is why we support the Government's proposal to amend the major provisions. As a matter of fact, because of the loopholes in the existing law, it is very difficult to initiate prosecution against some unscrupulous employers. While we believe it is good to introduce the amendments today, we very much hope that the Labour Department, being responsible for the practical implementation of the relevant amended legislation, will not be too conservative in discharging its duty. Over the years, I have accompanied many pregnant employees to the Department in the hope that the Government would assist in handling certain complaints against unreasonable dismissal or mental abuse by their employers during pregnancy. Regrettably, however, many a time we were unable to secure any positive response from the Department and thus could not initiate prosecution against the employers concerned immediately. Hence, I am taking this opportunity to draw attention to this fact.

Madam President, when women become pregnant, they naturally look forward to welcoming the new lives happily. However, according to my past experience, in many cases employers would dismiss employees during their pregnancy, thereby impacting gravely on the emotions of the pregnant employees. I have seen many double-income couples — by that I mean both the husband and the wife are wage earners — working hard in order to pay off their home mortgage loan and to raise a family. Their plan sounded pretty good at first;

but then, many employers would dismiss their employees upon learning that they were pregnant. In recent years, the approaches of some employers to dismissing their employees are more "enlightened". For instance, they would let their pregnant employees take their 10 weeks maternity leave first, and then dismiss them on the first day they resume work. Measures like this will impact directly on families awaiting the arrival of new members. In addition to economic hardship, these families, particularly the pregnant women concerned, will also suffer emotionally. This is by no means fair to the new members of the families.

Because of the provisions under section 9 of the Employment Ordinance, the Government used to experience much difficulty in initiating prosecution against some unscrupulous employers in the past. For this reason, we welcome the amendments proposed by the Government to the relevant provisions and will also support the amendment proposed to clause 7 of the Employment (Amendment) (No. 2) Bill 2000. I am very grateful to the Legislative Council Secretariat for separating clause 7 from other clauses of the Bill for deliberation. The Hong Kong Federation of Trade Unions (FTU) has requested that clause 7 be considered separately because of our concern over the proposed provision. So, what is the problem with clause 7 of the Bill? Originally, section 32Q of the Employment Ordinance has specified the exclusion of acts of discrimination within the meaning of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance from the application of the employment protection provisions of the Employment Ordinance. It is now proposed that acts of discrimination covered by the Family Status Discrimination Ordinance should also be excluded from the application of such provisions. For some time, we did not see anything unusual during our scrutiny of the Bill. However, upon consulting legal advice, we found that there might be some problems, though we were not sure whether the problems were just doubts or they could be true. At present, the Equal Opportunities Commission (EOC) is responsible for the implementation of the three ordinances mentioned by me, namely, the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. In the past, we would invoke the Employment Ordinance. Insofar as labour disputes are concerned, including the cases of the pregnant employees to which I referred earlier, there are relevant provisions under the existing legislation providing for the protection of female workers. With regard to the proposal to exclude certain acts of discrimination within the meaning of the Family Status Discrimination Ordinance from the application of the employment protection provisions under the Employment

Ordinance, we are concerned that we may not be able to invoke the Ordinance to initiate prosecution or appeal to the Labour Tribunal.

As Members are aware, the Labour Tribunal does not allow any of the two parties concerned to be represented by lawyers during the proceedings. Yet in many cases, the Court would allow the relevant employees to invite trade union representatives to plead the case on their behalf. That way, while the cost involved would be comparatively cheaper, the amount of compensation payable by the party losing the case would also be smaller. However, if acts of discrimination against pregnant employees should be excluded from the Employment Ordinance by virtue of section 32Q of the Ordinance, the Labour Tribunal would no longer be responsible for handling complaints in this respect. Instead, the complaints would be referred to the EOC, which would in turn submit the relevant cases to the District Court. If an employee should be required to plead his case in the Court, he could either do it himself or hire a lawyer to represent him. From the experience we gained in the Small Claims Tribunal, we know that due to a lack of means employees normally could not afford representation by counsel and would apply for legal aid in most cases. But then, not each and every application for legal aid would be approved by the Legal Aid Department. As regards the EOC, while it may also offer assistance to the relevant complainants by providing them with legal representation, not every application submitted to the EOC would be approved. What could the complainant do if he were not provided with legal representation by the EOC? In that case, he would need to plead his case in court. This is by no means easy for grass-roots workers with hardly any legal knowledge. Indeed, even a well-educated wage earner may find it hard to plead his case on his own because he may be fighting against some large consortia. Recently, an employee won his case against a large consortium. But this is all because the EOC has provided him with legal representation that he could have a fair chance to institute legal proceedings in the Court. What will happen if the employees concerned are not provided with any form of assistance?

For these reasons, we have reservations and doubts about the proposed amendments to clause 7 of the Bill. Even though the relevant government officials have told us that there should not be any problem because the employees concerned could choose to have their cases heard in the Labour Tribunal or in the District Court. On the surface, it looks as if the right to choose is in our hands. However, I wish to point out to the Secretary that in my many years' experience as a front-line labour service worker, I have hardly seen any staff members of the

Labour Department informing the relevant employees clearly of the rights they enjoy. That really concerns me. Moreover, when dealing with some cases related to maternity leave in the past, I visited the Labour Department in person, only to find that the attitude of the staff there was indeed very conservative. I just wonder how employees could secure any protection if they should complain their cases to the Department on their own, given that there are some grey areas with these problems. And of course, such problems invoke not only the Family Status Discrimination Ordinance under discussion today, but also the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

Madam President, I wish to express my heartfelt thanks to the Secretariat. Upon learning that we had doubts about clause 7 of the Bill, the Secretariat promptly made arrangement for the clause to be separated from the other clauses of the Bill. The FTU is looking forward very much to the Government responding to our views in this respect later on. We hope that the Government will respond clearly to our question of whether or not the employees concerned can choose to have their cases heard in the Court or handled by the Labour Tribunal. We will not abstain in the vote on the clause if the Government answers in the affirmative; otherwise, I am afraid we will still have considerable reservations about the proposed amendment. I hope to take this opportunity to draw the attention of the Government and the community to the fact that while both the District Court and the Labour Tribunal may equally hear cases related to employment protection, there is a huge gap between the different legal expenses payable by the employees concerned.

Madam President, with the only exception of clause 7 about which we have some reservations, the FTU supports the general direction of the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): Does any other Member wish to speak? If not, I will call upon the Secretary for Education and Manpower to reply.

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, I move the resumption of the Second Reading debate of the Employment (Amendment) (No. 2) Bill 2000. Let me first of all thank the Chairman, the Honourable Andrew CHENG, and other members of the Bills Committee for the constructive suggestions that they have given in the course of deliberation of the

Bill. Many of their suggestions have been incorporated into the Committee stage amendments, which I shall move later on.

The principal amendments of the Bill aim to give full effect to the employment protection for pregnant employees and employees on paid sick leave who are wrongfully dismissed by their employers under section 9 of the Ordinance, which provides for summary dismissal only if an employee has committed serious misconduct. The Bill also provides for the prosecution of employers whom we reasonably believe have knowingly breached the law.

However, some members of the Bills Committee were concerned at the way the relevant clauses, including the presumption and the defence to employers, were written would open the way to frivolous prosecutions. To address Members' concern, I shall move amendments to the Bill which I shall explain later on.

As regards the exclusion of acts of discrimination which are covered by the Family Status Discrimination Ordinance, from the application of Part VIA, which include employment protection provisions of the Ordinance, some members of the Bills Committee have expressed a concern that the proposed exclusion might narrow the protection for employees against unlawful discrimination on the ground of family status. I can reassure Members that this is not the intention, nor will it be the effect of the proposed amendment. The objective of the proposed amendment is to avoid duplicity of civil claims and remedies in respect of a single act, and to make clear in the legislation the delineation of authority to hear claims arising from discriminatory acts.

On this latter point, the proper jurisdiction to hear allegations of discriminatory acts, including those in the employment field, should be the District Court. This is laid down in the respective discrimination legislation. The present amendment is, therefore, consistent with the established practice. I note the Honourable CHAN Yuen-han's concern, but I do not see any ground for making any exception in respect of the Family Status Discrimination Ordinance.

The Employment (Amendment) (No. 2) Bill 2000 aims to clarify the policy intent on a number of issues concerning employment protection and benefits. The proposed amendments are essentially technical in nature, have been carefully examined by the Bills Committee, and have the Committee's full support. I have also taken note of Miss CHAN Yuen-han's comments about

implementation of the Ordinance, and will pass them onto my colleagues in the Labour Department.

Madam President, I commend this Bill to Honourable Members of this Council. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Employment (Amendment) (No. 2) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Employment (Amendment) (No. 2) Bill 2000.

Council went into Committee.

Committee Stage

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

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 2000

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Employment (Amendment) (No. 2) Bill 2000.

CLERK (in Cantonese): Clauses 1, 2, 3, 6 and 9 to 15.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 7.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That clause 7 stand part of the Bill.

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

MISS CHAN YUEN-HAN (in Cantonese): Madam Chairman, despite what the Secretary said just now, I still feel that she has failed to address my concern. I agree with the Secretary in that as section 32Q has already specified the exclusion of acts of discrimination within the meaning of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, the exclusion of discriminatory acts under the Family Status Discrimination Ordinance should also be specified as well.

As I pointed out in my speech just now, we had not realized the problem when studying this part of the provisions, it was only when we were dealing with realistic cases that we noticed that something was wrong. That is why we have

raised our concern in this respect. Having sought legal advice, we wish the Government to tell us categorically if the exclusion in question would cause all claims relating to the provisions of the Employment Ordinance against discrimination to be deferred to the Equal Opportunities Commission (EOC), obliging cases of wrongful dismissal to be heard in two different courts — a situation mentioned by me earlier. In that case, it would impact on the interests of labourers.

I wish to tell the Secretary while I understand that the Government has most probably made some research efforts when dealing with the issue, what I try to say today is that I hope it can conduct some further research. This is because I consider that problem would bound to arise if matters relating to unfair dismissal, unreasonable dismissal, terminal payments, and so on should in some way be categorized as acts of discrimination. From my experience in handling cases of employees being dismissed during pregnancy, I know the employees concerned would like the Labour Department to initiate prosecution on the grounds of unfair dismissal or unreasonable dismissal. Regrettably, this would not be possible in the future. While the Labour Department has always advised these aggrieved women to take their cases to the EOC, it does not follow that the EOC would receive us every time we went to its office. Moreover, the legal professionals of the EOC do not seem to be very familiar with labour affairs. As far as I can remember, I accompanied a number of pregnant women to the EOC last year and the year before, shortly after Miss Anna WU had assumed office as Chairperson of the EOC. I asked her why the EOC did not initiate prosecution for pregnant women. It seemed to me that she thought claims of this kind should be handled by the Labour Department. From this, we can see that there is indeed something wrong with the implementation of the Ordinance. And that is why we have to raise this issue in relation to clause 7 of the Employment (Amendment) (No. 2) Bill 2000 today. But then, we will be abstaining from voting instead of voting against the Bill. Why? Because we only wish to make our point and to alert the bureau and the Labour Department to the problem that a case which is originally within the ambit of the Employment Ordinance from an employee's point of view will be deferred to another agency — the EOC — if sex discrimination or other acts of discrimination is involved. According to the legal advice to us, or if we find out upon consultation that other people also share our view, I trust that the Government

should really look into the problem. Certainly, the Government may always handle the matter by administrative means, which will then be a different issue. So, if the Secretary cannot answer the questions raised by me today, I still hope that the issues brought out today can arouse the Government's concern in this respect. This is because we consider it is hardly possible to implement the relevant provisions of the Ordinance even from an objective point of view. Thank you, Madam Chairman.

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

(No Member responded)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I wish to reply to Miss CHAN Yuen-han's question. I understand the difficulties she just mentioned but basically, when an employee thinks that his dismissal is a discriminatory act, the case should be handled by the District Court according to law. However, if he thinks that his employer has dismissed him unreasonably, his case can be handled by the Labour Tribunal. As regards whether we will encounter the difficulties mentioned by Miss CHAN in the course of actual implementation, we must consider the actual situation after a substantive case has happened before considering whether it is necessary to further amend or clarify the relevant legislation. As section 32Q has specified the exclusion of discriminatory acts within the meaning of two ordinances on discrimination, the exclusion of discriminatory acts under the Family Status Discrimination Ordinance should also be specified for consistency.

CHAIRMAN (in Cantonese): Miss CHAN, do you wish to elucidate part of your speech just now?

MISS CHAN YUEN-HAN (in Cantonese): Yes, and thank you, Madam Chairman.

To help the Secretary understand the content of my speech, I wish to make it clear that I am aware of the exclusion of discriminatory acts within the

meaning of two ordinances, and we are talking about the exclusion of a third ordinance. What I try to say is that there is something wrong with the implementation. I hope very much that the Secretary can understand my point, and that I did not say I was not aware of the exclusion of such acts under those two ordinances. Quite the contrary, I did mention about the exclusion of discriminatory acts under those two ordinances in my speech just now. That is why I seek to make a point of clarification to tell the Secretary that I am aware of the actual situation, only that I wish to point out there is really something wrong with the implementation, and that I have complained to the Labour Department about the problem. I just hope the Government can address the problem squarely.

Thank you, Madam Chairman.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I understand Miss CHAN's concern. I will look into this with the Labour Department.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 7 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Clauses 4, 5 and 8, headings before clause 16 and clause 16.

SECRETARY FOR EDUCATION AND MANPOWER: Madam Chairman, I move the amendments to the clauses read out just now as set out in the paper circularized to Members. Under the original clauses 5 and 8, employers who terminate a contract of a pregnant employee or an employee on paid sick leave shall be deemed to have done so otherwise than in circumstances where summary dismissal is justified, unless the contrary is proved.

To protect employers who had acted in good faith, but the dismissal was later found to be wrongful by the Court, we propose to allow as a defence for the employer being prosecuted to prove that, at the time of terminating the contract, he reasonably believed that he had a ground to do so.

When the Bill was deliberated at the Bills Committee, some Members expressed concern about the deeming provision described above. They were worried that employers might be subject to frivolous prosecution, irrespective of whether they genuinely believed they had a case to dismiss a pregnant employee or an employee during paid sick leave.

We have explained to Members that it is the prosecution's policy not to take out a prosecution unless there is sufficient evidence to establish the offence charged, and that there is a reasonable prospect to secure a conviction. Since a defence exists in this case for employers who have acted in good faith, it is highly unlikely that prosecution will be initiated against any employer who genuinely believed that he had good grounds to initiate summary dismissal.

However, to address Members' concern, we have recast the presumption clause by making it clear that the presumption will not be triggered for the purpose of criminal proceedings if the employer can prove that he purported to dismiss the employee summarily and he reasonably believed that he had a ground to do so. The new clauses 5 and 8 should provide reasonable protection to employers who have acted in good faith.

I would like to add that in civil proceedings, the original deeming provision still applies. This means that an employer who dismisses a pregnant employee or an employee on paid sick leave will have to prove, if challenged, that he terminated the contract in circumstances where summary dismissal is justified, otherwise, he shall be liable to pay compensation to the employee.

The rest of the amendments are purely textual in nature. For instance, members of the Bills Committee were of the view that the original clause 4 could be expressed in a manner which is easier to read by using less double negatives in the construction of the clause. We have amended the clause accordingly.

The Department of Justice has also advised that Schedule 3 to the Sex Discrimination Ordinance (Cap. 480) had already expired. Clause 16 is, therefore, redundant and can be deleted.

All the Committee stage amendments have been agreed with the Bills Committee after detailed discussion. I hope that Members will support and pass these amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 4 (see Annex II)

Clause 5 (see Annex II)

Clause 8 (see Annex II)

Headings before clause 16 (see Annex II)

Clause 16 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to headings before clause 16 and clause 16, which deal with deletion, have been passed, headings before clause 16 and clause 16 are deleted from the Bill.

CLERK (in Cantonese): Clauses 4, 5 and 8 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 2000

SECRETARY FOR EDUCATION AND MANPOWER: Madam President,
the

Employment (Amendment) (No. 2) Bill 2000

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Employment (Amendment) (No. 2) Bill 2000 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Employment (Amendment) (No. 2) Bill 2000.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): This Council now resumes the Second Reading debate on the Education (Amendment) Bill 2000.

EDUCATION (AMENDMENT) BILL 2000**Resumption of debate on Second Reading which was moved on 10 January 2001**

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, I will report on the deliberations of the Bills Committee on Education (Amendment) Bill 2000 in my capacity as the Chairman of the Bills Committee first.

The Bill proposes a number of amendments that seek to amend some inadequate or outdated provisions in the Education Ordinance and the Education Regulations.

In its deliberations, the Bills Committee has focused on the time limit for making prosecution and the control over schools' advertisements containing false or misleading information.

At present, violations of provisions under the Education Ordinance and the Education Regulations are summary offences. In the absence of any specific provisions, prosecution action has to be taken within six months after an offence is committed and no prosecution can be instituted thereafter. The Bill proposes to allow prosecution to be instituted within six months from the date when the Director of Education discovered the commission of the offence.

While members of the Bills Committee support relaxation of the time limit to facilitate prosecution work against unlawful acts by schools, they are concerned that the proposal may give too much flexibility to the Director of Education. Moreover, they consider that relaxation of the time limit may give rise to unfairness because in theory, the Director of Education may institute prosecution against a person many years after the offence was committed and the penalty for that offence may have become much more severe at the time of prosecution.

Therefore, members have suggested that the Administration should consider stipulating the maximum time limit during which the Director of Education can institute prosecution, or limiting application of the proposed relaxation of the time limit to offences of a certain nature prescribed in the Ordinance.

Members have also questioned whether the six-month time limit will start to run only after the offence is discovered by the Director of Education personally.

To address members' concerns, the Administration has agreed to amend clauses 15 and 26 to the effect that offences of over-enrolment and over-charging or improper collection of school fees may be prosecuted within six months from the date of discovery of the offence by the Director of Education or an inspector of school, and prosecution for all other offences prescribed in the Ordinance and the Regulations may only be taken within six months after an offence was committed. The Bills Committee supports the proposed amendments.

Madam President, regarding control over schools' advertisements containing false or misleading information, under the existing Education Ordinance, the Director of Education may only institute prosecution action against schools making false advertisements in relation to their premises and against unregistered schools falsely claiming to be registered with the Education Department (ED). The maximum penalty for these offences is a fine of \$25,000. To protect the interests of students and parents, the Administration proposes to widen the scope of control such that it will be an offence for schools to publish any advertisement containing false or misleading information relating to the schools. Members support this proposal.

In response to the suggestion made by the Panel on Education previously, the Bill proposes to raise the fine for false and untruthful advertisements by schools from the existing \$25,000 to \$100,000. Members agree to this proposal in order to achieve greater deterrent effect.

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

Madam President, I now wish to express my personal views on the Bill.

As the representative of the education sector, I am not only concerned about whether the Bill will be passed, but also whether the Bill can serve the purposes of monitoring schools and protecting students. Madam President, I have recently received many complaints about non-compliance with the law by private school operators and about variations not conforming to descriptions as advertised. The Hong Kong College of Management, which was extensively reported in the media a month ago, is one of such cases.

Last week, representatives of teachers and students of the Hong Kong College of Management visited my office. They sought my assistance because their complaints lodged with the Education Department (ED) and the Consumer Council had had no results. While the Hong Kong Certificate of Education Examination (HKCEE) is now in progress, these students still have to spend time and effort on getting back their academic transcripts and arranging for meetings with officials of the ED and yet, they have not been provided with any substantial assistance.

These students come from different branches of the Hong Kong College of Management. They had already been forced to attend untaught lessons intermittently after the New Year. Afterwards, their classes had been conducted in the absence of teachers for successive months. When teachers were available, they nevertheless spoke Putonghua and the students did not know whether these teachers were registered or not.

Madam President, these senior secondary students who have to study in private schools are already academic underachievers, and many of them are taking the HKCEE this year. They have to pay much higher school fees than their counterparts in subvented schools and worse still, they are deprived of the golden opportunity to receive education at the last moment just when they have to sprint for the HKCEE. Even though the students have been suffering double losses in that their classes are not taught by teachers and their school fees not refunded, they dare not tell their parents. How can we just sit by while these students, who are doing less well academically but are willing to make a last-ditch effort in the HKCEE, being bullied and abandoned?

I wish to draw Members' attention to the point that those students lodging complaints with me have all made a one-off payment, ranging from

\$8,000 to some \$10,000, as their school fees for the whole year. Some students have even been waiting for more than one year and have not yet started their classes. In fact, in the existing Education Ordinance there is a provision against over-charging or improper collection of school fees, under which the collection of school fees for a whole year on a one-off basis is prohibited. These students have lodged complaints with the ED and there has been extensive coverage on this incident in the media, and this is not an individual case either. But the ED has just taken a bureaucratic attitude as usual and referred the case to the respective districts for them to handle on their own.

In handling this case, I was outraged by the attitude of the ED officials who have been bureaucratic, filibustering, disputing over trivialities, shirking responsibilities, and unsympathetic. They have failed to fulfill their duties, and have neither complied with the law nor stringently enforced the law, conniving at procrastination by schools in refunding school fees to students, allowing students to attend untaught classes, allowing teachers to suffer from defaulted payment of their salaries, and allowing the College to enroll students — the College is still enrolling students at the moment. It is indeed infuriating that the College is allowed to get off scot-free as such.

Two days ago, I formally lodged a complaint with the ED, demanding the ED to resolve the problem before this Bill is examined by the Legislative Council today. Yesterday, a student rang me up in the evening, telling me that the ED had just informed him that his case would be taken up by the central administration of the Government and that they would take actions against the College. This, I very much welcome, and I hope that the ED can explain to the public and these victimized students whether there is any dereliction of duty on the part of the ED or anyone else in this incident. Our students have been deceived and bullied time and again, and this situation still has not ceased even today when the HKCEE is in progress.

Madam President, I have brought up this case particularly to illustrate that whether it be a new or an old piece of legislation, so long as the education authorities refrain from enforcing the law and so long as they continue to connive at these unscrupulous school operators, this Bill, even if enacted, will eventually be rendered null and void, in which case legislation will only become a decorative vase and a mockery, and this will not be of any help to students, but

will hurt them instead. Therefore, I urge the Administration to enforce the law immediately after the Bill is passed today.

I so submit.

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, the last time when the Education Ordinance and the Education Regulations were reviewed and amended was in 1993. Over the eight years since then and with the new developments in education, quite a number of provisions in the Ordinance and in the Regulations have become outdated and cannot meet the realistic needs. It has therefore become essential that the relevant provisions be amended. The purpose of the amendments is conducive to ensuring the normal conduct of educational affairs and to safeguarding the interests of students. Amendments are proposed in areas such as the delegation of the powers of the Director of Education, the performance of the functions of a principal by the person recommended, the vesting of power in school inspectors to request personal particulars, the power of the Director to suspend the operation of schools or to issue related directives if there is any immediate danger or unruly behaviour found in schools, and the imposition of stricter control over false advertisements made by schools, and so on. The Democratic Alliance for Betterment of Hong Kong (DAB) supports all these proposals.

A contentious issue in the proposed amendments is related to the provisions on the time limit for making prosecution. The Bill stipulates that prosecutions against an offence under the Ordinance may be instituted within six months from the date of the discovery of the offence by the Director of Education, instead of only within six months from the date of the commission of the offence. This is not in conformity with the penalty provisions for summary offences. The time regarded as the date for the discovery of the offence is too flexible. In the light of members' queries and suggestions, the Government finally proposes to make the following amendments: with respect to offences of over-enrolment and over-charging or improper collection of school fees, prosecution may be instituted within six months from the date of discovery of the offence by the Director. For all other offences, prosecution may only be taken within six months after an offence was committed. On the interpretation of "date of discovery of the offence by the Director", the Administration will propose Committee stage amendments to make it clear that the time limit will start to run when an offence is discovered by the Director or an inspector of schools. The Administration has also assured members that the Education Department (ED) will set up a documentation mechanism to record the date of discovery by the

Director or an inspector of schools to avoid any possible dispute in the future. The DAB supports this amendment. However, even if the relevant Ordinance is amended, the entire process of prosecution will rely on complaints lodged by parents before the case can be discovered. We therefore suggest the Government to step up publicity efforts among parents and to urge parents to make inquiries or lodge complaints whenever they are in doubt. The ED should also have a clearly defined procedure for the handling of complaints to record information from the date the complaint is received to the verification of the complaint, the offences related and the time of commission, and so on. All these information will later be submitted as evidence in court.

The legislation as amended authorizes the person recommended by the school management committee to be the principal of a school and perform the functions of a principal. However, we are concerned that this may lead to legal disputes. When such disputes arise, there may be arguments as to whether the recommended person is to be recognized formally as the principal during that interim period, for the person's office has not been approved by the Director of Education in writing. We hope that the authorities will reach a decision on such recommendations expeditiously so that unnecessary disputes may be avoided.

Madam President, it is regrettable that the amendments being made to the Education Ordinance this time fail to address a number of important issues. These include the definition of a school and regulation of tutorial schools, and so on. It is reported that there is a serious problem of over-enrolment in tutorial schools and students have to move to another place whenever there is an inspection. The problem of over-enrolment exists in tutorial schools because, in cost analysis, if these tutorial schools comply with the legal requirements in respect of class size, none of these schools can survive. It is unfortunate that the Bills Committee has not invited any deputation from the tutorial schools to attend before it and present their views. I do not know how the Government looks at this problem. Some representatives from the tutorial schools tell me that the situation of tutorial schools is like a "cooked food stall" and they should not be subject to the same requirements and standards for "restaurants". They suggest that the Government should issue them a different kind of licence, as it issues a different kind of licence for "cooked food stalls". We urge the Government to pay serious attention to this problem, make a speedy review of it and put forward concrete measures to tackle it.

With these remarks, I support the Bill on behalf of the DAB.

Thank you, Madam President.

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

(No Member responded)

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, I move the resumption of the Second Reading debate of the Education (Amendment) Bill 2000. The Bill updates the Education Ordinance and the Education Regulations which were last reviewed and amended in 1993.

It aims to delete archaic provisions, remove unnecessary restrictions on schools, streamline administrative procedures and better safeguard the rights of parents and teachers.

I would like to thank the Honourable CHEUNG Man-kwong and members of the Bills Committee for their efficiency in scrutinizing the Bill, for the very constructive advice that they have tendered and for their support of the proposals in the Bill.

On the basis of the discussion in the Bills Committee, I shall be moving six Committee stage amendments later on. Three of them are fine-tuning of our policy intention. The rest are technical amendments. All of the amendments have the endorsement of the Bills Committee, and I hope that Members will support the Bill and the amendments which I shall propose.

I very much regret the incident which Mr CHEUNG Man-kwong has described. I shall investigate and see if the complaints procedures of the Education Department will need improvement.

I do agree that the Administration has the responsibility to enforce legislation but, having said that, with over 1 200 schools under its jurisdiction, the Education Department will inevitably have to act on complaints and will have to rely on the vigilance of students and teachers to bring to its attention illegal acts.

With these remarks, Madam President, I commend the Bill to Members.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Education (Amendment) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Education (Amendment) Bill 2000.

Council went into Committee.

Committee Stage

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

EDUCATION (AMENDMENT) BILL 2000

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Education (Amendment) Bill 2000.

CLERK (in Cantonese): Clauses 1 to 9, 11 to 14, 17 to 24 and 27 to 30.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 10, 15, 16, 25 and 26.

SECRETARY FOR EDUCATION AND MANPOWER: Madam Chairman, I move the amendments to the clauses read out just now and set out in the paper circularized to Members. I shall briefly explain the reasons for these amendments.

Clause 10 empowers school inspectors to require individuals found in school premises to produce proof of identity and personal particulars when the inspectors have reasonable suspicion that the Education Ordinance or the Education Regulations are not being complied with. Clause 10 as presently worded, however, allows school inspectors to request proof of identity and personal particulars from all individuals present. The proposed amendment is to prescribe more clearly the people from whom a school inspector may demand proof of identity and personal particulars, that is, only those whom the inspector believes to be guilty of an offence under the Ordinance.

Clause 25 aims to put beyond doubt the Director of Education's power to stipulate the maximum number of pupils permitted in every classroom. Having further examined the clause, we propose to replace the word "limit" with "specify" since maximum number should already have been the limit.

Clauses 15 and 26 concern the time bar for prosecution. At present, prosecution under the Education Ordinance and the Education Regulations must take place within six months from the date an offence is committed. Our original proposal was to start the countdown of six months from the date the

Director of Education becomes aware of the offence. This is necessary because experience shows that some offences may take a long time before being brought to the attention of the Education Department. As the Chairman of the Bills Committee explained earlier, the Committee has reservations about relaxing the time bar for all offences under the Ordinance.

The proposed amendments to clauses 15 and 26 limit the relaxation to offences related to over-enrolment and over-charging or improper collection of school fees only. These offences cause more concern to the community and are not easily detectable. The amendments will also make clear that the count-down will start when an offence is known to the Director of Education or an inspector of schools. Further, to avoid any ambiguity, we propose to amend clause 16 to make clear that the proposed relaxation of the time limit for prosecution will not apply to offences committed before the enactment of the Bill.

All the above amendments represent consensus reached between the Government and the Bills Committee. I hope that Members will support and pass these amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 10 (see Annex III)

Clause 15 (see Annex III)

Clause 16 (see Annex III)

Clause 25 (see Annex III)

Clause 26 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 10, 15, 16, 25 and 26 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 26A Penalties.

SECRETARY FOR EDUCATION AND MANPOWER: Madam Chairman, I move that new clause 26A be read the Second time. The clause is a consequential amendment to Regulation 102(2). At present, contravening Regulation 87 is an offence and is subject to penalties stipulated under Regulation 102(2). Under clause 25A of the Bill, the existing Regulation 87 will be renumbered Regulation 87(2). Consequently, reference to Regulation 87 in Regulation 102(2) has to be replaced by reference to Regulation 87(2).

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clause 26A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 26A.

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, the Employment (Amendment) (No. 2) Bill 2000 has passed through Committee

CHAIRMAN (in Cantonese): Secretary, the motion we are dealing with is: That new clause 26A be added to the Bill.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I am sorry. Madam Chairman, I now move that new clause 26A be added to the Bill.

Proposed addition

New clause 26A (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 26A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

EDUCATION (AMENDMENT) BILL 2000

SECRETARY FOR EDUCATION AND MANPOWER: Madam President,
the

Education (Amendment) Bill 2000

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Education (Amendment) Bill 2000 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Education (Amendment) Bill 2000.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Merchant Shipping (Registration) (Amendment) Bill 2001.

MERCHANT SHIPPING (REGISTRATION) (AMENDMENT) BILL 2001**Resumption of debate on Second Reading which was moved on 14 March 2001**

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 and that is: That the Merchant Shipping (Registration) (Amendment) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Merchant Shipping (Registration) (Amendment) Bill 2001.

Council went into Committee.

Committee Stage

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

MERCHANT SHIPPING (REGISTRATION) (AMENDMENT) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Merchant Shipping (Registration) (Amendment) Bill 2001.

CLERK (in Cantonese): Clauses 1 to 9.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

MERCHANT SHIPPING (REGISTRATION) (AMENDMENT) BILL 2001

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the

Merchant Shipping (Registration) (Amendment) Bill 2001

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Merchant Shipping (Registration) (Amendment) Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Merchant Shipping (Registration) (Amendment) Bill 2001.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 25 April 2001.

Adjourned accordingly at fourteen minutes past Eight o'clock.

Annex I

HONG KONG SCIENCE AND TECHNOLOGY PARKS
CORPORATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
6(1)(b)	By deleting "industry" and substituting "manufacturing and service industries".
10	(a) In subclause (1), by adding "董事局" before "如此". (b) by adding - " (3) The Corporation shall establish and maintain a register ("the register") for the purposes of this section. (4) Where a person makes a declaration required under subsection (1), the Corporation shall cause the name of the person to be entered in the register together with the particulars contained in the declaration, and if, in accordance with such a requirement, the person subsequently makes any such declaration, the particulars already so entered shall be added to or otherwise amended in such manner as the Corporation considers appropriate. (5) The Corporation shall make the register available for public inspection at its principal office at any reasonable time."

ClauseAmendment Proposed

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(a) By renumbering it as clause 14(1).

(b) By adding -

" (2) The Chief Executive Officer -

(a) notwithstanding section 11, is the administrative head of the Corporation and is responsible, subject to the direction of the Board, for administering the affairs of the Corporation; and

(b) has, subject to that direction, such other responsibilities as may be assigned by the Board."

33

By adding -

"(1A) A bylaw made under subsection (1) is subsidiary legislation."

Schedule 3

By adding -

"10. Delivery of books, etc.

All books, papers, minutes, receipts, accounts or other document relating to HKIEC, HKITCC or PHKSPCL that were under the care and custody of HKIEC, HKITCC or PHKSPCL immediately before the appointed day shall be delivered to the Corporation on that day by the person who has the care and custody of those documents on the commencement of that day."

Annex II

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>By deleting the clause and substituting -</p> <p>"4. Proportion of the end of year payment</p> <p>Section 11F is amended -</p> <p>(a) in subsection (1) -</p> <p>(i) by repealing "subsection (1A)" and substituting "subsections (1A) and (1B)";</p> <p>(ii) by repealing paragraph (a) and substituting -</p> <p>"(a) the contract of employment is terminated -</p> <p>(i) at any time during the payment period; or</p> <p>(ii) on the expiry of the payment period; or";</p>

ClauseAmendment Proposed

(b) by adding -

"(1B) Subsection (1)(a) shall not apply where a contract of employment is terminated -

(a) by the employee (except such a termination which is in accordance with section 10); or

(b) in accordance with section 9."."

5 (a) In paragraph (b), by deleting the proposed section 15(1B) and substituting -

"(1B) An employer who terminates the continuous contract of employment of a pregnant employee shall be taken for the purposes of subsection (1)(a) or (b) to terminate the contract otherwise than in accordance with section 9 -

(a) unless the contrary is proved; or

(b) subject to subsection (1C), unless the employer proves that -

(i) he purported to terminate the contract in accordance with that section; and

ClauseAmendment Proposed

- (ii) at the time of such termination, he reasonably believed that he had a ground to do so.

(1C) Subsection (1B)(b) shall not apply in the case of civil proceedings."

- (b) In paragraph (d) -

- (i) in the proposed section 15(4), by deleting "Subject to subsection (5), any" and substituting "Any";

- (ii) by deleting the proposed section 15(5).

8

- (a) In paragraph (b), by deleting the proposed section 33(4BAA) and substituting -

"(4BAA) An employer who terminates the continuous contract of employment of an employee on any sickness day taken by the employee in respect of which sickness allowance is payable under this section shall be taken for the purposes of subsection (4B) to terminate the contract otherwise than in accordance with section 9 -

- (a) unless the contrary is proved; or

- (b) subject to subsection (4BAB), unless the employer proves that -

ClauseAmendment Proposed

(i) he purported to terminate the contract in accordance with that section; and

(ii) at the time of such termination, he reasonably believed that he had a ground to do so.

(4BAB) Subsection (4BAA)(b) shall not apply in the case of civil proceedings."

(b) In paragraph (c) -

(i) in the proposed section 33(4BB), by deleting "Subject to subsection (4BC), any" and substituting "Any";

(ii) by deleting the proposed section 33(4BC).

16

(a) By deleting the headings "**Consequential Amendments**" and "**Sex Discrimination Ordinance**" before the clause.

(b) By deleting the clause.

Annex III

EDUCATION (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
10	In the proposed section 81B, by adding "whom he reasonably believes to be guilty of an offence under this Ordinance" before "to -".
15	(a) In paragraph (d), by deleting the semicolon at the end and substituting a full stop. (b) By deleting paragraph (e).
16	By adding - "(3) Notwithstanding regulation 101(10) of the Education Regulations (Cap. 279 sub. leg.), no prosecution for an offence under regulation 61, 62, 65, 66 or 87(2) of those regulations which is committed before the commencement of section 26 shall be commenced after the expiration of 6 months from the date of commission of the offence."
25(b)	In the proposed regulation 87(1), by deleting "limit" and substituting "specify".
26	(a) In paragraph (c), by deleting the full stop and substituting a semicolon.

ClauseAmendment Proposed

(b) By adding -

"(d) by adding -

"(10) Prosecution for an offence under regulation 61, 62, 65, 66 or 87(2) shall be commenced within 6 months after the date of discovery of the offence by the Director or any inspector of schools."."

New

By adding -

"26A. Penalties

Regulation 102(2) is amended by repealing "87" and substituting "87(2)".