

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 2 May 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 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.

**MEMBER ABSENT:**

THE HONOURABLE CYD HO SAU-LAN

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

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

MR LEO KWAN WING-WAH, J.P.  
SECRETARY FOR HOME AFFAIRS

MISS YVONNE CHOI YING-PIK, J.P.  
SECRETARY FOR COMMERCE AND INDUSTRY

**CLERKS IN ATTENDANCE:**

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

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**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>
Employees Compensation Assistance (Notice of Insolvency of Insurer) Regulation.....	85/2001
Road Traffic (Traffic Control) (Amendment) Regulation 2001 .....	86/2001
Clubs (Safety of Premises) (Exclusion) (Amendment) Order 2001 .....	87/2001
Shipping and Port Control (Closure of Waters) Notice 2001 .....	88/2001
Tax Reserve Certificates (Rate of Interest) (No. 5) Notice 2001 .....	89/2001
Education (Amendment) Ordinance 2001 (8 of 2001) (Commencement) Notice 2001 .....	90/2001
Hong Kong Science and Technology Parks Corporation Ordinance (5 of 2001) (Commencement) Notice 2001 .....	91/2001
Urban Renewal Authority Ordinance (Cap. 563) (Commencement) Notice 2001 .....	92/2001

## Other Paper

Report of the Bills Committee on Rehabilitation Centres Bill

**ORAL ANSWERS TO QUESTIONS**

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

**Impact of a CFA Ruling on Employee Compensation Mechanism**

1. **MR BERNARD CHAN** (in Cantonese): *Madam President, on 20 February this year, in a case involving a fatal industrial accident, the Court of Final Appeal (CFA) ruled that even if the deceased did not have any established habit of saving money during his lifetime, it was open to the Court to make an estimate of the wealth which the deceased would have probably accumulated in his future days but for the accident causing his death, and use this as the basis for determining the amount of compensation payable to his dependants in this respect. In this connection, will the Government inform this Council:*

- (a) *of the impact of the precedent on the compensation mechanism for deaths and injuries of employees; and*
- (b) *whether the precedent will pose greater financial pressure on the Employees Compensation Assistance Fund (ECAAF) in future; if so, of the solution that the relevant authorities have?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, section 20(2)(b)(iii) of the Law Amendment and Reform (Consolidation) Ordinance provides that, in common law cases, damages payable to an employee who died in the course of duty cover the loss of wealth which the deceased would have accumulated. In assessing such loss, the Court will take into account the income and expenditure of the deceased person, the age when he died, and the wealth he would have accumulated if not for the accident which took his life, and so on. Since the Ordinance came into force in 1986, the High Court already has a number of precedents awarding damages, including to those who did not have any established habit of saving money, in respect of loss of wealth that would have been accumulated.

Regarding a case of award of damages in a fatal industrial accident, the CFA ruled in February this year that although the deceased was not able to accumulate any wealth due to his heavy family burden, the fact that he was a

thrifty and hardworking person who was not hooked on any bad habits, his parents were already very old and his children were about to complete their schooling formed the basis for it to arrive at an inference that if not for the accident, the deceased would have accumulated wealth by the time he would otherwise have died. The rulings on damages in respect of the loss of such wealth by the Court of Appeal and Court of First Instance were therefore affirmed.

It is clearly stated in the ruling of the CFA that in deciding whether damages should be awarded for loss of accumulated wealth, whether the deceased has a record of saving before his death was not a condition antecedent. The Court has to make analysis based on the established facts and estimate the wealth the deceased would probably have accumulated if he had been alive before making a ruling on damages.

In the case concerned, the CFA has only elaborated on the related provisions of the Law Amendment and Reform (Consolidation) Ordinance but did not alter the mechanism for calculating damages. Basing on this, we are of the opinion that the ruling should be supported since it can provide the grief and poverty stricken dependents of the deceased with a more reasonable compensation which can help relieve their hardships. It would not have any impact on the compensation mechanism for deaths and injuries of employees.

As the ruling of the CFA did not constitute a change of the calculation basis for damages and that there have only been a small number of such cases, it is estimated that they would not pose a great financial pressure on the ECAF. Indeed, if all employers took out insurance for their employees and bear their legal obligation, there is no need to draw on the ECAF at all. The current financial problem faced by the ECAF could be attributed to a number of causes, the most important one being that there have recently been three major common law cases with damages exceeding \$10 million. Besides, as a result of a drop in employees' compensation insurance premium, levy income has decreased in recent years. The Administration is presently reviewing the Employees Compensation Assistance Scheme and enforcement has been stepped up. We will do what we can to try to maintain a breakeven balance sheet.

**MR BERNARD CHAN** (in Cantonese): *Madam President, the Secretary mentioned in the fifth paragraph of her main reply that there had only been a*

*small number of such cases. However, according to some legal opinions, since the CFA has made this ruling in respect of the case mentioned, it is estimated that the amount of damages claimed for similar cases would increase by approximately 50%, thereby causing the amount of damages payable in each case to rise by \$500,000. In this connection, could the Secretary inform this Council whether it would concern her that the case in question might give rise to a trend, thereby causing the number of similar cases to rise continuously?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the relevant Ordinance came into effect in 1986. Actually, as clearly stated in the ruling of the CFA, there have in fact been a number of similar cases over the past decade or so. Moreover, the damages awarded by the CFA in the case concerned was around \$300,000 only. Having examined the relevant data, we do not agree with the Honourable Bernard CHAN about the estimation he mentioned just now. In our opinion, that is most probably too pessimistic an estimation. The most important point remains that damages will only be covered by the ECAF in such cases where the employers concerned have not taken out insurance for their employees. Had the employer of the case mentioned taken out insurance for the deceased employee, the damages payable would be the responsibility of the insurance company. Hence, the precedent will not pose any great financial pressure on the ECAF.

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

### **Research on Production of a Raw Material for Manufacturing Cement by Incinerating Waste**

2. **MR LAU WONG-FAT** (in Cantonese): *Madam President, it has been reported that the Green Island Cement Company Limited, in collaboration with the Hong Kong University of Science and Technology (HKUST), is conducting a research on the production of a raw material for manufacturing cement by incinerating waste in the company's plant in Tuen Mun. In this connection, will the Government inform this Council whether prior approval has been given by relevant government departments for conducting such a research; if so, of the justifications for approving the research; if not, how it will follow up the issue?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, the Green Island Cement Company Limited and the HKUST submitted an application to the Innovation and Technology Commission (ITC) in March 2000 to apply for funds under the University-Industry Collaboration Programme of the Innovation and Technology Fund to undertake a research project to produce raw materials for cement production by treating wastes with high temperature. Having carefully considered its research content and the technology involved, the ITC considered that the application met the assessment criteria of the funding scheme. It therefore approved the funding support to the project by providing half of the project cost. The Green Island Cement Company Limited will bear the remaining half of the project cost according to the requirement of that funding scheme. The project commenced in May 2000 and is expected to be completed by June 2002.

As far as this research project is concerned, the ITC is only responsible for providing funds and monitoring its progress to ensure that it meets the original objectives. As with other similar projects, the recipient company, that is, the Green Island Cement Company Limited has to be fully responsible for all the other aspects of the project, including submitting applications to the relevant government departments for any necessary permissions or licences.

As the Green Island Cement Company Limited plans to carry out the waste incinerating process early next year for research, it will submit an application to the Environmental Protection Department (EPD) in due course for a specified process licence under the Air Pollution Control Ordinance for its pilot waste incineration plant. When the EPD receives the application, it will consider the application according to the criteria stipulated in the Ordinance. No exemption or special treatment will be given.

**MR LAU WONG-FAT** (in Cantonese): *Madam President, does it violate the relevant land grant provisions for the Green Island Cement Company Limited to incinerate waste? If yes, will the Government consider resuming the land granted to it?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Commerce and Industry.

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, let me first explain that the ITC's funding approval for this project is based on several assessment criteria. The main assessment criteria include whether or not the relevant application can foster co-operation between private enterprises and universities in terms of applied technological development, whether or not it can help upgrade the standards of innovation and technology in Hong Kong, whether or not it can help broaden the base of technological knowledge in Hong Kong and whether or not it must entail the participation of universities. On our part, when we assess this application, we will of course consider other factors in detail, such as the feasibility of its detailed content, whether or not the research personnel undertaking the relevant research meet the standards of technology required and whether or not the estimated costs are reasonable.

Insofar as environmental protection is concerned, this project must obtain the necessary permits and licences, and the applying company, that is, the Green Island Cement Company Limited, is fully aware of this. When vetting this application, the ITC also considered the various criteria I have mentioned above. The ITC decided to approve the funding for this project after it was satisfied that the project could meet the various criteria mentioned above.

**PRESIDENT** (in Cantonese): Mr LAU, has the Secretary answered your supplementary question?

**MR LAU WONG-FAT** (in Cantonese): *Madam President, may I ask whether there is any direct relationship between the incineration of waste and the land grant provisions governing the Green Island Cement Company Limited? Will the company violate the provisions? I hope the Secretary can give me an answer.*

**PRESIDENT** (in Cantonese): Mr LAU, is this part of your supplementary question?

**MR LAU WONG-FAT** (in Cantonese): *Yes.*

**PRESIDENT** (in Cantonese): Which Secretary will answer this follow-up question? Secretary for the Environment and Food.

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I may perhaps add one point here. Since this research project involves a special technical process of manufacturing cement, I believe it should not constitute any breach of the relevant land grant provisions. However, in order to give a more detailed and definite answer to Mr LAU's supplementary question, we will clarify the matter with the relevant government departments, and will submit the relevant information in writing to Mr LAU. (Annex I)

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, the Secretary mentioned in her main reply that the funding allocated will be used to meet half of the cost of this research project. Will the Secretary please inform this Council of the actual amount of the allocated funding? Besides, how many researchers are required under this project?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, the cost of the whole project is estimated to be \$18 million. Under the University-Industry Collaboration Programme, the Government will allocate from the Innovation and Technology Fund a sum equal to half of the cost to be incurred. That is why we will provide funding support of \$9 million for the HKUST to conduct this project. As for the number researchers required, I do not have any relevant information now. I will clarify the matter with the relevant authorities, and after ascertaining whether they have any specific information about this, I will submit a written reply to the Honourable Member. (Annex II)

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, as far as I know, about 50 tonnes of domestic waste will be incinerated every day under this research project. May I ask the Government whether the EPD, in its consideration of this application, has given any thoughts to any possible ways of closely monitoring the conduct of the entire research project, so as to make sure that the incineration process will not emit any toxic substances that may harm people's health?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, since we have not yet received an application from the company concerned, we do not have the details of the project. If the daily incineration volume under the project is over 50 tonnes, the Green Island Cement Company Limited must conduct an environmental impact assessment under the Environmental Impact Assessment Ordinance and apply for an environmental permit; if the daily volume does not exceed 50 tonnes, it will not be bound by the relevant provisions under the Environmental Impact Assessment Ordinance. However, if our understanding is correct, that is, if it is really true that more than 0.5 tonne of waste is to be incinerated hourly under the project, then, as pointed out by the Secretary for Commerce and Industry in her main reply, the Green Island Cement Company Limited will have to submit an application for a specified process licence under the Air Pollution Control Ordinance. When deciding whether to issue such a licence, the EPD will study and verify the information submitted to it by the Green Island Cement Company Limited. Upon receipt of a licence application from the company, the EPD will also announce the receipt as required by the Air Pollution Control Ordinance. Members of the public may raise objection within 30 days from the date of announcement. However, their objection must be based on the following two grounds: first, the process involved may prevent us from achieving or maintaining the standards required by existing air quality indicators; second, they may also raise objection if they have reasons to believe that the facilities concerned may affect public health.

Having learnt of the views put forward by the public, the EPD will focus its consideration on whether or not the applying company can take the most effective and feasible steps to prevent the occurrence of the two scenarios mentioned above. In other words, the facilities concerned must be able to meet the standards required by existing air quality indicators, and they must not produce any harmful effects on public health.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, this research project is entirely about the production of a raw material for manufacturing cement by incinerating waste. May I ask the Government whether the project will also study the other by-products of the manufacturing process, including the energy generated? May I also ask the Government whether the project will at the same time study the emissions as a result of incineration, such as noxious gases like dioxin, so as to provide some kind of reference for the development of waste incineration in Hong Kong in the future?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, as far as we know, this research project will not only manufacture cement in the process, but will also generate electricity. The electricity thus generated is actually a kind of renewable energy resource. As for the point on emissions, we do understand the deep concern of the community over this project and the relevant facilities, and we also note that people's lack of understanding about our licensing criteria is precisely the reason for their great reservations. In respect of this research project, we will not conduct any tests on emissions, because our precondition is that the project itself must not produce any harm on public health and air quality. Besides, as in the case of other technological research projects, the relevant facilities will operate for several months. During this period of operation, the HKUST and the company concerned will be able to conduct their research, and not only this, the Government can also gain a more in-depth understanding about the process of waste incineration and accumulate more relevant experience. This will help us formulate our waste disposal policy in the future.

Madam President, I have forgotten to answer the Honourable LAW Chi-  
kwong's question on monitoring. According to the existing legislation, the applicant or the holder of a licence issued by us must submit to the EPD information about the emission of pollutants on a regular basis. Besides verifying the data submitted, the EPD will also conduct on-site surprise inspections.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, it is mentioned in the main reply by the Secretary for Commerce and Industry that the company concerned will submit an application for a specified process licence to the EPD later. But it is also said that the EPD will not accord any special treatment to the application. May I therefore ask whether the ITC is fully aware of the possible risks when considering the funding application? I mean, if the company concerned fails to get a licence, will the funding approved by the Government be wasted, thus resulting in a wastage of public money? Or, was the Government actually aware of such a scenario, but thought that even if this really happened, there would be other ways to carry out this project?*

**PRESIDENT** (in Cantonese): Which Secretary is going to answer this supplementary question? Secretary for Commerce and Industry.

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, applications for funding are considered by the ITC in the light of the criteria mentioned by me, namely, whether or not the relevant application can meet the criteria under the University-Industry Collaboration Programme, whether or not it can help upgrade the standards of innovation and technology in Hong Kong, and so on. We will of course also consider the relevant policies of the Government, including those on environmental protection. However, since this project involves the franchised technological research of the Green Island Cement Company Limited, and also because of sensitive commercial considerations, we did not consult the EPD. However, the applying company, that is, the Green Island Cement Company Limited, should be fully aware that if it really wishes to continue with the project, it will have apply to the EPD for the relevant licences and permits somewhere in the process, and it should also know that it must comply with our stringent requirements before it can obtain the relevant licences and permits.

As for Members' concern about whether or not public money will be wasted, we are of the view that one of the main objectives of the University-Industry Collaboration Programme under the Innovation and Technology Fund is precisely to encourage increased collaboration between universities and private enterprises in terms of applied technological research, and this means that the focus is not placed solely on research results. Besides, the funding we have allocated will meet only half of the cost incurred by the project, while the Green Island Cement Company Limited will meet the other half, that is, \$9 million. Before submitting the application, the company should have known that it must apply to the EPD for the relevant licences and permits. So, it can be said that the company will not submit an application unless it has confidence in itself.

**PRESIDENT** (in Cantonese): Members, this Council has spent more than 17 minutes on this question. However, since many Members are still waiting for their turn to ask supplementary questions, and also since we spent comparatively less time on the previous oral question, I can now take several more supplementary questions from Members.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Secretary for the Environment and Food mentioned that there would be no need to apply for a*

*licence if the daily volume of waste incineration is less than 50 tonnes. That being the case, will the Green Island Cement Company Limited try to take advantage of the loophole in law by incinerating 49 tonnes of waste daily instead? How can the authorities prevent the causing of any nuisance to Tuen Mun residents during the transfer of waste to the Green Island Cement Company Limited? And, how can they make sure that the substances emitted during the incineration process will not cause any harm to public health?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):

Madam President, in the reply I gave just now, I mentioned two environmental protection ordinances. The first is the Environmental Impact Assessment Ordinance, and the threshold of 50 tonnes is a threshold prescribed by this Ordinance. This means that if the daily volume of incineration is less than 50 tonnes, the company concerned will not have to conduct an environmental impact assessment and apply for an environmental permit. The other ordinance is the Air Pollution Control Ordinance. Under this Ordinance, if more than 0.5 tonne of waste is incinerated per hour, there will be a need to apply for a specified process licence. As we are aware, the facility used in the project will incinerate more than 0.5 tonne of waste an hour. I have already explained in detail what the EPD will do when it handles such an application for a specified process licence from the company concerned. In other words, although the company concerned does not have to apply for an environmental permit, it must still apply for a specified process licence under the Air Pollution Control Ordinance.

**MR ALBERT HO** (in Cantonese): *Madam President, I know that during the early 1990s, the Government once planned to construct a large-scale incinerator in Tuen Mun, but because of massive objection, the Government subsequently shelved the plan. The Government has now approved of a pilot scheme of waste incineration in the area; does it follow that it wishes to restore the plan that was shelved years ago? If yes, does the Government have any plan to conduct a large-scale exercise to consult the residents of Tuen Mun?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):

Madam President, first of all, let me clarify that the Government has not yet granted approval to the project in question. As I stressed over and over just

now, the Green Island Cement Company Limited must apply for a specified process licence under the Air Pollution Control Ordinance. So far, we have not received such an application.

Second, concerning the point on public consultation, I have already explained that when processing an application for a specified process licence, we will inform the public that we have received such an application, and we will also announce the details of the relevant application. Members of the public may raise objection within 30 days from the date of announcement on the grounds outlined by me earlier.

Regarding the policy of the Government on waste disposal, one or two years ago, we did consider the possibility of constructing incinerators to handle the millions of tons of waste produced by us every year. And, we still do not rule out the possibility of constructing incinerators to dispose of massive volumes of waste. However, in the past two years, we identified two trends of development that can be considered by us. First, there are actually some alternative technologies to dispose of waste. Second, as we know, some Members have recently visited some environmentally advanced countries on fact-finding trips, and come to realize that in some environmentally advanced countries like Sweden, Denmark, Germany, and so on, the latest technologies of incineration and high temperature treatment are adopted to dispose of waste. Our long-standing policy is: first, we must reduce the production of waste as much as possible, and this is to be achieved by waste separation, waste recovery and waste recycling; second, there must be adequate public consultation before we make any decision on what strategy to adopt. I hope that when the Government conducts a public consultation exercise on this, everybody can adopt an objective attitude and base their arguments on scientific evidence, so as to explore how best we are going to tackle this increasingly serious problem. Some people have reservations about incineration technologies, but I think they must realize the geographical limitations of Hong Kong. Actually, practically all pollutants produced by incineration can now be treated and neutralized in one way or another. That said, I must of course add that we must adopt the most environmental and cost-effective methods to deal with the problem.

**PRESIDENT** (in Cantonese): Members, the Council has spent more than 23 minutes on this oral question, and the Secretary for the Environment and Food has already given a very detailed reply. The five Members who are still waiting for their turn can actually follow up the matter through other channels, and I think that unlike oral questions in the Council, these channels will not be subject to any time constraint.

Third question.

### **Measures against Pickpocketing**

3. **MRS SELINA CHOW** (in Cantonese): *Madam President, I hope the time left from the first question will not be allocated to the second question only. If there are more follow-up questions for the other questions, I hope the President will also allow them more time.*

*Will the Government inform this Council whether the relevant authorities found in the past year any pickpockets acting in consortium or as individuals who mainly targeted at tourists; of the specific measures to prevent such persons engaging in activities which are causing harm to tourism, as well as the effectiveness of such measures?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, cases of pickpocketing involving tourists are taken seriously by the police with vigorous enforcement action and publicity campaigns to raise public awareness. However, there is no indication of a trend of pickpocketing cases involving syndicates or consortia specifically targeting tourists.

On enforcement action, anti-pickpocketing operations include adopting a highly visible police presence or assigning dedicated anti-pickpocket duties to plainclothes officers in areas such as Causeway Bay, Tsim Sha Tsui and Mong Kok where there have been more pickpocketing cases involving tourists. Public awareness messages are also broadcast via the public address system of police vehicles, such as the Police Crime Prevention Mobile Display Bus. The police also issue public safety reminders via the media to members of the public before major festivals when large crowds are expected to be drawn to the streets.

An example of publicity campaign against pickpocketing is the campaign that the Crime Prevention Bureau of the police, together with the catering and credit card industries, launched in 2000 regarding pickpocketing of credit cards. The police distributed to food premises stickers and menu-holders printed with crime preventive messages such as "Prevent theft of your credit card. Beware of pickpockets." Loose covers for back of chairs are also provided by credit card companies for food premise patrons to cover their suits and handbags so as to reduce the chance of pickpocketing. Such publicity campaigns will continue to be mounted.

According to police figures, there were 93 reported cases of pickpocketing involving tourists in 2000. This compares with 92 cases in 1999, and 49 in 1998. Given the large number of visitors to Hong Kong, the police believe that the figures show that their efforts to prevent pickpocketing of tourists have been effective. The figures appear to have stabilized. The police will continue to monitor the trend closely and revise their operations if there is any significant change of the trend.

**MRS SELINA CHOW** (in Cantonese): *Madam President, while the Secretary pointed out in the last paragraph of the main reply that there were only 93 pickpocketing cases involving tourists, I wish to raise the point that tourists very often may not report the cases to the police because of their short stay in Hong Kong. Thus, the figures on the reported cases may not be very reliable. Will the Secretary inform us of the crime detection rate of such cases or cases relating to pickpocket syndicates over the past three years?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, according to the figures I have on hand, the number of prosecuted pickpocketing cases involving tourists and locals is as follows: in 1998, there were 307 prosecutions and 299 convictions. The conviction rate was 97.4%. In 1999, there were 223 prosecutions and 221 convictions. The conviction rate was 99.1%. Up to June 2000, there were 99 prosecutions and 99 convictions. The conviction rate was 100%. As I quoted just now, the figures for pickpocketing cases involving tourists are: in 1998, there were 49 cases involving tourists and the detection rate was 20.4%; in 1999, there were 92 cases involving tourists and the detection rate was 18.5%; in 2000, there were 93 cases involving tourists and the detection rate was 18.3%.

The police point out that the crime detection rate for pickpocketing cases involving tourists is usually lower. This is because in order to convict the pickpocket, he must be either caught red-handed at the scene of crime or identified by the victims, or a third party, such as other members of the public, who must give evidence. Otherwise, if a suspect is arrested for carrying a woman's handbag, he may explain in defence that he found it lying on the ground and was just going to hand it to the police. Therefore, it is not so easy to crack such pickpocketing cases.

Nevertheless, in order to be fair to tourists, the police and the Court have formulated a series of measures. For instance, if the cases involve tourists, a court trial will be arranged as soon as possible. The tourist may also wait at the Court to be summoned. If the Judge knows he is waiting, he will hear the case first when its turn comes.

**MRS MIRIAM LAU** (in Cantonese): *Madam President, will the Secretary for Security inform us whether the police have forged co-operative ties with some large department stores or shopping malls in fighting these pickpocket syndicates? If not, will the police consider doing so?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, as I pointed out just now, co-operation is ongoing among the police, restaurants and credit card companies. First, in the case of restaurants, the police distributed 2 000 covers for back of chairs to 69 restaurants in 2000 to prevent pickpockets from stealing from the jackets or handbags that patrons put on the back of chairs. I also agree that the police should further its work by liaising with other shopping malls. The police will mount frequent anti-pickpocketing publicity campaigns. I will also refer Mrs LAU's suggestion to the police for consideration.*

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I agree with the Secretary that publicity is very important. The Secretary mentioned the distribution of things like menu-holders and covers for back of chairs. Although I often go to restaurants, I have seldom seen these menu-holders or covers for back of chairs. Instead, I have seen some electronic signs on the roadside reminding us to beware of pickpockets. They seem to be quite effective reminders. But the Secretary did not mention this measure. I wonder if the police could step up such measures.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, actually, the credit card companies distributed not 2 000 covers for back of chairs to 69 restaurants, but 9 000. The police are now closely monitoring the effectiveness of this measure and will consider distributing more of these covers. Mr LAU is right. The police have put up electronic display boards at conspicuous spots to remind the public to take care of their valuables. For instance, there are such display boards in Central. Apart from police car patrols and broadcasts of personal safety messages reminding the public to take care of their valuables and belongings via the public address system of police vehicles, the police will also consider putting up more of these electronic display boards in busy areas.

**MR JAMES TO** (in Cantonese): *Madam President, with regard to publicity among tourists, I wonder if the Government has considered whether too much publicity might scare tourists away, making them think that pickpocketing is very serious in Hong Kong. Would the Secretary tell us if the Government finds itself in an awkward position due to this dilemma? Moreover, will the police differentiate tourists according to their nationality? For instance, if they are Japanese tourists, will the police conduct the publicity campaign in their native tongue? Do the police have any special measures in this respect?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the police have a duty to remind everyone, tourists and locals alike, to pay attention to personal safety and take care of their valuables. Therefore, we are not worried that stepping up such publicity will scare tourists away. Currently, the police are considering adding texts in simplified Chinese characters and Japanese to anti-pickpocketing posters and leaflets, since mainland and Japanese tourists are the largest groups of visitors to Hong Kong. If necessary, we will consider adding texts in other languages to the publicity leaflets or posters.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, in the first paragraph of the main reply, the Secretary said that there was no indication of a trend of pickpocketing cases involving syndicates or consortia specifically targeting tourists. In the past, we often heard that a handful of disabled people, such as the deaf-mute — we do not mean to discriminate against them, were involved in pickpocketing. Has the situation improved or have the police dealt with this problem?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, as I said earlier, the police have not detected any criminal syndicates specifically targeting tourists. But syndicates are certainly active in some busy districts. I do not think pickpocket syndicates commonly make use of mentally handicapped people. But according to police information, we know it is true that overseas criminals are involved in the pickpocket syndicates. Criminal gangs from Southeast Asian or South American countries frequently work together in some busy districts in Hong Kong, such as Yaumati and Tsim Sha Tsui, Wan Chai, Mong Kok and Central. They are usually organized. Apart from patrols by uniformed officers and having plainclothes officers mix with the crowds for surveillance, the police also rely on intelligence networks. If it is found that such criminal gangs have entered Hong Kong, actions will be taken to prevent them from perpetrating crime. This strategy has been successful in the past.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, earlier, the Secretary said the Government would work on the restaurants. I have some suggestions that I hope the Secretary will follow up. In my view, it will not serve any effective purpose if the police distribute menu-holders to restaurants again, since they have a lot of set menus. From my personal experience, pickpockets usually pick the busy hours and large restaurants where people do not have to wait to be seated .....*

**PRESIDENT** (in Cantonese): Mr CHEUNG, please come to your supplementary question direct. You were telling the Secretary what to do.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, I will ask my question shortly. I hope the Secretary will send more plainclothes policemen to patrol large and busy restaurants. As for covers for back of chairs, I think they are quite useful. I hope the Government can distribute more covers for back of chairs to large restaurants and busy restaurants where people do not have to wait to be seated. Could the Secretary follow this up?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I thank the Honourable Tommy CHEUNG for his suggestion. I will ask the Crime Prevention Bureau of the police to contact Mr CHEUNG or his colleagues to review how we can do better.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, tourists are usually the main targets of pickpockets and this has a very adverse effect on Hong Kong's image. Will the Secretary consider drawing reference from the effective methods used overseas, or reminding tourists of the pickpocket black spots in Hong Kong or the tricks of the pickpockets, in order to heighten their awareness?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, according to the information of the police, these criminal gangs engage in pickpocketing activities throughout the world and their tricks are more or less the same. Hong Kong has rich experience in this. We certainly do not want tourists to worry too much. The police will continue to distribute anti-pickpocketing, anti-crime information to tourists whenever possible.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, visitors to Hong Kong generally stay here for less than three days. Just now, the Secretary said that the police had a set of procedures to expedite the processing of cases involving tourists. Will the Secretary inform us whether these procedures can ensure that tourists need not prolong their stay, and that their sightseeing plans and itinerary will not be affected as a result of attendance in Court? Are the procedures really that speedy?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the police quite understand that tourists do not wish their itinerary to be affected because they have to report a crime and give evidence. In this respect, the police, the Secretary for Justice and the Court have to co-operate. We have drawn up a set of procedures. In prosecuting cases involving tourists, the Secretary for Justice will apply to the Court for a hearing within one or two days so that tourists need not prolong their stay in Hong Kong. The police will also take the tourists to the Court to wait for a summons. They can give evidence in the Court on the same day when the defendant makes his plea. According to our experience, the Courts are very co-operative and will make special arrangements so that the tourists can give evidence quickly so as not to delay their itinerary.

**MRS SELINA CHOW** (in Cantonese): *Madam President, actually, I very much agree that there is a dilemma, as the Honourable James TO said earlier. Could*

*Secretary ask the police to strive for a proper balance? In other words, if the police adopt a high profile on publicity and prevention work, it might affect Hong Kong's image. While this will achieve the purpose of reminding tourists to beware of pickpockets, it will also give them a negative impression of Hong Kong. Could the Secretary discuss with the police the possibility of leaving the prevention work to plainclothes policemen? If some cases have been cracked, I hope the police can notify the tourists concerned and do the follow-up work even if they have returned to their own countries. The Hong Kong Tourism Board will be happy to offer assistance in this respect. Will the Secretary adopt this suggestion?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the answer is yes. If we look at the figures, although some tourists are victims, there have been few complaints from tourists. From 1999 to the first three months of this year, only five complaints were received. Our publicity strategies are the same for tourists and the general public. They include patrols by uniformed policemen, broadcasts via police vehicles and reminders to the public placed in conspicuous spots. But as I said earlier, we will try to use languages more familiar to tourists on leaflets and posters, such as simplified Chinese characters and Japanese. The Honourable Mrs Selina CHOW's suggestion to do suitable follow-up work with the tourists after cracking the cases, so as to give them a good impression of Hong Kong, merits consideration. We will follow this up.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. We will proceed to the fourth question.

### **Regulating Operation of Golf Driving Ranges**

4. **MR TAM YIU-CHUNG** (in Cantonese): *Madam President, regarding regulation of the operation of golf driving ranges (GDRs), will the Government inform this Council of:*

- (a) *the respective numbers of GDRs approved by the Lands Department (LD) for operation through short-term tenancies (STT) or short-term waivers (STW) in each of the past three years, and whether actions have been taken against unauthorized operation;*

- (b) *the specific safety requirements for GDRs, such as the safety nets, fence, warning signs and number of watchmen; the number of inspections of the venues conducted by the departments concerned in each of the past three years, and whether penalty has been imposed on operators violating the safety requirements; and*
- (c) *the measures in place to prevent golf balls from flying out of driving ranges and endangering the lives and property of nearby residents?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the answers to the questions are as follows:

- (a) In the past three years, four GDRs were allowed to operate through the grant of STT or STW. Approvals for operation for all the four GDRs were granted in 1999. However, one of them ceased operation since March 2001.

In the past three years, the LD had issued warning letters to the operators of three unauthorized GDRs. In one of those three cases, the operator of the GDR had, after obtaining planning permission from the Town Planning Board (TPB) in 1999, applied to the LD for STW. The application was rejected by the LD because the operator was unable to provide the requisite documents including a valid insurance policy, a report on safety measures in support of the application and consent from all the lot owners regarding the STW application. The Housing Department (HD) intends to arrange demolition of the unauthorized structures in the lot soon. Regarding the other two cases, warning letters were issued to the operators. They have subsequently applied to the LD for STT and STW for operating GDRs. The applications are being considered by the LD.

- (b) Prior to approving any land grant for golf facilities, the applicants have to submit a detailed proposal regarding the design and safety measures of the golf facilities. The design and safety measures should be verified by an Authorized Person such as a licensed

architect or registered golf facilities designer to ensure that the golf net, fence, and so on, can effectively prevent golf balls from flying out of the driving ranges. The applications will be circulated to the appropriate departments for comments. The Leisure and Cultural Services Department (LCSD) will advise on the safety aspects having regard to overseas experience as well as those of its own experience in managing GDRs. Also, there are appropriate terms and conditions included in the STT or STW relating to the safety requirements for the operation of GDRs. These include:

Firstly, building or structure should only be erected with the consent of the District Lands Office (DLO) and in compliance with the Buildings Ordinance;

Secondly, the operator should maintain a valid insurance policy to cover indemnity against any action resulting from damage or injury caused by golf balls. The operator should provide and maintain lights, guards, warning signs, fences, safety nets and watchmen in all respects to the satisfaction of the insurer; and

Thirdly, the operator should take all reasonable steps to avoid any accident, injury, nuisance or damage to any persons or properties whether directly or indirectly arising out of golf activities.

In accordance with lease enforcement, the LD conducts routine inspections to STT and STW sites to ensure that the land use complies with the lease conditions, and those approved GDRs are being covered. On average, these sites are inspected on a quarterly basis. Breach of the conditions and terms of the STT and STW may lead to cancellation of the tenancy or waiver.

- (c) As just mentioned, to prevent golf balls from flying out of GDR, operators are required to install and constantly maintain safety net, fence, lighting, and so on verified by an Authorized Person. In addition, operators are also required to maintain a valid insurance policy to indemnify any accident, injury, loss damages in this connection.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, according to the main reply provided by the Secretary, government regulation on GDRs appears to be rather comprehensive. In reality, however, this is not the case. I have received a complaint from the principal of a school in Yuen Long, saying that golf balls from an adjacent GDR flew into the school area frequently, and on 18 April alone, four window panes in the classrooms were smashed. The principal sought assistance from various government departments but to no avail. Has the Government received similar complaints and how would it explain the situation? What action would the Government take to ensure the safety of the teachers and students at the school?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *Madam President, I trust the case mentioned by the Honourable Member relates to a GDR near Fairview Park. The GDR is an unauthorized one — I need to stress that it is unauthorized. After finding out it is an unauthorized GDR, the Government did take action. We understand that the operator of the GDR has made an application to the TPB because he needs to apply for a change in the land use of the lot. Up to now, however, he has not obtained the approval. The LD will scrutinize his application after he has obtained the TPB approval. I understand that during the interim the school sought assistance from the Education Department. We will follow up the case with the Education Department and the LD, with a view to stopping any further nuisance caused by the unauthorized GDR to the school.*

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, will the Secretary inform this Council of any known cases of compensation having been made to anyone since those GDRs came into operation?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *Madam President, we understand that in the past three years, there have been two cases of injury. The relevant operators have reached an agreement with the victims, who have received compensation. Let me stress that both cases of injury happened in unauthorized GDRs. We understand no cases of injury from golf balls flying out of GDRs have ever happened in GDRs which are either authorized or large in scale.*

**MR WONG SING-CHI** (in Cantonese): *Madam President, I understand the Government has been prosecuting illegal GDRs by invoking legislation relating to unauthorized alteration of land use. The relevant ordinance can only serve to empower the Government to demolish structures erected on the lot but cannot close the GDR. Will the Secretary inform this Council whether there are other ordinances that can be invoked to prosecute such illegal GDRs and what the penalties are?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, in general, an empty lot alone cannot operate as a GDR. There must be some facilities such as changing rooms, rain or sun shelters, and so on. Therefore, one way or the other, some form of structure must be involved. Erecting a structure on a piece of land must be subject to regulation by the LD and the Buildings Department (BD). Therefore, both the erection of structures and the operation of a GDR can be adequately regulated under normal circumstances.

**MR WONG SING-CHI** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I asked what laws could be invoked and how heavy the penalties were.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, if a land use is changed, the relevant laws on planning or environment would be invoked and penalty imposed. If structures are found to have been erected without the approval of the BD, the BD and the LD are empowered to impose penalties on or institute proceedings against the relevant parties. I trust the Secretary for Planning and Lands will enlighten us on the details.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I would like to cite one more ordinance. Well, insofar as lease conditions are concerned, the Secretary for Home Affairs has talked about penalties in the form of fines. Where buildings are concerned, fines may be imposed according to the laws on buildings. Illegal buildings may even be removed altogether. Another ordinance which may be applied is the Town Planning Ordinance (TPO). For places where town planning layouts apply, applicants must not operate GDRs before their applications are approved under

the TPO. What comes next are matters involving the buildings or lease for the land. Under the TPO, developments without approval would be regarded as unauthorized developments and offenders on conviction are subject to a maximum fine of \$500,000. Further offences will result in a fine of \$1 million and, additionally, a fine of \$50,000 for each day during which the offence continues.

**MR AMBROSE LAU** (in Cantonese): *Madam President, in part (b) of the main question, it was asked whether penalty had been imposed on operators violating the safety requirements. Please note that it was about safety requirements. In part (b) of the main reply, it was said sites were inspected on a quarterly basis. Breach of the conditions and terms of the STT or STW may lead to cancellation of the tenancy. But this has not answered directly part (b) of the main question. Will the Government inform this Council whether any of such sites were indeed found to have violated the safety requirements?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Home Affairs.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, perhaps I shall tackle this. In part (a) of my main reply, I already pointed out that in the past three years, the LD had issued warning letters in respect of three cases. The HD is taking action to demolish the unauthorized structures in one of the cases. In the other two cases, the LD requested that the two operators provide the necessary papers before granting them approval to continue with their operations.

**MR AMBROSE LAU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. If he does not have the information now, would he provide the same to me after the meeting?*

**PRESIDENT** (in Cantonese): Will the Secretary provide the information to the Honourable Member after the meeting?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, perhaps I need to discuss with the Secretary for Planning and Lands after the meeting. I understand that in the past three years, three warning letters were issued. (Annex III)

**MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, according to the main reply provided by the Secretary for Home Affairs, the Government appears not to have a set of standards for safety measures but relies purely on the verification by the architect and registered golf facilities designer. Would this verification vary from person to person? Would the Government consider making a standard set of safety measures?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Home Affairs.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I would like to add some information again. In ensuring safety, there are currently four very important safeguards indeed. Firstly, in the STT or STW, there are specific provisions in respect of adequate facilities to be provided, and steps and repairs and maintenance plans to be taken by the operator. Secondly, there is a requirement for verification by authorized professionals, whose professional knowledge is certainly regulated by the relevant professional bodies and institutes. Thirdly, on receipt of applications, the LD would forward the detailed information to the relevant departments, one of which being the LCSD, for scrutiny. The LCSD will examine in particular the relevant safety measures. When it is in doubt or not satisfied with these measures, the applicant will need to propose safety measures to the satisfaction of the relevant departments before gaining the approval of the LD. The last hurdle is the requirement for the operator to take out an insurance policy. The insurer will only accept the insurance contract when it is satisfied with the safety measures. Therefore, there are four safeguards to ensure safety. We can see that, in the past several years, GDRs authorized by the Government were not involved in any accident.

**MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I asked whether the Government would consider making a standard set of safety measures in future.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, indeed, a most important safety measure for GDRs is the safety net. There must of course be other auxiliary facilities such as fences, lighting, watchmen, and so on. There are no internationally standards on the safety provided by the peripheral net other than some figures for reference. But these figures are not universally applicable for they all depend on the surrounding. For instance, the range of ball flight will determine the height of the net. In examining the papers, the LCSD will certainly make professional decisions not only on the reference materials but also on data about the surrounding to judge whether the information and facilities supplied by the operator are satisfactory.

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

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the problem is really arising from those unregulated and unauthorized GDRs where repeated accidents have happened. The GDR in question is unauthorized and has not taken out any insurance but it broke the windows of the school. The Secretary for Planning and Lands pointed out there was a possibility that the operator would be fined and the level of fine might be increased for repeated offences. In the light of the present situation, especially when golf balls pose a certain degree of danger to people, will the Government inform this Council whether the existing laws are up-to-date and effective enough? Are there other laws to prevent these unlawful acts which jeopardize public safety?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Planning and Lands.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, in accordance with the existing laws, the LD, the Planning Department and other departments deal with the applications for GDRs or the operation of GDRs for which application has not been made. If operators follow the procedures, there should be no problem. But, as the Honourable Member said, if someone operates without having satisfied all of the requirements, then, under the existing circumstances, the Government can only pursue the case afterwards, invoking laws such as the TPO. The Government is

not at all satisfied with the situation. Therefore, the two Policy Bureaux are taking follow-up actions to see if other means have to be employed to regulate GDRs operating on a commercial basis.

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

### **Shortfall of Services Provided by Refuge Centres for Women**

5. **MR LAW CHI-KWONG** (in Cantonese): *Madam President, in 1999-2000, the average occupancy rate in the three refuge centres for women in Hong Kong (namely, the Harmony House, the Wai On Home for Women and the Serene Court) was 90%, while from April last year to January this year, there were 263 cases in which the Harmony House had to decline immediate admission because it had been fully occupied. In view of the shortfall of services provided by refuge centres, will the Government inform this Council whether it will review the public demand for services of refuge centres and consider setting up more such centres; if so, of the implementation timetable; if not, the reasons for that?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, in 1999-2000, the average occupancy rate of the three refuge centres for women in Hong Kong was 90%. In the last financial year, it increased to 96%.

Analysis shows that for the Harmony House Operation, which is run by a non-governmental organization (NGO), the average occupancy rate was 85%. Whilst utilization reached high levels during school holidays, there were a few months in the year when the occupancy rate fell to as low as 52%. The corresponding average figures for the other NGO operated refuge, Serene Court, and the Social Welfare Department (SWD) operated Wai On Home was, 90% and 95% respectively in 1999-2000.

According to the monthly statistical reports prepared by Harmony House for the period from April 2000 to January 2001, there were 215 telephone calls inquiring after a place in the refuge, which could not be entertained due to full enrolment. However, these statistics should be interpreted with caution as telephone inquiries made by potential applicants do not necessarily reflect or

justify immediate admission. Moreover, potential clients in need of the service may make inquiries for admission to more than one facility at the same time. For urgent cases in need of shelter who cannot be immediately accommodated in the refuges, the case social worker will make alternative arrangements. These include renting private accommodation, or making arrangements to stay with friends or relatives, and so on. In this respect, it is relevant to note that for the past two years, the Wai On Home has not turned away any case requiring immediate admission.

The Government is committed to protecting battered women and their children from domestic violence. The SWD regularly reviews service provision in this area bearing in mind that these centres are designed for temporary shelter and that longer-term accommodation plans should be drawn up for the women and their children as soon as possible. Currently, the Department is conducting a review on the demand for this service together with the procedures for handling cases. It is expected that the review will be completed by the middle of the year and the findings will throw light on the need to set up a fourth refuge. Should such an expansion in service be justified, the Department will make plans for its establishment as soon as practicable by redeploying the additional resources made available in 2001-02 for enhancing services for victims of domestic violence.

In addition, the SWD is setting up a Family Crisis Support Centre. This Centre will provide short-term intervention and support, including overnight accommodation. It will serve as a temporary retreat, to individuals and families facing marital or relationship breakdown. Apart from providing a suitable place for the individuals to calm down and reflect on the situation, the Centre will also serve as a critical entry point for early intervention. This should help mitigate the occurrence of domestic violence and deterioration of family problems into domestic violence thereby reducing demand on the existing refuge centres.

The Women's Commission is also concerned about the recent increase in the number of domestic violence cases and we will be consulting the Commission on the nature and extent of services provided.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, the Secretary mentioned in the second paragraph of the main reply that the occupancy rate of*

*the refuge centres for women was high sometimes and low some other time. In the first paragraph of the main reply, it is also mentioned that in the last financial year, the average occupancy rate increased to 96%. That shows clearly that at times these centres do have full enrolment. However, in the third paragraph of the main reply, the Secretary said that the potential applicants of 215 cases do not necessarily have urgent needs for immediate admission into these refuge centres for women. That really baffles me. If the conclusion to the first and second paragraphs of the main reply clearly indicates that very often these refuge centres are fully occupied most of the time, then it is also clear that the problem of full occupation does not just appear this year or in the last year, but that it appeared one or two years prior to that. In the fourth paragraph of the main reply, the Secretary said that the SWD would regularly review service provision in this area. May I then ask the Secretary, when the last regular review took place? Did the findings of last year and the year before all indicate that there was no need for more service provision in this area? In addition, how are the contents of the previous review different from the contents of the review presently being taken?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I have explained in my main reply that the occupancy rate for refuge centres for women fluctuates. Therefore, the relevant organizations should deal with this situation with flexibility. The utilization rate of the refuge centres can at times be over 100% and the social workers will need to make flexible arrangements. For example, if a refuge centre is fully occupied, the clients seeking assistance will be referred to other refuge centres. Sometimes those people making inquiries for service do not have an urgent need for admission. In such cases, other kinds of services can be provided to these applicants. As I have explained earlier, social workers may make alternative arrangements, such as renting private accommodation or making arrangements for these applicants to stay with friends or relatives. I believe the SWD will review the relevant figures every year. Since it has come to the knowledge of the SWD that at times the occupancy rate for the refuge centres will exceed 100%, so the SWD thinks that there is a need to review the procedures for referral and arrangements. As these refuge centres only provide temporary services, women seeking help are not expected to stay in these centres on a long-term basis. Only a small number of them stay in these centres for more than three months. So there is a need for the SWD to review the existing procedures to see if these centres can make some formal and long-term arrangements for women seeking help.

**DR YEUNG SUM** (in Cantonese): *Madam President, information from the SWD shows that there were 1 172 cases of battered spouse for the year 1998-99, the figures for 1999-2000 were 1 689, representing a rise of 44%. That explains the drastic increase in the occupancy rate of the three refuge centres for women to 95% as mentioned by the Secretary earlier. Since additional resources have been allocated to the SWD for 2001-02, can the Government set up the fourth refuge centre as soon as possible? If so, when can it be set up at the earliest?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): *Madam President, we have earmarked additional resources to set up the fourth refuge centre. However, the SWD is presently making a review of the full range of services provided by it, with a view to offering a comprehensive range of services to women seeking help. There are times when staying in a refuge centre is not the best option to take, for these centres can only provide temporary shelter and a comprehensive range of services should be provided to these women in need of help. The SWD is therefore setting up a Family Crisis Support Centre which I have mentioned earlier to offer another source of support to women in need. It is because some women may not need to stay in the refuge centres on a long-term basis. They should be offered other kinds of services and options. As far as I am aware, not all these women in need of help would prefer to stay in a refuge centre. Having said that, if they so wish to stay in a refuge centre, we would certainly make the arrangements for them. According to information from the SWD, with regard to the referral system, the Wai On Home for Women has not turned away any case requiring immediate admission. Nevertheless, I agree with the Honourable Member that we must review our services to see if they are adequate, and whether timely assistance can be given to those in need.*

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that even when the refuge centres are fully occupied, women who need help can be offered alternative arrangements such as renting private accommodation or making arrangements to stay with friends or relatives, and so on. May I ask the Secretary whether a fourth refuge centre will be set up and what the relevant criteria for admission are? If, as the Secretary has said earlier, alternative arrangements can be made then it would not be a serious problem even if the refuge centres are fully occupied. Under what circumstances will the Bureau consider setting up a fourth refuge centre when it has secured the necessary funding?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I have explained earlier that in the present review we would make an analysis of the procedures to see if the needs of the potential clients can be met. That is to say, we will examine if the provision of accommodation in the refuge centres would be the best way to help them. In addition, we will make a review to see if alternative arrangements can be made. As these refuge centres are sometimes fully occupied while sometimes they are vacant, so the SWD will need to review if the setting up of a fourth centre will be the best option to take.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Government says in the fourth paragraph of the main reply that the review will be completed by the middle of the year and the findings will throw light on the need to set up a fourth refuge. This is my concern. Apart from that, I am also concerned about the fifth and sixth paragraphs of the main reply. The fifth paragraph mentions that the SWD is setting up a Family Crisis Support Centre to address the needs of problem families and the centre will provide short-term intervention and support. The sixth paragraph says that the Women's Commission is also concerned about the recent increase in the number of domestic violence cases and that the Commission is conducting some consultation on that. The Government seems to be concerned about the various aspects of the issue, but it is at the same time worried that the demand for services will keep on increasing. In view of this, and as an interim measure, how will the Government deal with the various problems?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, we do have such worries. I think it would not be possible for the Government to give a complete solution to all the problems in our community. Of course, we will be giving as much support as we can and provide the services as appropriate. Apart from the direct provision of services, the SWD is also engaged in a lot of educational and preventive efforts. What we need to do is to put more efforts in many areas, such as in publicity and education.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I was asking about the interim measures that will be adopted to deal with the problems. However, the Secretary only says that educational efforts will be made. Does this mean that the fourth refuge centre will not be set up?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, this is absolutely not the case. I have explained earlier that in accordance with the guidelines and practice of the SWD and the referral practice that we have, we will not let potential clients go away without getting suitable services. In the relevant review, we will look into our existing service provision to see if it can meet our expectations.

**MR FRED LI** (in Cantonese): *Madam President, according to the subvention agreement between the Government and the NGOs, the occupancy rate of this kind of refuge centres for women can only be about 60%, so that some of the residential places can be reserved for those women with special or emergency needs. In the past few years, the occupancy rate of the three refuge centres has been more than 90%. In view of this, why does the Government not review the figures expeditiously to see if they comply with the agreement? As the agreement is proposed by the Government and that the occupancy rate at present is far higher than the requirement under this agreement, so the fourth refuge centre should be set up as soon as possible. May I ask the Government whether it has looked into this issue from this perspective?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as I have said, we will review the issue. We have originally earmarked some additional resources to set up a fourth refuge. However, having studied the figures, the SWD has come to the conclusion that further studies should be taken. It is because at times the occupancy rates of these refuges are quite low. Moreover, some of the women seeking help stay in the refuges for quite a long period, but the refuges are not intended to provide long-term accommodation. Some kind of long-term arrangements should be made for the women in need and that is a more appropriate action. So I think a decision on this can only be made when the SWD has studied the relevant procedures. However, we will speed up work in this area and in the meantime, I believe the SWD can ensure that clients will be provided with the necessary services.

**MISS EMILY LAU** (in Cantonese): *Madam President, the question of how the Government of the Hong Kong Special Administrative Region (SAR) deals with*

*the problem of domestic violence caused the concern of members in the hearings of the United Nations committee in Geneva. I fully support the view expressed by the Secretary earlier, that the problem should be tackled from a long-term perspective. But before any long-term solution is found, I hope the SAR Government can undertake that all victims of domestic violence, including men, should be taken well care of. Madam President, we should not have any sex discrimination on this, for there may be 15% or more of the victims of domestic violence who are male. Although we are now talking about women victims of domestic violence, I hope the Secretary can tell us whether there are any men who need shelter of this kind. The Secretary mentioned 215 cases earlier and the number does not tally with the number quoted by Mr LAW Chi-kwong. These 215 applicants were not admitted into the refuge centres since the centres were fully occupied but their cases were followed up by social workers. Could the Secretary confirm whether these women in need were all taken care of? Frankly, if the families of these women could offer assistance, they would not have sought help from the Government. Then, did the Government give them money to rent some accommodation? Before there is a better arrangement in place, we are worried that if some women seek help from the refuge centres which are fully occupied, will these women be turned away?*

**PRESIDENT** (in Cantonese): Miss LAU, you have asked your supplementary question.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I agree with what the Honourable Member has said. We should not provide services to women only, but we also need to provide services to male victims of domestic violence. As Miss LAU has said, these cases are on the rise. With regard to the 215 cases, we have no formal records showing if they have been given services as appropriate. In accordance with the procedures and practice of the SWD, they should have been provided with suitable services. However, I would ask the SWD to follow this up and to ensure that before the fourth refuge centre is set up, all clients will be provided with suitable services.

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. With regard to these 215 cases, could the Secretary furnish us with a written reply?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I will ask the SWD to provide the relevant figures. However, as these 215 cases are inquiries received by the refuge centres, so I think we have to follow these up on a case-by-case basis before we know how the cases were handled after their referral. I am not sure if the SWD has figures on that, but if they do, I would give Honourable Members a written reply. (Annex IV)

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

**MR WONG SING-CHI** (in Cantonese): *Madam President, I would like to follow up the question on the 215 cases of people seeking help but were not admitted into the refuge centres, as raised by the Honourable Miss Emily LAU earlier. I hope the Secretary could give us more information on that. If the Secretary is unable to do so today, I hope he would give us a written reply later.*

*With regard to cases of people being refused admission into the refuge centres, could the Secretary tell us how many cases there are where, because of failure in seeking admission into the refuge centres, family tragedies or problems were caused to the relevant clients and with the result that social workers had to spend more time in following up these cases?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I would try my best to collect information in this respect. I believe, as a matter of principle, we should not refuse providing services to clients seeking help from us. (Annex V)

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

### **Assisting Employees to Recover Unpaid Wages**

6. **MR ALBERT HO** (in Cantonese): *Madam President, regarding the assistance provided by the Protection of Wages on Insolvency Fund (the Fund) to employees whose wages, wages in lieu of notice and severance payment (the wages) are due and unpaid, will the Government inform this Council:*

- (a) *whether the Commissioner for Labour (the Commissioner) had exercised his discretion in the past year to make ex gratia payment from the Fund to employees whose wages were due and unpaid in respect of cases in which no bankruptcy or winding-up petitions had been presented against the employers; if he had, of the number of such cases;*
- (b) *of the number of applications for legal aid received in the past three years by the Legal Aid Department (LAD) regarding employees whose wages were due and unpaid, for presenting winding-up petitions against their employers to facilitate the exercise of power by the Commissioner to grant them ex gratia payment from the Fund; and, among these cases, the number of applications rejected on grounds of the applicants' failure to pass the means tests; and*
- (c) *whether it will consider extending the scope of the Fund in order to assist employees whose wages are due and unpaid in presenting winding-up petitions against their employers?*

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

- (a) Under section 16 of the Protection of Wages on Insolvency Ordinance (the Ordinance), the presentation of a bankruptcy or winding-up petition against the employer is a precondition for an employee whose wages are due and unpaid to receive *ex gratia* payment from the Fund by the Commissioner. The Fund is mainly financed by the levies on Business Registration Certificates. To avoid abuses, bankruptcy or winding-up proceedings must be instituted before payment from the Fund could be made to employees so as to ensure that the employer is genuinely insolvent. By the institution of the bankruptcy or winding-up proceedings, the Fund may recover the *ex gratia* payment made, from the remaining assets of the insolvent employer through subrogation.

If, for any insolvent employer employing less than 20 employees, sufficient evidence exists to support the presentation of a petition and it is unreasonable or uneconomic to present a petition (for

example, the assets of the employer is less than the legal costs required for the presentation of the petition), the Commissioner may make *ex gratia* payment, by discretion under section 18 of the Ordinance, to an employee whose wages are due and unpaid, despite that a bankruptcy or winding-up petition against the employer has not been presented.

In 2000, the Commissioner exercised the discretion in 804 claims, that is, 32% of a total of 2 550 claims processed by the Labour Department in the year.

- (b) Since 1998, the number of applications received by the LAD from employees whose wages are due and unpaid for legal aid for the presentation of bankruptcy or winding-up petition against their employer and the number of applications rejected due to the applicant's failure to pass the means test are as follows:

	1998	1999	2000	2001 (up to 31 March)
Number of applications	940	1 244	1 179	271
Number of applications rejected due to the applicant's failure to pass the means test	111 (12%)	148 (11%)	130 (11%)	24 (9%)

The overall percentage is 9% to 12%.

- (c) The Fund has been set up to provide prompt relief to employees in the form of *ex gratia* payment in respect of arrears of wages. According to the existing legislation, we cannot make use of the Fund to assist employees whose wages are due and unpaid in presenting bankruptcy or winding-up petitions against their employers. We do not think that it is necessary neither because:

- (i) The Commissioner may exercise discretion under section 18 of the Ordinance to handle eligible cases in a flexible manner. As more than 90% of the establishments in Hong Kong employ less than 20 employees, the discretionary power of the Commissioner is sufficient to cover the great majority of establishments.
- (ii) As for the cases where section 18 is not applicable, if any other creditor has presented a bankruptcy or winding-up petition, then all the employees concerned would not need to present petition again.
- (iii) If employees whose wages are due and unpaid present a bankruptcy or winding-up petition, they should pay the costs for the presentation first. They may however be accorded priority in claiming the legal costs for the presentation from the assets of their employer, after the completion of the bankruptcy or winding-up proceedings. Employees who cannot afford the costs may seek legal aid from the LAD. Although individual employees may not be able to pass the means test and are therefore not entitled to legal aid, those eligible employees may act as an representative to present the bankruptcy or winding-up petition, which would enable all employees whose wages are due and unpaid to receive *ex gratia* payment from the Fund.

**MR ALBERT HO** (in Cantonese): *Madam President, I believe the Secretary will agree that many employees whose wages are due and unpaid may not obtain legal aid because they have some savings or their spouses are still working. However, they are not well off and it would be very burdensome for them to pay tens of thousands of dollars to present bankruptcy petitions against their employers. In the last part of her main reply, the Secretary stated that employees might be accorded priority in claiming the legal costs for the presentation from the assets of their employer. If the costs can be claimed, why does the Government not advance payments from the Fund? Why does it ask an employee whose wages are due and unpaid to bear the risk and spend tens of thousands of dollars to take action and put up with heavy mental pressure?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, this is not one of the purposes of the establishment of the Fund and it is basically not allowed to do so under the existing law. I have already given three reasons in my main reply to illustrate why it is not necessary to amend the law and make use of the Fund to assist employees whose wages are due and unpaid in presenting petitions. If a company employing more than 20 employees goes bankrupt, we reckon it will be cost-effective for petitions to be made after taking into account the assets of the employer concerned. It can be said that the discretion of the Commissioner covers 90% of the establishments in Hong Kong. If a company goes bankrupt, its creditors do not only include its employees. If any other creditor has presented a bankruptcy petition, all the employees concerned would not need to present a petition again. The question as to whether we should meet the costs for the presentation on behalf of employees whose wages are due and unpaid involves legal principles. In all other cases of indebtedness, the creditors have to pass a means test if they need legal aid. If compensation is claimed for reasons other than debts, the persons concerned should first meet the costs of the legal proceedings. We do not think there is any reason to exempt employees whose wages are due and unpaid. The LAD has also made arrangements for the presentation of petitions on behalf of employees in financial difficulties.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary has stated in part (c) of her main reply that an employee who fails to pass the means test of the LAD can pay on his own to present a bankruptcy petition against his employer in which case he can also receive ex gratia payment. Would the Secretary or the new Financial Secretary from the business sector who are very smart pay tens of thousands of dollars for the recovery of \$5,000 or \$10,000 wages in arrears? The employees concerned have to pay tens of thousands of dollars though they have wages due and unpaid. Would the Secretary do so? If not, would she consider making payments from the Fund or does she have other solutions?*

**PRESIDENT** (in Cantonese): Mr LEE, please raise your supplementary question.

**MR LEE CHEUK-YAN** (in Cantonese): *I have another supplementary question.*

**PRESIDENT** (in Cantonese): Mr LEE, you can only ask one question because a Member can only ask one supplementary question in each turn. The making of lengthy arguments is inconsistent with the provisions of the Rules of Procedures. I waited a long time just now, hoping that you would stop making arguments. If you wish to ask another supplementary question, please wait for another turn.

**MR LEE CHEUK-YAN** (in Cantonese): *Fine, Madam President.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have to clarify some points here. If an insolvent company has less than 20 employees, the amounts involved may be negligible and the Commissioner has the discretion to make *ex gratia* payments from the Fund to the employees whose wages are due and unpaid for the employers. But we are now talking about companies that have more than 20 employees, including some large companies. As we have said, so long as a creditor — he may be one of the 100 employees — has presented a petition, all the employees of the company will be benefitted. Therefore, they will not need to recover \$5,000 by paying tens of thousands of dollars as the Honourable Member has just said.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, how much does the Fund have in reserve and is it sufficient cope with its operation? If not, how would the Government handle the case?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the Fund indeed encountered some difficulties in the past few years because there was an increase in bankruptcy cases. However, the number of wages claims cases has recently reduced and we reckon that the Fund should be sufficient. However, I do not have the figures of the actual balance today on hand. I can give a written reply if the Honourable Member needs such information. (Annex VI)

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, the Secretary has not said what will be done if the Fund is insufficient.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, is this a hypothetical question? If the Fund is insufficient, we will certainly seek additional financing and the Fund is now mainly financed by the levies on Business Registration Certificates.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Secretary has stated in point (i) in part (c) of her main reply that the Commissioner may exercise discretion to assist the employees of establishments that employ less than 20 employees to present a petition and recover the wages due and unpaid from their employers. To what extent has the Commissioner exercised his discretion in the past and what are the criteria for the exercise of his discretion? Madam President, I am worried that the Commissioner may not exercise his discretion very often under these circumstances. If the Commissioner does not exercise his discretion, will the Government review again the criteria for vetting applications for legal aid and reconsider how assistance can be rendered these employees whose wages are due and unpaid?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): I have stated in my main reply that the Commissioner exercised the discretion in 32% of the claims in 2000. In other words, a total of 2 501 employees benefitted from the *ex gratia* payments from the Fund and the *ex gratia* payments totalled \$71.26 million in 2000. This is the situation in 2000.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): *Yes.*

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

**MR LEUNG YIU-CHUNG** (in Cantonese): *The Secretary said that the Commissioner had exercised discretion in around 30% of the cases but what about the remaining 70%? Will the Government review again the criteria for vetting applications for legal aid to help these employees whose wages are due and unpaid?*

**PRESIDENT** (in Cantonese): Mr LEUNG, have you asked whether the Government will review the criteria for granting legal aid?

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I said that the Commissioner had exercised discretion in around 30% of the cases in which bankruptcy petitions had not been presented. I believe bankruptcy petitions were presented in most of the remaining 70% of cases. After the completion of certain procedures, the employees have recovered from their employers wages due and unpaid. The LAD conducts a review on the vetting criteria annually. According to the existing provisions, if the assets of the employee or applicant concerned exceed \$169,000, he will not be eligible to apply for legal aid, but if his assets do not exceed this amount, he will be granted legal aid free. Basically, the upper limit of the means test for legal aid will be adjusted annually in line with changes in the price indices, and the LAD will review this upper limit every two years to determine whether there are other factors that stop the upper limit from changing with the price indices.

**MR AMBROSE LAU** (in Cantonese): *Madam President, the Secretary has stated in the second paragraph of part (a) of her main reply that the Commissioner may exercise discretion under section 18 of the Ordinance if three conditions are met. Firstly, the establishment employs less than 20 employees; secondly, there is adequate supporting proof for a bankruptcy petition; and thirdly, a petition is not reasonable or economical. However, are there cases in which the Commissioner has not exercised his discretion though these conditions have been met? Why has the Commissioner exercised discretion in some cases but not in others?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I believe the Commissioner will certainly exercise discretion if the three conditions are met and he will not fail to exercise discretion in cases that meet all these conditions.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary mentioned 30% and 70% when she answered the supplementary question, but it was actually not too meaningful. As far as I understand it, in the remaining 70% of the cases, the employers may have presented winding-up petitions voluntarily. In how many of around 10% of the cases rejected on the applicants having failed the means test has the Commissioner not exercised his discretion? The employees have also failed to recover their wages in these cases. I wish to know the relevant figures.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I can hardly give a further breakdown of the 10% of the cases. Some figures from the Labour Department show that only 1.2% of the employees whose wages are due and unpaid failed to present bankruptcy or winding-up petitions since they fail to get assistance from the LAD, so, they ultimately failed to get *ex gratia* payments from the Fund.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, can the Secretary specify the number of people that makes up 1.2%?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): I will give the Honourable Member a written reply on the actual number of people. (Annex VII)

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

**MR ALBERT HO** (in Cantonese): *Madam President, as stated in the Secretary's main reply, the discretionary power of the Commissioner is sufficient*

*to cover the great majority of establishments that employ less than 20 employees each. The policy consideration may be like this: If a company has more than 20 employees, some of the employees may successfully apply for legal aid or they may pay for a bankruptcy or winding-up petition against their employer. However, does the Secretary know that, in actual operation, when an employee petitions for the bankruptcy or winding-up of his employer or is granted legal aid to support his petition, the employer will only make compensation to this employee? After the employee has recovered his wages due and unpaid, other employees cannot file another petition and they will not be benefitted. How can these problems be solved?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I am aware of this. I can only call upon employees to help people in the same boat. An employee should not close a deal with his employer under the table and ignore other employees after he has crossed over to the other shore.

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

## **WRITTEN ANSWERS TO QUESTIONS**

### **Regulation of Cybercafes**

7. **MR DAVID CHU** (in Chinese): *Madam President, it has been learnt that patronizing cybercafes with Internet access has become an increasingly popular pastime among young people, and that some cybercafes provide computer games of a violent nature. Regarding the regulation of services provided by cybercafes and the fire safety of the premises where they are located, will the Government inform this Council:*

- (a) of the estimated number of cybercafes currently in operation;*
- (b) of the licences required by cybercafes and the regulation they are subject to for the provision of computer or Internet games;*
- (c) whether inspections are conducted regularly to see if the cybercafes comply with the prescribed fire safety and other requirements; and*

- (d) *when it will tighten up regulation of services provided by cybercafes and, before achieving that, how it will remind young people to be aware of noteworthy matters while spending time in cybercafes?*

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

- (a) If "cybercafes" refer to establishments where the main business is concerned with catering or reading of comic books, while a small number of computers with Internet facilities are installed for use by their customers, there are about 22 such establishments. If "cybercafes" refer to establishments where the provision of Internet computer games or computer games is the main business, there are about 13 such establishments that have come to the Administration's knowledge.
- (b) Contents of computer games fall within the jurisdiction of the Control of Obscene and Indecent Articles Ordinance (COIAO), Chapter 390 of the Laws of Hong Kong. The Television and Entertainment Licensing Authority (TELA) has adopted a complaint driven approach and will deal with public complaints against the indecent or violent nature of these contents.
- (c) In the event that the "cybercafes" are situated in premises licensed for use as a restaurant or clubhouse, the provision of fire service installations and equipment, for example, sprinkler system, fire detection system, fire hydrant/hose reel installation, emergency lighting, portable fire extinguishers, exit signs, and so on, is part and parcel of the licensing requirements for these premises. The Fire Services Department also carries out surprise inspections to ensure compliance. For those "cybercafes" situated in commercial or residential premises not falling within the licensing regime for restaurants, no specific fire safety requirements are imposed for such premises. However, the buildings where they are situated are subject to built-in fire service installations pertinent to the type of occupancy in accordance with the Code of Practice for Minimum Fire Service Installations and Equipment.

- (d) The TELA staff will conduct regular inspections to these "cybercafes" under the COIAO. As mentioned in (c) above, the Fire Services Department will conduct surprise inspections to licensed restaurants or inspections in response to public complaints on fire safety matters. In addition, the Administration is also considering the application of the provisions of the Amusement Game Centres Ordinance (Cap. 435) to "cybercafes".

### **Disclosure by Government Departments of Personal Data of Public to Outside Parties**

8. **MISS AUDREY EU** (in Chinese): *Madam President, regarding disclosure by government departments of the personal data of members of the public to outside parties since the commencement of the Personal Data (Privacy) Ordinance (Cap. 486), will the Government inform this Council:*

- (a) *of the circumstances under which the Immigration Department (ImmD) has disclosed to other government departments and public organizations the personal data of individuals in its possession, together with a breakdown by the circumstances and the names of these departments and organizations, the number of times such disclosure was made and the number of people involved; and*
- (b) *whether it will conduct a comprehensive review of the current practice of government departments' disclosing, by virtue of the exemption provisions in the Ordinance, the public's personal data in their possession to other departments or organizations, and adopt measures to enhance the transparency in making such disclosure, such as establishing a public monitoring channel?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President,

- (a) The ImmD has strictly adhered to the Personal Data (Privacy) Ordinance in the disclosure of personal data of individuals to other government departments and public organizations since the implementation of the Ordinance on 20 December 1996.

In general, the ImmD will disclose a person's personal data to the relevant government departments only with the consent of the data subject. Where no such consent is given, the ImmD will consider the cases carefully to ensure that the disclosure of personal data in each case is in exercise of the power and by virtue of the reasons given in the exemption provisions such as those stipulated in sections 57, 58 or 59 of the Ordinance. If in doubt, the ImmD will seek the advice of the Department of Justice or the Privacy Commissioner for Personal Data before it decides whether to disclose a person's personal data. In a nutshell, the disclosure of personal data to other government departments and public organizations by the ImmD is mainly for the purpose of law enforcement, and the prevention and detection of crime.

As it takes time to check the records, the ImmD is only able to provide statistics on the disclosure of the personal data of members of the public to other government departments and public organizations for the period between 2000 and March 2001. The annexed table shows the departments and the public organizations involved, the number of disclosures, the number of people involved and the reasons for the disclosures.

- (b) Since the enactment of the Personal Data (Privacy) Ordinance, the Home Affairs Bureau, in consultation with the Department of Justice, has been issuing guidelines to departments on compliance with the Ordinance. These guidelines advise departments, among other things, that personal data collected by one department shall not, without the consent of the data subject, be transferred to another department unless the transfer:
- (i) is for a purpose related to the original purposes of collecting the personal data; or
  - (ii) falls within the ambit of an exemption provision in the Ordinance.

They also include detailed guidance on the consideration to be given before a department requests personal data from, or agrees to release personal data to another department. All departments have

appointed officers as Data Controlling Officers, whose duties include the review of existing data protection measures to ensure compliance with the Ordinance and the guidelines issued by the Home Affairs Bureau. It is an ongoing process for individual departments to review, as and when necessary, their practices of disclosing, by virtue of the exemption provisions in the Ordinance, personal data of members of the public in their possession to other departments or organizations.

The Privacy Commissioner for Personal Data, an independent authority, is responsible for monitoring and supervising compliance with the Ordinance by data users in Hong Kong. We do not see the need to establish a separate channel for the public to monitor compliance by government departments.

Annex

Disclosure of Personal Data by the ImmD to  
Government Department and Public Organizations

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
Hong Kong Police Force	46 079	13 968	71 028	20 021	- Prevention or detection of crime - Investigation on missing persons
Customs and Excise Department	2 205	580	2 453	604	- Prevention or detection of crime
Independent Commission Against Corruption	8 073	2 344	14 487	4 430	- Prevention or detection of crime

<i>Government departments</i>		<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
		<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
			<i>January to March</i>		<i>January to March</i>	
Correctional Department	Services	285	77	285	77	<ul style="list-style-type: none"> <li>- Investigation on cases in contravention of supervision orders</li> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</li> </ul>
Inland Department	Revenue	14 548	3 295	14 555	3 336	<ul style="list-style-type: none"> <li>- Prevention or detection of crime</li> <li>- Tax recovery</li> </ul>
Social Department	Welfare	8 615	1 668	8 636	1 675	<ul style="list-style-type: none"> <li>- Consent given by the data subject for processing applications</li> <li>- Search for missing persons</li> <li>- Execution of maintenance order</li> </ul>
Official Office	Receiver's	3 027	677	3 154	707	<ul style="list-style-type: none"> <li>- Investigation of bankruptcy cases and execution of statutory duties</li> </ul>
Housing Department		5 180	1 486	9 088	1 662	<ul style="list-style-type: none"> <li>- Investigation on cases of suspected illegal occupation of subsidized housing units or false declarations</li> </ul>

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>	
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>		
		<i>January to March</i>		<i>January to March</i>		
					<ul style="list-style-type: none"> <li>- Confirmation on the eligibility of applicants (residence information) (with the consent of the data subject)</li> <li>- Investigation on cases of making false statement regarding income or assets</li> </ul>	
Agriculture, Fisheries and Conservation Department	144	15	222	28	<ul style="list-style-type: none"> <li>- Prosecution of persons violating the Animals and Plants (Protection of Endangered Species) Ordinance</li> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons.</li> </ul>	
Government Service	Flying	1	0	1	0	<ul style="list-style-type: none"> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by person.</li> </ul>
Lands Department		407	43	419	43	<ul style="list-style-type: none"> <li>- Verification of the length of residence for processing applications for the</li> </ul>

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
					construction of small houses (with the consent of the data subject)
Food and Environmental Hygiene Department	610	148	969	219	- Prosecution of persons violating the law - Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons
Legal Aid Department	1 860	308	1 888	356	- Confirmation on the eligibility of applicants (residence information) (with the consent of the data subject) - Execution of maintenance order or recovery of costs
Department of Justice	100	27	124	27	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
					<ul style="list-style-type: none"> <li>- Co-ordination and investigation on child missing cases in accordance with the Convention on the Civil Aspects of International Child Abduction</li> <li>- Recovery of advance of salary paid to dismissed civil servants</li> <li>- Disclosure of information to the Department of Justice in accordance with the court summons</li> </ul>
Fire Services Department	33	4	34	8	<ul style="list-style-type: none"> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</li> <li>- Prosecution of persons violating the Fire Services Ordinance</li> </ul>
Transport Department	56	15	769	159	<ul style="list-style-type: none"> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</li> </ul>

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
		<i>January to March</i>		<i>January to March</i>	
					- Prosecution of persons violating the law
Printing Department	1	0	1	0	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons
Marine Department	44	10	142	47	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the Shipping and Port Control Ordinance
Post Office	26	7	26	7	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law
Leisure and Cultural Services Department	30	6	35	7	- Prevention, preclusion or remedying (including

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
					<p>punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</p> <ul style="list-style-type: none"> <li>- Prosecution of persons violating the Public Health and Municipal Services Ordinance</li> </ul>
Architectural Services Department	12	2	12	2	<ul style="list-style-type: none"> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</li> </ul>
Television and Entertainment Licensing Authority	43	10	48	11	<ul style="list-style-type: none"> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</li> <li>- Prosecution of persons violating the Control of Obscene and Indecent Articles Ordinance</li> </ul>
Labour Tribunal	991	245	991	245	<ul style="list-style-type: none"> <li>- Disclosure of the personal data of the applicants in accordance with the instruction of the Tribunal's</li> </ul>

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
					Presiding Officer for verification in respect of claims for wages or compensation (with the consent of the data subject)
Electrical and Mechanical Services Department	13	0	13	0	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons
Environmental Protection Department	25	11	29	14	- Prosecution of persons violating the Waste Disposal Ordinance
Planning Department	145	30	515	155	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law
Highways Department	60	16	63	16	- Recovery of debts owed by the data subject to the Government - Prosecution of persons violating the law

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
					- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons
Education Department	3	1	3	1	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Recovery of debts owed by the data subject to the Government
Department of Health	7	0	127	0	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - prosecution of persons violating the law
Census and Statistics Department	1	0	1	0	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
Labour Department	6	1	6	2	- Prosecution of persons violating the Employees' Compensation Ordinance
Office of the Telecommunications Authority	3	0	3	0	- Prosecution of persons violating the Telecommunication Ordinance
Government Property Agency	0	1	0	1	- Recovery of debts owed by the data subject to the Government
Water Supplies Department	1 225	269	1 225	382	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law
Home Affairs Department	2	0	3	0	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law

<i>Government departments</i>		<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
		<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
			<i>January to March</i>		<i>January to March</i>	
Drainage Department	Services	13	3	162	35	<ul style="list-style-type: none"> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</li> <li>- Prosecution of persons violating the law</li> </ul>
Registration and Electoral Office		11 985	3 000	11 985	3 000	<ul style="list-style-type: none"> <li>- With the consent of the data subject</li> <li>- Updating the electoral register</li> </ul>
Judiciary Administrator		16 674	6 073	16 674	6 073	<ul style="list-style-type: none"> <li>- With the consent of the data subject</li> <li>- Assisting the Registrar of the Judiciary in compiling the provisional list/list of jurors</li> </ul>
Buildings Department		40	10	72	13	<ul style="list-style-type: none"> <li>- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons</li> <li>- Prosecution of persons violating the Buildings Ordinance</li> </ul>

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
	<i>January to March</i>		<i>January to March</i>		
Companies Registry	36	18	60	34	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law
Intellectual Property Department	1	0	1	0	- Prevention, preclusion nor remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law
Former Regional Services Department	1	0	1	0	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons - Prosecution of persons violating the law
Audit Commission	1	0	1	0	- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct,

<i>Government departments</i>	<i>No. of disclosures</i>		<i>No. of people involved</i>		<i>Reasons for the disclosures</i>
	<i>2000</i>	<i>2001</i>	<i>2000</i>	<i>2001</i>	
		<i>January to March</i>		<i>January to March</i>	
					or dishonesty or malpractice, by persons
					- Prosecution of persons violating the law
Securities and Futures Commission	343	51	1 200	308	- Prevention or detection of crime related to the Securities and Futures Commission Ordinance
					- Prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons
Hong Kong Housing Society	37	13	37	13	- Investigation on cases of suspected illegal occupation of public housing units or false declarations
Kowloon-Canton Railway Corporation	18	7	537	202	- Issue of summons to persons violating the Kowloon-Canton Railway Corporation By-laws
Mass Transit Railway Corporation	37	8	560	156	- Issue of summons to persons violating the Mass Transit Railway Corporation By-laws

**Shenzhen River Regulation Project**

9. **MR LAU PING-CHEUNG** (in Chinese): *Madam President, the Shenzhen Municipal Government will be responsible for implementing the Stage III works for the Shenzhen River Regulation Project, which will commence in October this year, while the costs of the works will be equally shared between the Government of the Hong Kong Special Administrative Region (SAR) and the Shenzhen Municipal Government. In this connection, will the Government inform this Council whether:*

- (a) *it knows if the conditions of tender will set out that companies from Hong Kong and the Mainland will be given equal opportunities to bid for the works contracts; if so, of the details; if not, the reasons for that; and*
- (b) *the SAR Government will take part in the selection of contractors for the works?*

**SECRETARY FOR WORKS** (in Chinese): Madam President,

- (a) The Stage III works for the Shenzhen River Regulation Project to be entrusted to the Shenzhen Municipal Government will be tendered under the principles of openness and fairness. Qualified contractors from both Hong Kong and the Mainland will have the opportunity to tender on equal basis. The Drainage Services Department of the SAR Government will invite all qualified Hong Kong contractors in the Approved List of Public Works Contractors to express interest in tendering the works. All interested and qualified Hong Kong contractors will be invited to submit tender.
- (b) Prior to tender invitation, we will work out with the Shenzhen side a set of assessment criteria and marking scheme based on contractor's experience, manpower and machinery resources, overall planning of the works, method statements for the works, flood protection contingency measures, environmental measures and site safety measures during construction. The Joint Technical Sub-Group under the Joint Working Group established by both Governments will closely supervise the tender assessment such that tenderers will

be assessed in strict accordance with the agreed assessment criteria and marking scheme. The final tender recommendation has to be scrutinized and endorsed by the Joint Working Group.

### **Amendment to Air Navigation (Hong Kong) Order 1995**

10. **MR HOWARD YOUNG:** *Madam President, the ad hoc groups set up respectively by the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA) are conducting studies on measures against unruly or disruptive passengers and criminal behaviours on board aircraft. One suggestion is to urge states to implement legislation to address offences committed on all aircraft which land in their jurisdictions. In this connection, will the Government inform this Council whether:*

- (a) it knows the progress, outcome and completion dates of the above studies; and*
- (b) it will amend the Air Navigation (Hong Kong) Order 1995; if so, of the legislative timetable; if not, the reasons for that?*

**SECRETARY FOR SECURITY:** Madam President, the international air transport industry is concerned about the problems caused by unruly passengers on board aircraft. To tackle the problem, the IATA has established a working group with representatives from different areas of the industry (for example, inflight services, legal dimensions, safety and security) and published guidelines for handling disruptive/unruly passengers. The ICAO also set up a Study Group on Unruly Passengers (the ICAO Study Group) to examine the subject in June 1997.

The ICAO Study Group considers jurisdiction to be a major issue because a number of cases involving unruly passengers may not fall squarely within existing recognized categories of jurisdiction. In April 2000, the ICAO conducted a survey among the Contracting States on the legal aspects of the matter of unruly passengers and circulated a draft list of offences committed on board civil aircraft and a draft clause on the extension of jurisdiction over such offences. In the light of the Contracting States' responses, the ICAO Study

Group has refined the list of offences and the draft jurisdictional clause, and has merged them together in the context of "Draft Model Legislation on Offences committed on Board Civil Aircraft by Unruly or Disruptive Passengers" (Draft Model Legislation). The Draft Model Legislation contains provisions which would extend the jurisdiction of a Contracting State over a relevant offence if the act constituting the offence took place on board a civil aircraft registered in that State; or a civil aircraft leased to an operator based in that State; or a civil aircraft on or over the territory of that State; or any other civil aircraft in flight outside that State, if the next landing of the aircraft is in that State and the aircraft commander has delivered the suspected offender to the competent authorities of that State for prosecution. The ICAO Study Group considers that the Draft Model Legislation would serve as an immediate and effective solution to the problem of unruly passengers.

The ICAO Study Group has decided to recommend to the ICAO Council a resolution to request Contracting States to incorporate the Draft Model Legislation into their respective national legislation. The ICAO Council's report on this subject will be submitted to the ICAO Assembly in September/October 2001.

We are closely monitoring developments in respect of the ICAO's efforts. Depending on the outcome of the discussion of this subject at the ICAO Council and the ICAO Assembly and in the light of any action that may be taken by the international aviation community, we will consider whether and, if so, how the relevant legislation of the Hong Kong Special Administrative Region should be amended to address this issue.

### **Collecting Information on Hong Kong Residents Living in Mainland**

11. **PROF NG CHING-FAI** (in Chinese): *Madam President, given that the Hong Kong residents who live in the Mainland are not covered by local population censuses as they do not have a Hong Kong residential address and only commute daily to their workplaces or schools in Hong Kong, will the Government inform this Council:*

- (a) *of the ways to carry out surveys to collect family and economic information about such people; and*
- (b) *whether it plans to carry out, in collaboration with the relevant mainland authorities, surveys to collect such information?*

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

- (a) Although Hong Kong residents living in the Mainland who travel daily to their workplaces or schools in Hong Kong are not covered by population censuses, the Government can obtain statistical information pertaining to these people via the "Cross-Boundary Travel Survey". The first round of the "Cross-Boundary Travel Survey" was conducted by the Planning Department in October 1999 to collect information on purpose, origin and destination of cross-boundary trips as well as socio-economic characteristics (for example, age, sex, industry and occupation of employment and whether Hong Kong residents) of the trip makers. Furthermore, information on their usual place of residence, the number of cross-boundary trips and so on was also collected. Based on results of the survey, there were about 6 500 Hong Kong residents living in the Mainland who usually travelled to Hong Kong to work and about 1 800 occupational drivers, who were Hong Kong residents living in the Mainland and frequently travelling between Hong Kong and the Mainland.

In order to provide sufficient data for long-term planning, the Planning Department plans to conduct the "Cross-Boundary Travel Survey" on a biennial basis. The second round of the survey will be conducted in November this year.

Regarding information on students who come from Shenzhen every day to Hong Kong for schooling, the Education Department conducted two surveys in October last year and February this year, which covered schools in the North and Yuen Long districts to collect information on the number, types of schools and classes attended by the cross-boundary students. Based on results of the surveys, there were about 3 000 Hong Kong residents living in the Mainland who usually travelled to Hong Kong to study.

The Census and Statistics Department will liaise with the Education Department to explore whether or not a survey to collect more detailed information on the family and economic characteristics of the cross-boundary students should be conducted.

- (b) We will co-ordinate with relevant government departments to study how to enrich the contents of the above-mentioned statistical information. We will also consider the need and feasibility of conducting cross-boundary travel survey in collaboration with the relevant mainland authorities to collect additional cross-boundary information.

### **Supply of Sea Water for Flushing**

12. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, regarding the need of residents in some districts to use fresh water for flushing due to the unavailability of sea water, will the Government inform this Council:*

- (a) *of the detailed geographical distribution of the areas in which sea water for flushing is unavailable, and the current daily total volume of fresh water used for flushing;*
- (b) *of the current number of households which need to use fresh water for flushing, and the average monthly flushing water charge paid by each of these households; and*
- (c) *whether the relevant authorities plan to supply sea water for flushing to all districts; if so, of the details and the timetable; if not, the reasons for that?*

**SECRETARY FOR WORKS** (in Chinese): Madam President,

- (a) The districts without sea water for flushing are the Peak, Southern District, Sai Kung, Outlying Islands, Northern District and Yuen Long. The total volume of fresh water used daily for flushing is 100 000 cu m.
- (b) At present, more than 2 million households in Hong Kong are supplied with government fresh water for potable use. About 400 000 households are using fresh water for flushing.

Currently, each household using fresh water for flushing has a free allowance of 30 cu m for every four months. According to the Water Supplies Department's analysis, this free allowance is sufficient for most households. To encourage people not to use water excessively, consumption above 30 cu m will be charged. Amongst the 400 000 households using fresh water for flushing, about 240 000 households consume less than 30 cu m and do not need to pay. For the remaining 160 000 households, each pays less than \$10 a month on average. However, the Water Supplies Department will review the free allowance from time to time and make appropriate adjustment when necessary.

- (c) The above-mentioned districts are not supplied with sea water for flushing for various reasons. They are, however, provided with fresh water for flushing. The Peak, Southern District, Sai Kung and Outlying Islands are not provided with sea water for flushing mainly because the population is sparse and scattered. The population of Northern District mainly concentrates in Sheung Shui and Fanling, which are not close to the sea front. Sea water supply is therefore not available to Northern District. As regards Yuen Long, the quality of water at Deep Bay is not up to the standard for flushing purpose and it is expensive to install additional facilities to treat the sea water. The capital cost, operation and maintenance costs are also very high to supply sea water from Tuen Mun to Yuen Long. In order to achieve the target of making the best use of available resources, there is no plan to provide sea water for flushing to these districts in the near future.

Nevertheless, the Government will review, in the long run, the feasibility of supplying sea water to these districts in light of the latest population forecast so that sea water can be supplied to these districts in due course.

### **Persons Issued with Hong Kong Permanent Identity Cards in Accordance with Article 24 of Basic Law**

13. **MR LEUNG FU-WAH** (in Chinese): *Madam President, will the Government inform this Council of the respective latest numbers of persons from the Mainland, India, Pakistan and Nepal to whom Hong Kong permanent identity cards have been issued in accordance with Article 24 of the Basic Law of the*

*Hong Kong Special Administrative Region (SAR) since the reunification, with a breakdown by their educational attainments; and how it assists them in employment and education?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, residents from the Mainland wishing to enter Hong Kong for settlement have to apply to the mainland authorities for a One-way Permit (OWP). For mainland residents claiming right of abode in accordance with Article 24 para 2(3) of the Basic Law as implemented by paragraph 2(c) of Schedule 1 to the Immigration Ordinance, they also have to apply for a Certificate of Entitlement issued by the Director of Immigration and have it affixed to a valid OWP for entry into Hong Kong. Holders of Certificates of Entitlement are entitled to a Hong Kong permanent identity card (PIC) upon entry. Since the reunification and up to 31 March 2001, a total of about 61 000 such OWP entrants were issued with PICs.

For other OWP entrants, in accordance with Article 24 para 2(2) of the Basic Law as implemented by paragraph 2(b) of Schedule 1 to the Immigration Ordinance, they should have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after establishment of the SAR before they are eligible for a PIC. As the Director of Immigration keeps records of PICs issued to persons according to nationalities rather than places of origin, the Government does not have statistics on PICs issued to this group of OWP holders from the Mainland.

For non-Chinese nationals, since the reunification and up to 31 March 2001, some 6 000 nationals of India, 3 300 nationals of Pakistan and 130 nationals of Nepal were issued with PICs upon establishment of their claims to right of abode in accordance with Article 24 para 2(4) of the Basic Law, as implemented by paragraph 2(d) of Schedule 1 to the Immigration Ordinance.

The Government does not have statistics on the educational attainment of people issued with PICs.

#### *Assistance in Employment*

The Government provides the public with a wide range of employment services through the Employment Services Division (ESD) of the Labour Department (LD), irrespective of their nationality and place of birth.

In the past few years, the LD has introduced various new measures to improve its employment services so as to help job seekers find suitable jobs promptly. The services of the ESD have been fully computerized. Through the self-service touch-screen computers installed at Job Centres, job seekers can have quick access to information displayed in Chinese or English and perform simple job-matching. Job seekers can also select from job vacancies displayed in Job Centres and placement officers of the Centres will arrange job interviews for them. Where necessary, placement officers of the Centres will assist job seekers to match suitable vacancies. Job seekers can also contact employers direct for job interviews when the employers concerned have chosen to display their contact means. Furthermore, job seekers who have already registered with ESD can access the job referral service through telephone.

Individual job seekers who encounter difficulties in seeking employment because they are not native to Hong Kong can contact managers of the Job Centre of the ESD. Personalized service will be arranged to help them secure a suitable job promptly.

As for training and retraining, the Vocational Training Council (VTC), the Employees Retraining Board (ERB), the Construction Industry Training Authority (CITA) and the Clothing Industry Training Authority (CLITA) all adopt a policy of equal opportunities for people who wish to receive training and retraining. New arrivals from mainland China, India, Pakistan, Nepal and other countries are considered for admission on the same basis as other eligible candidates.

#### *Assistance in Obtaining Education*

On the education side, under existing policy, all eligible local children (see Annex for eligibility criteria), including children from the Mainland, India, Pakistan and Nepal, may attend public sector schools in Hong Kong. To help newly arrived children integrate into the local education system early, block grants (\$2,750 and \$4,080 per student for primary and secondary levels respectively) are provided to schools which admit newly arrived children. Schools may use the grants to provide school-based support services, such as organizing tutorial classes on Chinese/English, developing special teaching materials, and so on. In addition, subventions are provided to NGOs for running induction programmes to help newly arrived children adapt to local school environment. Besides, since March 2000 the Education Department also

introduced a six-month, full-time Initiation Programme (incorporating both academic and non-academic support services) for newly arrived children from the Mainland before they were formally placed in the mainstream schools. All the above programmes are made available to newly arrived children above 15 of age.

We also acknowledge the need for adult education of newly arrived children above 15 who wish to seek employment upon arrival in Hong Kong. Since September 1996, the admission age for adult education courses has been lowered from 18 to 15 to provide an additional channel for these young people to receive education.

We believe all the above measures would enable new arrivals and people of different ethnic backgrounds to make full use of our employment and educational services.

Annex

#### Admission criteria of children to public sector schools in Hong Kong

Admission to public sector schools is restricted to children holding one of the following documents:

(a) *Hong Kong Birth Certificate*

- (i) For birth registration effected before 1 January 1983, the birth certificate alone is sufficient proof of the holder's eligibility for admission to such schools;
- (ii) For birth registration effected between 1 January 1983 and 30 June 1987, column 12 of their birth certificates must indicate their Hong Kong believer status as "*Established*";
- (iii) For birth registration effected on or after 1 July 1987, column 12 or 11 of their birth certificates must indicate their Hong Kong permanent resident status as "*Established*";

- (iv) Children whose Hong Kong belonger status or Hong Kong permanent resident status is shown as "*Not established*" in the birth certificate should have a Permit to Remain in Hong Kong — ID 235B or valid travel documents, with one of the endorsements listed in (c) below.

(b) *Hong Kong Identity Card*

A Hong Kong Identify Card issued on or after 1 July 1987 which does not bear the symbol 'C' (for conditional stay) at line 6. If the symbol 'C' is shown, the holder must have a valid travel document with one of the endorsements listed in (c) below;

(c) *Travel Document*

A valid travel document with any of the following endorsements:

- (i) "*Permitted to remain until (date)*" (the date showing the stay in Hong Kong to be still valid at the time of admission to school);
- (ii) "*Permission to remain extended until (date)*" (the date showing that the stay in Hong Kong to be still valid at the time of admission to school);
- (iii) "*The holder of this travel document has the right to land in Hong Kong. (Section 2AAA, Immigration Ordinance Cap. 115, Laws of Hong Kong)*";
- (iv) "*The holder arrived Hong Kong on (date) and was permitted to land.*";
- (v) Permitted to stay with no condition attached;
- (vi) "*Previous conditions of stay are hereby cancelled*"; or
- (vii) "*Holder's eligibility for Hong Kong permanent identity card verified*".

**Protection of Employees against Discrimination Arising from Participation in Trade Unions**

14. **MISS LI FUNG-YING** (in Chinese): *Madam President, the Employment Ordinance (Cap. 57) provides for the protection of employees against discrimination arising from their participation in trade unions. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints the relevant authorities received in the past five years about employers discriminating against employees who participated in trade unions and, among these complaints, the number of cases in which prosecution was instituted against the employers concerned and the number of convictions thereof; if no conviction was secured, of the reasons for that; and*
- (b) *whether difficulties in adducing evidence have contributed to a low rate of conviction in these cases; if so, whether the authorities will propose to amend the law to strengthen the protection for employees against discrimination arising from their participation in trade unions?*

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

- (a) The Employment Ordinance provides for protection against anti-union discrimination. Under the provisions of the Employment Ordinance, every employee shall have the right to be a member or an officer of a trade union, to take part in the activities of the trade union and to associate with other persons to apply for the registration of a trade union in accordance with the Trade Unions Ordinance. An employer shall be liable to prosecution if he prevents, deters, dismisses, penalizes or discriminates against an employee for exercising the above rights. The maximum fine upon conviction is \$100,000.

During the past five years, the Labour Department received 18 cases involving claims of anti-union discrimination. Thorough investigation was conducted for each case with a view to taking out

prosecution. Among these 18 cases, eight could not be submitted to the Department of Justice for consideration of prosecution due to lack of evidence or the claimant's refusal to act as prosecution witness. For the remaining 10 cases, due to insufficient evidence no prosecution was taken out upon careful consideration and legal advice by the Department of Justice.

- (b) As prosecution against employer for discriminating against an employee for taking part in union activities is criminal in nature and a serious matter, the prosecutor has to prove beyond reasonable doubt in order to secure a conviction. We cannot attribute the failure in taking out prosecution in individual cases because of insufficient evidence or the existence of reasonable doubt to that of having loopholes in the legislation and seek to amend it. In fact, under the Employment Ordinance, the stipulated provisions prohibiting an employer from discriminating an employee for taking part in union activities already have a deterrent effect. It also shows the Government's stance on the issue.

To further protect employees who have been dismissed by employers for taking part in union activities, a new Part VIA on Employment Protection was enacted on 27 June 1997. The Part which gives employees the right to claim remedies for unreasonable and unlawful dismissal, enables employees who have been dismissed by employers for taking part in union activities to make civil claims. Remedies include an order for reinstatement or re-engagement, or terminal payments. If no order for reinstatement or re-engagement is made, the Labour Tribunal may make a further award of compensation, up to a maximum of \$150,000.

### **Subsidies for Disabled Athletes**

15. **MR ERIC LI** (in Chinese): *Madam President, the Financial Secretary plans to allocate a one-off grant of \$50 million in the current financial year to provide subsidies for disabled athletes and to help them find employment at the end of their athletic careers. In this connection, will the Government inform this Council:*

- (a) *of the department or committee responsible for administering the grant;*

- (b) *of the qualifications of the applicants and the assessment criteria adopted; and*
- (c) *whether the subsidies currently provided for disabled athletes will be reduced as a result?*

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

- (a) the Social Welfare Department (SWD) will be responsible for administering this one-off grant. The intention is for the SWD to set up an advisory committee to oversee the management of the fund and its disbursement. Representatives from sports associations for the disabled will be invited to sit on the committee;
- (b) to develop the necessary procedures and criteria for screening funding applications, the SWD has set up a task group. Apart from government officials, representatives from the Hong Kong Sports Association for the Physically Disabled and Hong Kong Sports Association for the Mentally Handicapped also participate in the task group. We will consult members of the Panels on Welfare Services and Home Affairs on the funding criteria, conditions of grant and the related monitoring mechanism, shortly; and
- (c) the objective of the \$50 million grant is to strengthen the support and assistance offered to disabled athletes. As such, it will not affect the existing level of support provided to disabled athletes.

### **Expenditure of Small and Medium Enterprises on Purchasing Computer Software**

16. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, regarding the expenditure of small and medium enterprises (SMEs) on purchasing computer software, will the Government inform this Council whether it has:*

- (a) *assessed the average percentage of the expenditure on purchasing authentic computer software in the annual operating costs of the SMEs; and*

- (b) *taken measures to urge software distributors to lower software prices and to assist local software developers in developing cheaper Chinese software?*

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

- (a) The operating costs of enterprises are affected by the scale, nature and mode of their operation. Their requirements for computer software are also different from each other. The Government has not assessed the average percentage of the expenditure on purchasing authentic computer software in the annual operating costs of SMEs.
- (b) It is not appropriate for the Government to interfere with the commercial decision of software publishers in setting prices for computer software. The prevailing use of pirated software in business has dampened software developers' investment incentive. In the absence of market competition, there is little room for software prices to come down. The newly amended Copyright Ordinance plays a positive role in encouraging the use of legitimate software in enterprises and promote market competition. In the long run, we believe that more software developers (including local enterprises) will devote resources in product development to provide users with more choices at cheaper prices.

In the short run, the Hong Kong Productivity Council has assisted 57 business associations in different economic sectors in bargaining with major software publishers over software prices and succeeded in securing various discount rates. Besides, the Council has also actively conducted tests on the functions and compatibility of locally developed Chinese software, and will make the results available for reference by users.

**Pollution of Tan Shan River in Hok Tau by Government Contractor**

17. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it has been reported that workers of a contractor commissioned by the Highways Department to undertake slope landscaping projects were alleged to have dumped, in contravention of the Water Pollution Control Ordinance (Cap. 358), waste water into the Tan Shan River in Hok Tau, Fanling, resulting in the death of a large quantity of fish in the river. In this connection, will the Government inform this Council:*

- (a) *whether, upon receiving the relevant reports, the Environmental Protection Department (EPD) has sent its staff to the scene to collect evidence of illegal dumping of waste water into the river; if so, of the details; if not, the reasons for that;*
- (b) *of the actions taken by the EPD to follow up the incident, as well as the ways to prevent the recurrence of similar incidents; and*
- (c) *of the measures the EPD will implement to restore the ecological environment of the river?*

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

- (a) On 22 March, the EPD received a complaint from a member of the public that road repair workers had poured water inside some metal barrels onto the road. The water then flowed into the Tan Shan River nearby via stormwater drains and might cause pollution to the River. The EPD immediately deployed its staff to the scene to conduct an investigation on the same day. The EPD staff questioned the workers at the scene about the incident. Subsequently, the EPD also demanded the contractor concerned to provide details of the incident, and is now gathering additional evidence from other sources.
- (b) The investigation will be completed shortly. The EPD will then consider whether further action is required. The EPD staff will continue with their routine inspection of commercial/industrial

corporations and construction sites, and urge the parties concerned to discharge wastewater via sewers or other legal means so as to protect the environment.

- (c) The EPD staff carried out an inspection at the Tan Shan River on the day of the incident and on the following eight days. On the day of the incident, a small quantity of foam and dead fish were found in the river. Since 23 March, the water has become clear again and fish has been found swimming in the River. From the water quality test and the observation made on site, there have been no signs of deterioration in the ecological environment of the River.

### **Compassionate Rehousing Scheme**

18. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, the Social Welfare Department (SWD) is responsible for implementing the compassionate rehousing scheme which provides assistance to individuals or families with special housing needs. Regarding the SWD's implementation of the scheme and the Housing Department's (HD) handling of cases excluded from the scheme, will the Government inform this Council:*

- (a) *of the criteria the SWD currently adopts in assessing the eligibility of applicants for compassionate rehousing; and whether the SWD regularly reviews such criteria and how the scheme is operating;*
- (b) *of the number of times, in each of the past three years, in which the SWD recommended to the HD to the allocation of public rental housing (PRH) units to applicants for compassionate rehousing; if the numbers of such recommendations were below the quota of the respective years, of the reasons for that; and*
- (c) *of the circumstances in which the SWD, in dealing with certain cases in which PRH tenants are requesting transfer of units or splitting of households, does not use the quota of the compassionate rehousing scheme but instead refers them to the HD with the suggestion that the HD exercise its discretion in those cases; how the HD deals with such cases; the reasons for the HD rejecting some cases, and whether the HD will review this policy?*

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

- (a) Compassionate rehousing is a form of housing assistance aimed at helping individuals and families with a genuine and immediate long-term housing need because of social or medical factors. In making a recommendation for compassionate rehousing to the HD, social workers assess the circumstances and needs of each case. To qualify for compassionate rehousing, a person or a household must fulfil all of the following conditions:
- (i) be in need of immediate long-term housing assistance;
  - (ii) have continuously lived in Hong Kong for at least seven years; at the point of allocating a public housing rental flat, at least half of the family members (including the principal applicant) must have lived in Hong Kong for seven years and be still living in Hong Kong.
  - (iii) have an income level not exceeding that applicable for a public housing application;
  - (iv) have special social or medical needs which require better accommodation for rehabilitation into the community, that is:
    - (1) those having physical and/or mental problems which in the professional view of medical officers and medical social workers, improved accommodation in public or other suitable housing is essential to enable them to improve their conditions or to assist them to reintegrate into the community; or
    - (2) those who are socially handicapped to such an extent that in the judgement of social workers they face pressure because in their situation their existing accommodation is unsuitable to meet their needs to the extent that serious and long-term detrimental effects to the individual and/or to their families may occur as a result.

- (v) have no ownership of private residential property or Home Ownership Scheme flat;
- (vi) have the ability to pay rent, whether from his/her own or other resources, for example, Comprehensive Social Security Assistance.

For individuals and families with a genuine need, social workers exercise flexibility in making recommendations to the HD to waive some of these basic requirements. The SWD regularly conducts reviews on the processing of compassionate rehousing cases and the criteria adopted.

- (b) In the past three financial years (1998-99, 1999-2000 and 2000-01), the number of cases referred to the HD for compassionate rehousing was 1 853, 1 153 and 1 036 respectively. A recommendation for compassionate rehousing to the HD, is based on an assessment of applicants' family circumstances, taking into consideration social and/or medical factors. The quota is an administrative measure which allows the HD to set aside public housing units for this purpose. It does not affect the processing of needy cases for housing assistance. The quota on compassionate rehousing is 2 000 per year, with the understanding that if demand exceeds supply, genuine cases will still be entertained.
- (c) It is an established practice between the SWD and the HD that handling of applications for splitting or transfer of existing public housing tenancies is the responsibility of the HD. However, occasionally the HD does refer cases to the SWD for an assessment on compassionate grounds. In handling these cases, the SWD will use the same criteria as described under (a) above.

In general, the HD accepts all referrals from the SWD concerning requests for transfer or splitting of households and will allocate suitable flats. In these circumstances, there is no current need to review the existing arrangement.

**Redundancy and Wage Reduction Plans of Universities**

19. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, owing to the reduction of government funding for universities in six consecutive years, the universities have resorted to redundancy and wage reduction plans, and so on in order to cut costs. In this connection, will the Government inform this Council:*

- (a) *whether it knows:*
  - (i) *the respective staff management measures adopted by the universities to achieve cost saving;*
  - (ii) *if the staff of the universities have been consulted prior to the implementation of those measures; if so, of the consultation processes and the outcomes;*
  - (iii) *if upper limits have been set by the universities with respect to the number of people leaving the service and the expenditures involved; and*
  - (iv) *the numbers of complaints received by the universities in the past two triennia relating to redundancies and wage reductions; the outcomes of those complaints; and whether a centralized redress mechanism will be set up by the Administration to handle these complaints; and*
- (b) *whether the University Grants Committee (UGC) has provided the universities with the necessary funding for implementing various exit and redundancy plans; if so, of the respective amounts allocated to the universities in this triennium and the next, and the criteria the UGC has adopted to determine such amounts?*

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

- (a)
  - (i),(ii) and (iii)

All the UGC-funded institutions are statutory bodies with a high degree of autonomy. They are empowered to make decisions on matters relating to internal human resources allocation and management. Like other public organizations, the UGC-funded institutions will implement measures to enhance efficiency and quality according to their own development needs and their respective consultation and administrative mechanisms. The Administration will not interfere in the implementation of such measures. The institutions are not required to report the details of such measures to the UGC except in cases where additional funding applications are involved (see reply to Part (b)).

- (iv) In the past two triennia, the Administration and the UGC received nine complaints relating to cessation of employment. As these complaints were related to the internal administration of the institutions, the Administration's interference would be inappropriate. We have, therefore, referred these complaints to the institutions concerned for their action. All UGC-funded institutions are independent statutory bodies with their own complaint handling mechanisms. The Administration has no plan to set up any central redress mechanism to handle complaints against individual institutions.
- (b) The UGC earmarks funds in each triennium for central allocation purpose to meet new funding requirements arisen during the period. Details of the central allocation spent on early retirement schemes or exit plans in the 1998-99 to 2000-01 triennium are as follows:

<i>Institution</i>	<i>Year</i>	<i>Amount required for the implementation of early retirement scheme or exit plans</i>	<i>UGC grants</i>
Chinese University of Hong Kong	1998 and 2000	\$20 million	\$9.6 million
Lingnan University	1999	\$1 million	\$1 million
Hong Kong Baptist University	2000	\$5.5 million	\$4.5 million

The additional costs of implementing staff redeployment plans must first be absorbed by the institutions' own savings under other expenditure items. The deficiency of funds will then be met by the UGC through central allocation grants. The UGC also suggests that the institutions should:

- (i) implement the relevant schemes and plans according to management needs; and
- (ii) allow sufficient consultation with their staff before implementing any staff restructuring plans.

The UGC has not received any funding applications from the institutions for implementing early retirement or exit plans in the next triennium.

### **Electronic Service Delivery Scheme**

20. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, regarding the Electronic Service Delivery (ESD) Scheme which was fully launched on 19 January this year, will the Government inform this Council of:*

- (a) *the number of visits to the ESD website to date; and*
- (b) *the respective counts of various types of public services delivered through the ESD Scheme to date; how these figures compare to the Administration's estimation; if they are lower than those estimated, of the reasons for that?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Chinese): Madam President, the ESD Scheme was fully launched on 19 January this year. In the roughly three-month period since the launch of the scheme and up to 22 April,

- (a) the number of visits to the ESD Internet website is 5 410 000 (the average number of visits per day is 50 000 in the past month), and the cumulative hit rate is 77 320 000.

- (b) the total counts of public services delivered through the ESD Scheme is about 220 000. The respective counts of the major services used are set out in the Annex.

In our submission FCR(98-99)55 — "Implementation of the First Phase of the Electronic Service Delivery Scheme" made on 18 December 1998 to the Finance Committee, we estimated that there would be 800 000 transactions in the first half-year period after the launch. At present, the scheme is still at its initial stage of implementation, and some services are expected to be substantially used later this year (for example, most tax returns are submitted in May each year). Therefore, it is difficult to assess the usage in the first half-year period now and make comparison with the estimate.

The ESD Scheme is an innovative way to deliver services to the community. The public will take some time to familiarize with it. We will continue to carry out more publicity and promotion activities, enhance the performance of the system, and provide more services which are closely related to the daily lives of the public (for example, booking of sports and leisure facilities, booking of marriage dates, purchase of government publications, registration to sit for public examinations, and so on) so as to further encourage the public to make use of government online services.

Annex

*Counts of the Major Services  
used through the ESD Scheme  
(up to 22 April 2001)*

Labour Department — Job Search	40 179
Treasury — Payment of Government Bills	15 488
Hong Kong Tourism Board — Tourist Information Lookup	13 881

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Social Welfare Department — Application for Volunteer Schemes Registration	7 361
Trade and Industry Department — Small and Medium Enterprises Information Centre	4 106
Innovation and Technology Commission — Information on Technology Funding Schemes	3 441
Trade and Industry Department — Business Licence Information Service	3 107
Immigration Department — Appointment Booking for Registration of Identity Card	2 134
Change of Address	1 056

## **BILLS**

### **First Reading of Bill**

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

### **COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001**

**CLERK** (in Cantonese): Copyright (Suspension of Amendments) Bill 2001

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

### **Second Reading of Bill**

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

**COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001**

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I move that the Copyright (Suspension of Amendments) Bill 2001 be read the Second time.

The Bill seeks to suspend the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 insofar as it applies to certain criminal provisions in the Copyright Ordinance. But the new provisions will continue to apply to copyright works involving computer software, movies, television dramas and music.

Madam President, as the new Ordinance that came into effect on 1 April 2001 has aroused much concern and heated discussions, I would first of all like to brief this Council on the background of that Ordinance.

The use of copyright infringing products in business, such as pirated computer software, music and film compact discs, is a serious problem in Hong Kong. According to an unofficial estimate, about 50% of all computer software used in business is pirated.

The rationale underlying the legislative amendments last year is to enhance the protection of intellectual property rights. Hong Kong is undergoing a rapid transformation into a knowledge-based economy. Our local enterprises increasingly rely on knowledge, technology and innovative ideas to enhance their competitiveness. To cope with this development, it is very important that we adopt a proactive attitude in protecting intellectual property rights and cultivating public awareness of the issue.

The implementation of the Ordinance will foster the development of local knowledge-based enterprises, particularly the growth of the computer software industry, thereby providing more choices of software for our industries. It will also contribute to the development of Hong Kong as a leading information technology city in Asia. In addition, enhancing the protection of intellectual property rights would help attract foreign investments to Hong Kong, which will in turn contribute to our long-term economic development and create more job opportunities.

Madam President, intellectual property right is a complex subject. Different media have different regimes for copyright protection and for the licensing of copyright works. In principle, copyright works in all media, such as the electronic media and the printed media, should enjoy the same level of protection without differentiation.

Successful experience of other countries and regions reveals that adequate copyright protection requires the determination of the government, up-to-date legislation and effective enforcement machinery. Furthermore, it will require a mature and well established licensing mechanism and the cultivation of public respect for intellectual property rights.

In Hong Kong, different media are at different stages of developing their regimes for copyright protection and licensing of copyright works. As regards computer software and works of films and music, the licensing mechanism is relatively simple and clear. The Government's determination and measures taken to combat pirated software and compact discs over the past few years have enhanced the public's awareness of copyright protection for these types of work.

With the co-operation of the industries concerned, we have been very successful in curbing the piracy of these works at the production and retail levels. Our efforts are internationally recognized.

In comparison, the licensing and exemption regimes in respect of copyright works of other media such as books, newspapers and magazines, television and radio broadcasting and the Internet, have yet to be established or are being refined. In the absence of a convenient mechanism for obtaining the required authorization and faced with the threat of criminal proceedings, the new Ordinance has hampered the dissemination of information in enterprises as well as teaching activities in schools. In this connection, at the meeting of the Legislative Council Panel on Commerce and Industry on 12 April 2001, the Secretary for Commerce and Industry, Mr CHAU Tak-hay, expressed regrets to the public on behalf of the Government and pledged to explore ways to solve the problem. He himself made an apology to the public as well.

To address the immediate concerns of the public, the Government has drafted the Bill so that the criminal provisions in the recently amended Copyright Ordinance will revert to the position before the amendments took effect. But the new provisions will continue to apply to copyright works involving computer software, movies, television dramas and music.

Some Members suggest that the Bill should adopt an all-embracing suspension approach to cover all copyright works including computer software and so on. I wish to make it clear that the Government cannot agree to this.

The suspension should not apply to such copyright works because they are not normally "information" disseminated in enterprises or schools. Where these copyright products are involved, the general public has not encountered the difficulties just mentioned in complying with the new Ordinance.

Moreover, these products generally have substantial commercial value and the piracy of them, in particular computer software, in Hong Kong and elsewhere is rampant. In the past, the widespread piracy problem has deterred companies from investing in the development of new software to compete with mainstream products in the market. The new Ordinance has the effect of encouraging enterprises to use legitimate software. In the long term, this will attract more investment in the development of new software, promote market competition and offer consumers with better choices at lower prices.

It is therefore necessary to continue with the implementation of the new Ordinance in respect of the above products; otherwise, all our previous efforts will count for nothing.

I must emphasize that the legislative intent of the Government in making the possession of pirated computer software in the course of business a criminal offence has been clear and unambiguous. Both the Legislative Council and the public have understood and agreed with this. In fact, in the consultation document published in early 1999, the Government stated clearly its proposal to make it an offence for the possession of pirated goods such as computer software in the course of business. This proposal gained wide public support. When the results of the public consultation exercise were discussed in June 1999, the Legislative Council Panel on Trade and Industry also explicitly support the proposal. When introducing the Bill into the Legislative Council for the First and Second Readings in January 2000, the Government clearly explained the legislative intent. This was later reiterated at the Bills Committee meeting and the Third Reading of the Bill at the Legislative Council in June. It is evident from the above that during the processes of consultation and scrutiny of the Bill, the Legislative Council did not object to the legislative intent and the public supported the proposal. After we launched the massive publicity programme

for the new Ordinance last November, we have not received any objection from the public to the principle of imposing criminal sanction against the possession of pirated computer software in the course of business.

Thus if an all-embracing suspension approach were adopted hastily without rhyme or reason, it would send a wrong message that Hong Kong takes a retrograde step in the protection of intellectual property. The public and enterprises would be confused. Hong Kong's international image would be seriously damaged, and foreign investors' confidence in Hong Kong would be affected.

I wish to urge Members not to adopt the all-embracing suspension approach — it is just like giving up eating for fear of choking. This will only hinder our efforts in combating piracy activities.

The suspension is only a short-term measure which will end on 31 July 2002. After the enactment of the Bill, we shall consult non-government organizations, the copyright owners' industries and various sectors of the community and the Legislative Council, with a view to formulating a long-term solution to the problem. Where necessary, we will introduce another Bill to make further amendments to the law.

Madam President, the early enactment of this Bill will help address the concerns of the public. With these remarks, I commend this Bill for Members' support. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Copyright (Suspension of Amendments) 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 of the Rehabilitation Centres Bill.

**REHABILITATION CENTRES BILL****Resumption of debate on Second Reading which was moved on 18 October 2000**

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, I speak in my capacity as Chairman of the Bills Committee on Rehabilitation Centres Bill.

The Bill provides for the establishment of rehabilitation centres for young offenders who are considered unsuitable for the Detention Centre (DC) and Training Centre (TC) programmes. The Rehabilitation Centre (RC) programme targets young offenders who are aged from 14 to below 21. The programme is divided into two phases. The first phase of the programme will provide two to five months' training in a correctional facility which focuses on discipline training. In the second phase, the inmates will be accommodated in a penal facility with a half-way house setting for a period of one to four months on a mandatory basis.

The Bills Committee has discussed the issue of location for RCs. The Administration has explained that four RCs will be set up to provide a total of 224 places for offenders of both sexes. To provide the required accommodation and minimize the resource implications, the Administration will set aside certain parts of the existing penal facilities and carry out necessary refurbishment works.

Some members have expressed concern about the desirability of setting up Phase I facilities of the proposed RCs at existing penal institutions such as the Sha Tsui Detention Centre. As detainees at DCs are generally offenders who have committed more serious offences, the proposal might cause the public to associate the RC inmates with young offenders detained in the DC and have a bad impression of them. The Administration has assured members that detainees in the new RCs and those in DCs would be physically segregated and effectively supervised. The Government has agreed to consider giving the new RCs a distinct name so as to dissociate them from nearby penal institutions.

The Bills Committee is also concerned about the cut-off date to determine the eligibility of a young offender for the RC programme. The Administration proposes to treat the date of sentencing as the date on which a detention order is made. Thus, an offender who attains the age of 21 during the remand period and pending sentencing by the Court would not be eligible for the RC programme.

Members note that both the DC and TC programmes have adopted the "date of conviction" as the cut-off date. They have therefore requested the Administration to reconsider the matter. The Administration agrees that the cut-off date for the proposed RC programme should desirably be set at the date of conviction.

Discussions of the Bills Committee centre mostly on clause 10 of the Bill, which empowers the Chief Executive to direct the transfer of an offender from a RC to a TC or prison where circumstances arise. There are two areas of concern.

Some members consider it inappropriate for the Chief Executive to be the authority to order a transfer. These members consider that the authority to order a transfer should rest with the Court.

The Administration has explained that if a young offender is found incorrigible under the RC programme, the Administration has to transfer him to another rehabilitation programme. This may also shun bad influence on other inmates in the RC.

As regards members' suggestion that the authority to order transfer should be vested with the Court, the Administration considers that the judicial process should come to an end after a sentence has been passed by the Court (subject to appeal, if any). Therefore, the authority to order transfer as conferred by clause 10 is not within the customary sentencing purview of a Court.

The Administration has informed members that there are numerous precedents for the Chief Executive, rather than the Court, to be given such authority. For example, the Chief Executive may replace indeterminate sentences (such as life imprisonment or detention at Executive discretion) with determinate sentences on recommendation of the Long-term Prison Sentences Review Board. He may grant sentence remission upon prisoners' petitions, on

grounds of poor health, assistance rendered to prosecution, and so on. In particular, the Chief Executive is given the authority to transfer a detainee of a DC, TC or Drug Addiction Treatment Centre to another Correctional Services Department programme, because of the institutional (as opposed to criminal) behaviour of the detainee.

The Administration thinks that it is appropriate to confer on the Chief Executive the authority to order the transfer of problematic inmates to other programmes.

Another concern of the Bills Committee is that in directing the transfer of a RC inmate to a prison, the Chief Executive may determine the length of a prison term which should not exceed the maximum term of imprisonment to which the RC inmate was liable for the relevant offence of which he was convicted.

Members have expressed concern about the situation where an inmate could be given a term of imprisonment for a crime he has committed which far exceeds the length of detention for which he is liable under the RC or TC programme. At present, the maximum detention period in a RC or TC, is nine and 36 months respectively. Members consider that any prison sentence exceeding these is unacceptable.

Having reviewed the matter in the light of the members' concerns, the Administration has agreed to introduce Committee stage amendments (CSAs). The Administration proposes that the maximum period of detention determined by the Chief Executive of a young offender in prison after transfer from a RC should not exceed the unexpired part of the maximum nine-month term in a RC or the maximum term of imprisonment to which he is liable for the relevant offence of which he was convicted, whichever is the less.

At the request of a member, the Administration will propose an amendment to the effect that in determining the length of a prison sentence in the case of a transfer to a prison, the Chief Executive is required not only to consult but also to take into consideration, as far as possible, the recommendations of the trial Judge who made the original RC detention order.

Madam President, I would like to take this opportunity to thank members of the Bills Committee for their active participation. I also wish to thank the Administration for taking on board the opinions of members and for proposing the above amendments and other CSAs to make the Bill complete.

Madam President, I now speak on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB) in support of the Bill. The DAB thinks that some young offenders are considered unsuitable for existing DCs and TCs. Thus, there is a need for RCs as proposed by the Bill.

In scrutinizing the Bill, the Government has agreed to make some appropriate amendments in response to the concerns expressed by some members. Therefore, the DAB will support the Bill.

Madam President, I so submit.

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

**MR WONG SING-CHI** (in Cantonese): Madam President, concerning the Rehabilitation Centres Bill, the United Nations passed a resolution in 1995 on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and it was stated that detention had adverse psychological and social impacts on juveniles. Detention should be regarded as the last resort and it should be restricted to offenders who have used violence or repeatedly committed serious offences. There is a discernible tendency of the international community towards assisting juvenile offenders in receiving rehabilitation and counselling so that they will turn over a new leaf, thus avoiding isolating juvenile offenders from the community.

As regards services for juvenile offenders, Hong Kong has always lacked community-based sentencing options, and the rehabilitation programme actually provides an additional option. Unlike other programmes, the rehabilitation programme consists of two phases. Phase I of the programme will focus on discipline training and is similar to a correctional programme. During Phase II, young offenders will participate in community service programmes. Although they are accommodated in an institution, they may go out for work or attend vocational training courses. Such an arrangement will allow young offenders to prepare during the transitional period for eventual re-integration into society so that they or their families will find it easier to adapt psychologically and also easier to cope with life situations and problems. It is believed the programme can help young people reintegrate into society. Therefore, the Democratic Party supports the Rehabilitation Centres Bill.

Whether the programme under the Rehabilitation Centres Bill can be helpful to young people depends on the practical implementation. The four RCs to be established by the Government are not independent. Training in the first phase of the programme will be provided in the Sha Tsui Detention Centre and the Chi Ma Wan Drug Addiction Treatment Centre as mentioned by the Honourable Miss CHOY So-yuk just now, while training in the second phase of the programme will be provided in the Phoenix House and the New Life House half-way houses. Establishing RCs near other institutions can reduce administrative costs and afford greater convenience and flexibility in the deployment of manpower. For instance, young people will have more choices when they intend to take up skills training courses. However, problems will easily arise in operation. Miss CHOY So-yuk has just said that the Bills Committee also noted such problems. If RCs are established near other penal facilities, will it have a labelling effect on the young offenders and will they come into contact with other young offenders who have committed more serious offences and be influenced by them? Fortunately, the Government has told us very explicitly today that these offenders will not come into contact with one another. In the course of implementation in the future, we hope that the Administration will really separate the young people in different penal facilities so as to avoid mutual contact and influence.

If RCs were established in DCs, some young people would easily be labelled as I have said. We really hope that the Administration will tell us explicitly the distinct name of the RCs so as to dissociate young people sentenced to RCs from other institutions for offenders who have committed more serious offences.

We also hope that the Government will be able to train these young people rather than penalizing them for their offences under the premise that they will be able to reintegrate into society although they have committed minor offences. Then, these young people will really have a chance to return to the right course and re-integrate into society. The Democratic Party supports this Bill. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak? If not, I will invite the Secretary for Security to speak.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Rehabilitation Centres Bill was tabled to the Legislative Council for the First and Second Readings on 18 October 2000.

The Bill seeks to provide legal basis for drawing up and implementing a rehabilitation centre (RC) programme for young offenders, and providing an additional sentencing option for the Court in dealing with young offenders. This brand new rehabilitation service is in line with the trend of development in correctional services, and the community-based measures have been enhanced in particular. Young offenders participating in the programme have to undergo two phases of training. Having finished the first phase of custodial disciplinary training, the inmates shall be accommodated in a RC which is similar to a half-way house during the second phase. In this latter phase, they may go out for work, attend vocational training and educational courses, and participate in community service programmes. Also they can maintain closer contacts with their family members and friends. We believe that the design of the new programme can allow relevant inmates to experience the course of rehabilitation in a more open setting, which is good for them to reintegrate into society after release.

I am very thankful to Miss CHOY So-Yuk and other members of the Bills Committee on Rehabilitation Centres Bill (the Bills Committee) for conducting a detailed study and comprehensive discussions on the contents and relevant issues of the Rehabilitation Centres Bill, and finding time to visit some institutions of the Correctional Services Department (CSD) and the Social Welfare Department, so as to understand the operation of the existing programmes in helping young offenders to rehabilitate. After four Bills Committee meetings, we reached a consensus with the Bills Committee on the policy of establishing the RCs and details of the Bill. To perfect the legislative proposal, I shall move several amendments to the Bill at the Committee stage. The amendments have already been thoroughly discussed by the Bills Committee and endorsed by members.

It is worth mentioning here that we have had detailed discussion with the Bills Committee on clause 10 of the Bill in respect of the arrangement for transferring a problematic young offender from a RC to a prison.

First, I would like to point out that according to CSD's experience in managing other existing rehabilitation programmes for young offenders, problematic young offenders who required transfer to a prison are extreme small in number, if any. However, we still need to make suitable provisions for relevant transfer arrangements in case such needs arise. If the young offenders are incorrigible under the RC programme, arrangements should be made for

them to change to another rehabilitation programme in their interest. Moreover, if the inmates are not transferred to other programmes even though they exercise bad influence on other inmates of the RC, then the effects of the RCs programme on reforming other inmates will then be undermined.

As for the details of the provisions, we have reached a consensus with the Bills Committee that they will be amended suitably, so as to lower the ceiling of custodial period for relevant young offenders after they are transferred to a prison. Also, it is to ensure that the Chief Executive may as far as possible consider the recommendations made by the trial Judge or Magistrate in respect of the detention period. As for the relevant details, we will give explanations later on at the Committee stage.

Furthermore, I would like to talk about the required procedures if we need to adopt the above provisions to deal with problematic young offenders. In conducting regular reviews on the progress of every young offender under the RC programme, the Commissioner of the Correctional Services, if satisfied that certain inmate is incorrigible or exercises bad influence on other inmates, and cannot be suitably dealt with by the disciplinary proceedings provided in law, may draft a report to be submitted to the Chief Executive for consideration via the Secretary for Security with the conclusion and recommendations he made on how to deal with that inmate therein.

In handling the recommendations related to the transfer of inmates, we will seek legal advice from the Department of Justice for the Chief Executive's consideration. The Chief Executive may decide whether the inmate should be transferred to a TC or a prison. In the case of transfer to prison, the Chief Executive shall, as far as applicable, consult the trial Judge or Magistrate making the RC detention order when determining the term of imprisonment.

When determining the term of imprisonment, the Chief Executive must consider as far as possible the recommendations made by the relevant trial Judge or Magistrate. In fact, the Chief Executive shall not contravene the basic principle of judicial justice when he exercises his discretion in accordance with the relevant provisions.

With the above explanation, we hope to assure the Committee that in case there is a need to enforce the relevant provisions in future, they will be operated with propriety.

I appreciate that apart from the legislative proposals, the Bills Committee has made many recommendations in respect of the future implementation of the RCs programme, which includes the naming of the RCs, setting the age of aftercare officers of the CSD who take care of the inmates at the RCs, and making arrangements for segregating inmates at the RCs from prisoners at the neighbouring penal institutions. As for these valuable suggestions, we definitely will consider them carefully when this programme is thoroughly planned and implemented.

It is worth mentioning that our usual policy is to segregate prisoners of different categories, so apart from segregating males from females, adults from juveniles, we also segregate inmates under different rehabilitation programmes. Therefore, we can assure Honourable Members that although we will utilize some parts of the existing penal facilities for the use of a RC, we will ensure that inmates of the RC will be properly segregated from prisoners of the neighbouring institution.

I trust that with the implementation of the RCs programme after the Bill has come into effect, the Court can be helped to address the crux of the problem more effectively when sentencing young offenders. Hence, young offenders of different circumstances can get the rehabilitation service best suited to their needs and more effective help is rendered to them for turning over a new leaf and reintegrating into society.

Madam President, I hope that Members will support the Rehabilitation Centres Bill and the amendments I shall move later on at the Committee stage. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Rehabilitation Centres 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): Rehabilitation Centres Bill.

Council went into Committee.

### **Committee Stage**

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

### **REHABILITATION CENTRES BILL**

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

**CLERK** (in Cantonese): Clauses 1, 2, 3, 5 to 8 and 13 to 18.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 4 and 9 to 12.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that clauses 4, 9, 10, 11 and 12 be amended, as set out in the paper circularized to Members.

The amendment to clause 4(2)(a) seeks to provide clearly that the date of conviction of an offender should form the basis for determining whether an offender falls into the age group eligible for the Rehabilitation Centres (RCs) programme. This is consistent with the current rehabilitation programme for young offenders implemented by the Correctional Services Department.

The amendments to clause 9(4) seeks to ensure that when tracking down a person unlawfully at large, for example, an escapee from a RC, police officers or correctional service officers may enter a particular premises for the purpose of search only if they reasonably believe that the person is on that premises and no person appears to be on the premises.

Regarding the background of the amendment to clause 10, I have already explained it in the Second Reading debate. The clause is amended to the effect that the maximum detention period of an offender in prison after transfer from a RC should not exceed the unexpired part of the maximum nine-month term in a RC or the maximum term of imprisonment to which he was liable for the relevant offence of which he was convicted, whichever is the less.

Moreover, improvements have also been made to the drafting of the clause to provide clearly that in determining the length of a prison sentence of a young offender in the case of a transfer from a RC to a prison, the Chief Executive is required to consult, where practicable, the trial Judge or Magistrate, and must take into consideration, so far as possible, the recommendations made by the Judge or Magistrate.

The amendments to clauses 4(2)(f), 11(3) and 12 are purely technical in nature or for clarification purposes. The above amendments are proposed in the light of the suggestions made by the Bills Committee on Rehabilitation Centres Bill.

Madam Chairman, I beg to move. I hope Members will support the passage of these amendments. Thank you.

*Proposed amendments*

**Clause 4 (see Annex VIII)**

**Clause 9 (see Annex VIII)**

**Clause 10 (see Annex VIII)**

**Clause 11 (see Annex VIII)**

**Clause 12 (see Annex VIII)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 4 and 9 to 12 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move the deletion of the schedule as set out in the paper circularized to Members.

This is a necessary consequential amendment upon the amendment to clause 12 passed by Members earlier on. I urge Members to support and approve the amendment. Thank you.

*Proposed amendment*

**Schedule (see Annex VIII)**

**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 Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendment to the schedule, which deals with deletion, has been passed, the schedule is deleted from the Bill.

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

Council then resumed.

### **Third Reading of Bill**

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

### **REHABILITATION CENTRES BILL**

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

Rehabilitation Centres 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 Rehabilitation Centres 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): Rehabilitation Centres Bill.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. Since Members are already familiar with the rules on the time limits on speeches, I will not repeat them here. I just wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Establishing the technology industries processing zone.

## **ESTABLISHING THE TECHNOLOGY INDUSTRIES PROCESSING ZONE**

**DR LUI MING-WAH** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

The Hong Kong economy began to recover in the fourth quarter of 1999. Last year, our Gross Domestic Product (GDP) registered a 10.5% growth. But ironically, the majority of Hong Kong people have not benefited from the

economic growth. According to the figures of the Census and Statistics Department, there were still 154 000 unemployed people in Hong Kong at the end of March 2001. The unemployment rate still stood at 4.6%, while the Composite Consumer Price Index in March was -1.3%, showing that deflation in Hong Kong was still serious.

This phenomenon is attributable mainly to the extremely unbalanced development of the Hong Kong economy over the past 20 years. In 1999, for instance, the service sector accounted for 85.4% of the GDP. This is unique in the world. Moreover, the service sector consists mainly of the real estate sector, finance and insurance, the wholesale and retail industry, import and export trade, the transport industry, tourism and the catering industry. The excessive concentration of the economy on the service sector has rendered the Hong Kong economy extremely vulnerable and susceptible to external economic factors. Due to this kind of economic structure, and the fact that the growth of the service sector depends on the overall economic activities, which restrict growth and the number of persons employed in the service sector, the unemployment rate in Hong Kong will remain high and domestic consumption will remain stagnant, thus resulting in sustained deflation.

Actually, every independent economic entity — since Hong Kong is an independent tariff territory, it is an independent economic entity — must create wealth continuously to sustain its economic activities. For countries rich in natural resources, wealth can be created by the mining industry, agriculture, fishery and forestry. Their industry manufactures goods and processes the resources to add value to them, while their wholesale, retail and transport industries serve the primary and secondary industries. As a result, economic entities like these can be self-sufficient and maintain over the long term. However, economic entities lacking in natural resources like Hong Kong and Singapore can only rely on the manufacturing industry or other economic activities to earn foreign exchange in order to purchase imports and sustain the domestic economic activities. The electronics industry and petrochemical industry in Singapore, for example, account for about 30% of its GDP and make enormous foreign exchange earnings annually. In addition, Singapore attracts a huge amount of inward investments each year and has a booming services sector. As a result, the Singapore economy has managed to maintain high growth and its unemployment rate is kept at a relatively low level. In 1999, its unemployment rate was only 3.3%. Their people are well-off and society stable. All this has to do with Singapore's economic policy.

In contrast, one can only sigh at the situation in Hong Kong. During the '70s, people already called for the upgrading and restructuring of the industry. However, the then British Hong Kong Government neglected the importance of industry and failed to adopt vigorous measures to develop industry in the high-tech direction. As a result, after the opening of mainland China in the early '80s, industries began to move north to the Pearl River Delta in order to maintain their competitiveness in the international market and in order to survive. Thus, a long process of the drain of industries began in Hong Kong. After the reunification with the Motherland in 1997, the Government of the Hong Kong Special Administrative Region (SAR) expressed the laudable wish of building Hong Kong into a world-class metropolis, like New York in the United States or London in Britain. It was thought that the objective of building Hong Kong into a great city could be achieved by actively developing the service sector and tourism. Unfortunately, the Government failed to realize that the financial sector and tourism could not generate enough foreign exchange earnings to sustain Hong Kong's economic activities and employment.

Some scholars have pointed out that despite the Hong Kong economy has resumed growth, the unemployment rate remains high and deflation continues mainly because the economic growth is generated by the real estate sector, the financial sector and the re-export trade. Wealth is concentrated and accumulated in the upper strata of society and the general public has not reaped any benefits. This results in polarization of the rich and the poor. Thus, Hong Kong needs to revitalize the local high-technology and high value-added manufacturing industry in order for the economy to develop in depth and breadth and so that it can lead the growth of the overall economy and create job opportunities. If we look back at the history of Hong Kong, from the '50s to the early '90s, the export-oriented local manufacturing industry spearheaded the continued development of the Hong Kong economy. In the late '70s, before the exodus of the industries, the manufacturing industry accounted for 24% of the GDP and provided employment for 900 000 Hong Kong people. Now, due to the outward relocation, the manufacturing industry only accounts for 5.7% of the GDP, while the number of persons employed has dropped to 200 000. This shows that the dwindling manufacturing industry has a serious impact on the Hong Kong economy. The importance attached to industries by countries throughout the world shows that their role in the economy is by no means negligible. The Dow Jones Index in the United States is calculated with reference to 30 large companies, the majority of which are industrial enterprises. The rise and fall of the Dow Jones Index reflect the rise and fall of the United

States economy and its directions, and their effects are felt in large cities throughout the world.

Thus, to create new areas of economic growth and job opportunities, Hong Kong must revitalize the local manufacturing industry, especially the high-technology and high value-added industries. In order for Hong Kong to compete with other cities, the Government should adopt the following measures to attract inward investment: establishing the technology industries processing zone and offering it to manufacturers at nil premium or very low premium; profits tax exemption should be offered for the first three years, followed by 50% profits tax cuts after five years and another 50% cut thereafter; and another concession would be permission to import professionals and 50% of the workers. On the surface, this may seem to deviate considerably from existing policies and sell out Hong Kong in a blatant manner. But if we study them carefully, these measures are compatible with our long-term economic interest and will meet the demand for employment in Hong Kong in the long run. The transformation of Hsinchu in Taiwan is a case in point. At present, only 80 000 people are employed in the Science Park in Hsinchu. However, due to the establishment of the Science Park, the population in the neighbourhood of Hsinchu has risen from less than 100 000 to 360 000 and the majority of companies there serve the Science Park. This shows that if the technology industries processing zone can be established in Hong Kong, not only will there be employment for skilled and non-skilled workers within the zone, but factories and services will also spring up in the peripheral areas. This will create an intellect zone that will provide job opportunities and stimulate domestic consumption and economic growth in Hong Kong.

Some people may oppose my motion. Their reasons may come down to several reasons. First, they are of the view that by providing land at nil premium, the Government will be giving preferential treatment to the manufacturing industry. Second, the importation of workers will reduce the job opportunities of the local labour force. Third, the admission of technology talents will reduce the demand for local graduates. Fourth, the tax concessions are unfair to other enterprises.

I propose this motion because Hong Kong's economic development has already deviated from the usual course of economic development and unhealthy structural problems have appeared. If the Government still refuses to make major policy changes to adjust the economic structure, the unemployment rate

will remain high and grievances, anxiety and pessimism will prevail in society, with far-reaching effects. Besides, by importing 50% of the workers, an equal number of jobs can be created. It is a smarter move than it appears. The admission of professionals may also lead to the creation of more jobs. The eagerness to attract hi-tech professionals in advanced countries such as the United States, Canada and European countries is the best example. As for providing land at nil premium, it can be regarded as a social investment. Such measures are adopted by many cities. Tax concession is a common policy for encouraging investment in technology and not a Hong Kong invention.

I wish to remind Members again that Hong Kong's current economic structure is a result of the development over the past 20 years or so. The transformation from an export-oriented economy to service-led has been a result of the policy of non-intervention of the British Hong Kong Government. If the SAR Government still fails to support Hong Kong's manufacturing industry with policy measures to make it the basis of economic development, thus providing customers for the service sector, promoting employment, attracting overseas investment and generating foreign exchange earnings, Hong Kong's structural operating deficit will remain. If that happens, the Government can only meet its social expenditure by widening the tax base, increasing tax or dipping into the fiscal reserves. This is a realistic problem and possible consequence that we should consider. This motion merely seeks to put forward a solution for consideration by the Government and various sectors of society, in order to stimulate better ideas. I hope colleagues of the Legislative Council who are present will actively participate in discussing the specific terms and proposing wiser alternatives to support the establishment of the technology industries processing zone and solve the problem we are facing in order to make contributions to society. These are the ultimate aims of this motion.

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

**Dr LUI Ming-wah moved the following motion: (Translation)**

"That, as countries are scrambling to develop high-technology and high value-added industries in order to strengthen their economic base and enhance their competitiveness, this Council urges the Government to designate land for establishing the technology industries processing zone, with a view to revitalizing the local manufacturing industry, promoting

exports and creating job opportunities, thereby giving impetus to the development of the local economy."

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

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr LUI Ming-wah be passed.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam Deputy, colleagues in the import and export sector and I visited a friend's toys factory in Dongguan last month. The factory employs more than 7 000 workers and most of them are responsible for the assembly of component parts. The monthly salary of an employee is RMB¥480 and the monthly salary of a computer software designer is only RMB¥5,000 to RMB¥10,000. Obviously, Hong Kong industries no longer have the prerequisites to return to the old path of labour-intensive operation. To re-establish the foundation of local industries, as advocated by the Chief Executive, Hong Kong must develop knowledge-intensive innovative technology industries and commercialize the results of scientific research before it can develop into a centre of innovation and high value-added products.

We cannot only talk about concepts if we want to successfully develop high value-added and innovative technology industries. To attract more technology-based enterprises to invest in Hong Kong, I think the proposal to construct a processing zone for technology industries is worth consideration in principle. The Government should be proactive and enterprising and try its best to stimulate investment by means of taxation and land policies. As the development of innovative technologies often require long-term investment, the Government should consider offering preferential treatment in the form of tax exemption and tax holidays to attract technology enterprises to operate in the processing zone for technology industries. The Government may not get a lot of tax revenue from these enterprises, but it can attract enterprises that intend to invest in Hong Kong. It can then admit talents and create more jobs for the people as well as stimulate consumption and the demands for offices and housing.

Talents are also very important besides business costs; otherwise, it will be futile to establish a processing zone for technology industries. The Government should expeditiously implement the admission of mainland professionals scheme to attract technology professionals that Hong Kong lacks. To ensure the quality of the professionals, the scheme must have a simple and quick vetting process with stringent requirements. For instance, the applicants must possess recognized higher education degrees or professional qualifications and outstanding academic results as well as three to five years' relevant working experience. Moreover, the Government should not be mean in extending financial support to local universities for scientific research and talents training. Its determination to support universities should not wane at the intrinsic quality of technology industries not reaping good results within one to two years.

The Hong Kong Progressive Alliance (HKPA) must emphasize that although we in principle think that the proposal for the construction of a processing zone for technology industries merits consideration, it does not mean that we will support Dr the Honourable LUI Ming-wah's proposals ancillary to a processing zone such as free premium and importation of labour from the Mainland which are not covered by the motion. The HKPA thinks that since the motion does not cover these proposals and they are operational arrangements rather than matters of principle, we can discuss whether these proposals are feasible later.

The Government should also carefully choose the industries in which innovative products will be developed to avoid getting half the result with twice the effort. The business costs, cost of living index and labour cost in Hong Kong are several times higher than those of neighbouring regions and it is basically impossible for us to attract to Hong Kong the large-scale processing activities of technological products. I think that the Government should attract capital by means of its features. In the past decade or so, the quality of "Made in Hong Kong" products was credible, reliable and stable to a certain extent. Although the prices were higher, as the products had a good reputation, they were widely recognized and trusted by consumers. The pharmaceutical manufacturing, biochemical technology products and high-grade food processing industries also put a lot of emphasis on quality. As Hong Kong is a small place, it is much easier for the Government to enforce laws to protect the intellectual property rights of new technology products than other bigger regions. As the

SAR Government also has a reputation for being a clean government and it has a more transparent legal system, it has the prerequisites for attracting high-tech industries to Hong Kong.

Madam Deputy, the establishment of a processing zone for technology industries not only helps promote the development of high value-added industries but also helps stimulate exports. In the first quarter of 2000, the total exports value was 15% less than that of the same period last year. To revive the growth in exports in the long run, we should fully grasp the business opportunities arising from China's accession to the World Trade Organization and develop the technology processing industries in Hong Kong.

Madam Deputy, I so submit.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, since the reunification, the SAR Government has adopted a more positive and progressive attitude towards the development of technologies in Hong Kong. As the British Hong Kong Administration lacked foresight, the development of high technology and high value-added industries in Hong Kong lagged far behind our neighbouring regions in the past. Taiwan has a famous Hsinchu Science Park and the Mainland has a representative Zhongguancun Science Park in Beijing. Although the conditions and infrastructure of our neighbour Shenzhen are inferior to those of Hong Kong, it started to develop high-tech industries a few years ago with the strong support and guidance of the local government.

In the past 20 years, most industries in Hong Kong have moved northward and a "shop-cum-factory" mode of operation was adopted. As a result, the economic development of Hong Kong was forced to lay excessive emphasis on the service industries. The financial turmoil precisely exposed the weakness of putting little emphasis on industrial development. As local workers demand higher wages than mainland workers, it is certainly impossible for Hong Kong to develop labour-intensive industries but it is feasible to develop high-technology and high value-added industries.

In fact, there are potential problems with the economic development of Hong Kong and it is time for us to reposition our industrial development. Hong

Kong manufacturers who invest and establish factories in the Mainland engage mainly in the labour-intensive production of consumer goods and they have recently encountered more and more difficulties in the export of these products. Apart from competition from regions with lower production costs, their products have also been replaced by upgraded products overseas or on the Mainland. Therefore, the competitive edge of Hong Kong products in the market is subject to increasing challenge. The domestic sales on the Mainland also meet intense competition from similar products on the Mainland. It is forecast that after China's accession to the World Trade Organization, tariffs will substantially decrease and various types of overseas products will be directly imported to China and Hong Kong products will then meet a more vigorous challenge.

Moreover, the "shop-cum-factory" mode of operation is also subjected to test by an increase in business costs. Production costs such as land premium and wages in the Pearl River Delta have increased continuously in recent years, forcing Hong Kong businessmen to move their production lines further north inland. If this trend persists, it may affect the commercial relationship between these production activities and Hong Kong and the benefits of these activities to our economy. Therefore, the SAR Government should consider taking suitable measures to assist Hong Kong businessmen in developing high value-added industries and attract them back to Hong Kong. The development of high-technology and high value-added industries will also help create more jobs in Hong Kong and alleviate the excessive dependence of our economy on the services sector, thus, there will be more balanced development in the future.

Madam Deputy, taking into account the above factors, I think the SAR Government can consider providing inexpensive land and attractive tax concessions and adopting proactive policies to promote the development of high-technology and high value-added industries. With these remarks, I support the motion. Thank you.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Deputy, I jointly proposed a number of proposals with the Honourable James TIEN of the Liberal Party earlier on the freezing of government fees and charges. As a result, somebody said to us half-jokingly that recently, there was a frequent "collusion of employers and employees" in the Legislative Council. Whenever there is a

need to stop the Government's profiteering move, or there was a need to "seek extra advantages from the Government", the Hong Kong Confederation of Trade Unions (CTU) and the business sector would have a lot of "secret conversation". I believe today's motion is another chance for employers and employees colluding to look for "extra advantages". However, I can assure the Government that we are absolutely not duping the Government. It is because the "extra advantages" we are looking for will benefit not only the healthy development of the economy of Hong Kong, but also the community at large. In the end, it will also benefit the Government.

Madam Deputy, to a number of free market believers, today's motion is indeed "treason and heresy". To those people, the provision of preferential treatment to specific industrial sectors and encouragement of activities in seeking "extra advantages" will serve to distort the effective resources allocation mechanism of the market, and eradicate the "positive non-interventionism", which is the foundation of the success of Hong Kong. In the long run, so doing will only harm the economy of Hong Kong.

However, I do not subscribe to the above view that puts market before anything else. Even during the time when the economy of Hong Kong was taking off, the Government implemented land policies such as constructing factory buildings and housing estates in the vicinity of industrial areas to ensure the supply of inexpensive land and labour for the manufacturing industry, with a view to helping the development of industry. Today, if we take a broader view of the world, almost none of the economic systems with considerable development in high value-added industries have not seen intervention by local government in different ways and to different extents. Taiwan, South Korea and Singapore are no exceptions. In contrast, thanks to the Government's excessive emphasis on the market mechanism in Hong Kong, the local manufacturing industry has ended up in its present plight today. This is obvious to all, and to be more precise, horrific.

The CTU supports the motion of Dr LUI Ming-wah mainly because we agree to the general direction of revitalizing the local manufacturing industry. If we are to revitalize the local manufacturing industry, vigorous government support is indispensable.

In recent years, the Government has vigorously promoted the integration of the economy and information technology, with a view to making Hong Kong the premier financial and business services centre in the Asian region. This direction of development is an objective consequence of a division of labour in the regional economy. We can say that it is a general trend that may not necessarily be averted by our subjective aspiration. However, it does not mean that there is completely no room of survival for the manufacturing industry, or the local manufacturing industry has to be abandoned completely.

Firstly, we have to think about employment opportunities. There is this argument that in the so-called knowledge-based economy, even workers of lower academic qualifications may also benefit from growth in domestic consumption driven by high value-added activities. I am not that optimistic in that respect. Undoubtedly, the consumer industries can create jobs that only require a lower level of academic attainment. However, at present, it is difficult for a person over 30 years of age to find a job. As a result, many middle-age workers are simply unable to enjoy these employment opportunities.

Furthermore, the development of information technology makes it easier for enterprises to relocate jobs of lower skill requirement to other regions. For instance, the recent relocation of HSBC's back-office operation to the Mainland has strip off the employment opportunity of those bank employees who originally hold a stable job. If we are not that forgetful, we should remember that the relocation of manufacturing processes to China in just over a decade or so has made Hong Kong lose 700 000 jobs in the manufacturing industry. We should not ignore the impact of the relocation of some of the processes of the financial and business services industry to other regions on the local labour market. Therefore, we consider the revitalization of the local manufacturing industry can bring stable and long-term employment opportunities to middle-age workers with a lower level of qualifications.

The CTU supports the revitalization of the local manufacturing industry because of another consideration. That is, we believe that we do not live to work, we should not work for two meals only. Employment should not only fulfil the financial need of the workers; it should also provide workers with the opportunity to bring their talent into play through physical labour. I have many acquaintances who are workers cast out of the manufacturing industry. Even if they can find a decent job in the service sector, they are not necessarily happy. To these workers, sewing a nice-looking dress or making a down-to-earth finished product will give them instant job satisfaction. However, the service sector will take such kind of feeling away from them.

We have to understand that different people have different special skills, some people are good at mathematical analysis, some are good at hospitality, and some are good at craftsmanship. A people-based economic system should consist of a diversified range of economic activities, so that people of different natural gift or special skill can find a job best suits them and brings their talent into play. Just imagine if we only have economic activities in the information technology and business service industry in Hong Kong, and everybody are engaging in that particular industry only, even if the economy is burgeoning, will it be a society of joy?

With regard to the specific proposal of Dr LUI Ming-wah, that is, to establish the technology industries processing zone, frankly speaking, I know little about it. I have heard that several mainland microchip manufacturers, eyeing on the low rate of tax and the social system of Hong Kong, consider the setting up of production lines in Hong Kong would attract mainland and overseas professionals to engage in upstream activities such as microchip design. Initially, I think the establishment of the technology industries processing zone in Hong Kong merits a detailed study. I hope colleagues who have better understanding in this respect can provide us with more information and analysis. If this is proved to have development potentials in addition to bringing employment opportunities to local workers, I will throw my full weight behind it.

Madam Deputy, before I finish, I have to emphasize that the CTU supports the motion of Dr LUI Ming-wah because we agree to the general direction of revitalizing the local manufacturing industry, not because we entirely agree with all of the specific proposals. I believe Members all know that the CTU will not agree with the proposal concerning the importation of 50% of the necessary workers. I believe it is the right time to strive for maximum support, thus the issue of importation of labour should be put on hold. Furthermore, as to the tax concession proposal advanced by Dr LUI Ming-wah, that is, "to exempt profits tax for three years, to levy 50% of the profits tax for the next five years, and to levy 50% for the period after that", it appears it is excessively favourable to the industry, thus we prefer to support tax concession measures of a more specific objective, such as tax deduction for expenditure for research and development and manpower training purposes, and deduction for the depreciation of machinery, and so on.

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

**MR JAMES TIEN** (in Cantonese): Madam Deputy, when the Liberal Party and I first received a copy of Dr LUI Ming-wah's motion, I indicated that it would certainly have my support, after just glancing through it. This is because both Dr LUI and I are members of the industrial sector and advocates for the development of high technology, high value-added activities and technology industries processing zone, something we have been talking about and aspiring. However, Dr LUI subsequently sent us a more detailed, precise and specific representation, and this representation may lead to a change in our stance on this issue. Today, I also heard the Honourable LAU Chin-shek say earlier that if we simply look at the wordings of the motion, it would appear that it worths our support, but he also said his decision will still have to depend on the specific content. I also think that we should look at the specific contents before deciding on how to vote. There can be an occasion when Mr LAU Chin-shek moves a motion on the protection of labour interests in the future, we will certainly have to support it for how can we not support the protection of labour rights? However, how can we still support the motion if we discover that it is actually advocating for minimum wages, collective bargaining or enhancement of various fringe benefits? Therefore, I think that in addition to the wordings of the motion, we also have to look at the specific contents of each and every motion.

Madam Deputy, I think that the difficulties encountered by the industrial sector in the past decade or so only fell into two categories: first, it was high land premium and then it was high wages. The concept of "wages" includes the remuneration and fringe benefits of employees. Amendments introduced to the labour legislation over the past years can be said to have increased the burden of small employers. The two difficulties mentioned above are the most important. Today, we are saying that high value-added and high-technology industries can attract more industries to Hong Kong. As regards the admission of professionals, I absolutely agree with Dr LUI Ming-wah. However, let us take a look at the condition of factory premises, in particular, the condition of what the Government now refers to as industrial estates. Of course, Dr LUI Ming-wah is correct in his analysis, for many factory premises in the industrial estates are used as warehouses or logistics centres, instead of for research and production purposes. Cases like these do actually exist, though some companies in the industrial estates are engaged in the production of optical fibre cable or biotechnological researches. In fact, we can see how many employees have to be employed before a manufactory can be established in Hong Kong? How much money has to be paid in wages to employees? It is proposed in the motion that a new technology industries processing zone should be established.

The Government has been working with us on a plan to combine the established science park, industrial estates and other subvented industrial institutions into one, and integrate them into one project. However, are we moving in the right direction if we now propose to establish another processing zone?

As regards industries that have moved out of Hong Kong in the past several years, I do not think that they will return. Of course, if we can propose some specific improvements, they may return to Hong Kong, as suggested by Dr LUI Ming-wah and this I agree. But in that case, will the community as a whole accept our proposal? Now, let us take a look at the four specific proposals of Dr LUI.

Firstly, on exempting land premiums or charging extremely low land premiums. For example, let us use a 100 000 sq ft factory premises instead of one with an area of 1 million sq ft for the former is more sensible. Based on the current market land premium, industrial land put up for auction by the Government will only fetch a maximum premium of \$100 or so per square feet, and I successfully bid for a lot at this rate in October last year. The premium for 100 000 sq ft of land is more than \$10 million, while the building cost is also quite high, (Mr LAU Chin-shek, part of this cost is labour cost and it is also quite high), at a minimum of \$800 per square feet, that is \$8 million in total. Machinery worth at least \$50 million to \$100 million can be installed in a factory premise of this size, and the total investment on this factory will amount to \$200 million. Even though the Government is willing to grant a piece of land that is worth \$10 million or so for free, can factory operators really be attracted to establishing such a factory? I think today perhaps no factory operator will be willing to do so. In the past, at a time when the cost of land is higher than that of buildings, some factory operators will certainly be willing to do so. However, nowadays even if 100 000 sq ft of land is made available for use as factory premises as in the example, it may still be possible that factory operators will not be attracted to establish factories in Hong Kong.

The other specific proposal is to follow the practice of the Mainland by exempting such investors from payment of profits tax for the first three years, reducing it by half after five years and by a quarter thereafter. This practice has always been adopted in the Mainland. As regards the tax regime of Hong Kong, a simple and clear tax regime has always been implemented for both local and foreign investors. If we simply say that certain manufacturing industries should

be granted tax concessions because they are related to high-technology and high value-added industries in the processing zones, then how can factories in the science park not be granted the same treatment? The technology level of such industries should be higher than those in the processing zone. As such, how can the Cyberport not be granted the same concessions? Its technology level should be even higher. In other words, in accordance with the long-standing practice of the Government, is it not more appropriate that a detailed study be conducted before the policy of exempting profit taxes for the first three years, and then reducing it by half for the next five years be adopted?

The other point is on the importation of labour. Several years ago, when the unemployment rate of Hong Kong was only 2%, the Liberal Party did support the idea of mass labour importation. We also considered the 50% labour importation policy, that is, the ratio between local and imported labour should be one to one, that was under discussion several years ago. However, today, the unemployment rate of Hong Kong is more than 4%, and even many former workers of the manufacturing industry have attended retraining courses, they are still not given any opportunities to work in other service industries. Under such circumstances, is it still practicable to bring up the issue of the 50% labour importation policy again today? Moreover, we can see that most businessmen may consider to establish factories in Hong Kong, if they are allowed to import 50% of their workers and employ imported workers at a monthly salary of \$1,000-odd to \$2,000. Of course, this is infeasible, and there are so many representatives of the labour sector in this Council, how can we expect those Members to support such a proposal? Therefore, I think most businessmen may not establish factories in Hong Kong if they are required to employ imported labour at a monthly salary of \$5,000 to \$6,000.

Here, I would also like to mention that since my company is a member of the Chinese Manufacturers' Association of Hong Kong, I gave our President, Mr CHAN Wing-kee, a call during the holidays, and asked him whether the Chinese Manufacturers' Association of Hong Kong supports the specific content of today's motion. He told me that the proposals had not been discussed by the Association and the four specific proposals raised by Dr LUI today only represented his own views. I have also asked Mr Henry TANG whether his Federation of Hong Kong Industries, with its large membership of factory operators, supports these specific proposals, and he also indicated that they do not support the proposals.

Madam Deputy, for the above reasons, we cannot support Dr LUI's proposal, but as we are all members of the industrial sector, I do not think it is appropriate for me to vote against it. Therefore, under such circumstances, the Liberal Party decides that while we support the general direction of the motion, we cannot support the specific proposals. Finally, we have decided to make a compromise by casting an abstention.

**MR CHAN KAM-LAM** (in Cantonese): Madam Deputy, all economies in the world are developing in the direction of high-technology industries. The promotion of research and the development of high technology and information industries has gradually become a priority task of all countries. While Hong Kong is renowned as one of the international financial centres in Asia, our past experience shows that we have unduly emphasized and relied on financial business. Given the many variables in financial business, we have not been able to reinforce the base of the Hong Kong economy. During the financial turmoil in 1997, for instance, the economy of Hong Kong was hard hit. More importantly, in order to revitalize the economy of Hong Kong, we must also develop substantive industrial operations apart from restructuring the financial business. In view of the global trend of development in the direction of high technologies, I believe the development of technology industries and processing industries can help stabilize the economy of Hong Kong and facilitate the development of a knowledge-based economy in Hong Kong.

As all countries and places in the world are scrambling to develop high-technology industries, high-technology cities have emerged one after another. The most widely known is the Silicon Valley in the United States. In neighbouring Taiwan, there is the well-established Hsinchu Science Park. Industrial zones are also developed in many places on the Mainland exclusively for the production of high-tech products, such as specific components of personal computers, LCD monitors, and so on, attracting investments from 550 enterprises, such as Philips and Fujitsu, totalling over US\$8 billion. From this we can see that the development of these high value-added industries has become the world trend.

Not that Hong Kong is oblivious to this trend. On the contrary, greater efforts have been made to promote development in this direction. The fact that the developments of the Science Park and the Cyberport are surging ahead in full steam is proof of this point. However, both projects focus on the development of advanced technologies and information infrastructure.

The Cyberport is an information infrastructure project which aims to create a cluster of leading information technology companies and professional talents specifically for the development of information and multimedia services so as to provide support for industries and businesses. To put it simply, it focuses on information technology. The emphasis on the development of high-tech products and manufacturing businesses, however, does not appear to be consistent with the notion of the Cyberport. In fact, tenancy in the Cyberport is subject to the vetting of a selection committee. Many of the approved tenants are well-financed and powerful multinational companies, such as Microsoft, Oracle, Yahoo!, and so on. To non-multinational companies or the local small and medium enterprises, tenancy in the Cyberport is perhaps beyond their reach.

The Science Park project at Pak Shek Kok, which aims to provide a venue for researches and exchanges of knowledge and skills in relation to new technologies, is more suitable for developing technology processing industries. However, the Science Park project has made it clear that labour-intensive manufacturing industries engaging in mass production will not be accepted. Furthermore, with a site area of a mere 22 hectares, the Science Park cannot possibly meet the massive land requirement of manufacturing industries.

Madam Deputy, some people may think that as the vacancy rate in conventional industrial areas in Hong Kong, such as Kwun Tong, Hung Hom and Tsuen Wan, has remained high for years due to the northward relocation of industries, the demand for land of technology industries and their processing industries should therefore be met. But this is not so in reality. These vacant units vary in size, and there are the problems of fragmented ownership and dispersed locations. Besides, many of these units are located in grossly dilapidated industrial buildings. How possibly can these conditions attract investment from technology enterprises?

Even for the three developed industrial estates in Tai Po, Yuen Long and Tseung Kwan O, the total site area is 200-odd hectares only, and there is also the problem of dispersed locations. Moreover, the authorities have forecast that the utilization of land at the various industrial estates will reach saturation after 2004, and active planning is ongoing for the development of a fourth industrial estate. So, we can see that Hong Kong has not been able to meet the need of land-intensive enterprises, not to mention the need of technology processing zones that require not only massive land, but also the support of incessant input of state of the art knowledge.

Take the Hsinchu Science Park that stretches over 605 hectares in Taiwan as an example. The factory premises built by a technology company specializing in scanner IC in 1986 under phase I already occupied an area of 5 400 pin, equivalent to over 17 000 sq m. The development of that company still continues in that the company has plans to embark on phase III of the factory. In other words, massive land is a prerequisite for these industries to develop because other than the setting up of production lines, land is also required for constructing administrative wings. This explains why the provision of land is a fundamental issue that cannot be neglected in the development of well-established and sustainable industrial zones for technology industries.

The Democratic Alliance for Betterment of Hong Kong (DAB) holds that apart from the provision of land, the Government must also pay attention to how inward investment can be attracted. In Taiwan, for example, to attract investment in the new Science Park in Southern Taiwan, the Government, in 1999, conducted research studies of products in collaboration with a number of universities, and introduced programmes to subsidize the use of new technology in the research and development of key components, and so on. This has reflected the active support provided by the Taiwanese Government for new technology industries. Therefore, the DAB hopes that the Government will carefully consider providing concessionary support facilities in developing these industrial zones.

Regarding the wording of the motion moved by Dr LUI Ming-wah, the DAB basically supports the general direction of promoting high-technology industries. As to the other proposals and suggestions made by Dr LUI recently, the DAB considers that we can sit down and discuss them step by step.

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

**MR DAVID CHU** (in Cantonese): Madam Deputy, Hong Kong is situated in the centre of both Greater China and the Asia-Pacific region. In addition to having the Mainland as its hinterland, Hong Kong has also a number of natural and developed advantages such as advanced communication infrastructure, free movement of talents, satisfactory living standard, a sound legal system and an efficient financing market, all of which are qualities that can attract overseas technology enterprises to invest in Hong Kong. Nevertheless, the problem remains that in view of the comparatively higher cost of living index and

business costs, as well as the expensive land prices, technology enterprises will hardly be attracted to set up large-scale plants in Hong Kong. There is a general consensus among the sector that if we are to enhance the competitiveness of Hong Kong's technology-based exports, we cannot achieve the objective just by enhancing productivity and reinforcing the existing edge in terms of product quality. It is equally important that we strive to reduce costs. The Hong Kong Progressive Alliance (HKPA) therefore holds that the Government should adopt all possible measures to help the sector cut costs as far as practicable, including actively considering establishing the technology industries processing zone, and to encourage technology enterprises to use the processing zone through land and tax concessions. As regards the specific mode of operation of the processing zone, we may give the matter further thought and discuss it later.

In order to establish successfully the technology industries processing zone, we need to have both financial means and determination. The Government must demonstrate its determination to strengthen manpower training, commercialize technological research results, promote quality certification and protect intellectual property, with a view to giving the sector an impetus to transform into high-technology and high value-added industries. More importantly, the SAR Government should not act on its own but co-operate with the Mainland, bearing in mind that while plenty of high-technology experts are available on the Mainland, Hong Kong possesses enormous capital, management personnel and market development experience. If the two places can really strive to complement each other's strong points, the development of high value-added and high-technology industries will certainly be a success. Rather than treating the Mainland as a processing zone for the manufacturing sector in Hong Kong, the Government should strike up a complementary and high value-added relationship with the Mainland, with a view to drawing on Hong Kong's market experience to help the Mainland to commercialize its technological research results, thereby developing Hong Kong into an innovation centre for high value-added products.

Besides, Hong Kong may also send more technology personnel on exchange visits to the Mainland, so as to save on operating and training costs. On the other hand, at present, many top high-technology researchers in the Mainland prefer places in Europe and the United States to Hong Kong as their first choice of destination for work and study. The SAR Government should therefore formulate policies to encourage young people from the Mainland to study in Hong Kong, as well as to permit them to work in Hong Kong upon

graduation, thereby helping Hong Kong to import research results from the Mainland for commercialization purposes.

Further still, the SAR Government must co-operate with mainland authorities to ensure that the talents admitted to Hong Kong possess good academic qualifications and practical working experience. In this connection, the vetting procedures of the relevant scheme on admission of mainland talents must be highly transparent, efforts must also be made to give publicity to the scheme through such Hong Kong agencies in the Mainland as the Office of the SAR Government in Beijing, and offices of the Trade Development Council and the Productivity Council in the Mainland.

With these remarks, Madam Deputy, I support the motion on behalf of the HKPA.

**MR KENNETH TING** (in Cantonese): Madam Deputy, the Government has, for a considerable period of time, concentrated its efforts on developing Hong Kong into an international financial centre. In relative terms, the development of traditional industries has been neglected. We can see that the manufacturing industry is in face of constant shrinkage. I still remember I moved a motion on "Enhancing the competitiveness of Hong Kong's manufacturing industry" in July 1999. At that time, the manufacturing industry accounted for a total workforce of 367 000. In less than two years, however, the number has rapidly dropped to some 220 000. It is evident that the livelihood of workers in the manufacturing industry is being threatened. Moreover, the prospects of the industry are far from being optimistic.

Madam Deputy, Dr LUI Ming-wah has proposed in the original motion that the Government should develop high-technology and high value-added manufacturing industries with a view to revitalizing the local manufacturing industry and creating job opportunities. The Liberal Party shares the view that the development of technology industries processing can enhance the competitive edge of the local manufacturing industry, and safeguard the jobs of workers in the manufacturing industry. A stable development of the local manufacturing industry will create more vacancies in the local job market, thereby further ameliorating the unemployment problem.

The Liberal Party has always held the view that the Government should adopt a diversified economic strategy, instead of focusing on a specific economic activity. At the same time, the Government should promote and revitalize existing industries for they play a very important role in our economic development. The Government is indeed obliged to provide these industries with a conducive environment, to rescue the declining local industries, and to help the manufacturing industry to continue contributing to the economy. In fact, the Liberal Party has once put forward the proposal of setting up a processing zone at the border, which will cover such traditional industries as the textile and timepiece industries, in addition to the technology industry. This is even more comprehensive than Dr LUI's proposal.

In today's motion, Dr LUI Ming-wah proposes to establish a technology industries processing zone and suggests the Government to offer concessions to high-technology and high value-added industries. In fact, three industrial estates set up under the Hong Kong Science and Technology Parks Corporation are currently engaging in high technology, and the manufacture and production of high value-added goods. Through these industrial estates, operators of the manufacturing and service industries are offered suitable inexpensive sites for the building of factories. In the past, many operators have managed to operate their factories in industrial estates offering premium concessions. Through the mechanism and functions of industrial estates, and in coping with the operational demand of high-technology and high value-added companies, these enterprises have been able to thrive and enhance their productivity and competitiveness.

Furthermore, the fourth industrial estate to be constructed soon will focus on attracting the manufacturing and service industries based on high added value and technology in a bid to give impetus to the development of related projects. As the new industrial estate will provide local high-technology and high value-added industries and enterprises with a conducive business environment and a research and development base, it will play an active role in promoting the development of high-technology industries and attracting investors. I am afraid the motion, making another request for the establishment of the technology industries processing zone, is redundant and wasting resources.

Concerning the proposed policy of offering various incentives to technology industries in the form of concessions by the Government, the Liberal Party is of the view that the specific request made by Dr LUI is open to discussion. This is because the Government has never offered such concessions

to any individual industries before. Such an offer will involve not only the principle of fairness, but also the operation of the free market.

In fact, the Government needs to take corresponding measures to tie in with the development of high technology. In the long run, the Government must make careful planning with respect to the training of manpower for technological research in order to tackle the shortage of talents in technology in Hong Kong. In the short term, the Liberal Party agrees that the Government should continue relaxing the requirements of the admission of professionals scheme and streamlining the application procedures.

Madam Deputy, the Liberal Party agrees with the spirit of Dr LUI Ming-wah's motion of revitalizing the local manufacturing industry and creating job opportunities. Nevertheless, we must consider carefully the proposal of establishing the technology industries processing zone and the specific concessionary offers proposed by the Honourable Member. Therefore, the Liberal Party will abstain from voting.

Thank you, Madam Deputy. I so submit.

**MR SIN CHUNG-KAI** (in Cantonese): Madam Deputy, the Democratic Party has given its support to the Government's policies on the promotion of high technology on a number of occasions in the past, including the Innovation and Technology Fund with an injection of \$5 billion, the merger of the science and technology parks, the Cyberport project, the Applied Science and Technology Research Institute, and so on. We also hope that the Government can enhance its support for high value-added industries.

With regard to the motion today, I trust that the various political parties will object to its spirit. However, after examining carefully the specific contents of the motion moved by Dr LUI Ming-wah today, we consider that a number of issues still warrant further consideration. While the Democratic Party supports the Government promoting the development of high-technology industries, we hold that there are still a number of principles we need to handle with great care. The principles put forward by the Democratic Party are as follows: Land should not be designated when so designated for the sole purpose of granting concession to a certain enterprise, the same concession should be granted to all enterprises; the amount of land to be designated and when so

designated should be determined in the light of the market demands, so as to avoid causing any wastage of land resources; rents for the land so granted should be charged on a cost-recovery basis, no subsidy should be provided by the Government. In my opinion, the costs of development have already dropped to a very low level currently.

As a matter of fact, the three existing industrial estates are now playing a similar role in providing local industries with comparatively inexpensive supply of land. The only difference is that the existing industrial estates are not exclusive to technology industries processing, nor have these estates set any limit on the percentage of tenants engaging in technology industries processing; land use adjustments are mainly made automatically in accordance with the changes in market demands. At present, many of the tenants of the industrial estates are engaged in high value-added production. This includes integrated circuits, drug manufacturing, semi-conductor design and manufacturing, circuit boards, and so on. From this, we can see that the existing arrangements should basically be able to cater for the needs of technology processing industries.

On the other hand, if the sector considers that certain industries, including technology processing industries, have some special needs in terms of plant design and ancillary facilities, or that there is a problem of shortage supply of such plants, the Democratic Party fully agrees that both the Government and the newly merged Science and Technology Parks Corporation should actively consider designating a certain area of the industrial estate for the exclusive use of a specific industry. Besides, in addition to making special arrangements in terms of design and facilities to cater for the specific demands of different industries, the Government should also designate land for the establishment of the technology industry processing zone to address the needs of the sector. If it should happen that the third and even the fourth industrial estates are not enough to cater for the industries' demand for land, Hong Kong would still be able to cope with the situation. What is more, I consider that it is perfectly fine to design special processing zones for some industries. As regards site formation, provision of matching facilities, and so on, we are in full support of the Government devoting more efforts to these aspects.

Nevertheless, a more noteworthy point is that the growth in demand for land on the part of industries has been rather sluggish in recent years, reflecting the fact that the major problem with the development of high-technology industries in Hong Kong does not lie in the supply of land. With regard to the

issues mentioned by Dr LUI Ming-wah, even if land supply should be an issue, it is a comparatively rather minor issue at the present stage. The case of H & Q Asia Pacific is an atypical case. Since its completion in 1997, the third industrial estate has recorded a utilization rate of only 50% so far. Indeed, there are still premises vacant. Moreover, as the preparatory work for the fourth industrial estate is now in progress, there is still an adequate supply of land.

A more important obstacle to the local economy's development towards high technology seems to lie in the lack of such high-technology talents as graduate students studying for their doctorates. Taking the Innovation and Technology Fund as an example, applications have been falling short of the expected level two years into the establishment of the Fund. According to the Government's explanation, the crux of the problem mainly lies in the fact that local graduate students can hardly find any suitable research topics, and even some of the approved topics are either not really relevant to high technology or not of any practical application value. The research projects conducted by local universities in collaboration with industries, for example, include such items as advanced production techniques for manufacturing shuttlecocks, chess-playing robots, and so on. It is indeed open to question whether projects like these can really contribute to the development of local high-technology industries.

Insofar as Hong Kong's lack of quality talents in scientific research is concerned, the problem can hardly be resolved within a short time by means of training due to funding and teaching manpower constraints. For this reason, the Democratic Party supports the Government's introduction of the Admission of Talents Scheme to address the manpower shortage problem in this respect.

Concerning the letter prepared by Dr LUI Ming-wah to explain the motion today, however, there are a number of points we cannot support. In this connection, the Democratic Party is particularly opposed to such proposals as importing both professionals as well as 50% of labourers, and so on. This is because importation of labour will certainly impact on the employment opportunities of local workers. Earlier on, Dr LUI Ming-wah claimed that in importing one worker, an additional job opportunity would be created in Hong Kong. But then, this is only academic. For my part, I am afraid some local factories might dismiss 50 from their 100 employees and then move to another

location to recruit 50 imported workers to take their place. The question in this connection remains how the wage level of those 50 imported workers is to be determined. If those employees were to be paid \$2,000 monthly, the proposal put forward by Dr LUI Ming-wah would of course be feasible. However, if the wage level of such employees should still be set at \$5,000 to \$6,000 monthly, manufacturers just might not be attracted to invest in Hong Kong. In view of the wage levels of workers in the neighbouring Asia-Pacific region, if wage levels of workers in Hong Kong do not drop to around \$2,000 to \$3,000, we just cannot compete with our neighbours. So, this is the realistic difficulty.

Madam Deputy, the Democratic Party supports the Government promoting the development of high-technology industries, only that we believe some basic principles must not be overlooked. One example is that we must maintain a relatively simple tax regime. As regards the scientific research topics, talents training, tax concessions, and so on, the Democratic Party will give them our support so long as they are applicable to all businesses and industries. Actually, we have all along voiced our demands for talents training, tax concessions and tax reductions for businesses and industries over the years. Speaking of the proposal to offer tax reductions to scientific research projects, we would certainly give the proposal our support. But then, if the Government is to really implement the so-called "three waivers, five reductions" tax concession proposal, I believe we should first earnestly look into the tax regimes in force in our neighbours, since some of them indeed charge higher rates on certain tax items than ours. We must emphasize that while the tax rates in Hong Kong are set at a certain level, we only need to pay tax for the profits we have made. We should also emphasize that we do not impose a number of other taxes such as value-added tax. Since the tax regime in Hong Kong is indeed simple enough, if we should offer tax concessions for a certain industry, many issues might arise as a result, thereby giving rise to a more serious problem.

For the aforementioned reasons, Madam Deputy, the Democratic Party cannot support the motion moved by Dr LUI Ming-wah today. We will therefore abstain from voting on the motion.

**PROF NG CHING-FAI** (in Cantonese): Madam Deputy, on more than occasion in this Chamber during the past few years I have indicated my support for the

view that Hong Kong must build and develop its own technology and innovative industries and high value-added manufacturing industries to reinforce the foundation of Hong Kong economy. It is necessary to develop the service industries to enable them to strive for excellence; and it is also imperative to maintain and strengthen our position as the financial hub of Asia. All these are the linchpins of our economy. But there is one more to it and that is our industries: our technology and innovative industries, as well as our high value-added manufacturing industries. It is because not only do these industries provide new areas of growth for our economy, but they are also the only industries that can provide massive employment opportunities. Not long ago, we have had the bubble of dotcom stocks that eroded the confidence of some people in high technology. These people therefore think that it is inappropriate to mention the development of high-tech industries in Hong Kong. I also notice another view which thinks that it is inevitable that some bubbles will appear in the course of economic development. It is not surprising to find some adjustments from time to time. Moreover, the dotcom stocks are only related to the application of IT and they are not high-tech industries *per se*. Despite all these views, I still think that if we are to have a sound and solid economic base, it is essential to develop our own high-tech and high value-added industries. It remains, of course, that there is a process to it and it is also imperative that we should create the favourable conditions to spur such growth so that our goals can be realized as soon as possible.

I therefore think that the motion moved by Dr LUI Ming-wah today is aimed at pushing such a development. It is another of his efforts to raise the competitive edge of our economy. The technology industries processing zone which Dr LUI proposes is, as far as I know, different from the science parks, industrial estates and such like infrastructure projects. It is a processing zone, but it is not one which uses low technology. Its emphasis is on the processing of technological products. I think if we are to rebuild our industrial system, such a technology industries processing zone would indeed be very helpful. Once our manufacturing industries revive and prosper, there will certainly be a boost to our exports. Job opportunities will be created, giving impetus to economic growth as well.

However, we also need to consider whether the processing zone can attract many manufacturers to set up factories there. I think if the following conditions

are available, the processing zone can help revitalize our manufacturing industries:

- (1) the processing zone must be supported by government policies, including preferential treatment in land use and taxation, and to be complemented by human resources development and training to meet the needs of the processing zone. With government support, the processing zone will be attractive to the businessmen.
- (2) the establishment of the processing zone need not make attracting relocated Hong Kong factories back to the territory as its sole objective, but it should provide all the conditions conducive to developing high value-added products to encourage factory owners to develop new business and process innovative products of a higher content of technology. If production conditions that are not available elsewhere are provided to these factory owners, the processing zone will certainly stand an advantage.

Madam Deputy, in 1970, the total value of our manufacturing industries took up about 30.9% of our GDP and that was a brilliant performance. Now that we are calling for a revival of our manufacturing industries, we are not calling for the resurgence of those small and medium processing factories, but we want to build a new high value-added technology industry. I think the motion moved by Dr LUI Ming-wah is very useful to our development into a new economy. Certainly, as pointed out by some Honourable colleagues, some of the specific contents are open to discussion. I hope Honourable colleagues can give their support to the motion to urge the Government to look seriously into the proposal of establishing a technology industries processing zone and devise some feasible plans.

I so submit.

**MR NG LEUNG-SING** (in Cantonese): Madam Deputy, after the experience of the Asian financial turmoil, it is believed that the public has realized that our economy is relying excessively on the finance, real estate and service industries and that the share of the manufacturing industries in our economy is dropping all the time. This imbalance in the structure of our industries is very disadvantageous to the healthy growth of our economy. So it has become a

consensus in the community to make use of technology and innovation to seek new room for development and to revive our manufacturing industries, thereby widening the base of our economy.

As to the specific efforts to stimulate the growth of the manufacturing industries, government assistance is urgently needed in different areas. All along, the Government has been providing the basic support facilities to the local industries and technological developments through organizations like the Hong Kong Industrial Estates Corporation (HKIEC), the Hong Kong Industrial Technology Centre Corporation (HKITCC) and the Provisional Hong Kong Science Park Company Limited (PHKSP). The HKIEC leases the land in the estates which are equipped with facilities to businessmen at a price close to the cost. These businessmen are those in the manufacturing and service industries who want to introduce brand new or improved technology and processes that cannot otherwise operate in a multi-storey industrial building. The HKITCC is committed to incubation services given to those venture technology companies through its Technology-based Business Incubation Programme. It also provides support in such areas as marketing, financing, technology transfer and management. In addition, the HKITCC aims at promoting technology-based industrial development through its technology transfer programme and technology business partnership schemes. As for the Science Park, it focuses mainly on research and development activities and in the promotion of technology-based new investments. Recently, this Council has passed the Hong Kong Science and Technology Parks Corporation Ordinance to merge these three organizations with a view to further enhancing the efficient co-ordination between the industries and technological support services. However, there are still some obvious difficulties which may affect the creation of new vitality for the local manufacturing industries such as the expensive land costs and the lack of a competitive edge in terms of the quality of human resources and wages. Hence, there are still some obstacles to attracting of local and overseas investments in the manufacturing industries. Therefore, the Government should try its best to understand the aspirations of the industries and to explore more complementary measures which will suit the market needs. That applies in particular to those measures which will provide a certain degree of convenience to those technology and innovation projects with higher value-added potentials. The future Hong Kong Science and Technology Parks Corporation should have greater flexibility in this aspect and it should provide more convenient premises and facilities for processing procedures in technology industries under the principles of equity and free market operations. I think that

is in line with the major policy of industrial support which used to be the underlying policy behind the operation of the industrial estates.

Madam Deputy, I so submit.

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

(No Member responded)

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam Deputy, first of all, I wish to thank Dr LUI Ming-wah as well as other Honourable Members who have spoken for their many valuable views on the development of high-technology and high value-added industries in Hong Kong.

We fully acknowledge that high-technology and high value-added industries play an important role in the economic development of Hong Kong. This also explains why it has always been the policy of the Government to provide first-class infrastructural facilities and the most suitable support measures for industries, including high-technology and high value-added industries, with a view to facilitating their further development. Therefore, from the macroscopic perspective, the Government and Dr LUI Ming-wah do share the same view. In respect of specific measures, despite disparity between the kinds of support provided by the Government and those suggested by Members, I believe we still have a common goal. I wish to take this opportunity to explain the underlying concepts of the Government and the specific measures we have in place.

In respect of the underlying concepts, since the mid-1980s, local manufacturers have relocated the labour-intensive production lines to the Mainland and some neighbouring countries or territories in Asia where cheaper land and manpower are available, and shifted their focus to high value-added and technology-intensive activities in Hong Kong, such as design, research and development, supply chain management, and so on, in order to offset the pressure of increasing rental and wages. I believe Members will agree that it is impossible for the Government to reverse the trend of economic development. In fact, given the resource constraints in Hong Kong, it is impractical for us to compete with the Mainland or some Southeast Asian territories purely on low pricing in respect of land and labour. Therefore, we consider that Hong Kong should develop high value-added industries as well as technology-intensive and

knowledge-based industries by using our own advantages, namely, first-class infrastructural facilities, free flow of information, a simple tax regime with low tax rates, sound legal and commercial systems, flexibility and creativity of our manufacturers, an international network of business and individual connection, and so on. Based on this positioning of Hong Kong, the principle of the Government is to provide, through a full package of measures, systematic hardware and software support in areas ranging from the application of technology, technology transfer, nurturing of start-up companies to production processes.

Now I wish to turn to the specific measures. As the motion focuses on downstream production, I would also like to start with this aspect. At present, there is abundant supply of industrial sites and premises in Hong Kong, and prices have been adjusted downwards substantially in the light of the demand in the market. Take industrial sites as an example. There are over 290 hectares of land in total designated for "industrial use" in Hong Kong. So, insofar as general production processes are concerned, the supply in the market can meet the demand in full. Besides, the three industrial estates located in Tai Po, Yuen Long and Tseung Kwan O with a total area of 214 hectares can also provide suitable sites and factory premises for projects with special requirements for land or factory premises and of high technology and high value-added content. So, the industrial estates have, to a very large extent, met the objective of a technology industries processing zone as proposed in the motion. In 2000 alone, the Hong Kong Industrial Estates Corporation (HKIEC) approved 14 projects, involving a total site area of 13 hectares and investment totalling \$3.8 billion. Earlier on, some Members also mentioned that most of these projects are high-technology, high value-added and technology-intensive projects, such as the production of optical fibre cables, operation of telecommunication cable landing stations, operation of ground satellite receiving stations with telecommunication facilities, facilities for biotechnological research and development, and so on. These statistics prove that the sites at industrial estates are, to some degree, attractive to technology-intensive and high value-added industries. Industrial estates also have great potentials to further contribute to the industries of Hong Kong.

Certainly, the Government and the HKIEC appreciate that for historical reasons, the industrial estates do need to make improvement in some areas, and actions have been taken to respond to this need positively. After the completion of the comprehensive consultancy review in early 2000, the industrial estates

drew up a range of new measures and procedures accordingly to provide greater support for the productions of industries, particularly technology-intensive and high value-added industries, and to attract these industries to set up factories in the industrial estates, with a view to gathering momentum for the overall economic development in Hong Kong. These new initiatives include lowering land premium by as much as 20%, and allowing qualified manufacturers to renovate their factory premises returned to the industrial estates, the costs of which can be settled by instalments, and subsequently lease to small tenants in the same field with special requirement for factory premises and facilities. Another new initiative is the redevelopment of the Estate Centre Building of the Tai Po Industrial Estate with a view to providing more comprehensive facilities for tenants, including the provision of office sites for companies in need to conduct business activities and other support facilities. These new initiatives have begun to bear fruit.

In respect of the strategy, we agree that there is a pressing need for industrial estates to reposition themselves, improve their image and create a clustering effect, thereby providing better services for technology-intensive and high value-added industries. In April this year, the Legislative Council passed the Hong Kong Science and Technology Parks Corporation Bill whereby the HKIEC, the Hong Kong Industrial Technology Centre Corporation and the Provisional Hong Kong Science Park Company Limited are merged. The new corporation after the merger will be officially set up later this month. Members may wish to note that the four target clusters of the Science Park, namely, electronics, information technology, biotechnology and precision engineering, are all high-technology and high value-added industries. The new corporation after the merger will have more latitude to maximize synergy among tenants. It will also offer one-stop service for high-technology and high value-added industries, so as to provide greater inducements for these industries to proceed with production in industrial estates managed by the same corporation after their scientific and technological research and development work has achieved successful results in the Science Park. Moreover, by combining the resources of the three organizations, the new corporation will be able to cater for the needs of high-technology and high value-added industries at various stages in a more flexible and comprehensive manner.

Madam Deputy, the industrial estates have made the utmost effort to carry out reforms, and they mainly target at technology-intensive and high value-added

industries in the delivery of services. So, this has, in fact, met the objective in the motion. Meanwhile, preparations for the fourth industrial estate are already underway, and in-depth discussion has been held in respect of the location, admission criteria and pricing. The new corporation after the merger will also conduct in-depth studies of the positioning and development blueprint of the fourth industrial estate in order to ensure that the fourth industrial estate can meet the needs of industries, particularly high-technology and high value-added industries, under the present economic conditions. Earlier on we have listened to the views of Members in this regard. We will carefully consider their views in planning the fourth industrial estate.

Given the plans and measures that I have just mentioned, we do not consider it necessary to designate additional land for establishing a technology industries processing zone as it will result in over-stretching of resources which will make it impossible for well-targeted and effective services to be provided for industries. Of course, if there is any project with special land requirement that cannot be met by the industrial estates, or if investors will be instantly attracted to plough in resources for a particular high-technology or high value-added industry, the Government will take an open attitude and seriously consider each case on its own merits.

Dr LUI also mentioned tax concessions in his motion. In choosing projects for investment, investors will have a great deal of considerations, including wages, taxation, the overall economic climate, government policies, and so on. Land premium is not their only consideration. Dr LUI proposed that apart from establishing the technology industries processing zone, the Government also has to provide tax concessions for manufacturers in the processing zone. We do not support this proposal. In Hong Kong, we have a simple and predictable tax regime with low tax rates, and this is actually the best way for industries and businesses to reserve the largest capital for business investment. Our profits tax rate is only 16% and no tariff is imposed on imports. Moreover, an immediate 100% write-off is allowed for expenditure on plant and machinery specifically related to manufacturing, and for expenditure on computer software and hardware. Furthermore, industrial buildings, plant and machinery also enjoy a depreciation allowance. Compared with the short-term tax concessions in neighbouring territories, we consider that the simple and predictable tax regime with low tax rates in Hong Kong is more beneficial to investors in the long run.

According to the United Nations Conference on Trade and Development World Investment Report 2000, Hong Kong enjoys the second largest share of foreign direct investment in Asia in 1999, registering a total of HK\$180 billion, just second to China. This shows that Hong Kong is, to some degree, attractive to overseas investors.

The technology industries processing zone proposed by Dr LUI also involves the admission of professionals and 50% of labour. Regarding the admission of talents that we lack in Hong Kong, the Government already has a mechanism in place. There was the Supplementary Labour Scheme in 1996, the Admission of Talents Scheme in December 1999, and the Admission of Mainland Professionals Scheme initially applicable to the information technology and financial services disciplines, as proposed in the 2001-02 Budget. These schemes are introduced to meet the needs for manpower in Hong Kong and enhance our competitiveness. They can also facilitate the economic development of Hong Kong and create more employment opportunities locally.

According to the latest statistics released by the Census and Statistics Department on 20 April this year, the unemployment rate in Hong Kong remains at 4.6% whereas the underemployment rate is 2.4%. From the angle of employment, the unconditional admission of 50% of workers in a specific processing zone will violate the principle of giving priority to local workers in employment. We, therefore, do not agree with this proposal.

As I mentioned in the beginning of my speech, the Government has a series of plans to support high-technology and high value-added industries. Madam Deputy, I would like to briefly introduce them here.

With regard to the formulation of the overall policy, over the past year the Council of Advisors on Innovation and Technology appointed by the Chief Executive thoroughly examined a diversity of aspects, including policies on innovation and technology, technological support, and so on, in an effort to map out the long-term policy on technology. The new Chairman of the Council has just assumed his office, and I believe under the leadership of the new Chairman, the Council can further advise the Chief Executive on matters relating to innovation and technology from a holistic angle. Moreover, in order to more effectively co-ordinate and monitor the implementation of relevant policies by various Policy Bureaux, the inter-bureau co-ordination committee chaired by the Financial Secretary has held meetings regularly since its inception in April 2000 to discuss ways to effectively implement policies relating to innovation and

technology, including policies on human resources, technology infrastructure, and so on, and to review the progress and effectiveness of relevant initiatives. The committee will also discuss the priorities of policy implementation, distribution of resources, and co-ordination among Policy Bureaux and government departments.

To promote scientific research and development, the Innovation and Technology Fund set up in November 1999 has consistently made great efforts in this pursuit. Projects funded by the Innovation and Technology Support Programme mainly concern the development of communal technology or technology platforms. These projects, if successful, will expedite technology transfer and lend themselves to commercialization opportunities.

The Applied Science and Technology Research Institute, which is under active preparation, will also pool resources to carry out research and development work for industry-related technologies, and results will be transferred to the relevant industries. Another important mission of the Institute is to serve as a breeding ground for technology-based entrepreneurs and local professionals in technology, and also a central point that attracts overseas professionals specialized in scientific research and development. Through encouraging and supporting scientific research and development, technology transfer and commercialization of technologies, we hope that more downstream production processes of high-technology and high value-added industries will be derived, and through the support facilities at the industrial estates, these industries will be encouraged to develop, thus facilitating the overall economic development and creating more employment opportunities.

Madam Deputy, the Commerce and Industry Bureau has always sought to provide the greatest infrastructural support for high-technology and high value-added industries under a comprehensive strategy. Ongoing efforts are required and there are no quick fixes to this end. So, please bear with me in reiterating this: It is a principle generally accepted by the community that the Government should not give direct monetary subsidy to any individual industry. Therefore, on Dr LUI's proposal to provide subsidies purely in monetary terms, such as short-term tax concession or premium waiver, we consider that it cannot attract investors in the long run. In the meantime, I also wish to emphasize that the Government is not rigidly seeking refuge in the non-intervention policy. On the contrary, we have adopted a positive and open attitude, and endeavoured to create favourable conditions for the industrial sector and enhance the economic

foundation and competitiveness of Hong Kong through the provision of a comprehensive range of infrastructural support measures.

Lastly, Madam Deputy, the concern of Members over the development of high-technology and high value-added industries shows their agreement with the underlying concepts and direction of the Government in pursuing development. We agree with the spirit of the motion, that is, to create employment opportunities and facilitate economic development in Hong Kong. But we cannot support the proposals made by Dr LUI to this end, such as labour importation and tax concessions. As in the past, we will continue to take a serious and open attitude. We will actively consider the views of Members and the industrial sector. We will join hands with them to support high-technology and high value-added industries, and will make greater efforts to promote the development of the Hong Kong economy. Thank you, Madam Deputy.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): Members, the Deputy President asked earlier whether any Member would like to speak. At that time, Miss CHAN Yuen-han was not in the Chamber. Now she has asked for leave to speak. Not long ago, I permitted some other Members to do so. Therefore, I have to concede to Miss CHAN's request today. Having said that, I would like to remind Members once again that I hope they can speak on their views before the public officers speak. For in doing so, I do not have to ask public officers whether they would like to make a response after Members have spoken. That will also make the process of the motion debate smooth.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, thank you for your leniency. I will comply with the culture of this Council and will not refute the arguments put forward by the public officer. However, I think Dr LUI Ming-wah would know how this should be done.

I represent the three Members of the Council from the Hong Kong Federation of Trade Unions (FTU) to express our views on the motion moved by Dr LUI Ming-wah. When we first looked at the motion proposed by Dr LUI, we thought that the motion tallied with our approach on the issue, especially

when he mentioned promoting exports and creating job opportunities. As Members of the Council from the labour constituency, we agreed with what Dr LUI said in his motion. As we thought that we shared the same views with Dr LUI, so we thought we could support his motion. However, as we read the paper he sent to Honourable Members to solicit their support, we found that there were some parts of his motion which were very much in difference from our views and these views were very controversial among the public as well.

In the motion proposed by Dr LUI Ming-wah, there are proposals to urge the Government to develop high technology and the related land policy. I think our views are quite similar in these respects. As for the actual figures, I think we can discuss on that. On the issue of taxation, Dr LUI's proposals are also quite similar to ours, for the FTU has talked to the Financial Secretary on many occasions that we very much hope that the Government will support the related policies on the development of small and medium enterprises and high technology. So, with respect to these, our views are similar to Dr LUI's proposals. As to the details, whether there should be a tax regime of full tax concession for three years, half concession for five years, and a further half thereafter, and so on, we are still discussing on that. However, we agree with these two directions.

As to the third point mentioned by Dr LUI, that is, the preferential treatment of importing professionals and 50% of the workers, we are totally opposed to that. I would like to explain the reasons for that. On the question of importing professionals, the FTU has said before that we do not oppose importing those professionals who are in shortage here, but in the meantime, the Government should train local talents and try to secure some technology transfer, and so on. We have made these very clear. As to the proposal to import 50% of the workers, we can find in Dr LUI's paper that he thinks that this is a move that has to be accepted despite it being not so a smart idea after all. Our view is that if we are to develop high technology by importing 50% of the workers needed, that would be a catastrophe. I can assert that those people who hold a job now will soon be forced out of their jobs. What kind of social problems would that bring us? That issue has been discussed in the community and in this Chamber, and there have been heated debates on every occasion.

I do not wish to repeat our views on that issue. However, I would like to emphasize that if we want to make any slight change to our labour policy, not to say importing 50% of the workers, an amount which is even less than that would

cause more hardships to the working class in Hong Kong, given the prevailing fragile employment conditions.

For the above reasons, the three Members from the FTU are strongly opposed to the motion proposed by Dr LUI Ming-wah. Thank you, Madam President. Please also accept my gratitude for your permission to speak.

**PRESIDENT** (in Cantonese): Secretary for Commerce and Industry, would you like to make a response?

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I have no comments to make. I have made the position of the Government clear in the speech earlier.

**PRESIDENT** (in Cantonese): Dr LUI Ming-wah, you still have five minutes 43 seconds to make a reply.

**DR LUI MING-WAH** (in Cantonese): Madam President, first of all, I would like to thank all those Members who have spoken on this motion. I also wish to reiterate that this motion has been proposed with the aim of promoting our overall economic prospects and increasing job opportunities. So, I urge Members not to look at it from the narrow perspective of one single trade or industry.

Members have expressed their clear agreement that the economy of Hong Kong needs the manufacturing industries, that Hong Kong needs to provide more job opportunities, and that Hong Kong must put in place a new policy to attract a greater number of high-tech and high value-added industries. All this is the underlying spirit of the motion. Members may oppose the idea of offering preferential terms in respect of the technology industries processing zone. This can be discussed. But I do urge Members to support the establishment of a technology industry processing zone, because it is only by having locally-rooted manufacturing industries that we can hope to inject fresh energies and impetus into our economic development, create more job opportunities and enhance public confidence in our projects.

Here, I must say that I particularly appreciate the remarks made by Mr LAU Chin-shek as a representative of the labour sector. He has been able to discuss and support the motion from the perspective of Hong Kong's overall interests, for he has a good understanding of our economic development, and he also has a deep and first-hand understanding of the course of our industrial development. Mr LAU Chin-shek is really very far-sighted, even more far-sighted than the representatives of the industrial and commercial sector, and wiser as well.

Madam President, with the exception of political and related issues, the remarks I have delivered and the motions moved in the Legislative Council all represent my personal views only. But my experience over the past two years or so tells me that my remarks and motions have always been able to get the support and agreement of the Chinese Manufacturers' Association. There is a popular saying in the Mainland: "Use a great banner as a tiger skin", meaning to deck oneself out and intimidate people. I do not need to do this, because the Chinese Manufacturers' Association will definitely support such a motion that can work for the economic interests, stability and prosperity of Hong Kong. Therefore, once again, I urge Members to support this motion, so as to deliver a message to the Government, that it must make greater efforts to promote the economic development of Hong Kong, instead of sticking to conservativeness and complacency.

Thank you.

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

(Members raised their hands)

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

(Members raised their hands)

Dr LUI Ming-wah rose to claim a division.

**PRESIDENT** (in Cantonese): Dr LUI Ming-wah has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr Eric LI, Dr LUI Ming-wah, Mr HUI Cheung-ching, Mr Bernard CHAN, Mr WONG Yung-kan, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Michael MAK, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Mr CHAN Kwok-keung and Miss LI Fung-ying voted against the motion.

Mr Kenneth TING, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Mr LAW Chi-kwong and Mr Tommy CHEUNG abstained.

Geographical Constituencies and Election Committee:

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss CHOY So-yuk, Dr TANG Siu-tong, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted for the motion.

Miss CHAN Yuen-han and Mr TAM Yiu-chung voted against the motion.

Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, 12 were in favour of the motion, two against it and eight abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, 11 were in favour of the motion, two against it and nine abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

**PRESIDENT** (in Cantonese): Second motion: Treatment of terminal patients.

### **TREATMENT OF TERMINAL PATIENTS**

**DR LO WING-LOK** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. First of all, I need to make it clear to Honourable colleagues that this is not a motion advocating euthanasia. In the event of Honourable colleagues voting in support of the motion, it does not follow that they support legalizing euthanasia.

In fact, human societies are full of all sorts of taboos. To the traditionally minded Chinese people, death is a taboo from which one must stay at a respectful distance. The first message that I intend to convey from the motion moved by me today is that death is an issue that could and should be discussed. We need to discuss how we should face death, with a view to enabling society as a whole to understand the needs of terminal patients and to address their problems squarely.

Death is an unavoidable fact of life. Regardless of the remarkable advancements made, medical science and technology are still subject to many constraints. If a patient has an incurable disease, he or she cannot be cured of it

despite the various kinds of treatment administered. Nevertheless, since it takes time for disease to deteriorate, how terminal patients can be enabled to live the remaining part of their lives in dignity still remains an issue of concern and a subject for discussion across the world.

In November last year, the House of Commons of the Netherlands passed an act on euthanasia. The act was subsequently passed by the Upper House in April this year, thereby making the Netherlands the first country in the world where the practice of euthanasia is lawful. This unprecedented development triggered off a new round of heated discussions.

Actually, the treatment of terminal patients is the business of not only the medical profession but also society as a whole. Given that the Legislative Council represents the different voices of the various sectors in society, it should collect the views of the public on this issue in response to the world trend and to the aspirations of society. So, this is the main reason why I have proposed this motion.

With regard to the types and definition of decisions in respect of terminal patients, members of the public generally have widely divergent views on the question, including some confusion about a number of aspects. Hence, before expounding on my points, I should like to explain clearly what euthanasia means, and the two situations which people often confuse with euthanasia.

The majority of countries in the world, including the Netherlands which has recently passed an act to legalize the practice of euthanasia, as well as the Medical Council of Hong Kong (MCHK), have agreed to the following definition of euthanasia: Euthanasia is the direct intentional killing of a person as part of the medical care being offered. However, according to the provisions under the Offences against the Person Ordinance (Cap. 212), the practice of euthanasia is forbidden.

Two concepts are often confused with euthanasia. The first one is "forgo futile treatment". In fact, "forgo futile treatment" is purely a medical decision to abandon or stop using a certain kind of treatment having taken into consideration that the relevant treatment cannot achieve the intended medical effect or purpose. Under such circumstances, the death of the patient is caused solely by the fact that his or her condition cannot take any favourable turn, rather

than the fact that medical treatment has been stopped. This is, therefore, not a case of "passive euthanasia". In order to avoid confusing the public, I hold that the term "passive euthanasia" should not be used any more.

Another concept which people easily confuse with euthanasia is "patient's refusal of treatment". This refers to the situation in which a patient, in his sound mind, after learning the facts about his conditions and the proposed treatment, refuses to accept any treatment for his or her own reasons, regardless of whether the treatment is effective or futile. This is not a case of euthanasia either. Under the existing legislation in force in Hong Kong, both of the two said decisions of a terminal patient, namely, "forgo futile treatment" and "patient's refusal of treatment", are lawful.

Confusion about these three concepts is not uncommon. Indeed, even the headline of *South China Morning Post* last Saturday confused the definition of euthanasia with the two aforementioned concepts in covering a euthanasia study report prepared by a group of researchers from the University of Hong Kong. Given the confusing definition adopted, I am afraid the said study might not offer any good reference value.

Now that Members have clearly understood the basic definition of a terminal patient's decision, let us look at the actual situation of the places where euthanasia has been practised for this Council's reference.

In the Netherlands, which is a pioneer in legalizing euthanasia, although the Royal Medical Association of Holland has given its support on the grounds that this might be a helpful way out for hopeless patients or patients who could not suffer the pain caused by their diseases, it has to wait until the actual implementation of the relevant act to see whether legalizing euthanasia can really benefit society as a whole.

In fact, the "real" pioneer in legalizing euthanasia is not the Netherlands, but the Northern Territory, Australia. The relevant law was brought into effect in July 1996 but repealed in March 1997. During those nine months when the relevant legislation was in operation, a total of seven patients suffering from cancer applied for euthanasia according to law and four of them were successful. Australia conducted a consolidated study on the seven cases and a report on the study was published in an authoritative medical journal.

According to the report published in that medical journal, terminal patients in Australia seeking euthanasia need to secure the approval of two doctors, who are required to prove that the patients concerned will die if no extra methods other than normal medical treatment are administered. But then again, the report considers that it is very hard to determine the potential life span of terminal patients suffering from cancer. So, different experts actually hold different views.

Indeed, the medical profession has widely divergent views on the definition of "terminal", as different experts would have different estimation about the "terminating" time of a patient's life. In the United States, the meaning of "terminal" is interpreted differently in the Supreme Court and in different states. Wisconsin, for example, interprets it as a period of not more than 30 days. However, in Virginia, the period can be as long as several months; whereas Arizona considers patients in a permanent or irreversible state of coma as terminal patients as well. Moreover, we must not overlook that since medical science advances in leaps and bounds, the dying process of a patient may be extended at any time. So, a consensus as to what "terminal" really means can hardly be achieved even in the medical profession.

On the other hand, under the Rights of the Terminally Ill Act of the Northern Territory, patients seeking euthanasia are required to first obtain certification from psychiatrists as to whether they are suffering from curable depression. According to the said report, four of the seven applicants showed signs of depression like low moods, slow response, suicidal tendency, and so on. However, as the applicants already had the intention to seek death, they might deliberately hide their depression signs and thus making it very difficult for psychiatrists to make an accurate assessment.

Given the many grey areas and considerable controversy relating to the practice of euthanasia, the Northern Territory eventually repealed the relevant Act.

As a representative of the medical profession, my stance on the treatment of terminal patients is naturally in line with that of the MCHK. I am opposed to legalizing euthanasia in Hong Kong, as the practice is completely in breach of medical ethics or the professional conduct of medical practitioners. In addition to the vocation of curing patients' diseases, doctors also have a responsibility to enable terminal patients to leave the world in dignity and with the least pain possible. For this reason, rather than helping patients to end their lives, all doctors must make their best efforts to alleviate the physical and mental problems and pains suffered by terminal patients.

Some medical practitioners who keep an interest in palliative medicine and hospice care consider that patients are seeking euthanasia mostly because they are suffering from uncontrollable physical and psychological pain. In that case, the request for euthanasia made by patients in fact reflects not their desire to end their lives but their dire need for help. As such, we should target at the pessimistic tendency towards death harboured by terminal patients and enhance hospice care to enable terminal patients to face up to their forthcoming death and the pain of dying, with a view to alleviating the various pains caused by their diseases and upgrading the quality of their lives, thereby enabling them to leave this world in dignity. That way, I believe the number of patients asking to end their lives could be reduced.

At present, Hong Kong sees the death of some 30 000 people annually, one third or some 10 000 of whom were terminal patients suffering from cancer. In terminal patients suffering from cancer, about 40% (4 000) are now receiving hospice care aiming at reducing their pain. In fact, with the right medication and treatment, most of the pains suffered by terminal patients can be put under control. As shown in a survey conducted by the St. Christopher Hospice Hospital in the United Kingdom, 99% of its patients are not suffering from any pain. Apart from that, we must also strengthen educational efforts regarding the ways to face life and death, with a view to providing patients and their families with holistic physical and mental care, thereby alleviating people's pain of losing their family members. From this, we can see that taking care of terminal patients is the responsibility of not only the medical profession but also the patients' families as well as the community as a whole.

While opposing to the practice of euthanasia, the medical profession generally considers it acceptable to "stop futile treatment" or "forgo futile treatment" with the consent of the patient concerned under suitable circumstances. Indeed, instead of achieving any curing effect, many of the advanced technologies applied to terminal patients may even cause patients to incur many unnecessary pains, thereby making it impossible for the terminal patients to leave this world in peace. For this reason, the concept of "forgoing futile treatment" has been widely accepted and practised by medical practitioners across the world.

If the decisions made by terminal patients should be in conflict with that of their family members, we must give priority to the right of patients to make their own decisions. However, in the event of patients being unable to express their own wishes, the decisions to be made by doctors must be in the best interest of

their patients. In making such decisions, doctors must consult the families of the patients and refer any conflict of opinions to the ethics committee of the relevant hospital or even the Court for adjudication.

Therefore, in order to safeguard and respect the wishes of patients, the authorities may consider drafting laws to provide for the making of "advance directive" before death, so as to enable terminal patients to make advance directives regarding their medical treatment under the condition that they are sufficiently informed. Relevant legislation was passed in Singapore in May 1996. I therefore suggest that the Government give careful consideration to this matter.

If terminal patients should, in their sound mind, be enabled to express clearly their own wishes and make "advance directives" with binding effect, then patients can pour out their heart, thereby enabling their families and the doctors concerned to understand their wishes better and to make decisions which are most suited to the interest of the relevant patients.

We have to understand that it must be due to some unique background of the country, in terms of its history, people, social and cultural value standards, as well as health care system, that euthanasia is legalized in the Netherlands. As regards Hong Kong, I hope that the motion moved by me today will arouse the attention of the people of Hong Kong to the issues relating to euthanasia, as well as the availability or otherwise of feasible options other than euthanasia.

As a medical practitioner, I certainly appreciate the enormous pains faced by terminal patients with incurable diseases. Nevertheless, I still do not agree that they should resolve their pain by means of euthanasia. I just hope that the motion debate today can help to raise our concern over terminal patients' aspirations to euthanasia, which are in fact reflective of their dire need for measures to help alleviate their pain. Besides, I also hold that we should equally concern ourselves with the question of whether the wishes of terminal patients can be taken care of fully and promptly. Under the circumstances, is it not the right time to consider drawing up laws to provide for "advance directive"?

The issues mentioned by me just now can by no means be decided by the medical profession unilaterally. I hope that the debate today can be helpful to our exploration for a more positive attitude towards death. Madam President, I so submit.

**Dr LO Wing-lok moved the following motion: (Translation)**

"That, as the treatment of terminal patients has aroused considerable controversy in various places over the world, and a country has already introduced legislation to decriminalize euthanasia and bring it under regulation, while some other places have legislated for a total prohibition of euthanasia, this Council urges the Government to attend to the treatment of terminal patients in Hong Kong and to study the need to establish a regulatory mechanism."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr LO Wing-lok be passed.

Does any Member wish to speak?

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, as the representative of the medical sector, Dr the Honourable LO Wing-lok has courageously moved a motion debate today on euthanasia, a topic which is serious and highly controversial. I really admire his courage. I must also point out that whether one supports or opposes euthanasia, one is in fact trying to interfere with how others are going to conduct their own lives. In essence, it is infringement.

Whether Members have any religious convictions, whether they believe one's life comes from Heaven or from one's parents, I am sure they will certainly agree that life is precious and no rash decision should be made about it. That is true, but back to the harsh realities, when some unfortunate people suffer from incurable diseases, when even doctors, whose intrinsic duty is to cure patients, can do nothing to help, what are we supposed to do?

Some people, including medical professionals, have pointed out that euthanasia is a way out. A commonly accepted definition of euthanasia is "the taking of some measures by a doctor or the stoppage of certain measures by a doctor to end the life of a person who chooses to die". As I pointed out just now, this is an interference with how others handle their own lives, something which is not correct. I think the relevant provision under the Hong Kong Medical Association's professional code of conduct is more acceptable, because it allows patients, doctors and patients' family members to decide whether to administer some "futile treatment".

However, what is "futile treatment"? Who should decide when to forgo "futile treatment"? I think we should define this more clearly, so as to enable patients, their family members and medical personnel to face the problems related to terminal diseases with a more positive attitude.

Let me use a story plot of the famous television series "E.R." to illustrate my point. A patient with terminal cancer was sent to hospital. When he was still conscious, he instructed the medical personnel very clearly that he did not want to be kept alive by any life-sustaining medical instruments, and his mother, who accompanied him to hospital, also knew of his wish. The patient then slipped into a coma, but when his elder sister arrived at the hospital later, she requested the doctor to turn on the life-sustaining instruments, saving his life by all means. Under such a situation, doctors are really in a dilemma. Should they accede to the wish of their patients and let them die a natural death? Or, should they accept the request of their family members and turn on the life-sustaining instruments?

We must realize that the pains suffered by terminal patients are just the unfortunate facts of life, and they are not caused by the mistakes of anyone. Specifically, they are not caused by doctors' failure to do their best, and so, we should not focus on arguing who should be blamed. But in reality, patients, their family members and even medical personnel are all forced to shoulder the responsibility. That being the case, we should not try to run away from the difficulties, but should instead seek a consensus with a positive and responsible attitude.

If we agree that patients' wishes should be accorded priority, then whether they choose to fight on or to give up, we should always respect their wishes. However, if a patient can no longer state his wish clearly, then his family members should adopt a responsible attitude and make what is perhaps the last decision for him. And, once life-sustaining instruments are turned on, should the decision be regarded as final and irreversible? Or, should we put in place a mechanism that can allow people to make other decisions later?

I hope that the Government and the Hong Kong Medical Association can conduct a public consultation exercise, and I also hope that more people can express their views actively, so as to seek a consensus. Following this, an appropriate way, such as a Patients' Charter, should be used to spell out the procedures of looking after terminal patients. That way, the unnecessary pains suffered by patients and their family members can be reduced.

Madam President, I so submit.

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, based on the principle of respecting personal preferences, the will of a terminal patient should be taken care of and respected. In his motion today, Dr LO Wing-lok calls upon the Government to pay attention to the treatment of terminal patients. This is fully supported by the Liberal Party. As regards the proposal raised by the Honourable Member to urge the Government to study the need to establish a regulatory mechanism, although he has apparently taken no position, he has indicated earlier in the debate that the medical profession opposed the idea. Now Members like us who have been lobbied by him over the past two weeks are at a complete loss as to what we should do for we have always thought that he has not yet taken a position. The greatest controversy in the international community surrounding the treatment of terminal patients actually lies in the issue of euthanasia. Is the so-called regulatory mechanism mentioned by Dr LO a regulatory authority for prohibiting euthanasia (this appears to be his intended meaning) or allowing euthanasia? At the very beginning, we thought other issues would be raised as well. Anyway, today's discussion should actually revolve around these two issues.

The issue of whether euthanasia should be legalized is very complicated. In today's debate, we should not speak on behalf of a specific political party. I believe we should look at this issue from our personal angle. I also hope the community can fully discuss the matter. At present, the Liberal Party is holding a neutral and open attitude towards euthanasia. Given the fact that a country has made a precedent internationally to decriminalize euthanasia and this issue has attracted attention from all around the world, Hong Kong, as an international city, must address the issues related to euthanasia and terminal patients by holding prudent discussions. This is why we agree that the Hong Kong Government should conduct an in-depth study into the relevant issues expeditiously and consult various sectors of the community so as to meet the actual needs of patients, families and the community.

The rationale held by those in support of euthanasia is that euthanasia can prevent terminal patients from suffering unnecessary physical pains or mental disturbance. Furthermore, euthanasia can end prolonged worries and disturbance of families. But the main reason is: euthanasia can prevent patients or elderly people no longer want to live from committing suicide. Let me cite an example. Subsequent to the passage of a bill on euthanasia in the Netherlands, some speculators have already planned to organize euthanasia tours to send sufferers who no longer want to live to the country to end their lives according to their own wishes.

Of course, those who object to euthanasia have their justifications. For instance, religious people are of the view that euthanasia amounts to showing disrespect for human lives and dignity and that it will give rise to moral problems. For instance, will patients be induced to opt for euthanasia or will patients be actually forced to opt for euthanasia though they appear to be willing to do so? Or will it aggravate the mental burden of terminal patients so that they feel at a loss as to what they should do?

In our community, is euthanasia an untouchable taboo? We may refer to some overseas examples. In the United Kingdom, euthanasia is illegal. However, in a 1993 case involving a patient named Bland, who remained in a vegetative state in hospital for almost four years, the hospital was allowed by the Court, upon the request made by Bland's parents, to stop giving him nutrition and life support. In 1992, a Court in Shanxi, China ruled that a doctor who had performed euthanasia on his patient had not committed an offence on the ground that the offence was of a minor nature and no significant harm had been done. Finally, the doctor was acquitted of the charge.

Let us look at another example showing how terminal patients are treated in Taiwan. Perhaps there is something worth exploring in this case. In June last year, the Hospice Care Regulations were passed by the Legislative Yuan in Taiwan to provide that terminal patients may choose to die in a dignified and peaceful manner. In other words, patients will only be given palliative and supportive hospice care rather than cardiopulmonary resuscitation in the form of intubation or electroversion.

In fact, when the Code of Practice for Doctors was amended by the Medical Council of Hong Kong (MCHK) in end 2000, a guideline on "Care for the terminally ill" was added. In the guideline, it was pointed out that "Withholding/withdrawing life sustaining treatment taking into account the patient's benefits, wish of the patient and family, when based upon the principle of the futility of treatment for a terminal patient, is legally acceptable and appropriate". This practice of forgoing futile treatment is similar to the one adopted in Taiwan. The difference only lies in the fact that legislation has been effected in Taiwan but we have just a guideline issued by the MCHK.

Nevertheless, the Code of Practice is not law. There will inevitably be cases in which some doctors continue to administer treatment so as to prolong the lives of patients though they know it very well that there is a very slim chance of the patients surviving. Here it gives rise to the issue concerning patients' quality of life. Even though the patients can keep their lives temporary, their quality of life is invariably sacrificed. Is it good for the patients and their family members? How can the patients manifest their quest for quality of life in their own interests? Is it time for doctors to reassess their usual views on saving lives?

It is indeed necessary for the general community to discuss these issues in a comprehensive manner. I cannot wholly subscribe to the medical profession's view that euthanasia should be objected even though the community has not fully discussed the matter. In fact, euthanasia may take various forms. Even Dr LO mentioned "advance directives". In other words, we should respect a patient's will or the decision he made while he was still in a sound mind. Is this acceptable to us? Or as pointed out by a Member earlier, we should not "comment on" the choices of others. At the same time, however, we should not leave the onus of making the most painful decision for the patients to their family members or descendants because this is going to be the hardest thing to do.

For these reasons, the Liberal Party earnestly hopes the Government can continue deploying more resources to improve hospice services before the study on euthanasia is completed or a consensus of the general community is reached. Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, today I am going to speak on behalf of my organization. As people in my organization have different views on euthanasia, I would like to speak on behalf of them.

Of course, I have my own views on this, which I would like to elaborate here. One of my best friends died of cancer recently. It was such a great pain when we saw him finish the last part of his life. We all have to go through birth, death, illness and old age. But when something unfortunate happens to someone beside you, the pain it causes is incomprehensible to ordinary people. When we witness our dearest friend being tortured by illness, we are actually

going through the pain with him. Some people might take the initiative to end the lives of their beloved because they cannot bear to see their love ones being tortured by illness. Subsequent to the decriminalization of euthanasia in the Netherlands, euthanasia is now once again discussed extensively in the community.

Many people in Hong Kong want to impose a ban on euthanasia because they consider euthanasia amounts to murder. According to a guideline issued by the MCHK, the withholding of treatment for a terminally ill is not euthanasia. The organization represented by me is of the view that euthanasia involves the sense of value of different people and a religious and moral judgement. It also involves such controversial issues as the utilization of medical resources. The community should indeed take this opportunity to discuss this issue. Therefore, I think it is timely for Dr LO Wing-lok to move this motion.

As pointed out by supporters of euthanasia, patients are very often left to endure great pain when treatment proves to be futile. Just as I said at the very beginning, the pain suffered by one of my best friends facing the challenge of death was enormous. He once desperately searched for a peaceful way to end his life. Therefore, when he proposed to his doctor that he was going to give up his life, I accepted his decision with great pain even though he was my best friend. If we look at this matter from the patient's angle, we will be able to appreciate that he will want to find a solution for himself. Of course, he may have his unique way of thinking. He is probably under great pain in going through the process too. We may come up with different views in face of such issues. For instance, I personally do not support euthanasia. However, when I saw a friend of mine make such a decision, my stance began to waver.

Of course, some members of the community oppose euthanasia. In particular, a number of religious groups hold the view that euthanasia run counter to the faith of cherishing our lives. Moreover, euthanasia is considered an act of showing disrespect for life and damaging human dignity. Once the ban on euthanasia is lifted, it will give rise to worrying problems such as abuse, regulation, and so on. In my opinion, euthanasia is not the only way of helping terminal patients. We can see that hospice service is provided to terminal patients in a number of countries and regions. With the help of professionals from different fields, different ways are provided to patients to relieve the pain

caused by their illnesses or treatment. Moreover, families are counselled and taught how they can take care of the dying patients so that both patients and families know how to face death in a positive manner. As I said earlier in the debate, we are often forced to face the hardest battle fought between our love ones and death. Under such circumstances, hospitals will use different methods to help the terminally ill to cope with the last days of their lives.

Madam President, what I said just now reflected how I felt recently. It also shows that I find it difficult to decide how to deal with these issues. In debating euthanasia, we need to hold discussion at different levels. This is because people from different levels or with different experiences will see things differently. This is why we should be more careful. Only in doing so can the whole society reach a better consensus.

I have to reiterate that members of the Democratic Alliance for Betterment of Hong Kong hold different views on this matter. Therefore, I think we should hold a liberal attitude in holding the discussion.

Madam President, we support the motion moved by Dr LO Wing-lok. Thank you.

**MR AMBROSE LAU** (in Cantonese): Madam President, euthanasia involves such complicated issues as ethics, morals, culture, religion and legislation. For example, how should a person's right to life be protected? Do others have the right to decide the death of a person? How do we judge whether a patient, in choosing euthanasia, made the decision on impulse or was it a well-considered "final decision"? Further, will the lawful killing of terminal patients have impact on the entire culture as well as ethical and moral principles? Is euthanasia accepted by the traditional culture and customs of a country or a territory? These issues have aroused a huge controversy all over the world for euthanasia is not purely a medical or legislative issue, but a Gordian knot involving many complications of human civilization.

Individual countries in the world have now enacted legislation to decriminalize euthanasia. In the Netherlands, for example, legislation on euthanasia was enacted not long ago to pronounce officially the legalization of

euthanasia. Response to the enactment of the legislation was diverse, and there was even strong opposition against it. Results of an opinion poll in the Netherlands showed that 87% of the respondents supported the legislation but over 10 000 people took to the streets to protest against it. Bishop Tadeusz PIERONEK in Poland even condemned it as an attempt by man to correct God. Many people even consider euthanasia a violation of international human rights covenants.

Human life is dearly cherished in traditional Chinese culture. In the last years of the Spring and Autumn Period, Laozi said, "..... just as Tao has this greatness and as earth has it and as heaven has it, so may man also has it ....."<sup>1</sup>, stressing that mankind belongs to the "four portions of greatness"<sup>2</sup> in the universe. Later, Xunzi said, "Humans possess vital breath, life and awareness and add to them a sense of morality and justice. It is for this reason that they are the noblest beings in the world."<sup>3</sup>, pointing out that mankind is most precious. LIU Yuxi of the Tang Dynasty explicitly stated to the effect that Heaven is the greatest of all tangible things, whereas man is the most superior kind of animals. Many philosophers in ancient China had put forward the idea that mankind is most valuable among all, reflecting the values and importance of human life. In *Chunqui Fanlu* or *The Luxuriant Dew of the Spring and Autumn Annals*, DONG Zhongshu of the Han Dynasty said to the effect that man is created by Heaven to live out his years. The philosophy of life conveyed is that human life must run its course naturally. All these thinkings show that the traditional Chinese culture opposes a person ending his life prematurely either of his own accord or with the help of others.

Madam President, I have cited these philosophies of ancient Chinese thinkers on human life to emphasize that in considering the propriety of enacting laws to regulate euthanasia, we must also have regard for a nation's culture and traditions because euthanasia involves not only legislative control and management, but also the perception of life and death, values, moral concepts and religion in a nation's culture and traditions.

In Hong Kong, the legalization of euthanasia must be studied in the light of the actual circumstances in the territory. In recent years, we have seen an increase in the number of suicide cases. While suicide basically bears no direct

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<sup>1</sup> *Laozi* Hunan Publishing House 1995

<sup>2</sup> *Laozi* Hunan Publishing House 1995

<sup>3</sup> *XUNZI* Hunan People's Publishing House & Foreign Languages Press 1999

relation to euthanasia, suicide is in many cases a way to extricate oneself from failures and agonies. Now that the Hong Kong community is in dire straits, and if the Legislative Council legalizes euthanasia now, will it have a negative impact on people in difficulties or desperation? This question does warrant our careful consideration.

Moreover, if euthanasia is legalized, there must be a very stringent monitoring and management mechanism in place to prevent abuse or murder in disguise of euthanasia. This will also involve extremely complicated issues. Indeed, it is questionable as to whether Hong Kong has the conditions for setting up such a monitoring and management mechanism at the moment.

As to whether euthanasia should be legalized or whether legislation should be made to effect a total prohibition, the Hong Kong Progressive Alliance considers that while we should take account of the world trend, we should also consider it in the light of the actual circumstances in Hong Kong as well as the traditional morals and culture of the Chinese nation. We should consider it from all perspectives. We should not reject anything blindly or implement anything hastily. It is reasonable for the Government to pay due attention to this issue and carefully conduct studies of it.

Madam President, I so submit.

**MS AUDREY EU** (in Cantonese): Madam President, the methods currently adopted by the medical profession in treating terminal patients can be broadly classified into three categories. The first one is to continue administering treatment, which is the least controversial. The second one is to forgo futile treatment, which has attracted much attention and discussion. In other words, subject to the consent of terminal patients or their families, futile treatment, including medicine, equipment, and so on, will be withheld. The last one is euthanasia, which has stirred up a tremendous controversy. With euthanasia, doctors will take certain actions or measures to put an early end to the lives of those who have opted for it.

The first two methods are not the focus of this debate for they have been in practice for a long time. The last method, euthanasia, is generally rejected by the medical profession in Hong Kong. There is a marked difference between the second and third methods. By applying the second method, futile treatment

will be withheld to allow patients to die naturally of disease. As for the third method, euthanasia, doctors will need to take certain measures to induce premature deaths. Under the existing laws in Hong Kong, euthanasia is illegal. Both murder and giving assistance to another person to commit suicide are offences under criminal law. There is no exemption, regardless of whether the act is committed by a doctor, by a dying patient, or in compliance with the will of a patient.

Doctors are duty-bound to save lives. There is no dispute on a doctor continuing to administer treatment on a dying patient. As for the forgoing of futile treatment, the current practice is, when a doctor considers all treatments futile after making professional diagnosis in various aspects, he may terminate treatment if the relevant patient or the family of the patient agrees to do so. If the patient has lapsed into a coma or when there is a divergence of views between the doctor and family members of the patient, they may consult the Ethics Committee of the respective hospital. If a consensus is still not forthcoming, they may seek instruction from the Court. Although the patient cannot express his own wish, the Court is empowered to appoint a statutory lawyer to be his guardian *ad litem* to represent and safeguard his interest. There are indeed a number of such precedents in common law. The most notable example is *Airedale NHS Trust vs Bland (1993)AC789* dated 1993 in the House of Lords of Britain. Actually, the relevant guideline issued by the Medical Council of Hong Kong on care for the terminally ill has embraced the spirit of this precedent.

Following this practice for years, the medical profession has so far met no great objection. It was only recently that the Netherlands enacted a law on euthanasia. The City University of Hong Kong has also published the findings of a survey on euthanasia. Now Dr LO Wing-lok has moved this motion in a bid to induce extensive discussions.

Madam President, my reason for opposing euthanasia is simple. While euthanasia may sound appealing, it is indeed trying to kill someone or to help someone commit suicide in the name of "goodness". Once we accept that a person can kill someone or help another person to commit suicide in the name of "goodness" under certain circumstances, we will then be opening the door. The same theory can be applied to people finding their lives lack of meaning or dignity, or to people who are simply suffering. It is easy to end life; to live requires courage. I therefore disagree that our society should head for euthanasia.

Although Dr LO Wing-lok strives to make the wordings of his motion as neutral as possible, I fear that the motion, if passed, will give the community the wrong message that euthanasia should be permitted and that the Government should consider establishing a mechanism to regulate euthanasia. I have always believed that a healthy society should be able to co-ordinate its own business. If the Government sees it necessary to put in place a mechanism to regulate certain behaviours, practices or arrangements, there must be some problems with those behaviours, practices or arrangements. Perhaps there is opposition from a certain party, there are a lot of unsatisfied demands, or a certain party has no bargaining power though it has been unfairly treated. Under such circumstances, a regulatory mechanism will serve to protect the weak and play the role of a co-ordinator to facilitate balanced social development.

The Medical Council of Hong Kong has issued detailed guidelines on the treatment of terminal patients. There are also a number of precedents in which patients have been treated in a fair, harmonious and concordant manner. Since I see that no terminal patients have been treated otherwise, I cannot agree that doctors should be given the responsibility of putting an early end to patients' lives. It is also for this reason that I consider it unnecessary for the Government to examine the establishment of a regulatory mechanism with respect to this issue at this stage.

With these remarks, I oppose the motion. Thank you, Madam President.

**MR MARTIN LEE:** Madam President, "euthanasia" is a great word. It comes in two parts: "eu", as the surname of Ms Audrey EU, meaning good, and "thanatos" meaning death — good death.

Dr the Honourable LO Wing-lok would define it as "the direct intentional killing of a person as part of the medical care being offered." I understand that the Administration's definition is slightly different, and it is defined as "a deliberate act with the primary intention of ending the life of an individual, as part of the medical care offered."

On either definition, to me, it is murder. No one can justify such an act by pretending that it is acceptable because it is offered as part of the medical care

or the patient had requested it. A doctor's undoubted duty is to cure the patient, not to kill him.

The "Hippocratic Oath", which is deemed to be taken by every doctor in practice, contains this sentence, "I will give no deadly medicine to anyone if asked, nor suggest any such counsel." Of course, the proponents of euthanasia will say that this is not so if life is no longer worth living because of the poor quality of life, as if, Madam President, life is worth living only if it is beautiful, good and useful.

That is so only if we agree that life is no different from a chattel, or a thing that we possess — like an old radio which no longer works, and so must be discarded. But life is infinitely more precious than a chattel, and we do not own it.

For as Pope John Paul II put it in his Encyclical Letter entitled *Evangelium Vitae: The Gospel of Life*, "Only God is the master of life, and human life which is sacred and inviolable is but entrusted to us as a treasure, which must not be squandered." The Pope defined euthanasia as "an action or omission which of itself and by intention causes death, with the purpose of eliminating all sufferings." And he carefully distinguished it from "the decision to forego so-called 'aggressive' or 'disproportionate' medical treatment" which is not objectionable.

On human suffering which is relied upon to justify euthanasia, the Pope had this to say: "Love gives meaning to suffering and death, despite the mystery which surrounds them, they can become saving events. Respect for life requires that science and technology should always be at the service of man and his integral development. Society as a whole must respect, defend and promote the dignity of every human person, at every moment and in every condition of that person's life." And I would add, particularly at this end.

Let me now recite the beautiful lyric on unfading love by Thomas MOORE, taken from *Irish Melodies* (1807), assuring his loved one not to worry about growing old:

"Believe me, if all those endearing young charms,  
Which I gaze on so fondly today,  
Were to change by tomorrow, and fleet in my arms,  
Like fairy gifts fading away!  
Thou wouldst still be ador'd as this moment thou art,  
Let thy loveliness fade as it will,  
And, around the dear ruin, each wish of my heart  
Would entwine itself verdantly still.  
It is not while youth and beauty are thine own,  
And thy cheeks unprofaned by a tear,  
That the faith and fervour of a soul can be known,  
To which time will but make thee more dear.  
No, the heart that has truly lov'd never forgets,  
But as truly loves on to the close,  
As the sunflower turns on her god, when he sets,  
The same look which she turn'd when he rose."

And I also remind Honourable Members of the matrimonial vow that many of us took on the wedding day: "I take thee as my lawful wedded wife — for better or for worse, for richer or poorer, in sickness and in health, till death do us part." What then do we do when our loved one is dying of incurable cancer? How do we fulfil our matrimonial vow? By speeding up her death?

The sunflower which greeted the sun with joy at dawn does not hasten its departure at dusk. Euthanasia is not the answer to pain and suffering which is often present when death is near.

I agree wholeheartedly with Dr LO Wing-lok that the answer lies in the education of the whole community, public discussion, and in extending hospice and palliative care to all our citizens who are approaching the end of their lives.

The last few days of one's life need not be gloomy and miserable for both the dying and his or her family members. If properly prepared and helped, both the dying patient and his or her family members may find a closer bond between them, sealed by greater understanding, sharing and love.

Just as the most beautiful and tranquil part of the day is at its end, let every life end in peace and love, when the soul leaves the body and returns to its God of love.

**DR TANG SIU-TONG** (in Cantonese): Madam President, with respect to the treatment of terminal patients, health care institutions in the public sector provide hospice services to these patients to help them pass the last days of their lives and to reduce the pains and sufferings which they and their families have to bear. It remains of course that hospice service does not include euthanasia which is a controversial subject among the medical profession around the world and in Hong Kong. Euthanasia as defined by the Secretary for Health and Welfare in a question raised in the Legislative Council last year is "a deliberate act with the primary intention of ending the life of an individual, as part of the medical care offered". The Secretary pointed out that such a kind of service is usually offered to the terminal patients and is under the request of the patient or his family. As for the withdrawal of life-sustaining instruments to cause a patient to die, that does not fall under the definition of euthanasia. The Guideline on In-patient Resuscitation issued by the Hospital Authority and the Code of Practice of the Medical Council of Hong Kong both provide for such acts of medical treatment.

Madam President, the controversy which centres around euthanasia is that patients are caused to die as a result of deliberate acts performed by the medical staff. It therefore is tantamount to assisting others to commit suicide and it runs against the moral standards and expected professional conduct of medical doctors as commonly held by the community. With the great strides made in medicine in recent decades, many patients who would have died of certain diseases can have their lives prolonged. However, that does not mean that their diseases can be cured. They still have to bear the pains caused by their diseases and in the end they may still need to face death. Those in support of euthanasia think that every person has the right to decide how they lead their lives. According to them, when diseases become incurable and when great pains have to be borne, patients should have the right to elect to end their lives. They should be allowed to die in dignity and leave this world in peace. In addition, those who support the idea think that euthanasia can serve to put an end to the long-standing mental stress and anxiety which the family members of the patients are undergoing. Those who oppose euthanasia think that human lives are priceless and should be respected. Even the patient himself does not have the right to take his own life away. Moreover, a patient who cannot be cured today does not mean that there is no cure for him in the future in the form of some potent drugs or treatment methods. The patient will have no chance to go back once he chooses to end his life by resorting to euthanasia. The debates on euthanasia mentioned above show that different people in society have different values. Other related issues

like the right to choose and the value of life and such like moral and ethical issues are too complicated to enable the reaching of a consensus in society.

Euthanasia is much more than a person's choice between life and death, it also has to do with the role of the health care personnel. According to the Secretary, euthanasia is part of medical care offered, but the question is, would the health care professionals agree that euthanasia is a kind of medical care? The kind of professional training received by the health care personnel in Hong Kong has always put the saving of patients' lives as their first and foremost duty. And the Chinese people have always valued benevolence and compassion in the medical profession. Just imagine how many medical practitioners can accept the idea of giving drugs to help patients end their lives. Would this not make the health care personnel killers? In addition, euthanasia would create tremendous impact on the laws. A lot of legal problems and disputes may arise and the laws will become more complicated if a patient's death is caused by the acts of his doctor.

In the letter Dr LO sent us, it is mentioned that the medical profession in Hong Kong generally accepts the idea of "forgoing futile treatment". To forgo futile treatment is a passive act of abandoning proactive acts of medical intervention and let the disease run its natural course. It is very much different from euthanasia which is active participation. As to whether or not this approach is reasonable, I think more discussions are needed in the community. As a member of the medical and health profession, I am inclined to accepting this idea.

Demands for human rights are rising, and the right to die is regarded part of human rights. As to the right to know of the family members of the patients and whether family members have the right to object to the decision made by the patients or the medical and health staff, all these are issues that require proactive study in order that the services given to terminal patients can be improved and the rights of the public safeguarded.

As to the question of whether laws should be made to regulate the practice of euthanasia, I think this should be left to the extensive and detailed discussions and deliberations in the community. I do not think we should make a rash decision on it.

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

**MR LAW CHI-KWONG** (in Cantonese): Madam President, although Dr LO Wing-lok has defined euthanasia clearly in his speech, still a lot of Members confuse euthanasia with the forgoing of futile treatment and the refusal of treatment by patients in this debate. I would like to take this opportunity to state the position of the Democratic Party with respect to this issue.

The Democratic Party generally accepts that euthanasia should be defined as "direct intentional killing of a person as part of the medical care being offered". Despite the different versions of definitions, euthanasia carries the broad meaning of deliberately or intentionally ending a person's life.

The Democratic Party generally holds the view that beliefs involving individuals, particularly religious belief, should not be subject to any form of regulation. On behalf of Members of the Democratic Party, I would say that we find it impossible to support euthanasia of a narrow definition. Nevertheless, forgoing futile treatment and refusal of treatment by patients are both permissible under the law. As decision-making by doctors, patients and families is usually involved, we agree that there is a need for the Government to examine the relevant issues to explore whether a regulatory mechanism should be established and whether certain existing practices should be codified, though we can always refer to precedents for guidance.

The one who faces death is not only the terminal patient. His family members and the staff responsible for treating and taking care of him face death too. After all, facing death is not an easy task. Many problems, such as communication between doctors and family members of patients, the adaptation of family members after the patients' death, and so on, will arise too. We should take positive steps to deal with such situations and provide adequate hospice services. As of today, the development of these services is still at a preliminary state. There is still room for improvement in various aspects.

Insofar as this motion is concerned, the Democratic Party is caught in a dilemma. As regards the wordings, Dr LO Wing-lok has not stated clearly whether the "regulatory mechanism" refers to euthanasia or the treatment of terminal patients. If Dr LO was referring to euthanasia, the Democratic Party will surely raise objection because it will assume that euthanasia is permitted before studying the need to establish a regulatory mechanism. If Dr LO was

actually referring to the treatment of terminal patients, including the forgoing of futile treatment and the refusal of treatment by patients, we will surely raise no objection. Basically, we agree that study should be conducted to examine the need to establish a regulatory mechanism. Although Dr LO has stated clearly in his speech that he was referring to the latter, not the definition of euthanasia in its narrow sense, we are going to decide whether to endorse the motion, not the speech delivered by the Honourable Member. After detailed discussions, the Democratic Party finally decided to abstain from voting.

Thank you, Madam President.

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

**MR ERIC LI** (in Cantonese): Madam President, originally I did not intend to speak. But having listened to the speeches of some Honourable colleagues, I think they may have some misunderstandings about Dr LO's intention in moving this motion or the content of Dr LO's speech. I hope Members can look at Dr LO's motion from a different perspective.

As Mr LAW Chi-kwong has clearly said, it seems that Members are still very confused about euthanasia, the termination of treatment or the forgoing of futile treatment. Fortunately, the Honourable Ms Audrey EU and Dr LO Wing-lok had explained the differences very clearly when they spoke earlier on. So, I do not wish to repeat their meanings here. However, I do appreciate why Dr LO, as the representative of his profession, has moved this motion and explained the relevant situation to Members at this juncture.

First, the question of whether legislation should be made to prohibit or permit euthanasia has gradually become the focus and trend of discussion in the international community, and I believe our discussion today, particularly as this debate is supported by many members of the public, will prompt many patients to ask for and expect more from medical practitioners. Being a responsible representative of his profession, Dr LO hopes that the Government can face and look into this issue early. I think this is unavoidable, and I reckon this issue will become extremely controversial in Hong Kong sooner or later. If other

countries proceed to make legislation in this regard one after another, it will only be inevitable for Hong Kong to follow this direction. So, the earlier this issue is studied, the better.

Second, being a professional myself, I fully understand that in the absence of clear statutory provisions and a regulatory regime, and given the increasingly strong desire for euthanasia on the part of patients and their relatives and friends, medical practitioners are caught in this moral and legal dilemma almost every day. I believe the medical profession hopes that a decision can be reached in the community early on whether or not we should legislate to permit or prohibit euthanasia, and I would have this hope too were I a medical practitioner. If it is decided that euthanasia should be permitted, what sort of regulatory mechanism should there be? I believe the earlier these issues are discussed, the earlier medical practitioners can know clearly the direction in dealing with the relevant complications.

Third, Dr LO has taken great pains to choose some very neutral wordings for his motion, but some colleagues appear to have some misunderstandings about his well-intentioned efforts, thinking that Dr LO has chosen such neutral wordings only to canvass votes from Members. I believe it is absolutely not his intention to ask Members to vote for or against euthanasia. In my view, as I said just now, Dr LO only wishes to raise an important social issue for discussion, and I believe this is his view. In concluding his speech, he said, "The issues ..... can by no means be decided by the medical profession unilaterally. I hope that the debate today can be helpful to our exploration for a more positive attitude towards death." As many Members have said earlier in the debate, this is not a medical issue confined to the medical sector. Rather, it involves social morals and other complicated issues, such as patients' rights or choices. What we are discussing is not just an issue on which doctors find decision difficult. It is also an issue that requires discussion in the Legislative Council in order to identify a way forward. Certainly, it is absolutely reasonable for Dr LO, being the representative of his profession, to move this motion and express his views from the perspective of a medical practitioner. It is definitely not his wish to see Members, without actively participating in the discussion, splitting into two camps of supporting or opposing euthanasia.

Dr LO has used very clear wordings in his motion. While he had presented the current position of the medical profession, his conclusion showed that his position is open for he is willing to listen to the views of all sectors of the community. If a final decision can be reached in the Legislative Council, I believe the medical profession will accept it, for this will point to a clear direction for them to face their work easily.

If we look at the motion from this angle, we will see that Dr LO hopes that Members can give their own views. The last sentence of the motion reads, "..... to establish a regulatory mechanism". As far as I understand it, and as agreed by Dr LO, "a regulatory mechanism" includes legislation, not just administrative measures. Insofar as legislation is concerned, whether legislation is made to prohibit or permit euthanasia, it means more clearly-written statutory provisions to provide the medical profession with guidance. I believe this is the main purpose of Dr LO in moving this motion.

I hope that Members will not oppose Dr LO's motion because of the subjective views that they may have on euthanasia. Dr LO told me that as he had used all his 15 minutes for his earlier speech on the motion, he may not have the chance to thank Members for speaking enthusiastically on this complex motion. Therefore, I must thank Members on his behalf. Certainly, Dr LO very much hopes that Members will vote for this motion. But disregarding whether Members support or oppose the motion, their input will still be helpful to both the medical profession and the Government in considering this issue.

Thank you, Madam President.

**MR MICHAEL MAK** (in Cantonese): Madam President, we can often find in the newspapers stories about people having committed suicide because of prolonged illnesses and terminal patients suffering great pains and traumas in fighting fiercely against death. So should we introduce euthanasia to let terminal patients die in an apparently more comfortable manner?

The greatest controversy surrounding euthanasia is whether medical staff should be allowed to help suffering patients to end their lives in order to alleviate their pain and whether such an act amounts to murder or aiding and abetting suicide. Supporters of euthanasia will defend by saying a person has to die in dignity. Some people in the community even raise this question: While we can give birth and live in a chosen manner, why cannot we die in a chosen manner too?

Actually, the first motion on euthanasia was moved in Ohio in the United States as early as 1906, but it was eventually negated. The whole world was rocked recently by an American doctor, Dr KEVORKIAN, also nicknamed "Dr Death". Since 1990, he has helped the mercy killing of more than 100 patients. He was subsequently charged three times by the Court with the offence of aiding others to commit suicide, but each time he was acquitted.

The Netherlands passed an act on euthanasia last month to set out clearly the requirements to be met for the purpose of executing euthanasia. For instance, it is required that the patient concerned must be a resident of the Netherlands, he is suffering from an incurable disease and unbearable pain, he must be in a sound mind when making the request, and so on. As for children between 12 and 16, they must seek their parents' consent before they can volunteer to receive euthanasia. Although the relevant act has been passed, the disputes triggered still continue.

At present, the medical profession in Hong Kong considers the "forgoing of futile treatment" acceptable. Based on the principle of the futility of treatment, life support may be withheld for a terminal patient to let him die peacefully. However, this still gives rise to other controversial issues, such as "what is futile treatment" and "who is going to be responsible to decide that treatment is futile". Actually, the forgoing of futile treatment for terminal patients is taking place every day. In doing so, medical staff allow patients to die naturally, thus sparing them the physical and mental torture caused by intrusive emergency measures. In my opinion, it is difficult to say when we can make decision with respect to the dignity to live or which group of people can do so. Who has the power to decide whether a person should live or die?

The first and foremost task of health care professionals is to save lives. As a member of the profession, I will definitely adhere to the principle that life is precious. This is the highest principle in the medical sector. Therefore, I object to any unnatural death.

Let us imagine a scenario in which an underage patient has lapsed into a coma or a state of dementia. If his family members opt for euthanasia because the patient has imposed on them excessive burden or because they have a conflict of interests with the patient, it will not only give rise to a serious moral crisis, but also lead to incalculable legal proceedings.

With the rapid advancement in medical technology, the medical sector has actively studied human genes as early as since the previous century in a bid to reduce the chances of contracting hereditary diseases and other diseases by way of genetic modification. For the time being, it is still uncertain as to whether medical science can achieve a breakthrough for terminal patients. This is like human immunodeficiency virus (HIV) was seen as a terminal disease of the century by HIV patients a decade ago. With the progress in medical technology and the invention of "cocktail" treatment a few years ago, terminal patients are now given new hopes. So who can assert that terminal diseases are incurable?

Facing dramatic changes in sense of value, medical staff often find it difficult to determine whether the general community can accept allowing suffering terminal patients to decide ending their own lives. While sufferings are inevitable, no one can escape death. At present, we can only provide terminal patients with hospice services. For instance, we can relieve physical pains by prescribing painkillers. At the same time, with the provision of continuous psychological counselling, we hope patients can feel that we support and care for them so as to remove their fear and helplessness and to foster the feeling that they can eventually die without any regret.

Like the motion of whether soccer betting should be legalized, this motion involves a lot of moral arguments. I hope various sectors of the community can carefully weigh the advantages and disadvantages of euthanasia after conducting full discussions. However, I must stress that we must not advocate euthanasia and other unnatural deaths solely from the angle of economic effectiveness, ageing population, rising medical costs, and so on. Instead, we must respect the value of life and make the interests of patients as our prime consideration.

As life is of paramount importance, I cannot support the motion for, if I do so, people will naturally think that I support euthanasia. Madam President, I so submit.

**MISS MARGARET NG** (in Cantonese): Madam President, I will vote against this motion later. I would like to explain why I will vote against such a neutral motion though it seems that the motion is only asking the Government to conduct a study. Is the Government disallowed to conduct the study?

Madam President, a Member mentioned earlier in the debate that today's discussion is not focused on whether we should support or oppose euthanasia. Rather, we should see euthanasia as part of the treatment of terminal patients. Madam President, it has already been stated very clearly in the question of the motion that the Government is requested to take the lead to study euthanasia as part of the treatment of terminal patients.

Madam President, whenever we legislate to support or permit something, legal regulation or relaxation will be involved. At the same time, there will be a moral implication, that is, we think the community approves of it. If we legalize euthanasia, it will imply that the community approves of the following: Committing suicide under certain circumstances, abetting suicide under certain circumstances, ending someone's life prematurely, or facilitating a premature death when life is too miserable or when the quality of life is too low. In other words, the community has to approve of such values before we can proceed to making legislation. If the Government is to carry out the study, it will mean that the Government considers that the community might have established or approved of such values since the study is not an academic study.

Madam President, the Honourable Miss Emily LAU asked a question on euthanasia on 26 January 2000. At that time, the Secretary for Health and Welfare stated clearly that the Government would definitely disapprove of and would not consider euthanasia. According to the Secretary, there was limited discussion about the issue in the community, though the Government would continue to keep the development of euthanasia in view. If members of the community are found to have reached a consensus in their sense of value and inclination with respect to this issue, the Government will surely explore the issue again.

Madam President, what has happened since 26 January 2000 that has made the Government change its position? Is the Government of the view that there is such a consensus in the community at the moment? If the Government accepts this motion today, it will be tantamount to telling us that it has changed its position. In other words, it has changed its position of disapproving of euthanasia, or at least its position has softened. Are we going to relay this message to the public?

What has actually happened during this period is that the Netherlands has enacted a law. Yet this piece of law is of a very limited scope. Earlier in the

debate, a Member remarked that euthanasia had been legalized in the Netherlands. This is not entirely accurate because euthanasia has aroused great controversy in the country itself. When a delegation from the parliamentary assembly of the Netherlands visited Hong Kong recently, both Ms Audrey EU and I were present. We asked the delegation about the situation in the Netherlands. Some members commented immediately that they did object fiercely and they would continue to do so.

Even if the legislation is passed in the Netherlands, it does not mean that there are signs showing that the local community has changed its attitude. For this reason, I do not consider the time is ripe for this Council to pass this motion to press the Government to study this matter. If the Government accedes to the motion and conducts the study, it will someday see it necessary to either legislate to permit euthanasia or relax the restrictions on euthanasia (if the study is really conducted in an open-minded manner) or not to relax the restrictions. There is always such a possibility. In this way, we will turn something out of consideration into a possibility. This message is extremely clear.

Madam President, I do not wish to see this happen. I do not wish to see this message conveyed to the community. This is why I will vote against the motion today. It is not because I think Dr LO should not initiate such discussions at this moment. It is because I object to the motion.

Madam President, during the last discussion of this issue in this Council, the then representative of the medical services constituency in this Council, Mr Michael HO, pointed out that the guidelines issued by the Hospital Authority (HA) should not be confined to the HA. More should be done to give all medical staff, hospital employees, and private practitioners a better understanding of the guidelines. He also expressed his wish that the Government could encourage the HA to do so. I hope the Secretary for Health and Welfare can tell us when he responds later what the Government has done during that period to give the public a better idea of the Government's current position and what form of hospice services it will provide.

Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, first of all, I would like to thank Members for their speeches. The treatment of terminal patients has indeed been a standing topic of study by the Government for many years. The development of legislation on the relevant issues in overseas countries mentioned by Dr the Honourable LO earlier has also drawn our close attention. Today I shall describe briefly the current view of the Government on treatment of terminal patients before coming to an exposition of our view on the related regulatory mechanism.

Before going into the discussion, I would like to make some introductory remarks. The "terminal patients" here refer to those patients with incurable diseases leading to imminent unavoidable death. I would like to point out that, under the topic of care for terminal patients, euthanasia is only one of the concepts that is worth discussing. Other initiatives such as the promotion and development of palliative medicine may be even more important. By "palliative medicine", I am referring to the medical specialty that endeavour to relieve the mental and physical sufferings of patients with severe or terminal illness. Health care professionals practising palliative medicine all along uphold the belief in ensuring that terminal patients are given appropriate care. The principles underlying these services is to enable the patients to be afforded dignity and privacy; to have good amelioration of physical pain; to have relief of comfort in response to their sorrow and anxiety; and to have their personal wishes and autonomy respected. We have now in our public hospital system many hospitals that specifically provide terminal patients with hospice care. Professionals in the Clinical Oncology specialties and other related specialties, as well as some community organizations have also spared us efforts in developing hospice care. The Hospital Authority and other professional bodies have also put a lot of efforts in training health care personnel in hospice care. For the well-being of terminal patients, the Government will continue to support this direction of development.

We know that "life and death" is a very complex issue in medical ethics. Death is not only the isolated stage symbolized by the moment at which our hearts stop beating. It can be perceived as having begun ever since our birth. Let me cite the saying, "The art of living well and dying well are one." Therefore, as regards "death", society and families have to provide a suitable environment conducive to educating the people how to positively confront illness and rationally face death. In this way, when being faced with the topic "death", instead of evading or fearing it, we can reflect on it and confront it. As a result,

"death" will no longer be a jargon for health care professionals and religious leaders. Many medical ethicists have proposed that, in order to "die well", we do not need to have all of our aspirations in life realized. They instead encourage people to think about how to seize every single second and minute in order to be in company with the family for such a short time, share one's precious experience in life, come to terms with one's unfinished wishes with a mind-easing conclusion. I believe palliative medicine will help patients avoid thinking of terminating their lives prematurely; and, in a more self-controlled manner, draw a regretless full-stop to their perhaps imperfect life.

To avoid confusion, I would like to start with reiterating the definition of euthanasia adopted by the Government from the beginning. Euthanasia is the direct intentional killing of a person as part of the medical care being offered. This concept of euthanasia does not include withholding or withdrawing resuscitation or life-sustaining treatment for terminal patients.

First of all, we shall discuss the statutory regulation of euthanasia in Hong Kong. Although legislation in Hong Kong, like many other countries, do not use the word "euthanasia", either administering poison and wounding with intent to murder or aiding and abetting others to commit suicide is considered illegal under the present legislation. In other words, life-terminating behaviour which are sanctioned by a few countries such as giving lethal injection to patients or offering medication to assist suicide, are illegal in Hong Kong.

Although the above criminal law has been effectively fulfilling its function of proactively deterring illegal life-terminating behaviour, Members may still concern about this question: Is there an effective mechanism in the present health care system which can help detect such behaviour. The Coroners Ordinance passed in 1998 has indeed strictly required health care personnel to report certain "reportable deaths" to the Coroner. These include those deaths caused by administering of a drug or poison, or those of which doctors cannot accurately state the cause of death. This legislation, in conjunction with peer monitoring among health care personnel and the clinical audit system in public hospitals, have already effectively prevented illegal life-terminating behaviour. As a result, we believe there is no immediate need to strengthen regulation in this respect.

Next I will talk about an arrangement that is totally different from euthanasia, that is, the withdrawing of life-sustaining treatment for terminal

patients. At present, after considering the patients' best interest, whether the treatment is futile, and the will of patients and their families, doctors in Hong Kong will always offer individualized treatments which best meet the patient's needs. When it is certain that further treatment will be futile, the medical profession will accept the practice of withdrawing those particular treatments and let the patient's life end naturally. Many advanced countries also accept this practice in similar situations; and legally speaking, courts in countries practising common law have also ruled this as legal. We have to clearly distinguish this practice from euthanasia.

The Medical Council of Hong Kong has already added a new section on "Care for the terminally ill" in its late-2000 edition of the Code of Practice to set out clear guidelines on withdrawing life-sustaining treatment. The Hospital Authority has also issued a "Guideline on In-patient Resuscitation" to help health care personnel make decisions about applying or withdrawing cardiopulmonary resuscitation based on professional requirements and ethical standard. As a result, I believe we have already got appropriate measures on the practice of withdrawing life-sustaining treatment to safeguard people's autonomy as well as rights to treatment.

I wish to point out that as a topic which leads to complex medical, societal, ethical, moral and legal influence, the concept of euthanasia really warrants a deeper discussion in future. We note that in the past professional bodies and community organizations have expressed opposing views on amending legislation to sanction euthanasia. We however have not seen a clear consensus among the general public. Related community surveys show that there is still some confusion in some concepts pertaining to this issue and there is still room for deeper discussion in society. Acknowledging this, the Government will continue to closely monitor the trend of societal values regarding euthanasia.

Dr LO mentioned the arrangement of advance directives. This is an area to which the Government has paid particular attention. Such arrangement enables people to express their will in advance as to whether life-sustaining treatments are to be withdrawn should they become terminally ill. Ways of carrying out this practice vary in different countries. Some countries adopt legislation to set out particulars on making advance directives. Others may use the approach similar to that of Hong Kong and allow people to informally express their wishes during their interaction with health care personnel. In this

regard, the Government will continue to observe discussions in society about making legislation to regulate advance directives and follow up accordingly.

At the present stage, the Government will on the one hand pay attention to the trend of societal values on treatment of terminal patients; and continue to observe the implementation of the relevant guidelines set out by professional bodies and public hospitals on the other. Meanwhile, we shall continue supporting the development of palliative medicine to ensure that terminal patients will be given the best physical, psychological and spiritual care.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Members, at this stage I should call upon Dr LO Wing-lok, mover of this motion, to speak in reply. However, since Dr LO has already exhausted the 15 minutes allowed, this Council shall proceed to vote on the motion now.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Martin LEE rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Martin LEE has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Miss LI Fung-ying, Mr Henry WU, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Miss Margaret NG and Mr Michael MAK voted against the motion.

Mr CHEUNG Man-kwong and Mr LAW Chi-kwong abstained.

Geographical Constituencies and Election Committee:

Mr CHAN Kam-lam, Mr Andrew WONG, Mr LAU Kong-wah, Miss Emily LAU, Miss CHOY So-yuk, Dr TANG Siu-tong, Mr David CHU, Mr NG Leung-sing and Mr YEUNG Yiu-chung voted for the motion.

Ms Audrey EU voted against the motion.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Mr WONG Sing-chi abstained

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 15 were in favour of the motion, two against it

and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, nine were in favour of the motion, one against it and nine abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 9 May 2001.

*Adjourned accordingly at four minutes past Eight o'clock.*

**Annex I****WRITTEN ANSWER****Written answer by the Secretary for the Environment and Food to Mr LAU Wong-fat's supplementary question to Question 2**

As regards the question whether the pilot project on waste incineration to be carried out by the Green Island Cement Company in its plant would violate any land grant provisions, we have sought the advice of the Lands Department. Having studied the nature and the details of the project, the Department considered that there would not be any contravention of the land grant provisions.

**WRITTEN ANSWER****Written answer by the Secretary for Commerce and Industry to Mr WONG Yung-kan's supplementary question to Question 2**

According to the information provided by the Green Island Cement Company Limited, the research project requires a total of 28 researchers, with 18 of them from the Hong Kong University of Science and Technology, another eight from the Company concerned and the remaining two are advisors for environmental protection.

**Annex III****WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Mr Ambrose LAU's supplementary question to Question 4**

In the past three years, no breach of relevant safety conditions was found by the Lands Department during their inspection of those golf driving ranges operating under short term tenancy/waiver.

**Annex IV****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Miss Emily LAU's supplementary question to Question 5**

Unfortunately, Harmony House does not keep records on the follow-up action taken in relation to the callers. Under the standing arrangement amongst the three refuge centres for women and as confirmed by Harmony House, the practice is that the intake worker of Harmony House will advise callers to approach the other two centres (Wai On Home for Women and Serene Court) for admission. As a last resort, women in urgent situations will be admitted into the Social Welfare Department's Wai On Home, which has not turned away any case.

At our request, the refuge centres will keep records, in future, on these cases, as well as the advice/assistance given to such callers; however, Members will appreciate practical difficulties at times, as some callers might not be forthcoming in providing the data.

**Annex V****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Mr WONG Sing-chi's supplementary question to Question 5**

The intake worker from Harmony House has referred all of these cases to the other refuge centres. Unfortunately, records of these cases are not kept. If alternative arrangements cannot be made, the women will be admitted to the centre of the Social Welfare Department, which has never turned cases away. We are not aware that any of these cases resulted in family tragedies.

At our request, the refuge centres will keep records, in future, on these cases, as well as the advice/assistance given to such callers; however, Members will appreciate practical difficulties at times, as some callers might not be forthcoming in providing the data.

**Annex VI****WRITTEN ANSWER****Written answer by the Secretary for Education and Manpower to Mr CHAN Kwok-keung's supplementary question to Question 6**

As at 30 April 2001, reserves of the Protection of Wages on Insolvency Fund (the Fund) stood at \$317 million. Huge running deficits are registered since 1997 due to the drastic increase in the number and amount of *ex gratia* payment caused by companies going bankrupt. Running deficits stood at \$130 million last financial year and it is estimated that the deficits will amount to \$127 million this year. A review of the Fund's financial position is now underway.

**Annex VII****WRITTEN ANSWER****Written answer by the Secretary for Education and Manpower to Mr LEE Cheuk-yan's supplementary question to Question 6**

The record of the Labour Department shows there was a total of 13 582 applicants for *ex gratia* payment from the Protection of Wages on Insolvency Fund in 2000, 165 of these (that is, 1.2%) were rejected because they failed to pass the Legal Aid Department's means tests and no bankruptcy or winding-up petitions had been presented against the employers.

**Annex VIII****REHABILITATION CENTRES BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
4(2)	<p>(a) By deleting paragraph (a) and substituting -</p> <p style="padding-left: 40px;">"(a) is, in the opinion of the court, not less than 14 but under 21 years of age on the day of his conviction;"</p> <p>(b) In paragraph (f) -</p> <p style="padding-left: 40px;">(i) by deleting "on the date of conviction,";</p> <p style="padding-left: 40px;">(ii) by adding "at the time of his conviction" after "dependent".</p>
9(4)	<p>By deleting everything from "entry to" to "correctional services" and substituting -</p> <p style="padding-left: 40px;">"a police officer or correctional services officer -</p> <p style="padding-left: 80px;">(a) cannot obtain entry to premises as a result of a request under subsection (3); or</p> <p style="padding-left: 80px;">(b) reasonably believes that a person unlawfully at large is on particular premises but no person appears to be on the premises,</p> <p style="padding-left: 40px;">the".</p>

ClauseAmendment Proposed

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- (a) By renumbering the clause as clause 10(1).
- (b) In subclause (1), by deleting everything after "direct that the" and substituting "young offender be dealt with in the manner referred to in subsection (2) or (3).".
- (c) By adding -

"(2) The young offender may be transferred to a training centre; and for the purposes of this Ordinance and the Training Centres Ordinance (Cap. 280), he shall be deemed to be a young offender who, on the day on which the detention order was made against him, had instead been sentenced to detention in a training centre.

(3) The young offender may be detained in prison for such term as the Chief Executive may, subject to subsection (4), determine, not exceeding -

- (a) the unexpired part of the maximum period during which he might have been detained in a rehabilitation centre; or
- (b) the term of imprisonment to which he was liable for the relevant offence of which he was convicted,

whichever be the less; and for the purposes of this Ordinance and the Prisons Ordinance (Cap. 234), such offender shall be treated as if he had been sentenced to imprisonment for the term so determined by the Chief Executive.

ClauseAmendment Proposed

(4) The Chief Executive shall, before making a determination under subsection (3) -

- (a) consult, where practicable, with the judge or magistrate who made the detention order; and
- (b) take into consideration, so far as possible, the recommendations made by the judge or magistrate, as the case may be."

11(3) By deleting "Visiting" and substituting "Subject to section 12, visiting".

12 (a) In subclause (1), by deleting everything from "Subject to" to "144(k)," and substituting "The Prisons Ordinance (Cap. 234) (except sections 3, 4, 6, 7, 12A, 22A, 24A, 24B and 25) and the Prison Rules (Cap. 234 sub. leg.) (except rules 22, 51, 69, 144(j) and (k) and 222(1)) ("the applicable provisions")".

(b) By deleting subclause (2) and substituting -

"(2) Notwithstanding subsection (1), in the event of conflict between this Ordinance (including the regulations) and the applicable provisions, the former shall apply."

Schedule By deleting the Schedule.