

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 13 June 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 CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

**MEMBER ABSENT:**

THE HONOURABLE DAVID CHU YU-LIN

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

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

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

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

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

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

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

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

MS ELAINE CHUNG LAI-KWOK, J.P.  
SECRETARY FOR HOUSING

MR KEVIN HO CHI-MING, J.P.  
SECRETARY FOR TRANSPORT

**CLERKS IN ATTENDANCE:**

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Import and Export (Fees) (Amendment) Regulation 2001 .....	128/2001
Municipal Services Appeals Board (Witnesses' Allowances) Regulation.....	129/2001
Banking Ordinance (Amendment of Seventh Schedule) Notice 2001 .....	130/2001
Midwives (Registration and Disciplinary Procedure) (Amendment) Regulation 2001 .....	131/2001
Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2001 .....	132/2001
Administrative Appeals Board (Witnesses' Allowances) Rules .....	133/2001
Chiropractors (Registration and Disciplinary Procedure) Rules .....	134/2001
Chiropractors Registration (Fees) Regulation (L.N. 79 of 2001) (Commencement) Notice 2001 .....	135/2001
Fugitive Offenders (Malaysia) Order (Cap. 503 sub. leg.) (Commencement) Notice 2001 .....	136/2001
Banking Ordinance (Amendment of Eleventh Schedule) Notice 2001 .....	137/2001

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. Question time normally does not exceed one and a half hours, with each question being allocated about 15 minutes. Supplementaries should be as concise as possible and Members should not make statements when asking supplementaries.

First question.

### Establishment of Human Rights Institution

1. **MR SZETO WAH** (in Cantonese): *Madam President, after considering the initial report submitted by the People's Republic of China on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the Hong Kong Special Administrative Region (SAR), the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) adopted on 11 May this year its Concluding Observations in which it regretted that the SAR had not yet implemented a number of recommendations it had made in 1996, including the establishment of a "human rights institution" with a broad mandate, and urged the SAR again to establish such an institution. In this connection, will the Government inform this Council how and when it will fulfil its obligation to establish a human rights institution?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, human rights are well protected in Hong Kong. At the constitutional level, Article 39 and other Articles of the Basic Law enable the Courts to provide effective remedies against many types of human rights violations. This is supplemented by the Hong Kong Bill of Rights Ordinance, the three anti-discrimination ordinances, and other legislation that provides remedies for the contravention of specified human rights. There is an independent Judiciary, an accessible legal aid system, and The Ombudsman.

The Government operates in the full view of a free and active press and is monitored by non-government organizations (NGOs), and the United Nations treaty bodies. We are of course accountable to this Council which treats human

rights seriously. Together, these provide a sound framework for the protection and enhancement of human rights. It seems sensible for us to continue to operate within this framework rather than to devise an entirely new institution in the field of human rights.

We must also point out that there is no provision — either in the ICESCR or in any of the other United Nations human rights treaties — that obliges parties to establish a national human rights institution.

Having said that, our minds are open. We shall continue to listen to public views and will regularly review whether there is a need to reconsider our position.

**MR SZETO WAH** (in Cantonese): *Madam President, it is pointed out by government official in the main reply that Hong Kong has effectively protected and enhanced human rights and thus need not devise an entirely new institution in the field of human rights, and that there is no provision in any United Nations human rights treaties that obliges parties to establish a national human rights institution. In other words, it is said that Hong Kong has the best human rights record in the world, and that countries and places where human rights institutions are established are not as effective as Hong Kong in protecting and improving human rights. Officials of the Hong Kong Government have once said that human rights treaties .....*

**PRESIDENT** (in Cantonese): Mr SZETO Wah, please come to your supplementary question direct.

**MR SZETO WAH** (in Cantonese): *..... human rights treaties are not legally binding and thus drawn stern criticisms from the international community. May I ask the Secretary whether the Government has turned a deaf ear to such criticisms? Could the Secretary also inform this Council why the recommendation was brought up again in the Concluding Observations; and whether the recommendations put forward in the Concluding Observations are pointless, superfluous and complete nonsense?*

**PRESIDENT** (in Cantonese): Which Secretary will reply to this supplementary question? Secretary for Justice.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, I thank the Honourable SZETO Wah for his supplementary question. Of the six questions seeking oral answers today, five are related to the Concluding Observations of the UNCESCR. I wish to take this opportunity to clarify the functions of the UNCESCR and the effects of the Concluding Observations, so that Members can understand better the replies by government officials.

First of all, let me give Members an account of the functions of the United Nations Human Rights Committee (the Committee). According to United Nations Fact Sheet No. 16, the functions of the Committee are to monitor the implementation of the covenant by States Parties and to develop a dialogue with States Parties to determine whether or not the norms contained in the covenant are being adequately applied in States Parties. The guide to the United Nations human rights report has the following description — to avoid misrepresentation, please allow me to cite the following in English:

"The purpose of considering a report in a public discussion is to establish a constructive dialogue between the reporting State and the supervisory Committee, in order to make the Committee's experience available to the State and to enable it to take advantage of this experience in carrying out the implementation of its international obligation. At this point, one must stress that the Committees are neither courts nor quasi-judicial bodies. The nature of the activity may be of a different quality with regard to the competence of some treaty bodies to receive and to examine individual complaints or communications. However, it has never been claimed that the treaty bodies may perform judicial or quasi-judicial functions. In the consideration of the State Party's reports, the Committees, as a result of the dialogue, do not issue a judgment regarding the degree of the implementation of the provisions contained in the relevant instrument in the reporting State.

The purpose of the dialogue is rather to assist the reporting State in the implementation of its treaty obligations. The dialogue should clarify the scope and the meaning of the treaty obligations and should highlight those aspects that may have been neglected by the authorities of the reporting State. It is in this spirit that the members of the Committees raise issues of concern to them, ask

the questions and formulate their comments accordingly at the end of the consideration of a report. And it is in the same spirit that the written comments of the Committee as a whole are formulated at the conclusion of the consideration of a report."

It is made clear in the above quotation that rather than functioning as a court or passing any judgement, the role of the Committee is to maintain a dialogue with State Parties to assist State Parties to better understand and implement the provisions contained in the relevant treaties and covenants.

As regards the binding effect of the Concluding Observations, the United Nations Fact Sheet No. 16 has the following description: "While the Committee's concluding observations, in particular suggestions and recommendations, may not carry legally binding status, they are indicative of the opinion of the only expert body entrusted with and capable of making such pronouncements. Consequently, the State Parties to ignore or not act on such views would be to show bad faith in implementing the Covenant-based obligations."

The above quotation explains clearly that the Concluding Observations of the UNCESCR is a very authoritative expert report .....

**MR LEUNG YIU-CHUNG** (in Cantonese): *Point of order, Madam President.*

**PRESIDENT** (in Cantonese): Secretary for Justice, please resume your seat first. Mr LEUNG Yiu-chung, do you have a point of order?

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, I seek your ruling as to whether the Secretary for Justice is answering the supplementary question raised by the Honourable SZETO Wah.*

**PRESIDENT** (in Cantonese): Mr LEUNG, the Secretary for Justice is answering the supplementary question raised by Mr SZETO Wah. Secretary for Justice, please go on.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, since the UNCESCR is an expert committee appointed by the United Nations, the Government will certainly respect its views and seriously consider the recommendations it has made in the Concluding Observations. Nevertheless, given that the Concluding Observations are not any judgements made by a judicial body, and that Article 2 of the Covenant requires State Parties to take steps to achieve progressively the full realization of the rights recognized in the Covenant by appropriate means, due regard must be paid to the situation of the State Party concerned when determining what methods and timetable best implement the provisions of the Covenant. Hence, the main reply given by the Secretary for Home Affairs, which says our minds are open and we will listen to public views and reconsider our position, is fully in line with the requirements of the Covenant. There is no question of the Government being disrespectful to the views raised in the Concluding Observations or considering such views as having no binding effect.

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

*(The Secretary for Home Affairs indicated that he did not have anything to add)*

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, according to the Secretary's main reply, the Government operates in the full view of a free and active press and is monitored by NGOs and the United Nations treaty bodies. Bearing in mind that NGOs and the press are not constantly or concentrated on monitoring the relevant work of the Government, how could they effectively monitor the success or otherwise of the Government in achieving the ultimate goal of safeguarding human rights? May I ask the Secretary how the Government can achieve the goal constantly concentrating on monitoring its human rights efforts?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, as I pointed out in the first half of my main reply, if any person in Hong Kong should feel aggrieved, they could file court cases under a series of laws we have at present, including the Hong Kong Bill of Rights Ordinance. In this connection, our independent judicial system is second to none in the world. Besides, there

are also other open and liberal institutions monitoring the performance of the Government. All in all, I believe nobody can say that we do not have the capacity to monitor the performance of the Hong Kong Government in respect of human rights.

**MISS CYD HO** (in Cantonese): *Madam President, the Secretary pointed out in the main reply that while the media and other relevant organizations will monitor and keep a close watch on the performance of the Government, any aggrieved person can also seek redress through judicial means. However, in-between these procedures there is a void that can be filled by lower-cost arbitration and conciliation, data collection and assimilation, education and promotional efforts, and so on. Who will be responsible for such work if a human rights institution is not established? Could the Secretary inform this Council whether there is already someone within the existing structure vested with the responsibility for the aforesaid duties, or the Government is of the view that it is not necessary to deal with them?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the scope of human rights is rather extensive. Actually, in addition to the Hong Kong Bill of Rights Ordinance mentioned by me earlier and three anti-discrimination ordinances, many of the rights provided for in the ICESCR are also protected by more than 50 pieces of legislation in Hong Kong. Besides, the majority of the Policy Bureaux of the Government all have a responsibility to enforce the relevant legislation and to carry out promotional, publicity and educational work where appropriate. With regard to the situation in Hong Kong, certainly we have a very powerful non-government structure, which comprises a large number of high standard organizations covering matters in such fields as housing, education, and so on, working in collaboration with the Government to promote human rights. Judging from the present situation, Madam President, I would say that the efforts of Hong Kong in this respect are rather advanced. Having said that, I should also like to emphasize that we can never be complacent about our human rights efforts. When I was at the UNCESCR meeting held in Geneva in May this year, I also mentioned time and again that there were a number of areas we wish to effect further improvement gradually. That is why I say our minds are open in my reply to this question.

**MISS CYD HO** (in Cantonese): *Madam President, the Secretary has not answered the part of my supplementary asking whether there is any department responsible for such roles as arbitration, conciliation, data collection, and so on, with the existing government structure; and whether the Government is of the view that it is not necessary to deal with the same, as problems can be resolved by jumping directly from monitoring and close watch to initiating judicial procedures by invoking the 50 pieces of legislation mentioned by the Secretary just now.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I believe the Honourable Miss Cyd HO has to point out the areas that call for improvement. Taking the Equal Opportunities Commission (EOC) as an example, different bodies are set up under the EOC to take charge of the reconciliation, data collection and arbitration responsibilities relating to the operation of ordinances monitored by the EOC. Similar arrangements are also made in respect of other policy areas to enable the relevant Policy Bureaux and departments to carry out their work accordingly. All in all, as far as the protection of the major human rights is concerned, I believe the work we have done is rather sufficient.

**PRESIDENT** (in Cantonese): Miss Cyd HO, do you wish to say that the Secretary has not fully answered your supplementary question?

**MISS CYD HO** (in Cantonese): *Madam President, just now the Secretary asked me to cite some examples, may I have your leave to do so?*

**PRESIDENT** (in Cantonese): Miss HO, a number of Members are still waiting for their turn to rise supplementary questions, I would be denying them opportunities to raise supplementaries if I granted you leave to cite examples.

Miss Cyd HO, since this is not a debate, do you mind withdrawing your request for leave to cite examples? I believe you can give your examples to the Secretary for Home Affairs after the meeting or follow up the matter in the relevant panels of the Council.

**MISS CYD HO** (in Cantonese): *Madam President, I am willing to do so. However, I think there is some problem with our system, because government officials can always have the last say. Taking the present case as an example, the Secretary asks us to cite some examples, but we can never make our response. I believe there is a need for us to review the procedures regarding the Question Time of our Council meeting.*

**PRESIDENT** (in Cantonese): If Members find any part of the Rules of Procedure of the Legislative Council calling for improvement, they may reflect their views to the Committee on Rules of Procedure.

We have spent more than 15 minutes on this question. This will be the last supplementary question.

**MISS EMILY LAU** (in Cantonese): *Madam President, just now the Secretary told us that the United Nations was not a judicial body. I should like to ask the Secretary whether he still remembers that while the UNCESCR recommended in 1994, 1996 and this year that Hong Kong should establish a human rights institution to take charge of the various functions mentioned by Miss Cyd HO just now, the Committee also made the same recommendation in 1995 and 1999. Even though the Secretary has not flatly refused to do so, it seems that he is still unwilling to take such actions. In this connection, may I ask the Secretary in what position he places the United Nations, bearing in mind the Secretary said that he had respected the UNCESCR very much when he was attending its meeting in May? Madam President, the recommendation has been made on five occasions but the Government still has not implemented the recommendation yet. Does the recommendation made by the United Nations carry any weight at all?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the Secretary for Justice has explained clearly how we deal with the recommendations made by the relevant committee under the United Nations. I wish to stress again that while we attach great importance to the views raised by the relevant committee of the United Nations, the countries and places which are parties to the treaties may make their own appropriate decisions in the light of their respective situations. We have explained to the UNCESCR time and again that — both during its members' visits to Hong Kong and our attendance at its

meetings — judging from the existing circumstances, we consider there is no need for us to establish a human rights institution in Hong Kong. We and the UNCESCR do certainly respect each other, and we will also continue to take into consideration the recommendations made by the UNCESCR.

**PRESIDENT** (in Cantonese): Council has spent more than 17 minutes on this question, we will now proceed to the second question.

### **Implementation of Recommendations Concerning Employee Benefits**

2. **MR LAU CHIN-SHEK** (in Cantonese): *Madam President, in 1996, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) recommended that the Hong Kong Special Administrative Region (SAR) make regulations on statutory minimum wage, working hours, paid weekly rest, rest breaks and compulsory overtime pay. In its recent Concluding Observations, the Committee regretted that the recommendation had not yet been implemented in the SAR. In this connection, will the Government inform this Council of:*

- (a) the reasons for its failure so far to implement the recommendation; and*
- (b) the specific measures and the timing for implementing the recommendation?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which relates to the Mr LAU Chin-shek's question, requires parties to "recognize the right of everyone to the enjoyment of just and favourable conditions of work". This includes fair wages and decent living, safe and healthy working conditions, equal opportunity for promotion, as well as rest, leisure and reasonable limitation of working hours and periodic holidays, including public holidays with pay. The Article sets the objectives but allows flexibility over the means of achieving them, depending on the social, economic and political circumstances of individual signatories.

Hong Kong is a free economy where everyone has the right to choose and accept work. Wages are determined by labour supply and demand. Promotion is based on merits. The Government invests heavily on education, training and retraining so as to provide opportunities for all to upgrade themselves and compete in the labour market. We stipulate and promote standards to safeguard workers' right to safe, healthy and reasonable working conditions. We require employers to provide rest days, paid annual leave and statutory holidays with pay. It is fair to say that maintaining a flexible labour market with a high degree of mobility provides the best safeguards for the rights of workers. We must be careful not to over-legislate with the unintended effect of creating rigidity in the labour market which may turn out to be counter-productive to worker protection.

At a meeting in May 2001, the UNCESCR, the Committee which monitors the implementation of the Covenant, recommended that the SAR review its policy in relation to unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay rates.

We have explained to the Committee the Government's policies on these issues, the reviews that we have conducted and progress made. We will report to and update the Committee the implementation of the Covenant on a regular basis.

Madam President, we seek to implement the Covenant through a combination of legislation, administrative measures, self-regulation, as well as persuasion. The protection and benefits enjoyed by workers in Hong Kong compare favourably with many other places in the world. We shall continue an open dialogue with employers and employees to review our labour legislation in the light of changing needs and circumstances. In the final analysis, our primary objective must be to create a favourable business environment and promote economic growth, in order to create more job opportunities. This is fundamental to the interest of workers.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, Article 7 of the ICESCR clearly stipulates that the Government is obliged to safeguard the wages and remuneration of workers to enable their families to lead a "decent" living and there should be reasonable limitation of working hours. Nevertheless, in the second paragraph of the main reply, the Secretary stated that the Government*

*must be careful not to over-legislate for the purpose of regulation. Now we can see that wages have been spiralling downward, say, from \$10 to \$8 or \$6. On the other hand, the number of working hours has been roketing, say, from 12 hours to 14 hours or 16 hours. Is the Government oblivious to this situation? Even though the Government has recently improved its tender system, the improvement is confined to outsourcing services only. If the Government decides not to legislate to impose minimum wages and regulate working hours, can the Government tell us what measures it will take to ensure that workers in Hong Kong can, as stipulated in the ICESCR, enjoy reasonable wages and working hours?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the issue of minimum wages has been debated repeatedly in this Council. I have also made it clear in the main reply that maintaining a flexible labour market with a high degree of mobility provides the best safeguards for workers. Although the imposition of minimum wages might provide certain employees with protection of minimum income, some disadvantaged groups might lose their jobs as a result.

The issue pertaining to the hourly wage of \$7 was discussed in this Council some time ago. Although the relevant issue has been settled, Members must be aware that an elderly person who expressed willingness to be employed by the company in question was interviewed by a newspaper. In the interview, he remarked that it might be even better if the community chose not to deal with the issue for him because he might lose his job as a result.

Of course, we are not trying to encourage the continuance of this phenomenon. Yet we must ensure that the imposition of minimum wages will not deprive some workers of their job opportunities. A social security system is already in place in Hong Kong to provide those who are unable to find a job and families with inadequate incomes with a safety net whereby their basic needs of living are taken care of. Judging from this angle, we have already fulfilled the requirements of the ICESCR.

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

**MR LAU CHIN-SHEK** (in Cantonese): *Yes, Madam President. The Secretary has not answered my supplementary question. I have put my question very clearly. If the Government decides not to impose minimum wages and regulate working hours, how can the Government ensure that workers in Hong Kong can, as stipulated in the ICESCR, enjoy reasonable wages and working hours? I was not asking the Secretary to explain why the Government decided not to legislate.*

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

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have explained in the main reply that the basic objective of the ICESCR is to propose certain general principles. Individual signatories are free to decide how the ICESCR should be implemented, depending on the social needs and economic conditions of each place or signatory. As for the question asked by the Honourable Member in connection with minimum wages and maximum hours of work, I have actually answered it. Insofar as the present community is concerned, we feel that the operation of a free market can best safeguard the fundamental needs of workers. As regards minimum protection for the people's livelihood, we have put in place a Comprehensive Social Security Assistance system to ensure that families in need are given a basic safety net.

**MR ANDREW CHENG** (in Cantonese): *Madam President, in the last paragraph of the main reply, the Secretary stated that "the protection and benefits enjoyed by workers in Hong Kong compare favourably with many other places in the world". I find such remarks hard to understand. Madam President, let me cite the issue of maximum hours of work as an example. Some signatories have actually enacted legislation to safeguard maximum hours of work. According to the findings of a number of surveys, most workers in Hong Kong work more than 50 hours on average each week. The Secretary stated in the main reply that a self-regulatory mechanism is already in place. Given the fact that the working hours of Hong Kong people have far exceeded the maximum hours of work, will the Secretary consider that the self-regulatory mechanism cited by her has failed and it is therefore necessary for the Government to legislate to safeguard maximum hours of work?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, in considering workers' benefits and conditions of service, the Government must take into account a whole host of problems. It should not single out a certain item and then conclude that the protection enjoyed by workers in Hong Kong is worse or better than that enjoyed by their counterparts in other countries. In the previous meeting, Mr LAU compared Hong Kong with some other places. On some other occasions, such as meetings held by the Panel on Manpower, we have discussed this issue too. While we believe some places may afford protection better than that in Hong Kong, some others may effect protection worse than that in Hong Kong. We cannot consider the limitation of working hours alone. We must, at the same time, consider whether wages in Hong Kong are higher than those offered in other places. If all people in Hong Kong agree to lowering the level of wages, perhaps we can let two people share one job.

**MR ANDREW CHENG** (in Cantonese): *Madam President, my supplementary question is very simple. I cited maximum working hours as an example only to see whether the self-regulatory mechanism has failed. However, the Secretary has not given me a reply.*

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

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I do not consider the mechanism has failed. This is because Hong Kong is a free market. All conditions of employment are imposed subject to the mutual agreement of employers and employees. According to labour laws, many issues are resolved through tripartite discussions among employers, employees and the Government. If it is considered that something is wrong and a review is deemed necessary, the matter can certainly be referred to the Labour Advisory Board for discussion.

**MISS MARGARET NG** (in Cantonese): *Madam President, as far as I understand it, the ICESCR has stipulated certain minimum standards only. Since the situation varies from place to place, it may take some time before the minimum standards can be reached. Nevertheless, the Secretary seemed to hint*

*that our situation should be fine since workers in Hong Kong compare favourably with their counterparts in other places of the world.*

*Madam President, may I ask the Secretary whether she agrees that we can fulfill those obligations on a selective basis? Concerning reasonable wages and maximum hours of work, does the Secretary consider that we can choose not to fulfill the relevant obligations?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have stated in the main reply that Article 7 of the ICESCR has not mentioned minimum wages. It has only mentioned such major principles as fair wages, decent living, safe and healthy working conditions, and so on. The Covenant itself has not stipulated what are minimum standards. Neither has it pointed out the minimum and most reasonable hours of work. Therefore, each signatory can, in the light of its actual social environment, put in place a system in compliance with the ICESCR.

**MR JAMES TIEN** (in Cantonese): *Madam President, the Secretary stated in the main reply that the Government had explained to the UNCESCR when the latter questioned the Government's existing policy concerning unfair dismissal or minimum wages. Will the Secretary inform this Council whether the Government has explained to the UNCESCR about the pegging of Hong Kong dollar to the US dollar? This is because other countries where minimum wages are imposed may pay only half the wages by depreciating the value of their currencies by 50% at any time. Has the Government explained this to the UNCESCR and did the UNCESCR find the explanation acceptable?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I cannot answer this supplementary question. I need to inquire with the Bureau which took part in the relevant meeting to see if this question was raised then.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, this issue was not discussed in the meeting held in May.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Secretary stressed repeatedly in her reply that Hong Kong is a free economy and stated that our wages are determined by supply and demand in the labour market. At present, a large group of people is available in the market, only that the supply side — that is, the workforce — has absolutely no bargaining power. In other words, supply and demand has lost equilibrium. Faced with this, what remedies will the Government take, given our faith in the market mechanism?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, Hong Kong economy is indeed undergoing transformation. As a result, the academic qualification and knowledge of labour cannot cope with the needs of society. Therefore, the Government invests heavily in education, training and retraining to upgrade the skills of employed workers. I hope the entire workforce can realize that we can cope with the needs of society only by engaging in lifelong learning and constantly upgrading ourselves. The Government can but only provide opportunities. Workers themselves must make an effort to grasp these opportunities.

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

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, my supplementary question was: Given the fact that the mechanism has lost equilibrium, how would the Government help the workers? In her reply, the Secretary only cited some of the work done by the Government. However, such work has failed to resolve the problem. What should we do then? I did not cite only concrete contents when I put my question earlier. I only want to ask what the Government can do to help those people to seek employment.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the Government considers that training and upgrading personal abilities remain the ultimate solutions. Since the Government cannot provide an immediate solution to the short-term loss of equilibrium, it can only provide a safety net to give workers basic safeguards in terms of their living. As regards employment, more job opportunities can be created only through

promoting economic growth. As Members are aware, because of the economic depression in the past two years, an Employment Task Force was set up by the then Financial Secretary to carry out a lot of work to create job opportunities. Nevertheless, the fundamental solution lies in workers upgrading their own abilities to cope with the needs arisen from economic transformation.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the economist, Milton FRIEDMAN, once said, "If you want to see how capitalism works, go to Hong Kong". I guess he has forgotten something — "If you want to see how unflattered capitalism exploits workers, go to Hong Kong". The Financial Secretary, Mr Antony LEUNG, once remarked that Hong Kong will become Manhattan-plus and a civilized international cosmopolitan. However, we can infer from the reply given by the Secretary that she has all along been refusing to fulfill the Covenant obligations. Refusing to accept human rights standards generally accepted by a civilized society is tantamount to "shirking responsibilities". May I ask — I wonder if the Secretary will respond — whether Hong Kong is running in a direction opposite to becoming a civilized cosmopolitan? Is Hong Kong being uncivilized, and is it trying to ignore and defy the ICESCR?*

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

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I definitely disagree to the description made by the Honourable LEE Cheuk-yan. As a government or community, we must take care of the disadvantaged groups. At the same time, we must strike a balance. The harmonious labour relation has been attributed to the good communication and consultative mechanism we have put in place. Through negotiations between employers and employees, we have been able to resolve many problems and reach consensus on what entails legislation or what warrants administrative measures. In my opinion, we cannot hold a certain party solely responsible for the present situation. It is true that economic transformation has posed great challenges to workers. It is necessary for employers and employees to

negotiate in order to resolve this problem. At present, workers are faced with a difficult situation. Similarly, in the present economic environment, employers are faced with a very difficult situation too. A lot of relevant discussions have been held in this Council. Small and medium enterprises have endless grievances too. We cannot resolve these problems unless we are willing to work in partnership and help one another. It is pointless to accuse one another.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, will the Secretary inform this Council whether the Government has acted in an uncivilized manner because it has acted in defiance of the ICESCR? It is obvious that many matters are not dealt with by the Government.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we have definitely not acted in defiance of the ICESCR. I would like to repeat what the Secretary for Home Affairs said earlier today. We attach great importance to the ICESCR and the recommendations made by the UNCESCR. Nevertheless, it is impossible for the latter to handle the problems faced by individual signatories. We must therefore deal with our own problems. The Government has accepted the recommendations and made active review and constant improvement.

**PRESIDENT** (in Cantonese): We have spent more than 16 minutes on this question. We shall now proceed to the third question.

### **Implementation of Recommendations on Prohibition of Discrimination**

3. **MR JAMES TO** (in Cantonese): *Madam President, in 1996, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) made recommendations to the Hong Kong Special Administrative Region (SAR) for extending the prohibition of race discrimination into the private sector and prohibiting discrimination on the basis of sexual orientation and age. In its Concluding Observations adopted recently, the UNCESCR regretted that the recommendations had not yet been implemented, and urged the SAR again to*

*implement the recommendations. The UNCESCR also considered that the SAR's failure to prohibit race discrimination in the private sector constitutes a breach of its obligations under Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In this connection, will the Government inform this Council how it will follow up the recommendations?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, taking the three issues raised by the Honourable James TO *seriatim*:

(a) *Race*

We are currently reviewing whether there is a need to legislate against racial discrimination in the private sector with a view to reaching a preliminary conclusion on the way forward in early 2002. To that end, we are seeking views from interested parties as to:

- (i) whether they agree in principle to the Government introducing legislation against racial discrimination in the private sector;
- (ii) the concerns that they may have should such legislation be introduced; and
- (iii) issues to which we should pay particular attention in drafting such legislation.

We will advise the Council of the preliminary conclusion from the consultation exercise later this year and will also listen to the views of this Council.

(b) *Sexual orientation*

This is a sensitive issue that impinges on deeply ingrained values and notions of morality. Our considered view is that, at this stage, we should address discriminatory attitudes through public education, with a view to fostering in the community a culture of greater objectivity, tolerance and mutual respect. Inevitably, these measures may need time to take effect as we cannot expect public attitudes to change overnight. We consider that at this stage,

introducing legislation against discrimination on the ground of sexual orientation may arouse major public controversy; and

(c) Age

The Secretary for Education and Manpower last consulted the public on the matter in 1999. The survey revealed divergent views on whether legislation should be introduced for age discrimination in employment. Over the years, the Government has addressed the issue through public education. The Education and Manpower Bureau will conduct another survey in late 2001 to review the effectiveness of these efforts and elicit public opinion on the desirability of introducing legislation on age discrimination. However, we anticipate that the subject will remain controversial as age has different bearings on productivity in different jobs and establishing the actual occurrence of age discrimination in employment would be difficult.

**MR JAMES TO** (in Cantonese): *Madam President, this is the first time that the word "breach" is used in the reports of the United Nations committees on Hong Kong and Hong Kong has been criticized for breach of an international covenant for the first time after the reunification. The Home Affairs Bureau said in May that it would conduct a consultation in preparation for introducing legislation. Can the Government confirm that it had said so at the meeting of the UNCESCR? Can Hong Kong do just the opposite although it had told the UNCESCR that it would conduct a consultation in preparation for introducing legislation?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we noted the recommendations made by the UNCESCR on race discrimination and we took them seriously. Therefore, we have conducted another public consultation. The reply given by me today is consistent with what I said in Geneva in May. We have to listen very carefully to the public's views before deciding whether it is necessary to or whether we should make laws on this in Hong Kong.

**PRESIDENT** (in Cantonese): Mr James TO, have your supplementary not been answered?

**MR JAMES TO** (in Cantonese): *Madam President, my supplementary asked whether the Government had said that it would conduct a consultation in preparation for introducing legislation at the Geneva meeting in May, and I did not ask the Secretary whether his reply was consistent with his remarks then. Had the Secretary said so at that time?*

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

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, at the Geneva meeting in May, we explained carefully and in detail to the UNCESCR our position and views on race discrimination. We also indicated to the UNCESCR that we would consult the public later this year on whether we should legislate on race discrimination that might arise between private organizations and individuals. We said then we would consult the public, and we have commenced work in this aspect.

**MR JASPER TSANG** (in Cantonese): *Madam President, I notice that the Secretary mentioned age discrimination and indicated that the public would be consulted. But when it came to race discrimination, he said that he would have to consult the parties concerned to determine whether they think that legislation is necessary and find out what their concern is. What are the parties concerned that the Government has to especially consult in respect of race discrimination?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, when the UNCESCR discussed the matter in May, individual members pointed out that issues of such nature as race discrimination should not be determined merely through an opinion survey. We agree to the view because race discrimination very often arises as a result of the inappropriate acts of the mainstream races against the minority races and it may be most inappropriate for us to make a judgment merely on the basis of the majority view. Therefore, we will adopt a consultation method that starts with groups that are particularly concerned about the issue and we will then listen to public opinion. Our tentative idea is that we would first consult employer groups and the non-governmental organizations of ethnic minorities as well as other interested groups. We would listen to their views first.

**MR ALBERT HO** (in Cantonese): *Madam President, the Secretary for Justice has earlier given a reply to the question asked by Mr SZETO Wah and her reply is related to the nature of the responsibility for implementing the ICESCR. Although it is a relevant reply, I still wish to ask the Secretary for Justice to follow up the question.*

*Madam President, the Secretary for Justice said that, when implementing the ICESCR, the state parties can progressively implement it in stages in the light of their situation after they have understood their responsibilities. When I attended the Geneva meeting, and after listening to the comments of some members, I appreciated that their conclusions were very clear, that is, the state parties should fully implement the provisions of the ICESCR immediately. In other words, if the state parties thought that their conditions were not yet ripe and they could not implement the Covenant, they should make reservations instead of becoming signatories and then progressively implementing the Covenant. Therefore, the members said that the correct idea was to immediately and fully implement the ICESCR instead of implementing it in stages or selectively. Is the Secretary for Justice aware that the UNCESCR has such views? Is the Secretary prepared to rectify her earlier remarks? If not, does the Secretary consider that the UNCESCR's interpretation of the nature of the responsibility of implementing the ICESCR incorrect?*

**PRESIDENT** (in Cantonese): When the Secretary for Justice answered the first question, she stated that a few questions in this meeting were related to the report of the UNCESCR. As Mr HO's question is connected with the Secretary's reply, Mr HO can raise this supplementary.

Secretary for Justice, please reply.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, I was referring to Article 2 of the ICESCR. Article 2 states that "each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." This is the provision of the Covenant as stated in United Nations documentation.

Moreover, the meaning of "progressive realization" is carried in the Fact Sheet. The ICESCR is different from the International Covenant on Civil and Political Rights (ICCPR). The ICCPR requires all state parties to achieve the full realization of the rights recognized in it at once, but the ICESCR does not impose such a requirement.

I wish to emphasize two points. Firstly, Mr HO referred to immediate implementation, but I have just referred to achieving progressively the full realization of the rights. Secondly, the ICESCR stipulated that the Covenant should be implemented by all appropriate means, including administrative, legislative, educational, economic and other measures. As regards the implementation of the Covenant, various places should adopt appropriate measures in the light of the local situation in order to fulfil their Covenant obligations.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, on the grounds of divergent views, the Government refuses to legislate against age discrimination but some members of the UNCESCR have explicitly pointed out that the Government has the responsibility to educate opponents on the international responsibilities specified under the ICESCR. Does the Government agree to this point? Will the Government accept the recommendation of the UNCESCR, that legislation and education on the prohibition of age discrimination should be conducted in parallel?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we agree that we should educate the public, as public education is the most effective way to eliminate age discrimination. Thus, we started to educate the public by various means after the public consultation in 1999. We wish to conduct another survey by the end of this year to gauge whether the community's attitude towards age discrimination has changed. Upon the conclusion of the consultation, we will review whether it is necessary to legislate or to step up education and publicity.

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

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, the Secretary has not answered whether legislation and education should be conducted in parallel.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, my reply is that education should come before consideration of legislation.

**MISS MARGARET NG** (in Cantonese): *Madam President, in the race part of the reply of the Secretary for Home Affairs, concern was expressed on whether the parties concerned agree in principle that the Government should make legislation against race discrimination that is applicable to private organizations and individuals. Does the Secretary think that whether we would enact laws and whether the Government would legislate should be premised on the agreement of other people? Does the Government think that it has the responsibility to legislate and promote the idea of legislation under the binding international covenant?*

*Madam President, the Secretary for Justice has read out the relevant provision of the ICESCR. The provision has actually stated very clearly that progressive realization is necessary because it is mainly dependent upon the available resources, and legislating .....*

**PRESIDENT** (in Cantonese): Miss Margaret NG, you have asked a question and you are prepared to ask a second one. Is the question you are going to ask related to your first question? A Member can ask only one question in each supplementary.

**MISS MARGARET NG** (in Cantonese): *Madam President, I only wish to explain my points clearly so that the Secretary would understand better the basis of my supplementary question when he gives a reply, and I would not make a lengthy speech to elaborate my views. I have just said that legislation is just a step but it should not be selective, and explanation is needed if this step is not taken. I would like to ask the Government whether it should consult others to see if they agree in principle, or whether it should make a decision to legislate and then promote compliance later.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, when we conduct a consultation on such an important subject, we should politely and substantively find out whether the organizations to be consulted agree to the basic principle in respect of the issue. Certainly, we will ask them why and what their key concerns are if they do not agree. In our letters to these organizations, we have explicitly pointed out the obligations we should fulfil under the ICESCR and the views of the UNCESCR on our position on this issue. We have already put forward this premise but we think that it is after all appropriate to consult these organizations on this issue.

**MISS MARGARET NG** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. My supplementary question is very simple: Would the Government not legislate if others do not agree?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we certainly have to understand why they do not agree to legislation and then determine whether it is reasonable of them to oppose it. This is actually the normal way in which consultation is conducted. I hope Members would consider this. If I indicate to the Legislative Council that the Government has decided to do something and I am only asking Members for the relevant details, I believe Members will certainly think that we are very impolite.

**PRESIDENT** (in Cantonese): This Council has spent more than 16 minutes on this question. We shall now proceed to the fourth question.

### **Improvement on Method of Forming the Legislative Council**

4. **MR MARTIN LEE** (in Cantonese): *Madam President, in its Concluding Observations, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) pointed out that the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in the Hong Kong Special Administrative Region (SAR). In this connection, will the Government inform this Council:*

- (a) *of its plan to improve the method for forming the Legislative Council in order to achieve "the ultimate aim" of "the election of all the members of the Legislative Council by universal suffrage", as stipulated in Article 68 of the Basic Law; and*
- (b) *whether, prior to the submission of the second report on the SAR to the Committee in 2003, it will conduct public consultation on the direct election of all members of the Legislative Council on a one-person-one-vote basis, the voting procedure of the Legislative Council and the provisions of Article 74 of the Basic Law regarding the introduction of bills by Members of the Legislative Council, and submit the outcome of the consultation to the Committee for its reference; if so, of the timetable for the consultation?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, as regards the first part of the question, the blueprint for Hong Kong's future constitutional development has already been drawn up in the Basic Law. The number of directly elected seats in the Legislative Council will increase progressively from 20 in the first term to 24 in the second. In 2004, there will be 30 directly elected seats in the third term of Legislative Council, constituting half of the total membership. The ultimate aim is the election of all members of the Legislative Council by universal suffrage. We will introduce the relevant bill to the Legislative Council in due course to make specific arrangements for the 2004 Legislative Council Election. Regarding the fourth and subsequent terms of the Legislative Council, Annex II to the Basic Law has already provided a mechanism for the SAR to determine on its own the method for the formation of the Legislative Council after 2007.

After the reunification, the SAR Government has, in accordance with the timetable laid down in the Basic Law, held the first and second Legislative Council elections in 1998 and 2000 respectively. The number of directly elected seats in the Legislative Council formed by the above elections has also been increased progressively according to the Basic Law in order to realize the principle of gradual and orderly progress.

As regards the second part of the question, when reviewing the issue of constitutional arrangements subsequent to the year 2007, including the method for the formation of the Legislative Council and its voting procedures, we are

committed to conducting an extensive consultation so as to ensure sufficient and full public participation in the review process. In fact, we have been discussing with the Legislative Council and its Panel on Constitutional Affairs issues concerning constitutional development and the relationship between the executive and legislative authorities.

In January last year, a motion debate on constitutional arrangements was moved in the Legislative Council. Subsequent to the motion debate, the Panel on Constitutional Affairs invited all sectors of the community to submit representations to the Panel on the question of constitutional arrangements. After examining the representations and views of the public, the Panel on Constitutional Affairs published a report in June last year and a motion was passed by the Legislative Council urging the Administration to consider the recommendations of the report. In response to a recent request of the Panel on Constitutional Affairs, we briefed members of the Panel on the follow-up actions taken by the Administration with regard to the recommendations of the report yesterday.

As for the question concerning Article 74 of the Basic Law, it mainly involves a difference in understanding between the executive and legislative authorities of certain provisions of the Rules of Procedure of the Legislative Council and the relevant articles of the Basic Law. The two sides are still in discussion over this particular issue.

We would continue the dialogue with Members on constitutional development and other related issues through the Legislative Council and the Panel. We will also in due course conduct extensive consultation on the important issue of constitutional development. In discussing the issue, we will have due regard to the overall interests, development and needs of the Hong Kong Community. But, we have no intention of submitting the public views to the relevant United Nations Committee in the form of a report.

**MR MARTIN LEE** (in Cantonese): *Madam President, last year the then Chief Secretary for Administration, Mrs Anson CHAN, and the Secretary for Constitutional Affairs, Mr Michael SUEN, said that after the Legislative Council elections were held in last September, a review would take place immediately to study the way forward. But now the Secretary for Constitutional Affairs said that a review would take place in due course. May I ask the Secretary if he has*

*been instructed by the Chief Executive to engage the reverse gear and so that is what he is doing? Or is it his own decision to engage the reverse gear?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, it is true that we made such remarks last year. However, at the time we were saying that we would undertake preparatory work for the initial stage of the review. I also pointed out that we would collect information on the models and procedures adopted by different foreign countries in their constitutional development. We are now working on this. As we have actual work in progress, so it cannot be said that we are putting the work at hand on hold on the instruction of the Chief Executive. Since we have other work in progress, so the data collection work has been slower than expected. However, we would put more efforts into this and continue with the work.

**DR YEUNG SUM** (in Cantonese): *Madam President, the Secretary said that a consultation would be conducted on constitutional development. In principle, it seems that it would be conducted, could the Secretary then make it clear when would this consultation be conducted and in what form?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, after the Chief Secretary for Administration had assumed office and when he attended the meeting of the House Committee of the Legislative Council in that capacity for the first time, he answered some questions raised by Honourable Members. One of the questions was about the same subject as raised by Dr the Honourable YEUNG Sum earlier. On that occasion, the Chief Secretary for Administration said clearly that there would be two important landmarks with regard to work in this respect. Firstly, it is the election of the Chief Executive in 2002; and secondly, the Legislative Council elections in 2004. The Chief Secretary for Administration also indicated that later this year the Chief Executive would disclose the details of the accountability system for senior officials mentioned in his policy address last year. All this would have tremendous impact on our constitutional development. So at that time the Chief Secretary for Administration said that he hoped that after getting past these few landmarks, we would be able to draw conclusions from our experience and then make proposals on how the review should be conducted.

As for the form of the review, we do not have any detailed plans on that, but we expect it would be a detailed public consultation. The actual form to be adopted has not been finalized yet.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the Secretary said in the fifth paragraph of the main reply that as for the question concerning Article 74 of the Basic Law, it mainly involves a difference in understanding between the executive and legislative authorities of certain provisions. Although the Government says that the two sides are still in discussion over that particular issue, the problem has not been solved. May I ask the Secretary whether the Government will take further measures to solve the problem?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): *Madam President, I think many Honourable Members are very much concerned about this issue and, that is, there appears to be a great difference between the way the Government and Members of the Council look at Article 74 of the Basic Law. We understand the difference in our views. Honourable Members have based their understanding of Article 74 of the Basic Law, and make some arrangements in the Rules of Procedure of the Legislative Council in accordance with Article 75 of the Basic Law. We are trying to seek a compromise which will not undermine the position of both sides and which is also acceptable to each other. We are working on this. Presently we still have some internal business to take care of, but I hope we will be able to come up with relevant proposals on this as soon as possible and discuss them with Honourable Members.*

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary said that a review would be made of constitutional arrangements, including the method for the formation of the Legislative Council. As a matter of fact, this is the kind of work which has to be done before 2007 as stipulated in the Basic Law. As the drafting and deliberation of a bill and its public consultation would require time, would the Secretary inform us, according to the timetable concerned, how long it will take from the beginning to the completion of the deliberations on the bill? The Secretary has said earlier that there are two landmarks. The second landmark will be the elections for the third term of the Legislative Council. As there is not much time before that, has the Secretary ever thought of the relevant time constraints?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I believe Members all know that, as I have said, we hope to start work on this in 2004 or begin some preparatory work after we have gone past the first landmark and gauged the new scenario. When we have gone past these two landmarks, there will still be three years before 2007. Three years are in fact not a very short time and if a consensus is reached in the community, I trust a lot of work can be completed within three years, including conducting consultation on this issue. I hope a consensus will be reached and if there is any need for legislation, there should be ample time for that as well.

**MR ANDREW WONG** (in Cantonese): *Madam President, the main question asked by the Honourable Martin LEE is about the voting procedure of the Legislative Council and the provisions of Article 74 of the Basic Law on the introduction of bills by Members of the Legislative Council. The implications are that the provisions in Article 74 are not reasonable and they are very much different from the provisions in the former Royal Instructions. Hence the Article should be amended. It seems to me, however, that the Secretary has not responded to this point at all. Does the Secretary think that my understanding of the main question raised by Mr Martin LEE is correct?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, it is hard for me to say on how I would think of the understanding which an Honourable Member has of a question raised by another Honourable Member (*laughter*). However, as I have made it clear earlier, I admit that there is some difference between the understanding of Article 74 by the Government and that of Members. Notwithstanding this difference, we hope to find a solution which is acceptable to both parties and can effectively solve the problems. This is my hope and wish and as to whether it will work, I think that depends on how we will work together on it.

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary for Justice mentioned earlier that there was no need for the immediate realization of all the rights as recognized in the ICESCR, but civil rights and political rights are a different matter. I do not know if I have caught her point correctly. Since civil*

*rights and political rights should be realized immediately, I believe the Secretary for Justice and the Secretary for Constitutional Affairs would remember that the United Nations Human Rights Committee had pointed out in 1995 and 1999 that the election arrangements in Hong Kong failed to meet the requirements in the International Covenant, then do we want these United Nations committees continue to accuse Hong Kong of violating the international covenants?*

**PRESIDENT** (in Cantonese): Which Secretary would like to answer this question? Secretary for Constitutional Affairs.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, first of all, I reckon we are only discussing the report of the UNCESCR. About the supplementary question raised by Miss Emily LAU, as a matter of fact, the Basic Law has provided for the constitutional development of Hong Kong under the principle of gradual and orderly progress in keeping with the prevalent circumstances. The ultimate aim is the election of all Members of the Legislative Council and the Chief Executive by universal suffrage. These arrangements are laid down in the Basic Law. So it cannot be said that we have violated any stipulations in international covenants. However, just as the Secretary for Justice has said earlier, each country or place will take into account their own requirements and situation and make arrangements to realize these aims smoothly. What we are doing now is to realize these aims in compliance with the requirements of the Basic Law. Thus I do not think we would be subject to further accusations.

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not responded to the part of my question that immediate steps shall be taken to achieve the full realization of the rights recognized in the International Covenant on Civil and Political Rights (ICCPR). With respect to the election of the Chief Executive, there is no saving clause in the ICCPR as applied to Hong Kong.*

**PRESIDENT** (in Cantonese): Miss LAU, the Secretary pointed out in the reply just now that this oral question today should be related to the report of the

UNCESCR. However, you are now raising questions on other subjects, is that because they were mentioned by the Secretary for Constitutional Affairs or the Secretary for Justice in their replies earlier?

**MISS EMILY LAU** (in Cantonese): *Yes, Madam President. I was following up a point raised by the Secretary for Justice. She made a comparison of the two international covenants in her reply then.*

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, I hope Miss LAU can point out which provisions in the ICCPR she was referring to. It is because with regard to the issue of direct elections, we do have some saving clauses, for example, the parts in the ICCPR on direct elections are not applicable to Hong Kong.

**MISS EMILY LAU** (in Cantonese): *Madam President, I was referring to the Legislative Council elections, not the election of the Chief Executive. I have made that clear earlier.*

**PRESIDENT** (in Cantonese): Miss LAU, I think you are only being not very happy with the reply given by the Secretary for Justice. That is all for this oral question. Now the fifth question.

### **Illegal Importation of Meat**

5. **MRS SELINA CHOW** (in Cantonese): *Madam President, will the Government inform this Council of the following, for each of the past three years:*

- (a) *the number of cases in which live food animals, chilled or frozen meat and poultry illegally imported were seized by the Customs and Excise Department (C&ED); whether it has estimated the ratio of seized meat to the total quantity of meat brought in successfully via illegal channels; and*

- (b) *the number of prosecutions instituted in respect of the offence mentioned above, and the average penalty imposed by the Court on convicted persons?*

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

- (a) A total of 12 236 cases of illegal importation of live food animals, meat and poultry (including chilled or frozen) were seized by the C&ED in the past three years. The annual breakdown of the figure is as follows:

<i>Year</i>	<i>No. of cases</i>
1998	4 907
1999	3 756
2000	3 573
Total	12 236

We do not have information on which we could reliably estimate the quantity of meat which could have been brought in successfully via illegal channels. We have not therefore estimated the ratio of seized meat to the quantity of meat which could have been successfully smuggled into the territory.

- (b) At present three government departments are responsible for taking prosecution action against illegal importation of meat, poultry and livestock into Hong Kong. If the C&ED found any persons who had imported cargoes (including meat, poultry and livestock) undeclared or without import licences, the persons involved will be prosecuted in accordance with the Import and Export Ordinance (Cap. 60). The C&ED will also seize and forfeit the smuggled meat, poultry and livestock and hand them over to the Food and Environmental Hygiene Department (FEHD) or the Agriculture, Fisheries and Conservation Department (AFCD) for further action.

The FEHD will take appropriate enforcement action against persons importing meat without valid official certificates pursuant to the

Public Health and Municipal Services Ordinance (Cap. 132). The AFCD will prosecute persons importing live animals or birds without the requisite licences according to the Public Health (Animals and Birds) Regulations (Cap. 139) and the Rabies Regulation (Cap. 421).

The number of prosecutions instituted by the three departments and the penalties imposed by the Court on convicted persons in the past three years are summarized as follows:

	<i>No. of cases</i>			<i>Penalty Imposed</i>	
	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>Minimum/ Maximum Fine</i>	<i>Minimum/Maximum period of imprisonment</i>
C&ED	28	21	11	\$1,000-\$5,000	14 days to 1 year
FEHD	165	105	186	\$100-\$35,000	7 days to 4 months
AFCD	99	81	74	\$200-\$3,000	6 months

**MRS SELINA CHOW** (in Cantonese): *Madam President, the numbers of relevant cases are stated in part (a) of the Secretary's main reply. Over the past three years, the industry has repeatedly reflected to the Government the seriousness of the problem of illegal importation of meat. Would the Government please inform this Council whether it has ever conducted any analysis relating to the number of these cases? Has it ever tried to find out the seriousness of the problem of illegally imported meat in Hong Kong? Can a decline in the number of these cases really reflect the seriousness of this problem? Can the number of cases reflect the real increase in the magnitude of the problem?*

**PRESIDENT** (in Cantonese): Although Mrs Selina CHOW has asked four questions, still I permit her to ask these questions because she is only asking for an analysis of the relevant figures.

Secretary for Security, are you going to answer this supplementary question?

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, let me tackle this first.

Madam President, I have discussed this problem with the C&ED. The following are the comments from the C&ED. First, the number of such cases has shown a decline. Second, there is no sign of any large-scale illegal importation of meat. On the basis of its analysis and experience, the C&ED concludes that the illegally imported meat comes mainly from Lo Wu. Last year, for example, the C&ED intercepted an average of seven such cases a day at the Lo Wu Control Point. Moreover, according to the observation of the C&ED, the illegal importation of meat is mainly undertaken by women. Some housewives returning from their shopping trips in Lo Wu, for example, may stuff several cabbages of meat or chicken into their bags. Others may be a bit more professional, and they may tie a dozen or so cabbages of meat to their bodies and then try to enter Hong Kong. Lo Wu is the control point more frequently used for the illegal importation of meat, because it is conveniently located, with a market right outside the train station, and illegally imported meat can be picked up right after entry into Hong Kong. Other control points are not so conveniently located for this type of activities. The quantity of meat illegally imported in each case is not very large, which is why the C&ED believes that this type of illicit activities will not offer any big profits, and that the problem is therefore not very serious. That said, however, in addition to trying to intercept these illicit activities at control points, the C&ED also liaises regularly with its counterparts in the Mainland, so as to enhance its work of intelligence analysis. The C&ED also maintains contact with meat importers such as Ng Fung Hong; the purpose is to obtain the demand and supply information about live food animals, meat and poultry (chilled or frozen) in the Hong Kong market, so that it can know which kinds of meat are showing signs of increasing illegal importation. In this connection, the C&ED has not observed any large-scale smuggling activities.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, it is stated in the Secretary's main reply that there were 12 236 cases of seizure over the past few years. But during the same period, only 770 prosecutions were instituted by the Government (that is, the AFCD, the FEHD and the C&ED). As we now know, and as the Secretary has briefly mentioned, the illegal importation of meat is found mainly at the Lo Wu Control Point. May I ask the Secretary what is/are the place(s) of origin of the meat involved in the biggest case of illegal*

*importation? And, is there any information which can show the kinds and quantity of meat illegally imported?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have also asked the C&ED why the number of prosecutions has been relatively less. As I have explained, the illegal importation of meat is mainly found at Lo Wu, involving individual Hong Kong residents trying to bring meat into the territory. Since the meat involved is not brought in as goods, it is very difficult for the C&ED to institute any prosecution under the Import and Export Ordinance. That is why we can only hand over the meat seized to the relevant departments for further actions — the FEHD or the AFCDD, depending on the kinds of meat seized.

There are of course other ways of illegal importation besides smuggling through Lo Wu, and one example is a method which has become relatively rare now; for quite some time in the past, people simply tried to throw meat into Hong Kong from Chung Ying Street in Sha Tau Kok over the wire fence there. These cases occurred sporadically, and the quantity of meat involved each time was very small. Since September last year, when the police set up a checkpoint at the junction of Chung Ying Street, the number of such cases has gone down.

**MR WONG YUNG-KAN** (in Cantonese): *The Secretary has not answered my supplementary question. We know that meat is illegally imported through Lo Wu and Sha Tau Kok, but besides this, we also know that meat is illegally imported in the largest quantity by sea. Has the Secretary ever considered the possibility of discussing with the Mainland on intercepting the illegal importation of meat by sea?*

**PRESIDENT** (in Cantonese): Mr WONG Yung-kan, I understand that you wish very much to ask more questions. But you can only ask the Secretary to answer that part of the supplementary question which has not been answered.

**MR WONG YUNG-KAN** (in Cantonese): *Yes, I see. I only wish to ask the Secretary to name the biggest case of illegal meat importation and tell us the origins of such meat.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, besides smuggling by individuals, the C&ED also notices other ways of smuggling. For instance, frozen meat may be smuggled into Hong Kong by land in container trucks and refrigerating lorries, and meat may also be smuggled into Hong Kong by sea on board river trade vessels or cargo ships. The statistics of the C&ED, however, show that the number of cases involving smuggling by sea is comparatively small. The figures for the past three years are as follows: 4 852 cases of illegal importation of meat into Hong Kong by land and 55 cases by sea in 1998; 3 723 cases by land and 33 cases by sea in 1999; and 3 540 cases by land and 33 cases by sea in 2000. If the Honourable WONG Yung-kan wishes to know the quantity of meat involved in the biggest case of illegal importation, I can obtain the relevant information from the C&ED. (Annex)

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary stated in the main reply that it is impossible to estimate the quantity of meat that could have been smuggled successfully into Hong Kong. But we can be certain that there must have been successful cases of smuggling, or else the Secretary would not have been able to tell us that some people tried to throw meat into Hong Kong from Chung Ying Street in Sha Tau Kok. May I ask the Secretary whether she has ever assessed the negative impact that would be caused by unseized illegally imported meat on general health in Hong Kong?*

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

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, on the question of quantity, as explained just now by the Secretary for Security, it is impossible for the Government to estimate the quantity of meat which has been brought illegally into Hong Kong and which has escaped seizure. As for the health impact illegal imported meat may have on people, we have the following views. First, since the meat is illegally imported, the hygiene conditions during the process of conveyance are necessarily poorer. Second, since illegally imported meat would not have undergone any hygiene inspection at the place of origin, there is practically no protection for safe consumption. We have in fact been educating people on this, telling that they must be particularly careful when they can buy any meat at very low prices. At

the retail level, staff from the FEHD will conduct regular inspections and raids at retail outlets at licensed fresh provision shops, so as to check whether any illegally imported meat is sold at these places.

**MRS MIRIAM LAU** (in Cantonese): *Madam President, it is stated in the Secretary's main reply that there were 12 236 cases of illegal importation of live food animals in the past three years, and according to the Secretary, the reason why only a small number of prosecutions was instituted is that most cases only involved people carrying a few catties of meat or a few chickens into Hong Kong through Lo Wu. The Government cannot institute any prosecutions under the Import and Export Ordinance; is this because it is entirely powerless? Will this induce some people to take advantage of the loophole, asking different individuals to each bring in small quantities of meat illegally into Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Government is empowered, under several ordinances, to institute prosecutions against people engaged in the smuggling of live food animals, meat and poultry. First, if the meat is in the form of goods import, the Government can invoke the Import and Export Ordinance and charge the persons concerned for importing or exporting unmanifested cargo. The maximum penalty is a fine of \$2 million and a prison sentence of seven years. If the goods concerned are contrabands, prosecution can also be instituted under the Import and Export Ordinance. Besides, the Government can also institute prosecutions by invoking the Imported Game, Meat and Poultry Regulations under the Public Health and Municipal Services Ordinance. Under the Regulations, any person who imports game, meat, poultry and prohibited meat without a certificate issued by the Government is liable to a fine at \$50,000 or imprisonment for six months. Under the Public Health (Animals and Birds) Regulations, any person who imports animals and birds without a health certificate may be fined \$25,000. In addition, under the Rabies Ordinance, any person who imports prohibited animals without an import permit may be fined \$50,000 or imprisoned for one year.

In case the C&ED intercepts a person trying to carry meat into Hong Kong but cannot press any charges under the Import and Export Ordinance, it will usually refer the case to the AFCD or the FEHD for further action. As for the prosecutions instituted by these departments, I think it will be more appropriate for the Secretary concerned to give a reply.

**MRS MIRIAM LAU** (in Cantonese): *Madam President, the Secretary has failed to answer my question fully. I said just now while there were 12 236 cases of seizure of illegally imported live food animals by the C&ED in the past three years, the number of prosecutions instituted during the same period was just 60. As explained by the Secretary earlier on, since most of the cases of seizure by the C&ED simply involved people trying to carry several chickens or ducks, or several cattles of meat through the Lo Wu Control Point, the C&ED could not institute any prosecution under the Import and Export Ordinance. It appears the C&ED simply cannot do anything at all. My supplementary question was: Is it true that the Government cannot do anything about these people, with the result that one-man smuggling of live food animals into Hong Kong has been encouraged? If the Government agrees that there is a loophole here, will it seek to plug it?*

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

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Let me add one point here. Madam President, prosecutions against individuals trying to bring in small quantities of meat through control points have always been instituted, both by the FEHD and the two former Municipal Services Departments before reorganization. Over the past three years, the FEHD and its forerunners, that is, the former two Municipal Services Departments, have instituted a total of 456 prosecutions, and the success rate has been very high. The FEHD has never approached us on any loopholes in the existing legislation that may lead to difficulties in instituting prosecutions.

**PRESIDENT** (in Cantonese): Although this Council has spent 17 minutes on this question, I shall still permit Mr NG Leung-sing to ask one last supplementary question, because he was the first Member to request permission for raising a supplementary question on this question.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, my supplementary question is of a general nature. We note that although there were some 12 000 cases of seizure, the numbers of prosecutions instituted have been going down*

*year after year. This should of course be regarded as natural. But may I still ask why the numbers of prosecutions have been going down over the past three years? Will the Government let the public know what positive efforts it has made?*

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

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the number of prosecutions instituted by the C&ED has indeed been going down; when it comes to the FEHD, the number of prosecutions instituted by it last year (that is, in 2000) was comparatively large; and, for the AFCD, the number of prosecutions has also been going down. We certainly hope that all this has been due to our efforts of strengthening the work of interception. And, the fact is that the C&ED has really been stepping up its inspection and interception in response to the possibility of individuals trying to bring meat illegally into Hong Kong. We hope that the enforcement actions taken so far are enough as a deterrent.

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

### **Implementation of Anti-Poverty Measures**

6. **MR MICHAEL MAK** (in Cantonese): *Madam President, in its Concluding Observations, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) expressed grave concern about the widespread and unacceptable incidence of poverty in the Hong Kong Special Administrative Region (SAR), and strongly recommended that the SAR Government establish either an inter-departmental anti-poverty unit or an independent anti-poverty commission, to study and formulate anti-poverty strategies and monitor the impact of various policies on poverty. In this connection, will the Government inform this Council of the specific measures to implement the above recommendations and the timeframe for implementation?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the Administration is aware of the concerns of the UNCESCR regarding the issue of poverty, as reflected in their Concluding Observations. During the recent UNCESCR hearings in Geneva, we explained in detail the measures taken by the Government to ameliorate the poverty situation.

In the 2000 policy address, the Chief Executive expressed concern about the impact brought about by the Asian financial crisis on our community and in particular, lower-income families. The Chief Executive also referred to the need to adjust to the rapid emergence of a knowledge-based economy which requires new skills amongst the workforce. The difficulties faced by the disadvantaged groups including some elderly, single parents, new arrivals, and so on, were also recognized. The socially disadvantaged should be assisted by developing holistic and integrated social and economic policies. The best solution to alleviate poverty at source is by strengthening education, training and retraining, as well as creating more jobs by ensuring sustained economic development, for the unemployed to enhance their employability and upward mobility. A safety net in the form of social security is available to those with no or low income.

The Government assists the socially disadvantaged through a range of social services. The Comprehensive Social Security Assistance (CSSA) Scheme provides a basic safety net for those who lack financial means for various reasons, such as old age, disability, temporary illness, low income or unemployment, to meet their basic and essential needs. In addition, the Social Security Allowance Scheme provides a cash allowance to elders and disabled persons to help them meet their special needs. Assistance is also available in respect of housing, medical care, education, vocational training and rehabilitation. The Government is increasingly focusing on outreaching to the disadvantaged to ensure that they receive the services they need and to better understand and address their needs.

For those who are suffering from our economic restructuring, we must provide assistance to them to tide over difficulties. To achieve this, the Chief Executive announced in October last year an extensive package of initiatives to promote the wider economic participation of socially disadvantaged groups, at a cost of \$2.7 billion over these two years. The package includes the creation of 15 000 jobs, provision of recurrent funding for the Employees Retraining Board (ERB), the introduction of a Skills Upgrading Scheme and Re-employment Pilot

Programme for the Middle-aged, and the establishment of a fund to help retrainees of the ERB. Implementation is well underway and many individuals have already benefitted from these initiatives.

Turning to the specific question concerning the establishment of a co-ordinating body to deal with poverty, we believe that the existing arrangements already provide the necessary degree of co-ordination and community input.

With the higher echelon of the Government overseeing the overall strategy, the relevant Policy Bureaux and departments work closely together on the issue. The current arrangement, whereby cross-sectoral issues are discussed at various fora and co-ordinated at different levels within the Government, works well. As we are held accountable to the Legislative Council which also takes a keen interest in this issue, the effectiveness of our co-ordination is subject to close public scrutiny. Notwithstanding this, we will regularly review the existing arrangements to see if there is a need to reconsider our position.

We have taken steps using available resources to achieve progressively the full realization of our obligations recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR). We have examined the UNCESCR's recommendation and hold that the current arrangements serve equally well in honouring our obligations under the ICESCR.

In conclusion, the Government will continue with its efforts to improve the livelihood of the people and to promote self-reliance and upward mobility amongst the socially disadvantaged. The focus of our efforts will continue to be on creating employment opportunities through sustained economic growth and continuously upgrading the skills of our population through education and training.

**MR MICHAEL MAK** (in Cantonese): *Madam President, from the main reply we can see that the Government has refused to set up an inter-departmental unit or anti-poverty unit to address the problem of poverty, and it has no plan to draw an objective poverty line. The Government seems like an ostrich, thinking that there will be no poverty problem in Hong Kong simply by turning a blind eye at it. Since the Government has not drawn an objective definition of poverty, will the Government tell us how it can assess the number and characteristics of the impoverished in Hong Kong so as to draw up an anti-poverty policy?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, in fact, studies of the poverty problem were already underway before the announcement of last year's policy address. Therefore, it was pointed out in the policy address that different places had different definitions of poverty, and that it was most important to focus on how the poverty problem should be handled. As I said just now, we think that assistance should be provided for people in need. So, it was stated in last year's policy address that the focus would be put on providing the socially disadvantaged groups with assistance. Our investments in economic development and society also aim to assist people in need, and this is our policy direction.

**MR FRED LI** (in Cantonese): *Madam President, in the main reply the Government said that with the higher echelon of the Government overseeing the overall strategy, the relevant Policy Bureaux and departments work closely together. Whom does he refer to by "the higher echelon of the Government"? What level does he actually refer to? How many Policy Bureaux and departments are working closely together? Do they hold regular meetings or work separately?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, according to the policy set out in last year's policy address, different Policy Bureaux are responsible for following up various policy objectives within their respective remits. The Health and Welfare Bureau is responsible for compiling a report to follow up the issue of how poverty should be handled as undertaken in last year's policy address. We also have a mechanism in place to consolidate the work of each Policy Bureau and monitor the progress.

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

**MR FRED LI** (in Cantonese): *Madam President, I was asking also which other Policy Bureaux and departments are working closely together. As to the meaning of "the higher echelon of the Government", does the Secretary mean that he represents the higher echelon of the Government?*

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

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, in fact, I mean a myriad of policy areas. From last year's policy address, we can see participation of many Policy Bureaux in this area of work, and the Chief Executive himself is also very concerned about this issue. With regard to the objectives set out in the policy address, we will submit reports to the Chief Executive on a regular basis. In fact, a working group led by the Financial Secretary also monitors employment opportunities and holds meetings regularly to review the relevant measures. Therefore, different Policy Bureaux have their own sphere of work. The Health and Welfare Bureau is responsible for co-ordinating and examining all the information, and we will also convene meetings where necessary.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, while the Secretary stated in his main reply many anti-poverty measures taken by the Government, we still vaguely see some inadequacies. Of the Government's anti-poverty initiatives, which area of work does the Secretary think is most inadequate?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I believe we can always do better. Insofar as our anti-poverty initiatives are concerned, we make investment in three areas: first, manpower investment; second, economic investment; and third, social investment. We have done a lot in these three areas and these investments have to be made in a well-balanced manner. Obviously, we still have to assess step by step how well the results are.

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

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, I asked the Secretary which area of work is most inadequate.*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, it is very difficult to draw a comparison, but I think we must continue to exert more efforts in all these three areas.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the main reply actually demonstrates yet again the Government's refusal to accept the recommendations made by the UNCESCR in its Concluding Observations. Five oral questions today concern the recommendations of the UNCESCR, and we can see that this is the fifth time the Government has refused to take on board the recommendations. It shows that the Government is virtually contemptuous of the recommendations. The Secretary for Justice said earlier that signatories to the ICESCR are not required to implement ICESCR immediately. Nor are they required to make legislation for the purpose. All they need to do is to put it into effect gradually by appropriate means. Since the Secretary for Justice is so contemptuous of the UNCESCR's recommendations, does it mean that you hold the Covenant in contempt as well? Concerning the earlier reply of the Secretary for Justice, even if it does not prompt allegation from the UNCESCR of a breach of the Covenant by us, it still shows bad faith and indifference on our part. Does the Secretary for Justice agree that the Government holds an indifferent and "could-not-care-less" attitude towards the recommendations?*

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, I do not agree that the SAR Government or I myself is contemptuous of the UNCESCR's Concluding Observations. As I said earlier on, each place must achieve the human rights standards enshrined in the Covenant progressively in the light of the resources available. I also said that the UNCESCR is tasked to establish a dialogue with the signatories in order to facilitate their understanding of the interpretation of the Covenant and how compliance can be effected. We very much respect the views of the UNCESCR. But as to how we can realize its recommendations, it fully depends on the local conditions. As I said earlier, the UNCESCR is neither a court nor an adjudicative body. So, it does not have the opportunity to truly obtain full information. Thus it only establishes a dialogue with the signatories and gives them advice, but the signatories may not necessarily agree to all of its recommendations.

However, I believe Members will agree that in reply to Members' questions earlier on, the various Bureau Secretaries have all stated that they will adopt an open attitude towards the recommendations of the UNCESCR in many aspects, and that they will take necessary steps and listen to public views before making any decisions. Therefore, I must reiterate that first, the Concluding Observations are not legally binding, and second, while the Concluding Observations are not legally binding, the Government still very much respects the views of the UNCESCR. As to how we can meet the UNCESCR's requirements or implement its recommendations, it all depends on the local conditions. I believe insofar as the various policy issues are concerned, the Bureau Secretaries have already explained the relevant situation to Members.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, thank you for allowing me to add a point or two with regard to this supplementary question.

In fact, throughout the process, the relevant United Nations Committee will maintain an ongoing dialogue with the signatories, such as Hong Kong, in order to improve our work in this regard. Concerning the recommendations given to us by the UNCESCR, it will always have the opportunity to examine our reports in detail, irrespective of whether or not the recommendations are implemented; and in May, the UNCESCR also listened to our representation before it. The report published by the UNCESCR on its observations after the hearing in May actually gives many praises to the report submitted by the SAR Government. For example, in the second paragraph of the report on its observations, it welcomed our submission of a well-prepared and detailed report. It also praised our professionalism and openness, and took the view that our dialogue had been fruitful and constructive. The UNCESCR made positive comments on us in a diversity of areas. There are a total of 11 paragraphs of positive comments, more than those in previous reports.

**PRESIDENT** (in Cantonese): We have spent over 16 minutes on this question, but a number of Members are still waiting for their turns to ask questions. So, I will allow one last supplementary question from Members.

**MR JASPER TSANG** (in Cantonese): *Madam President, the Government considers it impossible to draw an absolute definition of poverty. But I think at least there should be a relative assessment, and only in this way can the Government know whether its anti-poverty measures can alleviate the poverty situation in Hong Kong. At present, the Government does not have in place a co-ordinated anti-poverty body. Will the Government tell us how the various anti-poverty measures taken by various departments can be assessed to see if they can genuinely mitigate the poverty problem in Hong Kong progressively?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as I mentioned earlier, there is no standardized definition of poverty, and it mainly depends on the objectives that we wish to achieve in a host of areas. We discussed this issue before the announcement of the policy address last year, and our conclusion was that we had to decide which groups of people in the community should be provided with assistance. Insofar as financial assistance is concerned, we have already provided protection through the CSSA Scheme under which people with financial difficulties can obtain support. As for other areas, the principal measures will target at the socially disadvantaged who are in urgent need of assistance. As I mentioned earlier on, our view at that time was that the disadvantaged groups included new arrivals, single parents, the elderly, low-income earners and people who are less well-educated. The measures and objectives mentioned in last year's policy address also aimed to assist these disadvantaged groups, with a view to facilitating their upward mobility. In dealing with the poverty problem, we mainly aim to provide the socially disadvantaged with more opportunities of upward mobility. We have set objectives, so we can monitor the progress and results.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Temporary Road Closures to Restrict Vehicular Access**

7. **MR HOWARD YOUNG** (in Chinese): *Madam President, regarding the temporary road closures to restrict vehicular access due to the holding of banquets at Government House or the Chief Executive's Official Residence, will the Government inform this Council of:*

- (a) *the number and average duration of road closures for the above reason; as well as the number of complaints about such road closures received over the past three years, together with a breakdown by the subject of complaint; and*
- (b) *the number of hours of advance notice of such road closures given generally to the affected residents and drivers?*

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

- (a) During the past three years, there has not been any road closure implemented near the Chief Executive's Official Residence. However, due to security reasons, road closures were implemented on two occasions in the immediate vicinity of Government House. Details are as follows:
  - (i) on 2 July 1998, during the visit of the then President of the United States, Mr William Jefferson CLINTON, the section of Upper Albert Road between Garden Road and Arbuthnot Road was temporarily closed from 9.10 pm to 12.06 am on the following day; and
  - (ii) on 9 May 2001, during the visit of President JIANG Zemin, the section of Upper Albert Road between Garden Road and Arbuthnot Road was temporarily closed from 11.32 am to 12.20 pm and from 1.20 pm to 1.57 pm.

During the road closure on 9 May 2001, an anonymous member of the public lodged a complaint, expressing dissatisfaction over the road closure near Government House.

- (b) The police will issue advance notice of road closures and the consequential traffic diversions as far as practicable. Owing to security reasons, there was no advance notice of the road closure implemented on 2 July 1998 to the public. As regards the road closure implemented on 9 May 2001, the police announced the arrangement at 7.00 am that day, so that members of the public could make alternative arrangements.

**Students being Bullied at School**

8. **MR WONG SING-CHI** (in Chinese): *Madam President, regarding cases of students being bullied at school, will the Government inform this Council:*

- (a) *of the total number of cases reported last year involving students being bullied by schoolmates, together with a breakdown by the form of bullying (for example, acts of violence or verbal abuses, and so on);*
- (b) *whether it has assessed if such cases are prevalent; and whether it will consider conducting surveys and compiling statistics to ascertain the seriousness of the problem, as well as formulating measures to tackle it; and*
- (c) *whether it will consider providing training to teachers, parents and students so as to assist them in identifying and handling cases of bullying at school?*

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

- (a) and (b)

The Education Department (ED) conducts annual surveys on students' behavioural problems in primary and secondary schools. According to the latest survey carried out in July 2000, the number of bullying cases <sup>(Note)</sup> reported in the 1999-2000 school year is 1 043 (396 and 647 cases in primary and secondary schools respectively). Seen in perspective, with a student population of about 950 000, the problem of bullying in schools cannot be regarded as serious. The ED does not have statistics on the detailed breakdown of the nature of these bullying cases.

- (c) To assist teachers, parents and students to identify and handle cases of bullying in schools, the ED conducts regular training for primary

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<sup>(Note)</sup> Bullying cases involve teasing, intimidating and damaging others' property.

and secondary school teachers tasked with student guidance and discipline work. The Department also organizes workshops and seminars on student guidance and discipline for teachers in general and offers guidance to schools in organizing tailor-made guidance programmes and activities to enhance students' inter-personal skills and handle their emotions.

To promote home-school co-operation, the ED encourages the setting up of parent-teacher associations and commissions non-governmental organizations to organize parent education courses from time to time, which includes, *inter alia*, programmes on handling children with behavioural problems and bullying activities in school.

### **Burglary Cases in Harmony Type PRH Estates**

9. **MR FREDERICK FUNG** (in Chinese): *Madam President, it is learned that residents in Harmony Type public rental housing (PRH) estates are very concerned about the numerous burglary cases which took place in such PRH estates recently, claiming that these cases were related to the design of the estates, for example, the four windows in the lift lobby are not grilled, and the metal gates of PRH flats can be opened by someone who puts his hand in from outside. In this connection, will the Government inform this Council:*

- (a) *of the number of burglary cases which took place in Harmony Type PRH estates in each of the past 12 months; and among such cases, the number of cases occurring in units near the lift lobby or the ventilation points at the corridor;*
- (b) *of the measures to solve the security problems caused by the above-mentioned designs; and*
- (c) *whether it has assessed if the burglary cases are related also to the other design aspects of PRH estates; if the assessment is in the affirmative, of the details and the measures for improvement?*

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

- (a) The Housing Department's statistics on burglaries in Harmony Type PRH estates in the preceding 12 months are as follows:

	<i>Month</i>	<i>Number of Known Burglaries</i>
2000	June	9
	July	9
	August	11
	September	18
	October	19
	November	11
	December	10
2001	January	19
	February	22
	March	21
	April	26
	May	23
	Total	198

Of these, 109 cases occurred in units near the lift lobby while 54 cases occurred in units near the ventilation points at the corridor.

- (b) All Harmony blocks have self-closing security gates at block entrance and staircase exits, doorphone system and close circuit television inside lifts and at main entrances. Round-the-clock patrol guard and tower guard services are also provided. To address residents' concern regarding burglary cases through lift lobbies and bathroom windows, the Housing Authority has recently decided to install window grilles at lift lobbies on all floors.
- (c) There are currently 63 PRH estates with 254 Harmony blocks comprising 167 580 flats. The Housing Department reviews the standard public housing block design including the design of Harmony blocks from time to time. As a regular crime prevention initiative, the Housing Department also holds meetings with the police to discuss crime prevention measures including whether and how alternative designs can improve security of the buildings.

**Promoting Hong Kong Overseas**

10. **MR HENRY WU** (in Chinese): *Madam President, regarding the efforts of the Government and public-funded organizations in promoting Hong Kong overseas, will the Government inform this Council:*

- (a) *of the details of the advertisements broadcast or published on overseas television, radio, newspapers and other publications, as well as the promotional fairs and exhibitions participated by the Government and public-funded organizations respectively in the past three years; together with the annual expenses and number of such promotion campaigns for each promotional channel, and the number of and expenditure on promotional campaigns which focused on Hong Kong's political and economic situations;*
- (b) *whether it has assessed the effectiveness of the overseas promotional efforts; if it has, of the assessment methods and results; if not, the reasons for that;*
- (c) *whether it has conducted any study on the overseas promotional strategies adopted by other countries, in particular those of Hong Kong's key competitors; if it has, of the details;*
- (d) *of the percentage of the expenses on such promotional efforts in the Gross Domestic Product (GDP) in each of the past three years; how it compares with those of Hong Kong's key competitors; and*
- (e) *whether it plans to allocate more resources so that such overseas promotional efforts can be more effective?*

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

- (a) The promotion of Hong Kong overseas by the Government is carried out mainly by the Hong Kong Economic and Trade Offices (ETOs) and departments such as the Information Services Department (ISD) and Invest Hong Kong (InvestHK). The public-funded organizations involved are the Hong Kong Trade Development Council (TDC) and the Hong Kong Tourism Board (HKTB).

The key responsibility of the ETOs is to promote Hong Kong's economic and trade interests overseas. As for the general promotion of Hong Kong's image, the ETOs (with the exception of the Geneva ETO, whose primary role is to represent Hong Kong at the World Trade Organization) organize and, where appropriate, sponsor conferences, seminars, exhibitions, receptions, speaking engagements, cultural performances and events. Media advertising constitutes an insignificant part of ETO's overall publicity programme. More than 300 activities were mounted in 1998-99 and over 400 activities in each of the years 1999-2000 and 2000-01. The expenditure of these promotional efforts amounted to \$21.3 million in 1998-99, \$20.4 million in 1999-2000 and \$24.5 million in 2000-01.

The ISD organizes two to three large-scale multi-faceted Hong Kong promotion activities overseas covering major cities in target countries every year. Key activities include high-level business conferences; keynote addresses by principal officials; meetings with senior foreign officials, leading political figures and think-tank organizations; themed exhibitions; and social, networking and cultural events. In 1998-99, three promotion projects were organized in Japan, the United States and Italy costing \$3 million, \$3.5 million, and \$7 million respectively. In 1999-2000, two projects were organized in North America (covering the United States, Canada and Mexico) and in Australia, costing \$8 million and \$4.9 million respectively. In 2000-01, three projects were organized in Europe (covering Germany, Holland, and Belgium), Australia and New Zealand, costing \$8 million, \$0.4 million and \$2.5 million respectively.

In addition, an overseas promotion programme to introduce Brand Hong Kong, was launched this year, at a cost of \$9 million. A wide variety of promotional material was produced for use by the ETOs.

InvestHK, established in 2000, also contributes towards the general promotion of Hong Kong's image by participating in and sponsoring international events, including a round-the-world yacht race and the FORTUNE Global Forum in Hong Kong. The expenditure in 2000-01 was \$7.8 million.

The TDC seeks to promote Hong Kong's image overseas through seminars, business luncheons, publications and other promotional activities. Over 40 promotional activities were mounted in 1998-99; and over 30 in each of the past two years. The relevant expenditure was \$24.4 million, \$22.4 million and \$17.9 million in 1998-99, 1999-2000 and 2000-01 respectively.

The HKTB centres its marketing and promotional activities each year on designated themes and messages. In the last three years, the main theme of its advertising, promotion and exhibitions has been presented through its "City of Life" campaign which was launched in May 1998. This worldwide campaign positions Hong Kong as one of the world's great international cities for tourism offering a unique fusion of Eastern and Western cultures, with a vibrant, dynamic energy matched by no other city in the world.

An integrated advertising strategy utilizing TV, print and outdoor/transit ads is employed in 17 international markets to convey the "City of Life" messages effectively.

The same theme has been communicated in trade and consumer exhibitions/shows around the world organized, or participated in, by the HKTB.

The total cost of the HKTB's activities in the past three years was \$317 million in 1998-99, \$287 million in 1999-2000 and \$280 million in 2000-01.

- (b) The departments and organizations concerned adopt different methods to evaluate the effectiveness of the great variety of promotional activities that they carry out. The ETOs, the ISD and the TDC make valuations with reference to indicators such as attendance rate, media coverage, feedback from participants, new contracts established and follow-up inquiries/meetings/visits. On the whole, these promotional activities have been favourably received and have been effective in bringing home the message of the successful implementation of the "one country, two systems" concept, and the maintenance of Hong Kong's way of life. The HKTB conducts regular visitor surveys at departure points and in its

source markets. Over the last few years, these surveys show growth in positive perceptions of Hong Kong by visitors, reflecting the aggregate effects of all types of promotional activity.

- (c) The Government and publicly-funded organizations take note of the promotional activities of other cities. In view of the differences in circumstances between Hong Kong and these cities, the organizations concerned have not conducted detailed studies on the promotional strategies of the other cities.
- (d) The total annual cost of all the activities mentioned in (a) above represented about 0.03% of the GDP in 1998-99, 0.028% in 1999-2000 and 0.027% in 2000-01. We have no information on expenditure for such purposes by Hong Kong's key competitors.
- (e) The departments and organizations concerned will review the resources required for overseas promotion from time to time. Each of them determines the resources to be spent each year having regard to competing demands.

### **Loss of Right of Abode by Persons not of Chinese Nationality**

11. **MR ANDREW CHENG** (in Chinese): *Madam President, in reply to my written question on 16 May this year, the Secretary for Security said that holders of the permanent identity card, regardless of their nationalities, enjoy the right of abode in the Hong Kong Special Administrative Region (HKSAR); and people with the right of abode in the HKSAR, regardless of their nationalities, enjoy the rights to be free of any condition of stay (including a limit of stay) in the HKSAR, not to be deported from the HKSAR and not to be removed from the HKSAR. On the other hand, paragraph 7 of Schedule 1 to the Immigration Ordinance (Cap. 115) provides that persons not of Chinese nationality may lose the status of permanent resident if they have been absent from Hong Kong for a continuous period of not less than 36 months. In this connection, will the Government inform this Council:*

- (a) *whether persons not of Chinese nationality will also lose the right of abode in the HKSAR and the right not to be deported or removed from the HKSAR when they lose the status of permanent resident as*

*a result of having been absent from Hong Kong for a continuous period of not less than 36 months;*

- (b) *if the answer to (a) above is in the affirmative, of the legal basis for this; and*
- (c) *if the answer to (a) above is in the negative, whether the Administration can impose conditions of stay on people who have lost the status of permanent resident but still enjoy the right of abode in the HKSAR, deport or remove them from the HKSAR or refuse them entry to the HKSAR?*

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

- (a) According to paragraphs 2(d) to 2(f) of Schedule 1 to the Immigration Ordinance, the following persons who are not of Chinese nationality are permanent residents of the HKSAR:
- A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and has taken Hong Kong as his place of permanent residence before or after the establishment of the HKSAR (paragraph 2(d) of Schedule 1).
  - A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the HKSAR under paragraph 2(d) of Schedule 1 before or after the establishment of the HKSAR if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong (paragraph 2(e) of Schedule 1).
  - A person other than those residents under paragraphs 2(a) to 2(e) of Schedule 1, who, before the establishment of the HKSAR, had the right of abode in Hong Kong only (paragraph 2(f) of Schedule 1).

These persons will lose their permanent resident status if they have been absent from Hong Kong for a continuous period of not less than 36 months:

- since they ceased to have ordinarily resided in Hong Kong (for those falling within paragraph 2(d) or (e) of Schedule 1);  
or
- after they obtained the right of abode in any place other than Hong Kong and have ceased to have ordinarily resided in Hong Kong (for those falling within paragraph 2(f) of Schedule 1).

Such persons shall then cease to enjoy the right of abode in Hong Kong, which means that in certain circumstances, they could be deported from the HKSAR under section 20 of the Immigration Ordinance, but otherwise they will continue to enjoy the right not to be removed from the HKSAR.

- (b) The circumstances under which a permanent resident of the HKSAR loses his permanent resident status in Hong Kong are provided for under paragraph 7 of Schedule 1 to the Immigration Ordinance.
- (c) Any person who ceases to be a permanent resident of the HKSAR by virtue of the operation of the Immigration Ordinance shall, immediately upon such cessation, automatically acquire the right to land in the HKSAR. People with the right to land can enjoy the right:
  - to land in the HKSAR;
  - to be free of any condition of stay (including a limit of stay) in the HKSAR; and
  - not to be removed from the HKSAR.

**Compensation for Occupational Deafness**

12. **MISS EMILY LAU** (in Chinese): *Madam President, the Occupational Deafness (Compensation) Ordinance (Cap. 469) (the Ordinance) provides that a person who wishes to apply to the Occupational Deafness Compensation Board (the Board) for compensation has to make an application within 12 months from the date of his leaving employment in a noisy occupation. It has been reported that a 68-years-old retired worker, who suffered from a 50% hearing loss after operating jackhammers on construction sites for years, had missed the deadline for making an application for compensation because he did not have a fixed residential address after retirement, and therefore had not received any documents from the Government. Under the Ordinance, he has to be employed in a noisy occupation again for one month before he may apply for compensation. In this connection, will the executive authorities inform this Council whether they:*

- (a) are aware of the above case; if so, whether they have taken any measures to assist that worker in applying for compensation;*
- (b) will consider amending the above Ordinance to empower the Board to accept late applications on a discretionary basis; and*
- (c) will review the adequacy of the current protection offered to workers who suffer deafness by reason of their employment in noisy occupations; if not, of the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, the Occupational Deafness Compensation Scheme was set up under the Ordinance in 1995 to provide for the compensation of persons who have been exposed to noise in their working environment and have suffered noise-induced deafness. The Ordinance provides that applicants shall:

- (i) have had five to 10 years of employment in any designated noisy occupation in Hong Kong;
- (ii) have incurred through employment, hearing loss of a specified degree; and

- (iii) have been employed under a continuous contract in any noisy occupation in Hong Kong within 12 months before the date of his application.

The Ordinance also provides that any person who was employed in any designated noisy occupation in Hong Kong after 1 July 1989 may also make an application before a specified deadline if he has left the designated noisy occupations before the commencement of the Ordinance. The deadline was first set on 30 June 1996.

Against the above background, the Administration would like to respond to the Honourable Miss Emily LAU's question as follows:

- (a) Under the Ordinance, applications for compensation made thereunder shall be processed and determined by the Board. The Board has been aware of the case in question through the referral by the Working Group on Review of the Occupational Deafness Compensation Scheme of the Labour Department and has taken follow-up actions. Details are provided as follows:

Records of the Board revealed that the worker concerned filed his application for compensation for the first time in 1996. Since his hearing loss was proved in a hearing test to be lower than the degree specified under the Ordinance at that time, the Board rejected his application.

Subsequently, the Administration relaxed the qualification requirements for compensation through the Occupational Deafness (Compensation) (Amendment) Ordinance 1998. To ensure that eligible applicants who had left the designated noisy occupations for 12 months or more would have sufficient time to file their applications, the deadline for them to make application was also extended, through the Amendment Ordinance, to 5 March 1999.

At that time, the Board widely publicized the new qualification requirements and the extended deadline for applications through the mass media and labour organizations, and so on. Since some applications which had been rejected might meet the new requirements, the Board sent letters to some 60 claimants (including

the worker mentioned above) on 17 July 1998 to their declared addresses, to remind them to submit applications for compensation again before the new deadline.

Late last year, the Commissioner for Labour appointed a working group to review the Occupational Deafness Compensation Scheme. At the meeting with the representatives of the Hong Kong Occupational Deafness Association in February this year, the working group learnt that the worker concerned had missed the extended deadline for application, and thereupon referred the case to the Board for follow-up. The Board examined the case in depth, but legal advice confirmed that, under the Ordinance, the Board had no discretion to accept a late application from the worker concerned.

The Administration is sympathetic that the worker concerned has missed the deadline for applications, but being bound by the Ordinance, is unable to make compensation to him under the Occupational Deafness Compensation Scheme. The Administration is actively exploring other possible ways of providing assistance to the worker concerned.

- (b) Medical opinion has indicated that, apart from working in noisy occupations for a prolonged period, ageing and sickness may also lead to deafness. If an applicant has left the noisy occupation for a long period of time, it will be extremely difficult to ascertain through current technology whether his hearing loss had been wholly or partially caused by work. It is therefore necessary for the Ordinance to require applicants to have been employed under a continuous contract in any designated noisy occupation within 12 months before filing their applications. To provide discretionary power to the Board to accept late applications would cause unfairness in assessing hearing loss and determining the amount of compensation.
- (c) The Commissioner for Labour has appointed a working group to conduct a comprehensive review of the Occupational Deafness Compensation Scheme. The review is expected to be completed in July this year.

**Students Seeking Summer Jobs**

13. **MR LAU KONG-WAH** (in Chinese): *Madam President, as many students seek short-term employment during the summer holidays (summer jobs), will the Government inform this Council:*

- (a) of the number of complaints about summer jobs received from students in each of the past five years, together with a breakdown by the type of jobs and the subject of complaint;*
- (b) whether publicity campaigns have been launched to remind students of matters that need to be noted when seeking summer jobs; if so, of the details; and*
- (c) whether guidelines on how to guard against deception have been provided to students?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, an account of complaints on seeking summer jobs and publicity campaigns launched to alert students to possible deceptions in the job searching process is provided as follows:

- (a) In the past five years, the Labour Department (LD) has not received any complaints about summer jobs.
- (b) and (c)

Every year, the LD organizes a series of publicity activities to remind young job seekers of matters that they should pay attention to when choosing their summer jobs and enhance their awareness of relevant labour legislation. Measures and activities for this year include:

- Placement officers have been reminding students of matters requiring special attention in seeking summer jobs when they delivered career talks at schools throughout the school year;

- Information has been displayed at Job Centres and at roving exhibitions on placement services to alert young job seekers to employment traps;
- A booklet entitled "A Guide for Summer Job Seekers" to set out information on relevant labour legislation, has been published. In particular, the booklet highlights the protection that summer job workers generally enjoy under the Employment Ordinance (EO) and areas in which they should take caution when entering into employment contracts. Free copies of the booklet, together with a purpose-made CD-ROM of interactive games on the EO, were distributed to young people via secondary schools and youth centres throughout the territory in January 2001. These materials have also been uploaded onto the LD website for wider public access;
- A poster has been produced to remind students to watch out for employment traps in seeking summer jobs and a booklet entitled "Summer Job Guide" has been published to provide students with guidelines on how to secure summer jobs. Starting from March 2001, free copies of the poster and booklet have been distributed to young people through secondary schools, youth centres and Job Centres of the LD;
- Since April 2001, information on common employment traps and hints on how to detect such traps have been uploaded onto the LD's Interactive Employment Service website for public use;
- A radio Announcement of Public Interest to remind students of employment traps has been broadcast since May 2001; and
- From February to May 2001, nine talks on the EO have been organized for students of local universities and the Hong Kong Institute of Vocational Education.

Meanwhile, the LD has been putting occupational safety messages across to young summer job seekers through education, publicity

and law enforcement. Publicity activities to promote summer job safety include:

- The LD has published jointly with the Occupational Safety and Health Council a booklet entitled "A Guide on Summer Job Safety" and a leaflet entitled "Safety and Health Guide for Summer Job Workers". Every year, these publications are distributed through the Education Department (ED) to all local secondary schools so that relevant messages can be put over to students before the summer recess;
- The LD has, in collaboration with the ED, produced an educational filmclip to promote summer job safety. Apart from broadcasting the filmclip on television, arrangements have been made for teachers to show it in class;
- A radio Announcement of Public Interest on summer job safety has been produced and will be broadcast during the summer vacation every year;
- The LD has produced a poster providing students with safety hints in seeking summer jobs. Every year, copies of the poster would be distributed to secondary schools before the summer recess. The safety hints have also been uploaded onto the LD website for easy access by students;
- The LD has launched a self-learning software, the "Occupational Safety and Health E-quiz", for students to browse on the Internet. This interacting quiz seeks to provide secondary students with basic occupational safety and health knowledge; and
- The LD has delivered two talks on summer job safety and health from May to June 2001.

In addition, the Commissioner for Labour would hold press conferences and remind students looking for summer jobs to be aware of employment traps and workplace hazards.

Regular publicity campaigns are launched by the Hong Kong Police Force to remind students of necessary precautions against falling victim to deceptions in seeking summer jobs. For instance, one of the selected anti-crime themes of this summer's Crime Prevention Campaign is "employment traps for young job seekers". Posters and leaflets will be displayed and distributed during the Campaign to maximize publicity and to provide guidelines for young job seekers.

### **Level of Foreign Reserves Required to Maintain Currency Stability**

14. **MISS EMILY LAU:** *Madam President, regarding the amount of foreign reserves that is required to maintain currency stability, will the executive authorities inform this Council:*

- (a) whether they have analysed the attacks on Hong Kong dollar during the Asian financial turmoil in 1997 and 1998, and drawn any conclusions in relation to the level of foreign reserves;*
- (b) whether they have reviewed if the current level of foreign reserves is too high; if they have, of the results of the review; and*
- (c) if such review has not been conducted, whether they plan to do so in the near future; if they do not have such a plan, of the reasons for that?*

**SECRETARY FOR FINANCIAL SERVICES:** Madam President,

- (a) The Hong Kong Monetary Authority (HKMA) has reviewed the attacks on the Hong Kong dollar during the Asian financial turmoil in 1997 and 1998. The review resulted, among other things, in the implementation in September 1998 of the seven technical measures to refine the Currency Board system. The HKMA's view is that Hong Kong's high level of foreign reserves was crucial in enabling Hong Kong to ward off the speculative attacks of 1997 and 1998 and that a strong reserve position remains crucial to the stability and credibility of the Hong Kong dollar in an increasingly globalized and uncertain financial environment.

(b) and (c)

The Sub-committee on Currency Board Operations of the Exchange Fund Advisory Committee has recently considered the desirability and feasibility of determining the optimal level of foreign exchange reserves for Hong Kong. It has recommended that further research and deliberation on the subject should be carried out.

### **Services for Young Night Drifters**

15. **MR LAU KONG-WAH** (in Chinese): *Madam President, in reply to my question on 16 May regarding the services provided by the Administration to young night drifters (YNDs), the Secretary for Health and Welfare said that since completion of the Youth Mobile Teams (YMTs) pilot project in 1999, many outreach social work teams (OSWTs) and integrated teams (ITs) had extended their service hours to serve YNDs. In this connection, will the Government inform this Council:*

- (a) *of the plans or measures in place to support these teams in their services to YNDs; and*
- (b) *whether it will consider opening some indoor games halls in North District, New Territories on a flexible basis so as to offer venues for social workers to provide counselling to YNDs late at night; if not, of the reasons for that?*

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

- (a) Based on data obtained in 1999 from two pilot YMTs, working with YNDs, 46% were assessed to have no need for service from social workers. The identified needs of the remaining 54% included assistance to be off the street to avoid exposure to danger, assistance to handle family-related problems, assistance to handle negative peer influence, and services to promote their mental health, prevent the occurrence of at-risk behaviour, and to assist with employment related matters.

The objectives of YMTs are to provide on the spot crisis intervention, including escort services to homes or temporary shelters, if required; to provide short-term intervention, including welfare referrals and, if necessary, escorting YNDs to relevant welfare agencies; and to arrange for them to receive mainstream youth services to facilitate their social and personal development.

Since the completion of this pilot scheme, mainstream OSWTs and ITs have extended their services to YNDs as part of the integrated programme for young people. These include services to meet their individual needs, publicizing available welfare services and encouragement to seek help should the need arise.

Apart from a wide range of support from mainstream youth welfare services to meet the needs of YNDs as outlined above, support is also available in the form of residential centres. Social workers may take YNDs who are temporarily unable or unwilling to stay at home to these centres which provide short-term accommodation. In this connection, financial support from the Government has been provided to a non-governmental organization (NGO) to operate two crisis residential centres in Sha Tin and Eastern Districts. Additional recurrent subvention has also been provided since May 2001, to enable another NGO to operate a similar temporary residential service in Kowloon for YNDs.

In addition, the Administration has allocated additional recurrent resources of \$22 million in 2001-02 to strengthen the manpower provision in 18 ITs (with an addition of three professional social workers to each IT) to provide services to YNDs. Furthermore, \$5.6 million has been allocated by the Lotteries Fund for the purchase of vehicles and mobile phones by the 18 ITs. This will enable the Teams to make speedy arrangements for young people in need from different districts to be admitted to these residential centres.

Social workers serving YNDs are also supported by other mainstream welfare services, including family welfare, mental health and employment services.

- (b) As recommended in the evaluation study of the pilot YMT service, a residential facility, to be used as a place of rest, and secure place for counselling should be made available. Pursuant to this recommendation, OSWTs and ITs providing services for YNDs make use of their centre-based facilities to provide counselling to YNDs, as required. This includes the crisis residential centres referred to above.

Leisure facilities and civic centres under the management of the Leisure and Cultural Services Department normally open until 10 pm to 11.30 pm. Applications from youth organizations or service providers to organize activities for YNDs at these venues late at night, will be considered on a case by case basis. In the long term, if experience demonstrates that night-time opening is an effective means to help meet the objectives of the welfare services provided to YNDs, we will consider how the operation of these facilities can be changed to contribute towards this process.

### **Competition in Software Market**

16. **MR NG LEUNG-SING** (in Chinese): *Madam President, it has been reported that a dominant supplier in the local market for computer operating system and application software plans to introduce a new licensing scheme as an option for its commercial customers in October. In addition to the current practice of buying permanent user licences for the software, they can also opt for paying software licence and upgrading fees on an annual basis. Regarding the licensing scheme and the competition in the software market, will the Government inform this Council whether:*

- (a) *it knows the details of the new licensing scheme; if so, of the specific details;*
- (b) *it has assessed how the new licensing scheme will affect the expenditure of government departments and industrial and commercial enterprises, in particular those small and medium enterprises, on computer software; if so, of the details of the assessment; and*

- (c) *it has assessed if there is sufficient competition in the local market for computer operating system and application software; if it has, of the details of the assessment, and the policies and measures in place to encourage and help government departments as well as industrial and commercial enterprises to use other cheaper software?*

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

- (a) The Government is closely monitoring the development of the software market. Information on individual software supplier's services is generally available through the Internet. We note that a major software supplier plans to introduce a new software licensing scheme in October this year to supplement its current scheme of separately selling software upgrades. Under the new scheme, customers can obtain the software on subscription basis by paying an annual fee and software upgrade services will be provided within the subscription period. As a software user, the Government has written to the supplier asking for further information on the new scheme so as to assess the possible financial implications involved.
- (b) We will assess the financial implications of the new software subscription scheme to government software expenditure after receiving further details about the scheme. As regards the financial implications to industrial and commercial enterprises, we will liaise with industry supporting organizations to encourage the industry to make its own assessment and negotiate with the relevant software supplier for the best arrangement.
- (c) There is no significant difference in the market competition situation of different suppliers on operating systems and application software between Hong Kong and other advanced economies. We consider that the best way to encourage competition is to allow the market to operate freely, with minimal intervention. The newly amended Copyright Ordinance plays a positive role in encouraging the use of legitimate software in enterprises and promotes market competition. In the long run, more software developers will invest in product development to provide users with more choices at cheaper prices.

Within the Government, the Information Technology Services Department regularly provides departments with information on products, pricing and other reference materials in respect of commonly used operating system software to facilitate departments in selecting software which meets their individual requirements. As for industrial and commercial enterprises, the Hong Kong Productivity Council has recently assisted 57 associations in different sectors to bargain with software suppliers over prices and has secured various discount rates. Besides, the Council has also actively conducted tests on the functions and compatibility of locally developed software and made the results available to users for reference so as to facilitate them in selecting software which meets their individual requirements.

### **Cases Handled by Copyright Tribunal**

17. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, will the Government inform this Council of:*

- (a) *the respective annual numbers of cases handled by the Copyright Tribunal since its establishment in 1997, together with a breakdown by the outcome of these cases; and*
- (b) *the number of the above cases which involved disputes over copyright royalty charges?*

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

- (a) The Tribunal has handled six cases since 1997. One case was received in 1997 and the other five in 1998. One of these six cases was subsequently withdrawn by the applicant. As regards the other five cases, the relevant parties had agreed on a settlement before a formal hearing was held.
- (b) All six cases involved disputes over copyright royalty charges.

**Regulation on Sale of Globefish**

18. **DR LO WING-LOK** (in Chinese): *Madam President, as the offal, skin and blood of globefish (commonly known as "puffer") contain a strong poison, eating globefish which has not been properly prepared may lead to sickness or even death. In this connection, will the Government inform this Council whether the sale of globefish is regulated under the existing legislation; if so, of the relevant regulation, including the penalties for the illegal sale of globefish; if not, of the monitoring mechanism in place to ensure that globefish sold in the territory will not endanger the health of the public?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Chinese): Madam President, the sale of globefish in Hong Kong for human consumption is subject to regulation under the Public Health and Municipal Services Ordinance (Cap. 312) (the Ordinance). Section 54 of the Ordinance provides that any person selling food not fit for human consumption commits an offence and is liable on conviction to a maximum fine of \$50,000 and imprisonment for six months. According to the Ordinance, any person selling globefish must ensure that it is fit for human consumption.

Regarding the retail market, any sale of sushi and sashimi (including globefish) can only be conducted after a permit has been obtained from the Food and Environmental Hygiene Department (FEHD) for the sale of such food items. The FEHD requires a valid official health certificate issued by the authorities of the place of origin to be produced by the seller to prove that the globefish is not poisonous and is fit for human consumption before allowing its sale. Furthermore, as an entire globefish contains a high level of toxin, the FEHD staff will also prohibit its sale in exercise of the power conferred by the Ordinance upon spotting the sale of an entire globefish during their inspection in markets or other shops.

At present, wholesale marketing of fresh marine fish is conducted in wholesale fish markets run by the Fish Marketing Organization. According to the record kept by the Fish Marketing Organization, no globefish has ever been offered for sale in wholesale fish markets. For the sake of public health, however, officers of the wholesale fish markets will, upon detection of any fisherman selling globefish, advise them to remove the globefish.

### Laundry Workshops Operated by Hospital Authority

19. **MISS LI FUNG-YING** (in Chinese): *Madam President, it has been reported that the Hospital Authority (HA) fails to fully utilize its laundry workshops due to improper shift arrangements for its workers, making it necessary for the HA to spend public money on contracting out the laundry of the staff uniforms and the clothing and bedding of patients of public hospitals to privately-run laundries. In this connection, will the Government inform this Council whether it knows:*

- (a) *the current number of laundry workshops operated by the HA, the total number of laundry workers and details of the shift system concerned; and*
- (b) *the respective percentages of the laundry of public hospitals currently handled by the HA, the Correctional Services Department (CSD) and privately-run laundries?*

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

- (a) At present, the HA has nine laundries for handling the laundry work of public hospitals. Six of these laundries are operated directly by the HA staff, two by the CSD, and one by a private contractor. All nine laundries operate from Monday to Saturday. Depending on the workload and the handling capacity of the facilities, different laundries adopt different shift arrangements. The number of laundry workers and details of the shift arrangements in respect of the nine HA laundries are as follows:

<i>HA Laundries</i>	<i>Total Number of Staff Employed</i>	<i>Shift Arrangements</i>
Six laundries operated by HA staff	435	Four laundries operate in single shift, from 8.00 am to 3.30 pm.  Two laundries operate in double shifts: From 8.00 am to 3.00 pm for the first shift, and 3.00 pm to 10.30 pm for the second shift.

<i>HA Laundries</i>	<i>Total Number of Staff Employed</i>	<i>Shift Arrangements</i>
Two laundries contracted to and operated by the CSD	Depending on the workload, each laundry is manned by about 135 to 160 inmates.	Operating hours from 8.00 am to 7.00 pm. Inmates basically work in two shifts, one in the morning and one in the afternoon.
One laundry contracted to and operated by a private contractor	23	Operates in double shifts: from 7.30 am to 4.00 pm for the first shift, and 2.00 pm to 10.30 pm for the second shift.

- (b) Through automation and streamlining work procedures, the HA has enhanced the annual total handling capacity of all nine HA laundries from 35.2 million kg to around 36.5 million kg. As the total laundry requirement of all HA hospitals and institutions is about 44 million kg per annum, the HA has to contract out the remaining laundry work to the CSD laundries or private-sector laundries. At present, 83% of the HA's laundry work is handled by the nine HA laundries referred to in part (a) above, 14% by the CSD laundries and 3% by private-sector laundries.

### **Inspection of Newly Completed Buildings by Buildings Department**

20. **MR ALBERT CHAN** (in Chinese): *Madam President, at present, newly completed private buildings are required to be inspected by the Buildings Department (BD) to ensure their compliance with the stipulations and requirements of the Building Ordinance (Cap. 123) before occupation permits are issued to the developers. Notwithstanding this, quite a number of owners still find rusted or spalling building materials upon occupation. In this connection, will the Government inform this Council:*

- (a) *of the details of the necessary inspection by the BD before occupation permits for the newly completed private buildings are issued;*
- (b) *as the BD should have completed the inspection processes before issuing occupation permits, why problems such as water seepage on external walls, concrete spalling, electricity leakage and rusted drains are still found in newly completed private buildings; and*
- (c) *whether it will consider stepping up its efforts in monitoring the construction of private buildings to prevent contractors from jerry-building?*

**SECRETARY FOR PLANNING AND LANDS** (in Chinese): Madam President, under the Buildings Ordinance (Cap. 123), Authorized Persons (APs), Registered Structural Engineers (RSEs) and Registered Contractors (RCs) have statutory responsibilities to design, supervise and certify that private buildings are constructed in accordance with the safety and health standards specified in the Ordinance. Building plans are required to be submitted to the Building Authority for approval. During the course of construction, the BD will check on the construction methods and sequence, the quality of construction materials, the performance of structural elements and the quality of site safety supervision.

Upon receiving an application for an occupation permit, the BD will conduct site inspections to verify whether the completed building has been constructed in compliance with the requirements of the Buildings Ordinance and in accordance with the approved plans. An occupation permit will not be issued if any major or structural defects, such as concrete spalling or water seepage on external walls, are found during inspection.

Minor workmanship-related problems which do not come under the Buildings Ordinance are covered by the defect liability warranty in the assignment of the property. The purchaser of the property can ask the developer to rectify any such defects during the warranty period.

As regards the supply of electricity to occupants of buildings, developers are required under the Electricity Ordinance (Cap. 406) to employ registered electrical contractors/workers to design, install, test and certify the electrical installations to ensure compliance with the statutory requirements. Before connection of electricity supply to the installations, the power company will carry out inspections on the electrical installations to ensure that the stipulated requirements under the Electricity Ordinance and the supply rules of the power company are complied with. If any defects are found in the electrical installations of a building, the Director of Electrical and Mechanical Services will be informed. Appropriate actions will then be taken under the Electricity Ordinance.

In August 2000, the BD introduced further measures to tighten up the supervision of foundation works by the APs, the RSEs and the RCs. Under the new arrangement, the RSEs and the RCs are required to increase the number of qualified supervisors to oversee and test all foundation works carried out at a construction site. These qualified supervisors are required to be resident full-time on site during the relevant stages of foundation works. The completed foundations are required to be tested.

To further enhance the effectiveness of monitoring building works in progress, the BD implemented a new strategy of construction site auditing in April 2001. The new approach is to make random audit checks unpredictable so as to maximize the deterrent effect.

The schemes mentioned in the fifth and sixth paragraphs above have been working well. The BD will continue to review their overall effectiveness and consider the need to introduce further improvement measures as necessary. In the meantime, the BD will continue to encourage developers to use more durable construction materials and to provide a longer defect liability warranty period for new buildings.

## **BILLS**

### **First Reading of Bills**

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

**HONG KONG COURT OF FINAL APPEAL (AMENDMENT) BILL 2001****IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001****MEDICAL AND HEALTH CARE (MISCELLANEOUS AMENDMENTS)  
BILL 2001**

**CLERK** (in Cantonese): Hong Kong Court of Final Appeal (Amendment) Bill 2001  
Import and Export (Electronic Transactions) Bill 2001  
Medical and Health Care (Miscellaneous Amendments)  
Bill 2001.

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

**Second Reading of Bills**

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

**HONG KONG COURT OF FINAL APPEAL (AMENDMENT) BILL 2001**

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam President, I move that the Hong Kong Court of Final Appeal (Amendment) Bill 2001 be read the Second time.

The Bill seeks to enable certain civil appeals to go direct from the Court of First Instance to the Court of Final Appeal, leapfrogging the Court of Appeal.

The leapfrog arrangement would speed up the litigation process and save costs. Under our proposal, an appeal may be brought direct to the Court of Final Appeal if two conditions are satisfied: First, the trial judge of the Court of First Instance making the decision against which an appeal is to be made has issued a leapfrog certificate; and second, the Court of Final Appeal has granted leave to appeal.

The trial judge of the Court of First Instance may issue a leapfrog certificate if he considers that a sufficient case for appeal to the Court of Final Appeal has been made out and all parties to the proceedings consent to the grant of a certificate. The trial judge should also be satisfied that the point of law in the case is of great general and public importance.

Once a trial judge has issued a leapfrog certificate, any party to the proceedings may apply to the Appeal Committee of the Court of Final Appeal for leave. Once the Appeal Committee has granted leave, the relevant appeal will rest with the Court of Final Appeal.

Details of the leapfrog mechanism are set out in the Bill. I commend the Bill to Honourable Members.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Hong Kong Court of Final Appeal (Amendment) Bill 2001 be read the Second time.

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

## **IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001**

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I move that the Import and Export (Electronic Transactions) Bill 2001 be read the Second time.

Under the Import and Export Ordinance and the Reserved Commodities Ordinance, carriers are required to submit to the Customs and Excise Department, the Census and Statistics Department and the Trade and Industry Department manifests in relation to cargoes imported into and exported from Hong Kong. At present, the law requires carriers to submit cargo manifests in paper form.

We propose to amend the relevant legislation to require carriers to use the Electronic Data Interchange (EDI) service to submit cargo manifests electronically. Electronic submission would reduce paper work, improve efficiency, and promote the development of e-commerce in Hong Kong.

With the approval of funds by the Legislative Council in 1999, the Government has been developing the EDI system for processing submission of cargo manifests (EMAN), which will become operational before the end of this year. By then, carriers of all modes of transport, except road vehicles, can submit cargo manifests electronically.

In 1992, the Government signed a franchise agreement with Tradelink Electronic Commerce Limited whereby Tradelink will provide front-end services for EMAN. The Government and Tradelink have consulted the industry on the implementation of EMAN and secured its support. The Legislative Council Panel on Commerce and Industry also supports the introduction of the Bill.

To ensure the arrangement on submission of cargo manifests can migrate smoothly from paper to electronic form, we will make special arrangement so that carriers will be allowed to continue to submit cargo manifests in paper form initially.

We will also organize publicity measures, which include setting up inquiry counters at the departmental offices handling cargo manifests, displaying messages at websites, and sending letters to the industry and relevant business associations. These measures proved to be effective when we launched the EDI services for other documents in the past.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Import and Export (Electronic Transactions) Bill 2001 be read the Second time.

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

## **MEDICAL AND HEALTH CARE (MISCELLANEOUS AMENDMENTS) BILL 2001**

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I move the Second Reading of the Medical and Health Care (Miscellaneous Amendments) Bill 2001. The Bill aims at improving the following six health-related Ordinances:

- (a) Dentists Registration Ordinance;
- (b) Midwives Registration Ordinance;
- (c) Nurses Registration Ordinance;
- (d) Hospitals, Nursing Homes and Maternity Homes Registration Ordinance;
- (e) Radiation Ordinance; and
- (f) Chinese Medicine Ordinance.

These Ordinances provide for the establishment of regulatory schemes to regulate the practice of various health care professionals and institutions through a system of registration and disciplinary control, and to control the handling and trading of irradiating apparatus and radioactive substances.

We propose to improve the above Ordinances by removing some outdated provisions, clarifying some existing ambiguities and rectifying some textual errors. The Bill will also enhance the consistency among the relevant ordinances. The more significant amendments are:

- (a) Amending the Dentists Registration Ordinance to provide that the Dental Council of Hong Kong may recognize certain local dental education programmes for exemption from its licensing examination by prescribing them in a new schedule;
- (b) Amending the Nurses Registration Ordinance to provide that the result of an election of members to the Nursing Council of Hong Kong may be questioned by an election petition and to authorize the Council to make regulations in relation to the election petition;
- (c) Amending the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance to enable different registration fees to be imposed on different private hospitals, nursing homes and maternity homes, having regard to their capacity;

- (d) Amending the Radiation Ordinance to enable the Radiation Board to transact its business by circulation of papers among all its members without meetings; and
- (e) Amending the Chinese Medicine Ordinance to clarify that the Practitioners Board of the Chinese Medicine Council of Hong Kong may conduct an inquiry into a complaint against a Chinese medicine practitioner and discipline him on the same occasion.

The amendments proposed in the Bill are necessary for the smooth operation of the regulatory schemes concerned. I commend the Bill to Members for their favourable consideration.

Thank you, Madam President.

**PRESIDENT:** I now propose the question to you and that is: That the Medical and Health Care (Miscellaneous Amendments) Bill 2001 be read the Second time.

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

## **MOTIONS**

**PRESIDENT:** Motions. Proposed resolution under the Road Traffic Ordinance.

## **PROPOSED RESOLUTION UNDER THE ROAD TRAFFIC ORDINANCE**

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I move the motion standing in my name on the Agenda.

Since 1976, the total number of vehicles which may be registered as public light buses (PLBs) has been limited at the level of 4 350. The limitation was promulgated by the Executive Council through the Public Light Bus (Limitation on Number) Notice. The effective period was extended from time to time

through resolutions passed by the Legislative Council, and it was last extended in June 1999 for two years to 20 June 2001. This motion proposes to further extend the effective period of this limitation for another five years until 20 June 2006.

In the planning of public transport services, it has been the Government's policy to encourage the provision of services by mass carriers including railways and franchised buses to meet passenger demand. PLBs, on the other hand, perform a useful function in supplementing the mass carriers, mainly by providing connecting services to public transport interchanges and serving areas where patronage is not high enough for the provision of services by mass carriers.

Currently PLBs have a 15% market share of public transport boardings. In the past few years, the patronage of PLBs has remained at about 1.6 million per day. In the coming years, it is expected that the planned expansion of railway will increase significantly the capacity of the overall public transport system. The franchised bus services are also expected to continue to improve. These developments will enhance the competition in the public transport market. We therefore consider that it is appropriate to maintain the total number of PLBs at its existing level of 4 350 for a period of five years up to 20 June 2006. This would also provide greater certainty for the PLB trade to operate in the public transport market.

Looking ahead, the Government will continue to implement measures to encourage the conversion of Red Minibuses to Green Minibuses (GMBs). In pursuance of this objective, the Transport Department will continue to identify suitable new GMB routes to be grouped into packages for open bidding by interested operators.

In response to suggestions made by Members at the meeting of Legislative Council Panel on Transport held in December 2000, we are reviewing certain specific issues relating to PLBs' functions and operation. It will not have impact on the overall number of PLBs. We will brief the Panel on the findings of the review when it is completed.

Madam President, I beg to move.

**The Secretary for Transport moved the following motion:**

"That the period for which there remains in force the limit on the number of vehicles which may be registered as public light buses specified in the Public Light Buses (Limitation on Number) Notice (Cap. 374 sub. leg.) and extended to 20 June 2001 by Legal Notice No. 158 of 1999, be further extended to 20 June 2006."

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

**MRS MIRIAM LAU** (in Cantonese): Madam President, I welcome the resolution moved by the Government to continue limiting the total number of PLBs at 4 350 and to extend the effective period of this limitation from two years to five years. According to the Secretary for Transport, extending the effective period of the limitation to five years would provide greater certainty for the PLB trade to operate in the public transport market.

Actually, given that the total number of PLBs has been maintained at the level of 4 350 since 1976, the PLB trade is rather stable as far as the size of the vehicle fleet is concerned. What the trade needs, however, is not merely stability but seeking further development amid stability.

With the Government being bent on developing a railway-based public transport system and franchised buses making continuous improvement in terms of service quality, the survival of PLBs as a mode of public transport will be threatened. If the PLB trade should aim at achieving stability rather than seeking further development, its vitality would shrink completely in the end.

Indeed, the market share of PLBs has already started to shrink gradually. Over the past few years, the patronage of PLBs in the public transport market has remained at 1.6 million passenger trips per day; but then, we must not forget that the population of Hong Kong has been growing continuously and at a remarkable rate in recent years in particular. The PLB trade has not seen any substantial increase in patronage, but its share of the cake has been falling continuously from the 14.9% in 1997 to 14.1% last year.

Members of the PLB trade have complained to me that while the Transport Department identifies suitable new routes for GMBs, at the same time it also gives approval to franchised buses to operate routes that overlap both the areas served mostly by Red Minibuses and the GMB routes. With growing competition from franchised buses, the majority of PLB operators are struggling hard to remain in business. Moreover, the overnight routes and extended-hour routes operated by franchised buses also pose a significant threat to the PLB trade.

In the face of competition from other modes of transport, members of the trade do wish to strive for a change, only that their fate is held in the hands of the Government. From the pilot scheme for alternative fuel minibuses which was completed in January this year, we all learn that the monthly operating cost of liquefied petroleum gas (LPG) minibuses is higher than that of diesel minibuses. In this connection, the trade is concerned that if the subsidy provided by the Government is of a one-off nature, the amount may not be enough to cover the increase in recurrent expenses upon switching to LPG minibuses. Hence, the trade has proposed to increase the number of seats in minibuses as a means to raise recurrent revenue. That way, not only air quality can be improved, the quality of PLB services will also be enhanced, since operators may then have the resources to improve the safety standard of vehicles and equip vehicles with more comfortable seats. It is regrettable that the Government has not responded to this proposal yet.

With respect to the future development of the PLB trade, as pointed out by the Secretary just now, by the Panel on Transport made some suggestions in December last year and the Government is now reviewing certain specific issues relating to the functions and operation of PLBs. I hope the Government can complete the review expeditiously and put forward proposals that are conducive to the development of the PLB trade.

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

**MR LAU KONG-WAH** (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) welcomes the Government's proposal to maintain the total number of PLBs at its existing level because the minibus trade has yet to show signs of turning the corner.

Speaking on the same motion two years ago, I asked the Government to give attention to the difficulties confronting PLB operators in their business. As a matter of fact, the market share enjoyed by PLBs has been falling continuously, with the patronage dropping from 1.8 million per day in 1996 to 1.6 million per day in 1997. Although no further drop in daily boardings has been recorded since 1997, it is visibly difficult to rely solely on farebox receipts to fund service quality improvement. On the other hand, because of satisfactory business performance, public bus companies are able to enhance their services, such as installing Octopus processors in all buses, using larger and more luxurious buses, and so on. Obviously, PLBs are not comparable to these buses as the majority of them have yet to install Octopus processors. Besides, limitations on vehicle weight also make it very difficult to enhance comfort in PLBs.

In addition to the competitive edge enjoyed by other modes of transport, significant increases in expenses are also a factor bothering the trade in its business operation. This year has seen a substantial increase in insurance premiums for minibuses. While premium rates for PLB fleets in general have risen more than 200%, the rate of increase for individual PLB owners is even higher. In a case received by the DAB, a PLB owner had hurriedly approached many insurance companies upon learning that the premium for his vehicle would rise tremendously from last year's \$10,000-odd to \$50,000, only to find that insurance companies either did not accept insurance on PLBs or charge very high insurance premiums. In the end, the PLB owner was able to renew the policy for \$30,000-odd in the end, but it was possible only after he had agreed to a condition laid down by the insurance company concerned: He must shoulder the compensation responsibility under certain circumstances. From this we can see that because PLB owners cannot do business without their vehicles, they have no choice but to accept any exorbitant increase in premiums or harsh terms and conditions laid down by insurance companies.

Madam President, the DAB urges the Government to give attention to the determination of insurance premiums for PLBs. Since the total number of PLBs is maintained at the level of slightly more than 4 000, this is too small a number to the vehicle insurance market. It is true that all insurance companies may accept insurance on PLBs, yet at the same time they may also choose not to accept insurance on PLBs. In reality, since only a few companies accept insurance on PLBs, the PLB trade is unable to enjoy the merits arising from competition among insurance companies.

Nevertheless, this is not the crux of the trade's dissatisfaction. What the trade hopes for most is a clear set of premium determination standards. Given the absence of any government statistics showing if the amount of compensation payable for insurance on PLBs is higher than that for other vehicles, PLB owners consider the increase in premium lacks transparency. If a set of premium determination standards agreed by all parties concerned should still be unavailable in future, the possibility or otherwise of another substantial increase in premium would continue to pose a threat to PLB operators.

Apart from the premium issue, I also mentioned two years ago that the Government should bring the policy on PLBs closer in line with its policy on franchised buses because GMB operators were also willing to shoulder their social responsibilities. Moreover, as PLBs also ply on fixed routes and scheduled frequency like franchised buses, they should be allowed the same concessionary offers as those granted to franchised buses like diesel duty concession. Much to our regret, no progress has been made in this connection even though more than two years have lapsed since then.

Madam President, on behalf of the DAB I support the Government's motion and urge the Government to give attention to the formulation of premium standards for PLBs and consider actively offering diesel duty exemption to GMBs. Thank you.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Secretary for Transport, you may now reply.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I would like to thank the two Members for their valuable views on the functions performed by PLBs in the entire transport system, the future development of PLB services and other issues related to PLBs. We share the views of Members on improving the quality of PLB services and ensuring the stability of PLB operation.

PLB services in Hong Kong have a history of over 30 years and the transport policy of the Government is to develop a mass transit system based mainly on railways to meet increasing passenger demand. Looking ahead, along with the development of railways and franchised bus networks, we believe that PLBs would continue to perform a supplementary function and provide short-working connecting services.

Not long ago, Members proposed at a meeting of the Legislative Council Panel on Transport that we should review certain issues relating to the functions and operation of PLBs. The relevant review is now underway. We anticipate that the review would be completed later this year and we would then brief the Panel on the findings of the review.

The objective of the pilot scheme on alternative fuel PLBs focuses on testing the operation of alternative fuel PLBs in Hong Kong to examine whether it is technically feasible. The Government is still exploring various proposals for promoting the use of alternative fuel PLBs. If there is any specific proposal in future, the Government will consult the minibus trade and the public.

As regards offering GMBs and franchised buses the same diesel duty concession, we think that GMBs and franchised buses are two different modes of transport and we must understand that franchised buses are mass carriers with a relatively high passenger volume and their operation is subject to the regulation of franchise. Therefore, we think that GMBs and franchised buses should not be placed on a par.

As far as premium is concerned, we believe it has no direct relation with the number of GMBs. If the minibus trade has operational difficulties, we will conduct a study and follow up the case.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance.

## **PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE**

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. The objective of the motion is to amend the Poisons List Regulations and the Pharmacy and Poisons Regulations.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The Amendment Regulations now before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations, for the purpose of imposing control on a number of new medicines.

The Pharmacy and Poisons Board proposes to add six new medicines to Part I of the Poisons List as well as the First and Third Schedules to the Pharmacy and Poisons Regulations, so that pharmaceutical products containing any of them must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under section 3 of the Ordinance to regulate the registration and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

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

**The Secretary for Health and Welfare moved the following motion:**

"That the following Regulations, made by the Pharmacy and Poisons Board on 22 May 2001, be approved —

- (a) the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2001; and
- (b) the Poisons List (Amendment) (No. 2) Regulation 2001."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

## **MEMBERS' BILLS**

### **First Reading of Members' Bills**

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

## **BANK OF CHINA (HONG KONG) LIMITED (MERGER) BILL**

### **THE BANK OF EAST ASIA, LIMITED BILL**

**CLERK** (in Cantonese): Bank of China (Hong Kong) Limited (Merger) Bill  
The Bank of East Asia, Limited Bill.

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

**PRESIDENT** (in Cantonese): As the Bank of China (Hong Kong) Limited (Merger) Bill and The Bank of East Asia, Limited Bill presented by Dr the Honourable David LI and the Honourable NG Leung-sing respectively relate to government policies, in accordance with the Rules of Procedure, the signification

by the Secretary for Financial Services of the written consent of the Chief Executive shall be called for before the Council enters upon consideration of the Second Reading of the Bills.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I confirm that the Chief Executive has given his written consent for the Bank of China (Hong Kong) Limited (Merger) Bill and The Bank of East Asia, Limited Bill to be introduced into this Council.

### **Second Reading of Members' Bills**

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

Dr David LI, you may now move the Second Reading of the Bill submitted by you.

### **BANK OF CHINA (HONG KONG) LIMITED (MERGER) BILL**

**DR DAVID LI:** Madam President, I move the Second Reading of the Bank of China (Hong Kong) Limited (Merger) Bill.

Madam President, the Bill which I introduce today will facilitate the restructuring of the Bank of China Group in Hong Kong.

It provides for the transfer of the undertakings of Bank of China Hong Kong Branch, the Hong Kong Branches of seven banks incorporated in the Mainland of China (referred to as the "Mainland incorporated banks" in the Bill), the Shenzhen Branches of The Kwangtung Provincial Bank and Sin Hua Bank Limited and Hua Chiao Commercial Bank Limited to Po Sang Bank Limited (Po Sang), a Hong Kong incorporated bank. All the entities I have just referred to are licensed banks authorized by the Hong Kong Monetary Authority (HKMA).

The Bill provides that the name of Po Sang will be changed to "Bank of China (Hong Kong) Limited" (BOCHK) at the appointed time for the merger.

The Bill also provides for the transfer to BOCHK of shares held by Bank of China in two further Hong Kong incorporated banks, Nanyang Commercial Bank Limited and Chiyu Banking Corporation Limited. The Bill also transfers to BOCHK the shares which Bank of China holds in the Bank of China Group's credit card company, BOC Credit Card (International) Limited.

The Bill will therefore create a merged bank, BOCHK, the business of which will comprise the businesses of Po Sang, Bank of China Hong Kong Branch, the Hong Kong branches of the seven Mainland incorporated banks, the Shenzhen branches of The Kwangtung Provincial Bank and Sin Hua Bank Limited and Hua Chiao Commercial Bank Limited. BOCHK will also own the interests in Nanyang Commercial Bank Limited, Chiyu Banking Corporation Limited and BOC Credit Card (International) Limited currently held by Bank of China.

The Bill was circulated to the Department of Justice, the Financial Services Bureau, the Inland Revenue Department, the Land Registry, the Companies Registry and the Privacy Commissioner of Personal Data for comments prior to its gazetting. The Bill has been approved by the HKMA. It has been advertised for the requisite number of times in both the Chinese and English press and in the Government Gazette.

Madam President, you have ruled that this Bill relates to government policy within the meaning of Rule 51(4) of the Rules of Procedure of this Council and, therefore, it requires the written consent of the Chief Executive before its introduction. I am pleased to report that the Chief Executive has given such consent. I, therefore, move that the Bill be read a Second time.

A private bill is necessary to assist with the implementation of this restructuring in order to avoid having to get all agreements and other documents assigned or novated to BOCHK. As there are more than 8 million agreements and other documents between the merging banks and their customers, it is not practicable to transfer such agreements and other documents by such a method.

As well as making the merger practicable for the merging banks, the Bill also has advantages for customers. First, because the Bill will transfer all the property and liabilities which are governed by Hong Kong law, customers will have the reassurance that all such property and liabilities have been properly transferred. Secondly, the basis on which all such property and liabilities are to

be transferred will be publicly known and uniform. Thirdly, customers will not be inconvenienced by having to sign new documentation.

Since the early 1980s, 11 ordinances merging banks and other authorized institutions have been passed by this Legislative Council. This Bill is based upon the form of these previous ordinances, although a number of changes have been necessary to reflect the fact that this restructuring involves the merger of 10, rather than two, banks, that in a number of cases, only a branch of the relevant bank is being transferred rather than the entire entity and the legal tender note issuing status of Bank of China.

As Bank of China is a note-issuing bank, clause 6 of the Bill includes provisions to deal with legal tender note issuing matters. Separate from the passage of this Bill, Bank of China and Po Sang intend to seek the Financial Secretary's approval for BOCHK to replace Bank of China as a note-issuing bank with effect from the appointed time for the merger. The Bill itself does not replace Bank of China as a note-issuing bank. This is a matter for the Financial Secretary and the Chief Executive in Council, pursuant to the powers conferred on them under the Legal Tender Notes Issue Ordinance.

On the basis that BOCHK is approved as a note-issuing bank by the Financial Secretary and the Chief Executive in Council, clause 6(2) of the Bill provides that all bank notes issued by Bank of China before the merger will remain legal tender after the merger. They will become obligations of BOCHK. The certificates of indebtedness issued by the Exchange Fund to back these legal tender notes will also transfer to BOCHK, so these legal tender notes will remain fully backed by the Exchange Fund, just as they are at the moment. Further, BOCHK will be able to issue legal tender notes using either the current designs used by Bank of China or using new designs approved by the Financial Secretary. All such notes will be legal tender and fully backed by the Exchange Fund.

Madam President, I believe that this Bill represents an important step in the consolidation of the banking sector in Hong Kong, a consolidation which should further improve the competitiveness and stability of the banking sector and assist in maintaining Hong Kong's position as a world-class financial centre.

Madam President, I, therefore, move that the debate of this Bill be adjourned.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Bank of China (Hong Kong) Limited (Merger) Bill be read the Second time.

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

**PRESIDENT** (in Cantonese): Mr NG Leung-sing, you may now move the Second Reading of the Bill submitted by you.

### **THE BANK OF EAST ASIA, LIMITED BILL**

**MR NG LEUNG-SING** (in Cantonese): Madam President, I move the Second Reading of The Bank of East Asia, Limited Bill.

The Bill seeks to put the merger of two Hong Kong banks, that is, The Bank of East Asia, Limited (BEA) and United Chinese Bank Limited (UCB), into implementation. The provisions of the Bill are basically similar to ordinances previously passed in this Council with respect to the merger of banks, with the exception of some adaptations in wordings to reflect some changes in the legal and regulatory aspects.

The Bill was passed to the Companies Registry, the Inland Revenue Department, the Securities and Futures Commission, the Office of the Commissioner of Insurance, the Department of Justice, the Financial Services Bureau, the Land Registry and the Privacy Commissioner of Personal Data for comments and has been approved by the Hong Kong Monetary Authority. As the President ruled that the Bill relates to government policy, it has to seek the written consent of the Chief Executive. I am pleased to report that the Chief Executive has given such consent in writing.

UCB is a private company established, incorporated and based in Hong Kong. It is a licensed bank under the Banking Ordinance operating banking businesses in Hong Kong.

BEA is a public company established, listed, incorporated and based in Hong Kong. It is a licensed bank under the Banking Ordinance operating banking businesses in Hong Kong.

UCB became a wholly owned subsidiary of BEA since September 1995.

Both BEA and UCB hope for a merger for the better conduct of their businesses.

The Bill provides the only practicable means that enables the merger of BEA and UCB. There are a large number of agreements between UCB and its clients, employees, as well as banks, suppliers and dealers having daily business transactions with it. Therefore, attempting to effect the transfer of these agreements separately by getting all these agreements novated or assigned will pose tremendous pressure on the resources of UCB and BEA, and will waste a lot of time. Moreover, confusion might arise between their clients and other parties. The Bill facilitates the merger to be conducted in a practicable and viable manner and enable it to go through an open and transparent process that is readily understood by clients, the third party and the general community.

The conduct of the merger through legislation will also benefit clients, other banks and suppliers who have transactions with UCB. This is because these interested parties will understand clearly that all the assets and liabilities governed by Hong Kong laws have been properly transferred from UCB to BEA. Since it is not necessary for new documentation to be signed, customers will not be inconvenienced and need not worry whether they have time to sign the documentation and have it returned to UCB. The transfer of the undertaking and different assets and liabilities of UCB will be publicly known and uniform. These benefits explain why 11 mergers of banks and other institutions have been effected through Hong Kong legislation over the past two decades.

Both UCB and BEA will be unable to save any profits tax by virtue of the Bill. The Inland Revenue Department has considered the provisions relating to taxation implications in the Bill in an in-depth manner and has given its approval. Madam President, I have been given to understand that, as of today, UCB has not sustained any losses in transactions as a result of the setting-off of assessable profits by BEA.

It is worth noting that the Bill will not adversely affect the rights of the employees of the merging banks. Employees of UCB will become employees of BEA after the merger. These employees will be employed under the conditions same as those in effect immediately before the merger. Their accrued benefits, such as annual holidays and long service holidays, will not suffer any losses as a result of the merger. Moreover, the continuity of their service will not be interrupted.

Furthermore, the Bill has not in any manner restricted the power of the Government of the Hong Kong Special Administrative Region and the regulator. Clause 18 of the Bill specifically provides that the Bill will not affect the rights of the Hong Kong Government. Clause 16 also specifically provides that the Bill will not exempt UCB or BEA from the provisions of any laws or ordinances regulating the business of any of them.

Madam President, I believe the Bill is not controversial and will be welcomed because it is in line with the development trend of Hong Kong's banking industry and is conducive to enhancing its competitiveness and stability.

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That The Bank of East Asia, Limited Bill be read the Second time.

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

**DR DAVID LI:** Madam President, I would like to declare interest, as I work for the Bank of East Asia.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR JAMES TO** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. This motion actually seeks to extend the deadline for scrutinizing the relevant subsidiary legislation. In doing so, we

will have more time to scrutinize the subsidiary legislation passed in this Council last year for the purpose of empowering several law enforcement agencies to collect DNA evidence.

With these remarks, I urge Members to support the motion.

**Mr James TO moved the following motion:**

"That in relation to the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 (68 of 2000) (Commencement) Notice 2001, published in the Gazette as Legal Notice No. 100 of 2001 and laid on the table of the Legislative Council on 23 May 2001, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 27 June 2001."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the two motion debates. Members should be very familiar with the rules on the time limits on speeches. I only wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Reviewing the Mandatory Provident Fund System.

## **REVIEWING THE MANDATORY PROVIDENT FUND SYSTEM**

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

Madam President, the various Mandatory Provident Fund (MPF) schemes have been implemented for more than half a year, it is therefore worthwhile to review the MPF system and the issues arising from the system at this juncture.

Many workers have a love-hate relationship with the MPF System. A young acquaintance, for example, once told me that over the past few years since he had joined the working population, he just spent every dollar made every month and had hardly saved up a penny; but then, with the MPF System, he would be compelled to put some money aside for his retirement indeed.

On the other hand, many employees are not very happy with the MPF System because some employers resort to reducing staff remuneration to offset their MPF contributions, while some others seek to cut back on their MPF contributions by revising the existing salary structure to the detriment of employees' interests. Further still, a worker told me that the implementation of the MPF System had caused him to lose his job.

However, all these problems should not be attributed to the MPF System. Rather, those penny-pinching employers should be held responsible because regardless of what protection system is in force, such problems are bound to arise so long as the employers are unwilling to shoulder their shares of contribution.

So far more than 2 000 complaints have been received since December last year, of which more than 600 cases were received in April alone. Among these complaints, some 400-odd are related to wage reduction, benefit cuts, default on contributions, and so on. Although these figures are not high compared to the overall participation rate, we need to note two points. Firstly, in order to keep their jobs, many employees would rather refrain from lodging any complaints. Secondly, there are still employers resorting to various means to deprive employees of their due rights and benefits even though the MPF system has been implemented for several months. Would it be possible that those employers are offending the law fearless just because not enough publicity efforts have been made in this respect?

As regards the cases referred by trade unions to the Labour Department, it is obvious that employers are unilaterally forcing employees to accept wage reductions. Actually, this is already an offence against the law. But then, since the Labour Department has instituted prosecutions against only a very limited number of cases, not much deterrent effect can be created.

Moreover, the first case in which an employer was prosecuted for defaulting on making contributions had just been tried and the offender employer was only fined \$5,000, which is a negligible sum indeed. However, since this is the judgment passed by the Court, it is irreversible. But then, the Mandatory Provident Fund Schemes Authority (MPFA) should step up prosecutive actions against offender employers. For example, as at the end of April, there are still employers who have not participated in any MPF schemes, the MPFA should take legal actions against such employers one after another so as to create some deterrent effect.

Let me now switch to the measures to alleviate the burden on the low-income earners. I believe government officials and Members sitting in this Chamber would take a bus trip sometimes. We have two types of buses, air-conditioned and non-air-conditioned. The difference between the fares of these two types of buses is only \$1-odd. Still, some people would rather wait for a

non-air-conditioned bus just to save that \$1-odd. So, a few hundred dollars of MPF contribution is by no means a small sum to the low-income earners.

At present, people earning less than \$4,000 monthly do not have to make contributions to MPF schemes; only their employers are required to do so. However, there are still a large number of people earning some \$5,000 to \$6,000 monthly. These are all low-income households. According to first quarter survey in 2001, more than 250 000 families in Hong Kong are earning less than \$6,000 monthly, representing more than 10% of the total population of Hong Kong.

Come to think about this. For a family of four, each member can only have an average slightly of more than \$1,000 at his disposal, and yet a large oportion of it is most probably spent on accommodation. In order to spare a few hundred dollars for contribution purposes, they cannot but further cut back on their expenses on food and clothing.

As such, the Government should really look into ways to lessen the burden on low-income earners in making contributions. I agree that the requisite minimum level of income be raised from \$4,000 to \$6,000. Yet a more important point is to set up an effective mechanism for adjusting the relevant levels of income in the light of changes in the economic conditions.

Industry schemes are specially designed for industries the members of which have a high mobility rate, so that employees do not have to switch MPF schemes whenever they switch jobs. Participants of industry schemes are mainly employees in the catering and construction industries. Given that most catering institutions have enrolled their employees in master trust schemes, the problems encountered by the catering industry in relation to the industry scheme is not as many as those of the construction industry.

The status of members of the construction industry changes very frequently; in one project they may be sub-contractors, but in another they may just be workers. It is therefore very difficult to determine whether they are employers or employees, and many problems relating to contribution arrangements have also arisen as a result. While sub-contracting is a common practice in the construction industry, things have deteriorated following the implementation of the MPF system. This is because many employers have forced their employees to undertake a certain job as subordinate sub-contractors, thereby turning them into sub-contractors and workers at the same time.

Yet what these workers have lost is not only the contribution payable by their employers but also their status as employees. The construction industry has a high incidence rate of accidents, yet in the event of industrial accidents, sub-contractors are not entitled to any sickness allowance or compensation for injuries sustained. Under such circumstances, how can they and their families support their own living? As the distinction between employers and employees are getting more confusing these days, the Government should think of measures to enhance the protection for self-employed persons.

With regard to MPF contributions, the Hong Kong Association of Constructors has proposed to set aside 5% of the costs for construction works as an "industry MPF for employers" collectively sponsored by employers. This proposal will obviate the need to differentiate between sub-contractors and workers.

It is also suggested that the Construction Industry Authority proposed to be set up by the Construction Industry Review Board should be vested with the responsibility to collect such levies.

According to the statistics of the MPFA, the number of employees enrolled in industry schemes has been on the increase. This is a good thing; but then, an increase in the number of participants does not mean that the relevant problems have all disappeared. Even though employees are enrolled in the industry scheme, it does not necessarily mean that their future employers will make contributions in respect of them.

We understand that the authorities do not wish to make radical changes to the MPF system only half a year into its implementation. But we still hope that it can seriously look into the situation of the construction industry and take the industry suggestions into consideration.

Next, I should like to speak briefly on the loopholes in law. At present, the Mandatory Provident Fund Schemes Ordinance only stipulates that trustees must make investments within a reasonable period of time, without making any specific provisions on the timeframe for making investments. According to the MPFA, the trustees concerned are not deliberately delaying the investment; many of them are just waiting to collect the necessary information. I do believe the MPFA's view that the trustees concerned are not doing this deliberately. But then, there is no guarantee that no trustees will deliberately delay the

investment to earn interest in future. In the United States, trustees are required to invest in funds immediately after they have received the relevant contributions; otherwise, people making the contributions may claim losses from the trustees concerned. I think Hong Kong should have similar requirements as well.

The MPFA should be well aware of the loopholes in law as complaints and views from the industries concerned have been received. The MPFA should adopt a proactive approach to plug the loopholes instead of striving to remedy the situation after problems have emerged.

The Honourable Miss CHAN Yuen-han will also be speaking on the arrangements for severance payments to be offset by employers' MPF contributions, while the Honourable LEUNG Fu-wah will speak on the comprehensive retirement protection proposal put forward by the Hong Kong Federation of Trade Unions.

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

**Mr CHAN Kwok-keung moved the following motion: (Translation)**

"That, as the Mandatory Provident Fund (MPF) System has been implemented for half a year, this Council urges the Government to conduct a review of the System, which must include:

- (a) lessening the burden on low-income earners in making contributions;
- (b) improving the industry schemes to ensure that industry members are protected;
- (c) expeditiously setting up separately a statutory universal retirement protection scheme for persons not covered by the MPF System; and
- (d) plugging the other loopholes in the relevant legislation and solving the problems relating to employer-employee relationships caused by the implementation of the MPF System

and, having regard to the outcome of the review, to amend the relevant legislation as soon as possible."

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

**PRESIDENT** (in Cantonese): Mr Bernard CHAN will move an amendment to this motion, as printed on the Agenda. In accordance with the Rules of Procedure, the motion and the amendment will now be debated together in a joint debate.

I now call upon Mr Bernard CHAN to speak and move his amendment.

**MR BERNARD CHAN:** Madam President, I am introducing some amendments to this motion.

On the whole, I do not disagree with the original version of the Honourable CHAN Kwok-keung's motion. However, he is looking at this issue purely from the point of view of the employees who contribute to the Mandatory Provident Fund (MPF).

I believe we should recognize that employees are not alone in experiencing difficulties with the MPF system. Employers and service providers are also experiencing administrative burdens and other problems. My amendments are intended to ensure that this motion reflects the concerns of all the parties involved in the MPF system.

My first amendment affects the paragraph concerning the level of income at which workers become liable to make MPF contributions.

Mr CHAN is concerned about the interests of low-income earners, and I agree with him that their interests must be protected. But I would like to urge the Government to consider establishing a mechanism for reviewing not only the minimum level, but also the maximum level, of relevant income for mandatory contributions.

The aim of MPF is to make sure that members of the workforce save money towards their retirement in the years ahead. This is obviously important. But we must also make sure that it does not impose excessive burdens on the employees, or on the employers. A minimum level is, therefore, needed to

avoid placing a burden on people on low incomes. Some say this should be \$6,000, and maybe this would be an appropriate level. At the same time, a maximum level is needed to avoid placing too great a burden on companies with employees on high salaries.

It is clear to me that we need a mechanism to decide on the ideal levels, and then to adjust them over time as circumstances change. Perhaps a panel of people should meet at regular intervals to review these levels. Perhaps there should be a formula to link the levels to salary trends, to inflation, or maybe to other economic indicators.

My second amendment is the introduction of a new paragraph. This is intended to urge the Government to consider ways to reduce the burden of administering the MPF system on employers, and on service providers.

The system is so complicated, it is enough to drive personnel managers crazy. In theory, it should be simple enough to calculate and check the amount and the timing of people's payments. In practice, it is a nightmare.

If everyone was paid monthly, it would be fine. But they are not. Some people are paid daily. Some are paid weekly. Some people are paid every 10 days. Some are paid every fortnight. Some are paid semi-monthly, on fixed dates. Some are paid semi-monthly, on variable dates. Are you all still with me? Some people are paid four-weekly. Some are paid every 30 days. Some are paid bi-monthly. Some are paid quarterly. And then some are paid half yearly, or even yearly.

Some employers use more than one of these payroll cycles. All their calculations have to be checked by the MPF service providers. Different maximum and minimum relevant income calculations have to be pro-rated across this range of cycles.

For Members who are still able to follow me, let me point out that on top of all that, we have the 30/60 day rule. What does that mean? It means that for the first 60 days of employment, no contributions need to be paid by either an employee or the employer. From that point on, the employer must pay contributions for the employee, backdated to include all the previous 60 days. The employee must also start to pay contributions, but these are backdated to the previous 30 days — missing out the first 30 days of employment.

The complication is that most employers do not use a 30-day pay cycle, so the 30/60 rule usually cuts across payroll cycles. For example, a new employee starting on 1 January will complete his first 30 days before the end of January (because January has 31 days). Yet he will not complete his first 60 days until March (because February has only 28 days), unless it is a leap year! If he is on a monthly pay cycle, his first contribution will fall in the March pay period. The actual contributions will be due in early April. If it sounds crazy — because it is.

Even with low staff turnover, this calculation and checking is a significant burden. When the economy picks up and staff turnover rises, it will get even worse. Already, service providers are finding error rates in the range of 40% to 80%, depending on the type of employers. Errors mean phone calls, correspondence, follow-ups and rectification. Even a small miscalculation — an underpayment of just one cent — can trigger an avalanche of bureaucracy.

All these increase business costs, and therefore damage Hong Kong's attraction as a business location. They also delay the process of investing the retirement savings of the people of Hong Kong. There are almost certainly ways around these problems. For example, industry groups have suggested the introduction of a generic, monthly reporting and remittance cycle.

My point is that the current system is damaging business efficiency, and the interests of the working people of Hong Kong.

I have not amended any other points in the motion. The motion mentions the industry schemes, which cover the construction and catering industries. Maybe we should look at the design of these schemes. However, I believe that the problem of low compliance lies in the structure of the two industries, especially the construction industry. This concerns issues such as wage payment practices and methods of sub-contracting. I would urge the Government to look at this.

The motion also raises the possibility of a universal retirement scheme to include people who are not covered by the MPF. In some ways, this is a separate issue, but I do not see any harm in the Government discussing such an idea.

To summarize, therefore, I have no real dispute with the motion put forward by Mr CHAN Kwok-keung. He is absolutely correct in wanting to ensure that the interests of employees are protected. My amendments are simply intended to stress that the MPF system can be improved in ways that help employers and service providers as well.

I must make it clear that I am not seeking to blame anyone for the shortcomings of the MPF system. It was always going to be a complex system. It is a credit to everyone concerned that it has been implemented so successfully and is running so smoothly.

However, over time, I believe that the Government will be able to identify ways to make the system simpler and easier for all parties. That would benefit everyone — the workforce and the business community. And for that reason, I urge all Members to support the motion as amended.

**Mr Bernard CHAN moved the following amendment: (Translation)**

"To delete "lessening the burden on low-income earners in making contributions" after "(a)" and substitute with "setting up a mechanism for reviewing the maximum and minimum levels of income for mandatory contributions; (b) lessening the heavy burden faced by employers in complying with the complicated administrative requirements in the legislation"; to delete "(b)" and substitute with "(c)"; to delete "(c)" and substitute with "(d)"; and to delete "(d)" and substitute with "(e)"."

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 amendment, moved by Mr Bernard CHAN to Mr CHAN Kwok-keung's motion, be passed.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Deputy, although I started fighting for the setting up of a comprehensive retirement protection system as early as the '70s, it has finally taken the Government almost three decades to formally implement the Mandatory Provident Fund (MPF) schemes. I welcome

and support any schemes that can provide protection for the future of wage earners, but I cannot help saying that the MPF System has come too late. Like an umbrella failing to keep off the rain because it has got a big hole, the MPF System is unable to safeguard the livelihood of workers retirement.

Madam Deputy, it can be said that the timing for the implementation of the MPF schemes is inappropriate. At present, wage earners are generally faced with such difficulties as high unemployment rate, drop in wages, job insecurity, pessimistic economic outlook, and so on. It will obviously aggravate the burden on low-income workers if they are required to set aside 5% of their wages as MPF contribution. A number of operators of small and medium enterprises are faced with a more strained financial situation since they are obliged to make MPF contributions for their employees. In order to evade MPF obligations, some employers have even forced their employees to turn into self-employed persons. This has deprived workers of their due protection under the MPF schemes as well as all protection afforded by other labour legislation. The Hong Kong Confederation of Trade Unions (CTU) considers it necessary for the Government to address these issues.

In our opinion, the Government must take a comprehensive approach to plug the loopholes arisen in the course of implementing the MPF System to bring the System into full play and ensure that wage earners can enjoy full retirement protection in future. In this connection, the Honourable LEE Cheuk-yan will, on behalf of the CTU, elaborate on the complaints received by us over the past six months with respect to MPF schemes and reiterate the necessity of severing the link of MPF with severance payment and long service payment later in the debate. Today, I will concentrate on two points, namely, first, how can we alleviate the burdens on low-income workers in respect of MPF contribution; and second, issues related to the setting up of a universal retirement protection system.

Insofar as the present-day standard of living in Hong Kong is concerned, those making a monthly income ranging from \$4,000 to \$5,000 are unable to make ends meet even if they need not support their families. It will definitely "kill" them if they are to contribute a few hundred dollars to MPF schemes every month. I think the income ceiling requiring contribution should be lifted to a more reasonable level, say, roughly between \$7,000 and \$8,000. The CTU considers it necessary for the Government to amend the MPF legislation and put in place a mechanism for regular review of the minimum wage requirement every two years. The adjustment should be based on a certain percentage, say, 70% or 80%, of the median wage.

The Government cannot really help low-income workers by merely alleviating their burden in making contributions. Although reducing the amount of contributions can alleviate the immediate pressure on low-income workers in meeting daily expenses, the protection they get after retirement will definitely be insufficient to meet their needs. In fact, the total contributions made by low-income earners and their employers are already limited. If the amount of contribution is further reduced, the significance of the entire MPF System will become even more limited. The CTU is of the view that the Government is obliged to meet the employee part the contribution for low-income earners to enable them to enjoy basic retirement protection.

Madam Deputy, apart from participating wage earners, there are obviously other problems that the Government cannot overlook, such as the retirement protection for persons not covered by MPF schemes. Whatever improvements are made to the MPF System, it is certainly not a universal retirement protection system. This is a fact that the Government cannot deny.

In the Question Time earlier today, I made a number of remarks concerning the implementation of the International Covenant on Economic, Social and Cultural Rights of the United Nations. The Covenant has clearly stipulated that the governments of the signatories are obliged to provide universal retirement protection.

As the problem of ageing population continues to plague Hong Kong, contribution schemes similar to the Old Age Pension Scheme (OPS) can obviously not be delayed or kept out of consideration indefinitely. Otherwise, the whole community, including welfare expenditure, will only face increasing pressure. The CTU considers that a universal retirement protection system should include MPF and Old Age Pension. I suggest that the Old Age Pension should adopt a tripartite model whereby contributions are made by employees, employers and the Government, with each party contributing an equivalent of 2% of the wages. Under this system, an Old Age Pension equivalent to 30% of the median wage will be immediately granted to retirees over the age of 60. If the OPS is to be implemented, the contributions made by the Government can be offset by the Old Age Allowance currently in force. On the other hand, the contributions made by employers and employees can be withdrawn from the existing MPF contributions. I emphasize: "The contributions made by employers and employees under the OPS can be withdrawn from the existing MPF contributions". In doing so, there will be no increase in the actual burden

on employers and employees in making contributions on the one hand, and the universal retirement protection system can be implemented immediately on the other. This is definitely conducive to all parties.

Many people make fun of the "Mandatory Provident Fund" and call it "Compulsory Fund". This has reflected not only the current economic depression and difficulties faced by wage earners in making contributions, but also the general feeling that the MPF is useless and not helpful to retirees. The Government should really reconsider this seriously and make improvement.

Madam Deputy, I so submit. Thank you.

**DR DAVID LI:** Madam Deputy, I would like first to declare an interest. The bank that I work for is a Mandatory Provident Fund (MPF) trustee that provides master trust and industry scheme products. I also sit on the Management Board of the Mandatory Provident Fund Schemes Authority (MPFA) as a Non-Executive Director.

This background has given me first-hand experience and an in-depth understanding of the MPF system.

As the MPF system is brand new, comprehensive and relatively complex, we have experienced some initial teething problems. Some legal and procedural requirements are cumbersome. Some problems can be traced to our lack of experience, and the heavy volume of applications created by the last-minute rush to enrol employers and employees. As we gain more experience, we are making appropriate improvements.

The motion as amended by the Honourable Bernard CHAN has much to commend it.

The Honourable Member calls for a mechanism to review the maximum and minimum levels of income for mandatory contributions. Certainly, an open and transparent mechanism would be welcomed by many.

I also agree that compliance procedures should be reviewed on a regular basis, with a view to simplifying them. In this regard, may I point out that many service providers can be of assistance. They offer comprehensive payroll

programmes that automate all record keeping and fund transfers, including those for MPF contributions. All employers should discuss their requirements with their service providers. All employers, large and small, can be benefitted.

The motion calls for improvements to the industry schemes. The industry schemes are tailor-made for the catering and construction industries. Admittedly, because of the high labour mobility, the large number of part-time employees, and the remuneration practices of the two industries, there has been a heavy workload in enrolling scheme members, handling contributions, and answering queries and complaints. However, the difficult start-up phase is now behind us, and we can look forward to smoother operation in future.

At the tendering stage, the two industry scheme trustees had projected a target membership of 130 000 employees in the first year of MPF operation.

According to the MPFA, by the end of May, six months after the launch of the MPF system, the number of employees who had joined the industry schemes had already topped the 150 000 mark. The contributions received exceeded HK\$300 million. Both enrolment and contributions are still growing steadily. These figures speak for themselves.

Surely, these better-than-expected results have not been achieved easily. They reflect the tremendous efforts jointly made by the MPF industry, government departments, the MPFA, and trade associations and labour unions.

Without being complacent, I think the results testify to the merit of the industry schemes. At this juncture, may I make a request so as to make the industry schemes even more successful.

Madam Deputy, with your permission, I would like to appeal to both employers and employees. For employers, please enrol casual workers into the MPF schemes as and when you employ them; please submit accurate remittance statements; please communicate more with your staff on their scheme benefits. And, for employees in the construction and catering sector: If you have not done so, may I appeal to you to obtain your industry scheme membership cards as early as possible.

The MPF system is a long-term project. We are only seven months into implementation. The industry is open-minded to any suggestions that would

improve the MPF system. I have no doubt that my fellow MPF trustees will agree with me that we will listen to what our customers say and we will respond to their needs.

Where I must raise my concern with the motion is on the issue of a universal retirement protection scheme.

We have discussed this matter long and hard in this Council, and consulted widely within the community. Following these deliberations, we opted for a contributory, privately-run scheme. Frankly, I see many problems if we now try to bolt a universal programme onto the side of the MPF system. The existing system of old age allowances and social security payments, based on need, is much better suited to our requirements.

The motion says nothing of means testing. Are we to make payments to the rich and the poor alike? How do we distinguish between those who are and are not covered by an MPF scheme? Is an individual who contributed for 10 years in his working life covered, while one who contributed for nine years and 11 months not? This certainly raises the question of fairness.

And there is the matter of cost. There is, of course, the monetary cost. But more important thing is: If we are forced to abandon our time-tested low-tax principles to fund a universal scheme, what will be the cost to our competitiveness and our entrepreneurship?

Our efforts should be focussed on meeting the future needs of our society, not on building grand monuments.

It is with great regret, therefore, that I cannot support this motion.

**MR TOMMY CHEUNG** (in Cantonese): Madam Deputy, the Liberal Party considers that since the Mandatory Provident Fund schemes have been implemented for half a year only, it is too early for Members to require that the system be modified, smacking of pulling it apart and rebuilding it.

To begin with, the first point of the original motion suggests lessening the burden on low-income earners in making contributions. As regards the amendment, it advocates setting up a mechanism for reviewing the maximum and

minimum levels of income for mandatory contributions. So, both of them are saying that this system should be reviewed and amended immediately. But then, the MPF System has been under discussion for 10 years before implementation. Besides, bearing in mind that it affects more than 3 million members of the working population and has been implemented for half a year only, would it not be too hasty to make changes at this juncture when banks, the insurance sector, employers, employees and the public have just started to become familiar with the system? On the administration front, we consider that it is certainly commendable for the Mandatory Provident Fund Schemes Authority (MPFA) to review and make improvements continuously in the light of the changes in circumstances to ensure the smooth implementation of the System. Nevertheless, we hold that in order to avoid confusion, the principles and contents of the System should not be amended hastily at this stage.

The maximum and minimum levels of income for mandatory contribution, which stand at \$20,000 and \$4,000 respectively, are the consensus of the former Legislative Councils; once implemented, they should not be revised arbitrarily. If the labour sector proposes to raise the minimum level from \$4,000 to \$6,000 or even \$8,000, can the business and industrial sectors then propose to lower the maximum level from \$20,000 to \$18,000, \$16,000 or even \$12,000? Actually, given the present deflation and reduction in wages, the minimum level should be adjusted downwards; it is just a bit too unreasonable to demand a raise in the minimum level. Moreover, the contribution responsibility is shared by both the employers and the employees, so if we should encourage employees to relinquish this responsibility unilaterally, then by the same token, could we exempt employers from contribution in times of poor business?

The second point of the amendment demands a lessening of the heavy burden faced by employers in complying with the complicated administrative requirements of the MPF schemes. The Liberal Party fully subscribes to this point. The industry schemes introduced by the MPFA are especially designed for industries the members of which are highly mobile. Taking the catering industry as an example, I support the industry scheme very much and have actively recommended it to members of the industry. Nevertheless, I do consider the implementation of the scheme calls for improvement in many aspects. Two of the Members of this Council work in banks responsible for implementing the industry scheme. I hope they can listen to the views from the catering industry.

Certain members of the industry have reflected to me that the paper work of the industry scheme is very cumbersome and time-consuming and has added substantially to the administrative burden of restaurants. Some large-scale restaurants even have to recruit an additional staff to specifically handle the MPF-related work. All these administrative overheads and expense on recruiting additional manpower have become employers' hidden costs on top of their 5% contribution.

Another point of complaint by the sector is the reimbursement procedures of the industry scheme. While employers are required to first make severance payments to employees upon folding a company, more often than not banks have to take half a year's time to reimburse employers the MPF contributions made in respect of the employees concerned. This is indeed very inconvenient to employers.

Some restaurant operators have complained to me that industry scheme salespersons encourage their employees to choose the more risky investment portfolios. I understand that the so-called more risky portfolios are not really very risky, only that they comprise a larger proportion of investment in stocks and shares. From the point of view of banks, if clients should invest their money in stocks and shares, they would of course stand a better chance of earning more profits than putting their money in time deposit accounts. To the employers, however, in the event of the MPF investment recording any losses and their restaurants having to close down, they would have to shoulder their employees' MPF investment losses when calculating the severance payments. In other words, employers have to shoulder the responsibility for their employees' investment failures. This is grossly unfair to the employers. I therefore hope that the two banks responsible for implementing the industry schemes can simplify the reimbursement procedures as far as practicable, so that employers who are closing down their businesses can get back their MPF contributions expeditiously to make compensation payments to their employees. At the same time, I also urge the salespersons of industry schemes to leave it to the employees to choose their investment portfolios, rather than deliberately leading them to make a certain choice.

The third point of the original motion, that is the fourth point of the amendment, proposes setting up separately a statutory universal retirement protection scheme. The Liberal Party is most concerned with this point and has much reservations about it. To set up separately a statutory universal

retirement protection scheme is to repeal the discussion results attained in the past and to start all over again another never-ending debate over retirement protection. Although the contribution responsibility of the universal retirement protection scheme is to be shared by the Government, employers and employees, the contributions to be made by the Government are in fact taxpayers' money. Would taxpayers be made to shoulder a double burden if public funds should be used to make contributions?

Further still, how are employers going to make contributions if the proposed universal retirement protection scheme is really introduced? How about full-time housewives? Does that mean if we employ a certain person, we have to make contribution for his wife and children as well? The MPF system should not have been established if we agree to the proposal to set up separately a universal retirement protection scheme today.

I should like to stress one point and, that is, MPF schemes are but mandatory saving schemes aiming at providing one more source of retirement protection for employees. To those needy retirees, the Comprehensive Social Security Assistance may perhaps be their last safety net. We should not try to turn the MPF Schemes into all-encompassing welfare schemes. Besides, I should also like to remind young persons that in addition to making MPF contributions, they should continue to save up money and make investments in preparation for retirement life.

Madam Deputy, I so submit.

**MISS LI FUNG-YING** (in Cantonese): Madam Deputy, the MPF system implemented since 1 December last year is a colossal project of social engineering. But then, rather than a complete system of retirement protection, the MPF system is only a privately run provident fund system comprising retirement schemes the mandatory implementation of which is required by law. However, given the extensive coverage of the MPF system, and that members of the working population between 18 to 65 years of age earning not less than \$4,000 monthly (with the exception of domestic helpers and hawkers) are mandatorily required to contribute to their respective MPF schemes, it can be said that the implementation of the MPF system must not fail, for it affects the retirement protection of several million MPF schemes participants directly.

The various MPF schemes have been in operation for half a year, and the Mandatory Provident Fund Schemes Authority (MPFA) has all along been able to play the role vested in it by law to actively promote and closely monitor the implementation of the schemes. Moreover, the MPFA has also suggested amendments to the imperfect terms and conditions of the various schemes. All this is commendable. Nevertheless, in addition to some technical amendments to certain terms and conditions, there is actually a need to conduct a comprehensive review of the operation of the MPF system in the light of social changes, with a view to perfecting the various MPF schemes gradually. In this connection, I should like to put forward the following suggestions.

- (a) Setting up a mechanism whereby the minimum level of income for contribution purposes of the low-income groups can be reviewed. Under the existing system, employees earning not less than \$4,000 monthly are mandatorily required to contribute in relation to a registered MPF scheme. Although the amount of contribution may be \$200 to \$300 only, this can add to the burden of the low-income groups. As such, there is a need to raise the \$4,000 minimum level of income. I suggest setting up a mechanism whereby the MPFA Board can conduct a review every two years in the light of the median wage or employees' wage level, so as to determine a reasonable minimum level of income for contribution purposes.
- (b) Improving the industry schemes to ensure that the interests of employees will not be adversely affected. At present, the mobility among members of the catering and construction industries is rather high, because most of them are casual workers who switch jobs very often. Moreover, under the sub-contracting system of the construction industry, contracts of works are more often than not further awarded to subordinate sub-contractors. As such, many irresponsible employers have tried various means to avoid their contribution responsibilities. As regards the workers, they are forced to place their employment above anything else. In order to retain their jobs, they have to remain silent in the face of the unreasonable and unlawful practices of their employers. To ensure the smooth and effective implementation of the various industry schemes, I suggest employees should be actively encouraged to report the unscrupulous practices of their employers, in addition to

stepping up enforcement actions. For any reported cases substantiated, apart from making up for the amount of contribution in arrears plus interest, the employers concerned must also be required to shoulder the responsibility for the employment protection of their employees. At the same time, examination should also be made on the possibility of extending the scope of protection of the industry schemes and the feasibility of establishing industry schemes for employees in other industries of high mobility, such as members of the transport industry and domestic helpers.

- (c) Amending the law to repeal the provisions enabling severance payments to be offset by MPF contributions. As we all know, employees have to work for an employer under a continuous contract of not less than 24 months in order to qualify for severance payment upon layoff, termination of employment, and dismissal because of closing down of business or relocation of workplace. As regards the MPF, its purpose is to provide retirement protection for employees, and is completely different from severance payment in terms of their respective legislative intent and the nature of protection provided. That being the case, how can the two be placed on a par? For this reason, reasonable amendments must be introduced to the law to repeal the offsetting arrangement, so as to achieve the real objective of the MPF, which is to provide retirement protection for employees.

Madam Deputy, the population of Hong Kong is ageing gradually. It is estimated that the number of elderly persons of the age of 65 or above will rise to more than a million by 2006 and will continue to increase at a rate of 1% per annum. On the other hand, the existing MPF system does not cover housewives, while the protection it affords the low-income earners and employees approaching the age of retirement is very limited. A responsible government should therefore prepare for rainy days and set up for the community a comprehensive and complete retirement protection system on the basis of the MPF, so that future elderly persons can really have a sense of security and spend their remaining years in happiness, rather than running into retirement without any protection and relying on the Comprehensive Social Security Assistance for their living.

I hope that the Government can solicit opinions extensively and adopt appropriate measures to conduct a comprehensive review of and improve the MPF system. I hold that the best policy the Government should adopt is to amend the relevant provisions expeditiously to establish a complete system of retirement protection.

I so submit in support of the original motion. Thank you, Madam Deputy.

**MR LEUNG FU-WAH** (in Cantonese): Madam Deputy, after years of study and discussion, the Government finally put into operation the MPF system in December last year. The Hong Kong Federation of Trade Unions (FTU) welcomes the MPF system because members of the working population are finally provided with a retirement protection system. Nevertheless, we still hold fast to the idea put forward by FTU in 1992 and, that is, it is not sufficient to implement only the MPF system.

The FTU considers that a comprehensive MPF system must be supported by a social insurance scheme. Under the existing MPF system, members of the working population are required to save up money and make investment from now on, so that they can rely on their provident funds to support their living upon retirement. However, since the various MPF schemes have to be implemented for quite some time before they can give play to their protection function, they are unable to cater for the retirement needs of elderly persons at present. Besides, the various MPF schemes also fail to cater for the needs of people who are not employed, such as housewives, retirees, and so on. In particular, although housewives are not salaried employees, they have all along been making remarkable contribution to society and should therefore be entitled to retirement protection. To those people approaching retirement, since their period of contribution to their MPF schemes is rather short, they would not get much money upon retirement. As such, the MPF can hardly offer any due protection to these people. Further still, for those low-income employees, because their amount of contribution is relatively small, even if they have contributed to their schemes for a period of 30 to 40 years, the MPF benefits they can get upon retirement will still be very limited. So, the MPF may not be able to protect any real protection for them either.

Madam Deputy, a complete retirement protection system should benefit all members of society. For this reason, the FTU holds that the Government should set up a social insurance scheme in parallel with the MPF system. Under this social insurance scheme, the responsibility for contribution payable in relation to the working population should be shared by the Government, employers and employees, whilst the responsibility for contribution payable in relation to non-working population should be borne by both the Government and the people concerned. Upon reaching the age of 65, members of the public can receive an amount of social insurance payment equivalent to 25% to 35% of the then prevalent median wage of employees in Hong Kong. In addition to providing protection for the existing elderly persons, this social insurance scheme can also subsidize the daily needs of those people who are not employed on the one hand, and cater for the needs of the low-income groups to a certain extent on the other.

Whereas the MPF can provide future retirees with retirement protection, the social insurance scheme can provide protection for people who are retired or approaching retirement and those who are not under any employment. Since the MPF system and the social insurance scheme are designed to cater for the needs of different targets, they can complement each other. We therefore suggest the Government implement them both at the same time, so as to enable different members of society to receive due retirement protection. It is based on the principle of "sense of security for the elderly" that we have formulated this "FTU's comprehensive retirement protection proposal", hoping that elderly persons can be enabled to lead a dignified retirement life rather than relying on Comprehensive Social Security Assistance for their living.

In addition to the failure to benefit the public universally, we also note that some people have been forced to become self-employed persons since the MPF system came into operation. This problem is particularly serious among certain industries, such as construction, transport, beauty and cosmetics, and so on. The problem of forcing employees to become self-employed has always existed in these industries, only that many employers have furthered emphasized the self-employed status of their employees to avoid their MPF obligations, thereby inducing a retrogression in the protection provided for workers. Many employers have unilaterally claimed that their employees are self-employed even though this is not the case in reality. This situation is most obvious in the construction industry. The beauty and cosmetics industry is another typical

example. Upon hiring employees, many beauty parlour operators would teach their employees beauty treatment skills and then rent the beauty treatment beds to their employees so that the latter could provide services for clients. These beauty parlour operators therefore claim that they just divide the income with their employees. Being forced into self-employment status, the employees have lost not only the MPF benefits to be contributed by their employers but also the employment relationship. In other words, they are no longer protected by the Employment Ordinance, and are therefore not entitled to such benefits as sick leave, sickness allowance, and so on. As a matter of fact, this is indeed an enormous loophole that has deprived some people of their right to retirement protection.

Madam Deputy, it is very obvious that retirement protection and terminal payments are very different in nature. As such, it is an unreasonable arrangement to allow employers to use the MPF contributions paid to offset severance payment. I hereby urge the Government to correct the problem at an appropriate time. Further still, I agree with Miss LI Fung-ying in that the Government should consider setting up industry schemes for other trades such as the transport industry. We hold that the existing MPF system indeed has many inadequacies and hope that the Government will take into consideration the proposal put forward by the FTU to implement the MPF system and the social insurance scheme at the same time, so that they can complement each other in benefiting the public universally and giving the elderly a sense of security.

**MR CHAN KAM-LAM** (in Cantonese): Madam Deputy, even though the Democratic Alliance for Betterment of Hong Kong (DAB) and the FTU have been continuously expressing our reservations about the MPF system proposed by the Government and putting forward a number of improvement proposals since 1995, the Government just insists on its own view. As a result, the MPF system, which is full of structural shortcomings, was brought into operation in December last year. As indicated in the information prepared by the Mandatory Provident Fund Schemes Authority (MPFA), so far 82% of the wage earners in Hong Kong have participated in their respective MPF schemes. However, our prime concern are two key factors: Firstly, can those wage earners participating in MPF schemes really be free of worries as the promotional slogan of some MPF products says? Secondly, for those people not covered by MPF schemes, how are they going to secure protection for their retirement life?

Madam Deputy, the MPF schemes implemented by the Government are in effect some mandatory saving and investment schemes introduced in the hope that the burden on the Government in respect of welfare for the elderly can be alleviated in the future. Yet, at the same time, the Government has refused to shoulder any responsibility for investment failures. The Mandatory Provident Fund Schemes Regulations only stipulate that fund managers are not allowed to charge any fees if the rate of return on capital preservation investment funds is lower than the savings rate. Besides, since the Government believes that products with guaranteed returns would be available in the market, so far it does not have any plans to lay down a minimum guaranteed rate of return.

First of all, let us take a look at a MPF schemes performance report published by the Hong Kong Investment Funds Association in the middle of last night. Among the 290 funds surveyed, only some 100 have recorded positive growth, the majority of them being conservative investment portfolios comprising securities, currencies, capital preservation investment funds, and so on. But they have recorded a mere 1% to 2% growth still. On the contrary, the more aggressive portfolios comprising a larger proportion of stocks and shares have recorded a negative growth of 3% to 8%. Although the MPF system has been implemented less than half a year, the hard-earned money of the public has already gone down the ditch in the investment markets!

Thus, government officials have tried to assure the public by saying that the success or otherwise of MPF schemes should be assessed with a long-term view, and members of the market also remark that the public has a long road to go before reaching the age of 65. However, we must not forget that not every wage earner has 30 to 40 years' time to accrue their MPF benefits. To those members of the public who are in their forties and fifties, they could at least enjoy returns at a rate of 2% to 3% if they should leave their money in the banks. On the other hand, even if they should choose the least risky capital preservation investment portfolio, the rate of return on their investment just might not be comparable to the savings rate. Just think, if the fund portfolio managers who charge members of the public fees on the services they provide will not be held responsible for their failure to help the public to make more profit, if the money that the Government requires members of the public to save up mandatorily is to be gambled away by portfolio managers in the market, how could this retirement system offer people any protection?

Whether or not the MPF schemes can really enable workers to live in dignity upon retirement is something to be proved in the future, but to the low-income earners, the monthly contribution will certainly impact on their daily lives immediately, as the 5% contribution is in effect a wage cut. To those workers earning a few thousand dollars a month, the contribution is adding remarkably to their burden. As regards the employers, while many have imposed a freeze on their employees' wage levels to make up for their additional expense on MPF contributions, some have even resorted to various means to exploit loopholes in the law to evade their MPF obligations. Although the MPFA has received a large number of similar complaints, the cases are being handled at an excessively slow pace. So far, only one single employer has been prosecuted for deducting employees' salary to make up for his MPF contribution. This case was heard in the Court a few days ago.

Madam Deputy, even if the MPF investment would achieve stable growth in future, could the low-income earners really enjoy some protection and live in dignity upon retirement as claimed by the Government? Just think, for a worker earning a few thousand dollars monthly and contributing a few hundred dollars to his scheme, he may have accrued only slightly more than \$100,000 when he retires. Even if the costs of living should remain at the present level, such an amount could only enable him to live in dignity for a few years upon retirement. After that, he has to scrimp on things or rely on the Comprehensive Social Security Assistance for a living. What is more, if he should become unemployed or meet dismissal a few times during his working life, the MPF benefits accrued for retirement would be even less.

For these reasons, the DAB hopes that the Government can review the various issues arising from the MPF system expeditiously and improve on the various MPF schemes, with a view to enabling the people of Hong Kong as a whole to enjoy real retirement protection.

Madam Deputy, I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Deputy, I believe that the Chief Executive of the Mandatory Provident Fund Schemes Authority is a mastermind and also a king and lover of fruits because a lot of advertisements on the MPF schemes involve fruits. But I wonder whether he is living under the shadow of rotten oranges and tangerines.

When we debated the Mandatory Provident Fund Schemes Ordinance in 1995, the Hong Kong Confederation of Trade Unions (CTU) voted against the motion because we thought that we would have a rotten orange system if there would only be MPF but not old age pension, and it might ultimately be "fruitless" for low-income earners. In regard to the principle and position of the CTU, as the Chairman of the CTU said earlier, a two-tier retirement protection system would comprise old age pension that could immediately protect this generation of old people and MPF schemes. This is our basic position. I would like to illustrate the problems observed by the CTU about the existing MPF system with the aid of pictures as what primary pupils usually do.

Let us look at some pictures now. This exquisitely printed and successful publicity pamphlet I am holding is related to the MPF schemes. One of the illustrations shows Mrs Anson CHAN and Mr TUNG Chee-hwa. When Mrs CHAN asks how many "tangerines" there are, Mr TUNG says that we can share the "pleasure". I would like to revise the story. How "pleasant" it is? It is extremely "grim", "grimmer" than tangerines. Why do I say, "it is extremely "grim" and how "grim"? Since the implementation of the MPF schemes, there have been substantial changes in labour relations. First of all, employers originally had to make MPF contributions for their employees but some employers transferred part of the contributions onto their employees. Thus, employees have seen reduction in their wages and benefits. The large number of complaints received by us show that quite a few employees have suffered harm because of the MPF system before they can enjoy any benefits.

Secondly, the hardest hit trades mainly include container truck drivers, and the transport and construction industries. The employers in these industries have changed the status of their employees into self-employed, which is really extremely "grim". An even "grimmer" situation is that employees who have become self-employed have to be responsible for their MPF contributions and employers do not need to make such contributions. In addition to assuming the MPF contribution responsibility, these self-employed persons will encounter another serious problem, that is, they will also be deprived of labour compensation, which is really very "grim". An insurance company has immediately posted bills at various construction sites, advertising that the self-employed should take out insurance policies on their own.

Therefore, to implement the MPF system satisfactorily, the Government cannot remain indifferent and oblivious to the relevant problems. It should think of ways to solve the problems. Can it set up a central MPF system for the construction industry? Can there really be an industry scheme? For instance, can a certain percentage be allocated from the total amount of works contract costs for the protection of all the workers on the site, including the self-employed? Then, we can simply make a central arrangement with the allocation from the total amount of works contract costs. The problems would continue to spread if the Government does not consider taking this course of action.

Besides the point I just made to illustrate that this is extremely "grim", there is another very beautiful picture. Mr LEE Ka-shing says, "I make the swing first and then the others will make theirs, and he asks why everybody cannot play golf together for we of one mind would yield results together. He really swings first and then the others will swing too but my interpretation of this picture is that the Government swings a flow at the workers before private organizations follow suit. Why did the Government swing first? Please do not forget that when the Government launched the MPF system, it deducted the MPF contributions from the end-of-contract gratuity of non-civil service contract staff and it took the lead to take advantage of the legal loophole. We have discussed many times the Government's striking before the other employers do. As we have observed, all the subvented organizations and some private organizations have followed the practice of the Government. For instance, we have recently learnt about a labour dispute concerning the British Council. The British Council followed the example of the Government in handling the MPF contributions of its teachers, and it explained to them that it had followed the example of the Government. Therefore, the Government has struck before the other employers do the same. It is really inappropriate for officials and businessmen to be of one mind and continue to strike at employees.

There is another serious problem. While there is a tangerine on the cover of this publicity pamphlet on the MPF schemes, the design at the back is very special for it shows an eaten tangerine and the spit seeds. The caption reads like this: "The fruits of MPF belong to you". This is your fruit, just bite it! However, as I see it, the tangerine before us will be eaten up very soon. Why? The MPF system as it stands is very unreasonable in that the employers may offset MPF contributions against severance payment, long service payment and terminal payments. The CTU sought to amend and oppose this point when the legislation was under discussion and put to the vote, but we ultimately failed.

Come to think about this. If a worker met three or four dismissals in his working life, all of his MPF contributions would more or less be offset, and he would only have very little or nothing at all when he retires. Is there something wrong with this? Madam Deputy, while the purpose of the MPF System is to protect workers after retirement, how can an employer offset MPF contributions against severance payment? If an employer can offset MPF contributions against severance payment, will the MPF become a fund for severance payment, long service payment and terminal payments? It will be used to make severance payment and long service payment rather than for the retirement protection of workers. This is absolutely illogical and unreasonable. I wonder why the Government can say so pleasantly that the MPF will protect workers after retirement. I remember it was stated that an unemployed worker could not get back the MPF contributions and he could only apply for Comprehensive Social Security Assistance. Now that an employer can offset MPF contributions against severance payment, does it mean that an employee can get back the MPF contributions? Is there not something wrong with this? The Mandatory Provident Fund Schemes Ordinance is enacted to provide for the retirement protection of workers but the purpose has been distorted in actual implementation and the MPF is no longer a retirement benefit. Therefore, we cannot accept this system at all. Madam Deputy, I hope that the Government would carefully consider doing justice to the MPF so that the MPF will really become retirement protection for workers, barring employers from offsetting MPF contributions against severance payment.

Lastly, I would support Mr CHAN Kwok-keung's original motion and oppose Mr Bernard CHAN's amendment because Mr CHAN has mainly deleted the point on low-income earners, giving people the impression that the motion has not addressed the problems of low-income earners. Therefore, we have reservations. Thank you, Madam Deputy.

**MR TAM YIU-CHUNG** (in Cantonese): Madam Deputy, everyone was addressed as a "boss" in the television commercial before the listing of the Mass Transit Railway Corporation and the same is also happening at construction sites. Is the construction Corporation industry that prosperous? Has everyone become a boss? No. It is only because contractors and sub-contractors are unwilling to make MPF contributions for their workers, and they have tried all means to evade and do away with their responsibilities in respect of employment relationship. This is evident in the fact that there is only a 22.3% rate of registration for the construction industry MPF schemes.

The Hong Kong Construction Industry Employees General Union therefore proposes to adopt the construction industry MPF scheme under which contributions will be made on a collective basis.

What is a collective contributory system? The existing system under which individual employers make contributions in respect of their employees would be changed to a system under which the employers' contributions would be made from the works contract costs, and the employers would be collectively responsible. There is precedent to levy on works contract costs. The Construction Industry Training Authority has adopted this method and there is technically no problem. Thus, it is proposed that the employer contributions to the industry MPF schemes would come from 5% of the wages portion of the total contract costs, and the employers would be collectively responsible. The construction industry co-ordination board to be set up later would collect the contributions. Based on the monthly contribution of an employee, the same amount would be contributed to the employee's account with the trustee.

With the setting up of the construction industry co-ordination board, the report on a review of the construction industry would gradually be finalized and a registration system for construction workers would be implemented in the future. Therefore, there would not be any difficulty in confirming the employee status of construction workers.

With such a collectively responsible contributory system for the whole industry, the contractors or sub-contractors need not directly bear the expenses because the contributions would be deducted from the contract costs, therefore, I believe the system would be welcomed. As far as I understand it, the relevant association has expressed its views and I hope that the Government would carefully consider the suggestions of the Hong Kong Construction Industry Employees General Union because this is an important retirement protection for construction workers.

It would be very helpful to the industry as a whole for it can also lift its professional standard and enhance its stability. I hope that the Government would carefully consider the suggestions of the Hong Kong Construction Industry Employees General Union concerning improvements to the collective responsibility system for MPF contributions of the construction industry. Thank you, Madam Deputy.

**MR ANDREW CHENG** (in Cantonese): Madam Deputy, more than six months into its implementation, the MPF System is found to have numerous problems such as deduction of employees' wages, and employers' attempts to evade MPF contributions by forcing their employees to turn into self-employed persons. Recently, we can also see from such problems as contributions by summer-job workers that the Mandatory Provident Fund Schemes Ordinance has a number of loopholes and grey areas. Actually, I am not at all surprised as the Government took an indifferent attitude towards the problems raised by us in the former Legislative Council and suggested that remedial actions would be taken after implementation. The MPF schemes affect the retirement security of millions of wage earners and self-employed persons in Hong Kong. We must seek solutions before problems emerge. It is time for the authorities to conduct a comprehensive review to plug the legal loopholes and review the inadequacies of the existing System.

To start with, the crux of the problem lies in the fact that the Mandatory Provident Fund Schemes Ordinance has made it mandatory on employers, employees and self-employed persons to make contributions for retirement protection in the future. It is absolutely unreasonable that no mechanism has been put in place for adjusting the maximum and minimum levels of contributions. It is impossible for the existing provision whereby persons earning less than \$4,000 monthly are exempted while persons earning over \$20,000 a month are subject to a maximum level of contributions to remain unchanged forever. Therefore, the Democratic Party agrees with Mr Bernard CHAN that we should request the Government to set up a mechanism to review the maximum and minimum levels of income for the purpose of contributions. But the Democratic Party cannot vote in support of the deletion of "lessening the burden on low-income earners in making contributions" from the original motion as proposed by Mr CHAN in his amendment. Actually, there should be no conflict between the setting up of a review mechanism and the lessening of the burden on low-income earners in making contributions. Why does Mr CHAN have to delete such wordings from the original motion? The Democratic Party has, on numerous occasions, criticized the privately-run mandatory provident scheme for failing to protect low-income earners. There is often not much left after their meagre monthly contributions have been eroded by the exorbitant administrative fees. Madam Deputy, this explains why I drafted a private bill in end 2000 when the MPF schemes had just started implementation to raise the exemption level from \$4,000 to \$6,000 to exclude employees and self-employed persons earning below \$4,000 a month from making contributions.

Nevertheless, in responding to the private bill, the Secretary for Education and Manpower remarked that my private bill is "contrary to the Government's policy objective, that is, members of MPS schemes should be provided with a reasonable level of benefits upon retirement". On the contrary, my private bill would delay or exclude contributions made by certain people and, in doing so, they will be unable to accrue enough benefits when they retire.

The Democratic Party was disappointed with the Government's response. It is precisely because the Democratic Party sees that the contributions laboriously saved by these low-income earners every month cannot provide them with "a reasonable level of benefits" in a few decades. For instance, after deducting administrative fees and offsetting the effect of inflation, an employee earning \$5,000 a month can only gain an actual annual return of 1% to 2% after making contributions for 40 years. Upon retirement, the employee can only get approximately \$300,000, which is just enough to meet his daily expenses for a few years. As for self-employed persons, they might get around \$100,000 after contributing for 40 years for only 5% of their income is contributed to the MPF schemes. They might use up the entire sum two years into retirement and then be thrown into the Comprehensive Social Security Assistance net. The MPF is simply unable to provide protection for these workers. On the contrary, it has brought them immediate misery and swallowed up a large portion of their daily expense. Is the Secretary aware that, insofar as a household with a monthly income of \$5,000 is concerned, a monthly contribution of \$250 is equivalent to the monthly breakfast expenses for two kids? For these reasons, the Democratic Party proposes that the exemption threshold for the MPF System be lifted to \$6,000 to provide relief for more than 200 000 workers who are earning between \$4,000 and \$6,000 monthly at the moment. We set the threshold at \$6,000 because we hope to set the income level of participants at half of the median wage plus 20%. At present, the median wage is \$10,000. Half of this sum is \$5,000. The total will become \$6,000 when 20% is added.

According to the Secretary, the policy objective of the MPF System is to "provide a reasonable level of benefits upon retirement". The Democratic Party is of the view that the Government should consider abolishing the off-setting arrangements with respect to severance payment, long service payment and MPF contributions. As early as 1995 when the relevant subject was debated in the former Legislative Council, the Democratic Party already pointed out that severance payment and long service payment should not peg with MPF contributions. According to the relevant requirements, MPF benefits accrued

in respect of employees will be deducted when they are made redundant or dismissed and that will affect the protection they are entitled to when they retire. If an employee is so unfortunate as to meet severance for several times, a large portion of his MPF contributions might be gone. Is this the Government's objective in implementing the MPF System?

Lastly, Madam Deputy, I would like to reiterate the overall concept of MPF. At the very beginning, the Government's objective of implementing the MPF System was to make preparation for our ageing population, to enable members of the public to accrue a certain element of security before they retire. Nevertheless, retirement protection should not be confined to the working population alone. For instance, many colleagues have cited housewives, the so-called "workers with no reward", as the most obvious example. Working laboriously, they put in a lot of hard work for their families and make immense contribution to the community. Why can they not enjoy retirement protection when they grow old? Furthermore, under the MPF mechanism, participants have to contribute for 10 to 20 years before they can accrue a certain sum of money. What can the Government do to deal with the benefits of the retirees-to-be or retirees? The Democratic Party would like to urge the Government once again to set up a universal retirement protection scheme whereby elderly persons over the age of 60 shall be eligible for "Old Age Pension". The legislation shall take immediate effect after enactment to ensure that elderly persons can maintain a reasonable living standard.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, the policy outlined by the Chief Executive in relation to giving the elderly "a sense of security, of belonging and of worthiness" will cross our mind whenever the issue of retirement protection is discussed. Nevertheless, we have not heard or seen the Chief Executive mention this policy again recently. Perhaps like other policies, this policy no longer exists when it is no longer mentioned. Nonetheless, we still believe it is the bounden duty of every government to implement this policy and realize the relevant objective. The Government is obliged to put the policy into implementation. In my opinion, the MPF System is still unable to resolve the problems faced by the public when they retire. The Government is thinking wishfully by assuming that the relevant problems can be resolved. In my opinion, the Government is not only thinking wishfully. Moreover, it has

over-simplified the problems. Actually, I have all along criticized that MPF is not worth keeping but is not bad enough to throw away. It has completely failed to provide concrete safeguard for the elderly in maintaining their living standard upon retirement.

We have all along stressed that a retirement protection system must be able to ensure a stable income not less than 30% of the median wage for existing and future retirees before their basic standard of living can be safeguarded. However, the existing levels of MPF contribution are unable to meet this standard. It is even more ridiculous that the MPF System is unable to protect the most needy such as housewives, the chronically ill, handicapped persons, and so on. This is where I find the System most ridiculous. Furthermore, it is virtually impossible for the amount of MPF benefits eventually received by participants to meet their expenses after retirement because the contribution ratio is simply too low in the absence of government commitment. The situation is worse still for low-income earners. If we calculate according to the existing MPF System, an employee earning \$10,000 a month will, after making contribution for 35 years, will only receive around \$2,600 each month after retirement. As for an employee earning only \$6,000 a month, he will only get around \$1,560 after 35 years. How can he cope with his daily expenses? Perhaps the Government will stress that the final amount of return will depend mainly on the investment portfolio of individuals. Nevertheless, as Members should be aware, greater risks might bring greater returns. The losses incurred might also be the greatest. For ordinary wage earners, how can they be expected to take such a great risk? Many employers adopt a "conservative" attitude with respect to their retirement life. This explains why the protection they receive at the end will become very small. When we look back at the past few months, we can see that the technology bubble has burst and the global stock markets generally fallen, a point made by colleagues earlier in the debate. Given the fact that our contributions have actually "shrunk", how can our retirement life be protected?

The MPF System is unable to solve the problems faced by wage earners in their retirement years. Worse still, their existing burdens have become increasingly heavy. Insofar as workers with a monthly income of only \$4,000 are concerned, they have already found it difficult to meet their basic needs. It will definitely deal a great blow to them if \$200 should be set aside from their wages as MPF contribution. I am worried that they cannot live to the age of 65 to enjoy the fruits of their contribution.

As early as the relevant legislation was tabled before this Council by the Government, we already pointed out that the arrangement whereby long service payment can be offset by MPF was unsatisfactory. Moreover, the legislation itself cannot plug the loophole whereby unscrupulous employers can evade MPF contribution by way of contracts lasting 59 days. Actually, the problem does not stop there. Before the implementation of the System, we clearly pointed out that we needed time to plug the loopholes in the System. It is most preferable if we can come up with certain solutions or proposals that can replace the unsatisfactory MPF System. Regrettably, the Government has chosen to act according to its own wish. Consequently, a lot of complaints were received after the System was put into implementation. The Government recorded a total of 493 complaints in February. As of April, the number of complaints received by the Mandatory Provident Fund Schemes Authority has risen to 2 011, with a number of complaint cases reflecting the emergence of labour disputes or, in other words, worsening problems between employers and employees. In particular, most cases involve the exploitation of employees' benefits and remuneration by employers. What good does it do to labour relations? According to the figures provided by the Government, 65% of the 624 complaint cases received in April involve employers, with most cases involving the unlawful deduction of wages or slashing of benefits by employers. Another important loophole is, as mentioned by some colleagues earlier, some employers have forced their employees to turn into self-employed persons in order to evade their responsibilities of making contributions. I do not intend to further elaborate this issue for some colleagues have talked about it earlier. Nevertheless, the crux of the matter really lies in the fact that the effect achieved with the implementation of the System has, as Mr LEE Cheuk-yan said earlier, done more harm than good. What benefits will it bring us?

Madam Deputy, as we have stressed, an Old Age Pension Scheme (OPS) precisely points us in the right direction as to how we can solve the abovesaid problems. Both the OPS previously proposed by the Government and the proposals raised by non-government bodies stress the point that retirees should receive a sum equivalent to 30% of the median wage every month to meet their daily expenses. Madam Deputy, I still remember the remark made by the then Secretary for Education and Manpower in a meeting held in the former Legislative Council in 1994: "If the community's wish is that Hong Kong does need to provide a floor of income protection for our senior citizens, then the only effective way to achieve this in a reasonably short time is to implement an old-

age pension scheme". Regrettably, the Government chose to knock down what it was yesterday by adopting the MPF System. Today, Madam Deputy, I would like to urge the Government again to change its mind to reintroduce the OPS to realize the goal of "giving the elderly a sense of security".

Madam Deputy, I so submit.

**MISS CHOY SO-YUK** (in Cantonese): Madam Deputy, the MPF is a good protection plan in itself, for it gives a means by which people can save for the rainy days and will help solve the problem of the livelihood of the elderly people. However, since the MPF schemes were implemented last December, quite a number of problems have come to light. As at the end of April, there are still more than 145 000 employees who have not registered with any MPF schemes. A total number of close to 40 000 employers are involved. In addition, some of the industries which have a greater mobility, such as the construction and catering industries, have encountered a lot of problems in the implementation of the schemes. Some trade unionists have also pointed out that some employers try to reduce the amount of contribution payable to the MPF schemes by changing the terms and conditions in the employment contracts. Some employees are forced to become self-employed persons and they have suffered cuts in original fringe benefits. In fact, the MPF system is a fundamental reform for our society and economy and a lot of complicated issues are involved. It is understandable that some difficulties will be encountered in enforcement. What is important is that the authorities must address the problems seriously, learn the lessons and make improvements as when necessary. In this regard, I have the following comments to make:

First of all, despite the fact that there is information showing that the number of people who have registered with the industry schemes is about 150 000, which is more than the number expected, there exist some problems in the industry schemes which should not be overlooked. As at the end of April this year, of the 2 300 or so complaints lodged in relation to MPF, 600 have to do with industry schemes. In addition, according to a survey conducted by the Hong Kong Construction Industry Employees General Union, at present only 20% of the construction workers have joined an MPF scheme. The rate of registration is low. The Union also points out that some employers deduct the entire amount of contribution by employers from the salary of the workers or

employ workers who should be paid at a monthly rate by purporting to pay them at a daily rate. They will dismiss the workers after employing them for less than 60 days, thereby evading the responsibility to make contributions. The industry schemes are originally designed especially for those industries with a great employee mobility and those industries which have some grey areas in terms of the status of the employers, employees and the self-employed. Some operational difficulties are therefore expected. As to how these difficulties can be overcome, the Mandatory Provident Fund Schemes Authority (MPFA) should hold more discussions with the employers and representatives of employees of these industries to look for an effective solution. The MPF system is a complicated scheme that involves a great number of details. Co-operation between employers and employees must be forged to make the MPF system a success.

Secondly, the MPFA should step up inspection and enforcement efforts so as to achieve sufficient deterrent effect. Recently, some employers have been prosecuted and convicted for violation of the MPF legislation. The cases would serve to increase the employers' initiative to gain a better understanding of the MPF schemes and participate in the schemes. The MPFA said that one of the difficulties it encountered when investigating into the complaints was that about one fifth of them were anonymous. The MPFA will initiate prosecution only when the information supplied is sufficient and the complaint is substantiated. As a matter of fact, it is a very difficult thing for employees to come forth and testify against their employers. The grass-roots workers in Hong Kong still have to face a difficult employment market and they are afraid of losing their jobs if they make a complaint. Therefore, the authorities should study into how investigation and prosecution work can be carried out more efficiently and how the complainants' rights can be protected. Certainly, I reckon that most of the employers are law-abiding. The MPFA should enhance publicity and education efforts among the employers so that they can be aware of the details with regard to the implementation of the MPF schemes, hence they can avoid breaching the law out of inadvertence or commit an offence out of wilful actions.

Finally, I agree with the suggestion that the Government should be more concerned about whether the low-income people are sufficiently protected and whether their quality of living will deteriorate as a result of the MPF schemes. For those low-income families with just a few thousand dollars of monthly income, a few hundred dollars more would make them less financially tight.

And for those socially disadvantaged groups which do not come under the protection of MPF schemes, such as the unemployed, casual workers and housewives, and so on, we should consider how their retirement protection can be effectively improved. All these issues warrant serious consideration by the Government. The fact that MPF schemes have been implemented does not mean that the Government can sit back with folded arms and ignore the problem of the retirement of the public.

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

**MS AUDREY EU** (in Cantonese): Madam Deputy, after many years of brewing, the MPF system was formally implemented last December, finally. The system had a slow start because of its not very timely mooting. Fortunately, 93% of eligible employees, that is, about 1.8 million people have joined their respective schemes to date. Moreover, the participation rate of self-employed persons has also reached 90%. As the MPF schemes have been in force for more than half a year, many operational problems have naturally surfaced. Besides, some some employers have contravened the law and made use of the loopholes in it. The Government and the Mandatory Provident Fund Schemes Authority (MPFA) should now review the System and improve its operational procedures so that it can really serve the purpose of giving people protection for their retirement life.

Madam Deputy, I agree very much with the proposal made in the original motion to lessen the burden on low-income earners in making contributions. The existing minimum level of income of \$4,000 for purpose of MPF contribution is too low and to require people with such a low income to make contributions will only add to their burden. I also agree very much with the amendment proposal to reduce some of the complicated administrative requirements. Under the existing legislation, employers should enroll their employees to an MPF scheme after they have been employed for 60 days. It involves a lot of paper work. If an employee resigns, his employer has the responsibility to make arrangements for the transfer of his MPF account. In addition, employers are required to issue a monthly statement of contributions to the employees and they are required also to provide information to the fund trustees such as the income of the employees and their contributions. In sum, employers need to fill out and sign a lot of papers and the administrative work involved is very cumbersome.

According to information provided by the MPFA, as at last week, the MPFA has received more than 3 000 complaints. There are a total of 14 cases where prosecution has been made. A majority of these cases are complaints against employers. These include failure to enroll employees in an MPF scheme, default in making contributions or evasions. There are even some cases where employees are forced to sign papers admitting that they are self-employed, and so on. Although we cannot tell from these figures alone whether employers' failure in compliance is very serious, we can see that there are some employers who defy their responsibilities as stipulated in the legislation.

At the beginning of this month, in a case heard in the Labour Tribunal, an employer was found to have compelled an employee to reduce his salary and the amount reduced was used to meet the MPF contribution. This is an attempt on the part of the employer to evade his responsibility of making contributions. In times of economic hardship as these, the employees may swallow such exploitation in order to keep their jobs albeit reluctantly.

The original purpose of the MPF system is to protect the retirement life of workers. It would be most ironical that workers have to suffer the pains of a salary cut by those irresponsible employers before they can enjoy the retirement protection. I agree that the Government should step up its supervision of MPF schemes and to conduct a detailed review of the existing legislation to ensure that no one can make use of any loopholes to evade the responsibility to make contributions.

Apart from stepping up enforcement, more efforts should be made in education and promotion. This will remind employers of their legal responsibilities and also encourage employees who have been unfairly treated to come forth and testify against their employers in court.

Apart from helping enforcement, education efforts can also help the 1.8 million employees and the 240 000 employers who have joined MPF schemes to become smart investors. Just as the MPFA has pointed out earlier, most of the employees who have joined the MPF schemes are first-time investors in funds. They do not have a good knowledge of the securities and fund markets, nor do they realize fully the investment risks. Therefore, they are unable to choose between conservative and aggressive investment strategies. For the employers, not every one of them has the ability or enough information to distinguish between good fund companies and trustees from bad ones.

I hope that the scope of the review of the MPF system will include the monitoring of fund companies and trustees in order to protect the money invested in MPF schemes. Such money is the savings from the hard-earned income of employees. Now that all employees have 5% of their salary deducted to make MPF contributions, they would expect to get some returns in future and to enjoy the fruits of their investment when they retire. Madam Deputy, I am not in full support of the proposal to set up a statutory universal retirement protection scheme expeditiously. However, as the motion only calls for a review of the MPF system, I think we should keep an open mind to all important issues. I am in full support of conducting a review at regular intervals. With these remarks, Madam Deputy, I support the original motion and the amendment.

**MR MICHAEL MAK** (in Cantonese): Madam Deputy, since the Mandatory Provident Fund Schemes Ordinance (MPFSO) came into force last December, many employees have experienced the disadvantages before they can enjoy any benefits. There are frequent reports of employers forcing employees to accept salary cuts so that the employers can offset the money paid in making MPF contributions. Although the Government has reiterated time and again that all employers cannot reduce the salary and benefits of employees as a result of MPF schemes, I do not think that the promotion efforts and actions of the Government are convincing at all. As the saying goes, a bad example set by those at the top will have adverse influence on those below. Now the Government is taking the lead to be an unscrupulous employer, it will set a very bad example for private-sector organizations.

According to law, some civil servants on contract terms and those employed in the Government on non-civil service contract terms will not be exempted under the MPFSO. As their employer, the Government has the responsibility of making MPF contributions for them. On the eve of the implementation of the MPF schemes, these types of government employees totaled about 29 000, among whom about 6 000 of them were employed on gratuity-bearing contracts.

The Government can well be said to be very experienced and astute. As early as in mid-December 1998, that is, two years before the MPFSO came into force, when the Government entered into contracts with the newly-employed and

those with a completed contract, it had stipulated that the end-of-contract gratuity of these employees, together with the MPF contributions payable by the Government, would be equal to a certain specified percentage of the total basic salary of the employee concerned during the period of service as specified in the contract. To put it simply, the Government has deducted the end-of-contract gratuity of the employees to offset its MPF contributions.

Technically speaking, the Government has not contravened any provisions in law, for it has amended the terms in the employment contracts well in advance. However, under the law, gratuities are deemed as part of the remuneration of an employee and they should not be deducted as a result of the implementation of the MPF system. What the Government has done is similar in nature to those unscrupulous employers who deduct the salary and benefits of employees. The only difference is that the Government is doing this in a much smarter and more astute manner. It makes use of the loopholes in law and takes the pre-emptive move to evade statutory responsibilities.

The move made by the Government to make use of the loopholes in law can indeed save MPF contributions for the Treasury, but has the Government ever thought what kind of moral appeal it will have when it calls on employers not to shun the responsibility of making MPF contributions?

Madam Deputy, I so submit.

**MR AMBROSE LAU** (in Cantonese): Madam Deputy, the MPF schemes have been in force for half a year. Both the MPFA and the Government have made a lot of publicity efforts during this period. Employers and employees are able to get the MPF messages because they are found in all kinds of mass media, means of public transport, professional bodies, chambers of commerce, trade unions, District Councils and even education and job exhibitions. As at the end of April, more than 80% of the employers and 90% of the employees have joined the MPF master trust schemes. The proportion against the total working population can be regarded as satisfactory. Despite this, in terms of the actual number of people who have joined MPF schemes, there are still close to 40 000 employers and more than 100 000 employees who have not joined any MPF schemes and the numbers cannot be said to be insignificant.

One of the reasons why MPF schemes have not covered all employers and the working population may be due to the fact that so far the returns of MPF investments have not been that satisfactory. This has made employers and employees stay away from MPF schemes. And it has also been made an excuse by some irresponsible employers to dissuade employees from joining MPF schemes. However, a more important reason is that the administrative arrangements for these schemes are so complicated that they have put some employers off. That especially applies to those employers in the small and medium enterprises who do not attach great importance to financial management and enlist the service of any financial or legal advisers. Moreover, the size of staff in these enterprises is small and the staff mobility high. Some employers therefore want to shun away from joining MPF schemes because that will incur extra costs to them. Or these employers may want to wait until the authorities urge them repeatedly to do so. On top of these factors, the pace of economic recovery has been slow and business is not good. One often hears about layoffs and salary slashes. Employers therefore do not wish to incur more costs and employees wish to save as much as possible. Therefore, both parties may make some arrangements between themselves to delay as much as possible in joining MPF schemes, though they may risk breaking the law for this.

To promote MPF schemes more effectively, the Hong Kong Progressive Alliance (HKPA) is of the view that there is a need to review the implementation situation of the schemes, including the reduction of the extra administrative burdens to be borne by employers in compliance, and the setting up of a mechanism to review the maximum and minimum levels of income for MPF contribution. The latter will enable employees to adjust their contribution amounts in a more flexible way and in accordance with their personal needs. It will also prevent those irresponsible employers from slashing the salary and fringe benefits of their employees only to offset the expenses in MPF. Moreover, the authorities should review the supervision of MPF trustees to examine if improvements can be made. Such may include the investment arrangements made by the trustees on receipt of the contributions, the time limit for investments and reports on investments made. The reports should be able to make both employers and employees know clearly their own benefits and investment situation. In addition, with the MPF system operating for a longer time, it is expected that, as more companies close down and people change their jobs, more problems will arise with regard to the transfer of information concerning MPF contributions. The authorities should think well ahead on how to make such transfer of information smooth in order that disputes may be avoided.

On the other hand, many employers and employees are still unclear about the complicated and boring details in respect of the implementation of the MPF schemes. Against this background, many banks and insurance companies give out all sorts of promotion leaflets to employers and employees, all claiming that their MPF schemes are better than others. With this flood of information, it is doubtful whether employers and employees are able to distinguish the good from the bad and the true from the false. Will this disparity in information quality make employers and employees feel less interested in the MPF schemes? The HKPA thinks that the Government should make use of the opportunity that the MPF promotions are still at an initial stage to liaise with the banking and insurance sectors to adjust their MPF promotion strategies, with a view to making the information easily comprehensible and helpful to employers and employees in choosing the most suitable MPF scheme.

As to the question of whether or not the setting up of a statutory universal retirement protection scheme should be considered in association with the Government's review of the MPF system, the HKPA thinks that the two systems are different and should not be discussed at the same time. At a time when the economy has yet to recover and when the unemployment rate remains high, the burden of the Government in respect of social welfare services is very heavy, to set up a universal retirement protection scheme will certainly affect the allocation of resources for social welfare. Therefore, we should avoid making any hasty decisions with regard to this retirement protection scheme when we are not sure of its viability and practicability. We should make an in-depth and thorough study into this issue and consider it carefully, having regard for the consensus reached in society and the overall interest of the people of Hong Kong.

The HKPA understands that the MPF system is unable to take good care of the elderly, housewives, the low-income group, the handicapped who have lost their working abilities, as well as those who are soon to retire. There is also a possibility that it may even make the socially disadvantaged worse off. However, before there is a consensus in society on the setting up of a universal retirement protection scheme, the HKPA hopes that the Government will refrain from cutting welfare expenses on the socially disadvantaged because the MPF schemes have been put into force.

Madam Deputy, I so submit.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, the MPF system has been implemented for half a year, however, for many of the employers and employees who are making contributions to MPF schemes, they still have quite a lot of doubts about the MPF system. We read in the papers about complaints and inquiries with regard to MPF, and about some loopholes in its enforcement. Therefore, the authorities concerned should enhance public awareness of the MPF system and now is the right time to make a review of it.

First of all, the question of the minimum and maximum levels of income for mandatory contributions has been a cause of controversy. In the wake of the financial turmoil, the local economy became sluggish and the number of people with a low income increased. For those in the low-income group, their monthly income is only \$5,000 to \$6,000, barely enough to meet the household expenses. If these people are required to spend \$200 to \$300 each month as MPF contributions, that will really be a burden to them. The authorities concerned have always stated that MPF prepares for the retirement life of the people, but those from the low-income group will find it hard to appreciate the good intentions of the authorities when they have to face the hardships of life. They will also think that the Government is not sympathetic to their difficult situation and that the minimum level of income for mandatory contribution has been set too low.

As to the maximum level of income for mandatory contribution, opinions are still divided. The different views should be included in the scope of the review. The affordability of the people in making contributions is often determined by the prevalent economic performance. In order that the maximum and minimum levels of income for mandatory contributions can better reflect the affordability of the people, the authorities should consider setting up a mechanism for review of the maximum and minimum levels of income for mandatory contributions.

In addition, the authorities concerned should also consider the difficulties faced by employers in complying with the complicated administrative procedures. A review should be made of the situation and improvement measures devised. Now many companies are not doing good business and the staffing situation is already very tight, so the authorities should try to simplify the administrative procedures as much as possible so that employers can find it easier to comply with the requirements.

Moreover, the loopholes in law are also a problem that the authorities must address. At the initial stages of the implementation of the MPF schemes, many employees complained that employers were resorting to all means possible to evade their responsibility of making MPF contributions or to transfer that responsibility onto employees. Some employers have reduced the salary of the employees or made changes to the original salary arrangements. Some employees are asked to become self-employed. As a result, not only will they not get the employer's share of contributions, but also lose the employment protection they used to enjoy.

In fact, these cases appear more often in industries where staff mobility is greater, such as the construction industry. It also shows that the industry schemes which are supposed to be designed especially for those industries with higher staff mobility are unable to achieve the aim of protecting this type of employees. Apart from making a review of this, the authorities should also step up prosecution efforts against offenders. If it is found that people are making use of the loopholes in law, the authorities concerned must address the problem by making legislative amendments and adopting measures to plug these loopholes.

Madam Deputy, the MPF system is still at an early stage of operation. There are many areas that warrant improvement, so a review of the system is essential. However, I think that the review to be made now should concentrate on the above-mentioned issues, excluding the issue of setting up a statutory universal retirement protection scheme. Given the current economic conditions, this is not the best time to discuss the issue and we need to accord higher priorities to the pressing tasks first.

Madam Deputy, I so submit.

THE PRESIDENT resumed the Chair.

**MR ALBERT HO** (in Cantonese): Madam President, the speeches made by my colleagues from the Democratic Party earlier have expressed the position of our party on this issue. I would like to add only two more points.

The first point is about the coverage of the MPF system. It should incorporate local domestic helpers into the scope of protection offered by this system. The Democratic Party is of the view that every employed person should come under the protection of this System. This is especially true when we consider the increasing number of local women who look for a job instead of staying at home to be housewives. They are doing this because in the face of an economic downturn, they have to earn money to relieve the burden on their families. Some of these women may be employed before, but they need to find another job as a result of layoff, or they may want to find a part-time job. That is why they are working as domestic helpers. The Democratic Party thinks that it is unfair to deprive them of MPF protection.

I have checked the records of the debate held in this Council in 1995 on the Mandatory Provident Fund Schemes Bill. At that time, Mr Michael LEUNG, the then Secretary for Education and Manpower, said that at the initial stage of the implementation of the Mandatory Provident Fund Schemes Ordinance, hawkers, domestic helpers and family workers were to be exempted from making MPF contributions. That is meant to make things simpler at the outset of the MPF system and to minimize administrative difficulties. At that time, the Secretary for Education and Manpower stated, to the effect, that the Government had no intention of exempting these types of employees from the MPF forever. If it is administratively feasible and appropriate, the Government would review these provisions so that they can come under the scope of the MPF ultimately. Madam President, it has been six years since 1995, has the Government made any review of this important topic? Has a timetable been devised? We think the review should not be delayed indefinitely.

Madam President, when the MPF was implemented, it could be said to be in a very untimely moment because it was launched at a time of economic downturn and massive unemployment. Since the MPF system came into force at the end of last year, we have been receiving a lot of complaints. Employers are accused of slashing staff wages or forcing employees to become self-employed persons. All these are done in a bid by the employers to reduce or evade their responsibility of making MPF contributions. Those people who have their salaries cut are in fact suffering a reduction in two aspects. The amount of salary reduced will be used to make MPF contributions that should be paid by the employer. On the other hand, these employees have to pay for their own MPF contribution. So under the MPF system, people in the low-income group would actually suffer a salary cut as much as 10%. It would add to their

already heavy burden of life. For those people who are forced to become self-employed, they would lose not only the part of MPF contributions from their employers, but also the protection they should have enjoy under the labour legislation. The Government must therefore do something to address these problems.

To date, it appears the Government has managed to bring to court and initiate prosecution against only one such case of employers evading their legal responsibilities under MPF. We think that the Government should step up efforts in this regard so that the system can be implemented fully under reasonable conditions. The Government should put the following into practice: first, a sensible mechanism of review should be set up to study the minimum level of income for mandatory contributions with a view to lessening the burden on low-income earners; second, the Government should improve on the operation of the system by plugging the loopholes in the relevant legislation which have come to light half a year into its implementation. In addition, the Government should step up prosecution against offenders so as to achieve a deterrent effect.

Madam President, I would like to add another point, a point mentioned by the Honourable Michael MAK earlier. Mr MAK mentioned that before the implementation of the MPF system, the Government had devised a new policy for those non-civil service contract staff on completion of their contracts. The new policy has in effect cut their end-of-contract gratuity and the amount so slashed is the MPF contribution to be made by the Government. Madam President, with respect to this problem, the Complaints Division of the Legislative Council has received a lot of complaints. We felt very indignant on hearing these complaints. We think that as the largest employer in Hong Kong and the one who initiates and implements the entire MPF system, the Government is so unscrupulous in taking the lead to reduce salaries. Since the Government has set such a bad example, I must use the strongest words to criticize it. Having said that, for many staff who are new recruits or who have just completed their contracts, they have nothing to choose other than accepting the government proposal, and that is, to accept a reduced contract gratuity. That is how the Government can use the money to make MPF contributions. However, we all know that gratuities are part of the remuneration and the law states that it should be deemed as part of an employee's remuneration. Irrespective of the way the gratuity is paid, it should not be reduced. In addition to that, bonuses and year-end double pay should also not be reduced.

The gratuity is actually a kind of compensation made by the Government to its contract staff. This is because their jobs are not so secure as compared to pensionable civil servants. The gratuity is paid as a kind of reward or part of the salary to encourage the relevant staff to complete the contract in satisfactory discharge of their duties. The unexpected move made by the Government to turn gratuity into MPF contribution is totally unreasonable. Although the motion today does not touch on this issue, I think the Government cannot absolve itself of the blame because it is a wrong practice.

Besides, there are still many outstanding problems with the implementation of the MPF schemes. One of these is whether the remuneration received by the chairman and secretary of owners' corporations can be regarded as salary and whether or not they should make MPF contributions. I hope the Government can give an answer to this question.

**PRESIDENT** (in Cantonese): Mr HO, your time is up.

**MISS CYD HO** (in Cantonese): Madam President, the Hong Kong Government has never formulated a comprehensive policy on woman. Neither has it addressed the women's need to enjoy financial independence when implementing government policies. When the Mandatory Provident Fund Schemes Bill was proposed in 1995 for enactment, the Government had obviously failed to conduct a gender-sensitive assessment and look at such legislation from the women's angle. I will therefore insist that the Government must review the MPF System in the light of gender impact when such a review is carried out in future. Today, I will discuss this subject from the perspective of gender mainstreaming.

Madam President, I will repeat this every time: Full-time housewives labour without receiving any income (I believe the President must have heard it a number of times before and can even recite it). Moreover, they are not protected financially when they grow old. This community has never acknowledged the value of household labour. Why? This is because no one has ever measured household labour in terms of monthly wages, daily wages or hourly wages. If domestic helpers are paid, why are housewives not paid? Their hard work goes unrewarded. Technically speaking, full-time housewives have no employers, pay slips, employment agreements, and so on. Yet the efforts they make are basically the same. Such household work as taking care

of the elderly and the young and caring for the chronically-ill can make up for the inadequacy of social services. The time it takes and the efforts made by them are actually far more than a job that requires 44-hour work a week. Nevertheless, housewives receive no income. What is more, they do not enjoy retirement protection for their old age.

I wish to focus on one point and that is, there are 788 000 full-time housewives in Hong Kong. In my opinion, their retirement problems can only be solved through the implementation of the Old Age Pension Scheme. Some people may then ask: How much is considered adequate? Why is Comprehensive Social Security Assistance (CSSA) considered insufficient? All housewives who are not financially independent or afforded retirement protection may apply for CSSA when they grow old. Nevertheless, as Members are aware, it is an extremely humiliating process to apply for CSSA. Moreover, insofar as those women who have worked so hard in fulfilling their household duties are concerned, is their value equal to the amount of CSSA receivable? In order to answer this question, the first step the Government or the community must take is to recognize the value of household labour. We propose that the Census and Statistics Department be commissioned to carry out a time use study to see how much time housewives spend on household chores in order to quantify household labour in terms of productivity plus Gross Domestic Product. Furthermore, we propose that we should start to examine ways to collect data on the value of household labour so that we will have a guideline when we distribute resources, consider elderly retirement protection, and ascertain or recognize the productivity value of household labour in future. At least, the Government should take the first step of conducting surveys and collecting data.

Madam President, I will now turn to domestic helpers. Right at the very beginning, domestic helpers have been excluded from the ambit of the Mandatory Provident Fund Schemes Ordinance. This is probably because most domestic helpers came from overseas when the Ordinance was drafted. The inclusion of these helpers would pose a problem with respect to the interest of employers. Moreover, some people hold the view that overseas helpers will not live their retirement life in Hong Kong. Therefore, our retirement schemes might not need to take care of them. Actually, this is racial discrimination. Members opted for the exclusion of the whole trade from the MPF System probably because they did not want to be caught in the stark act of racial discrimination at that time. This answers a remark often made by human rights

campaigners: Once we tacitly permit acts infringing on the rights of other people to happen, the rights of all people, including ours, may eventually be jeopardized in the same way.

During the early period when domestic helpers were excluded from the legislation, that is, during the deliberation of the bill, perhaps just a few Chinese "maids" (former known as domestic servants) were still working in Hong Kong and it was that group of people whose interests were in jeopardy. Furthermore, the number of people working in such fashion was diminishing. After the financial turmoil, however, many female workers knocked into redundancy by such industries as manufacturing and services industries were willing to work full-time or part-time as domestic helpers. I am sure a number of Honourable colleagues, also representatives of labour unions, can confirm this. Nowadays, more and more people enroll for home-helper courses. In 1995, only 323 people attended such courses. In 2000, the number of participants rose to 23 431. According to the findings of the surveys conducted by certain social organizations, 70% of graduates from such courses are prepared to work as home helpers. Actually, the industry is no longer dominated by foreign domestic helpers. Therefore, if the existing MPF System continues to exclude home helpers, it will run in contrary to the policy and market tendency whereby local people, or Hong Kong residents, are encouraged to undergo retraining and work as home helpers. On the one hand, we encourage more people to work in the industry so as to reduce the number of foreign helpers required to work in Hong Kong. On the other hand, the policy does not encourage these people to work as home helpers who are not covered by the MPF System. More importantly, people working as home helpers are mostly female. This measure actually represents a combination of racial and sexual discrimination. Members must seriously review this phenomenon to ensure people of different races and sexes receive due protection.

Madam President, owing to gender mainstreaming, I cannot support the amendment although it only seeks to lessen the burden of low-income earners in making contributions. It is regrettable that most low-income earners in the labour market are female. Therefore, the amendment really lacks the concept of gender mainstreaming and fails to take care of the hardships faced by low-income female workers. Therefore, I can only support the original motion.

Thank you, Madam President.

**MR NG LEUNG-SING** (in Cantonese): Madam President, after a protracted debate among different sectors of society, the Government and the legislature, the Mandatory Provident Fund Schemes Ordinance (MPFSO) was finally passed into law in 1995. Later on, the Government and the legislature worked closely together to formulate the necessary subsidiary legislation to stipulate the details relating to the implementation of the MPFSO, including approval of trustees, registration of schemes, governing of investment, arrangements for the existing voluntary retirement schemes to link up with the MPF system, and so on. Eventually, the MPF system was brought into operation towards the end of last year. After the system has been implemented for some time, the Government has recently submitted a bill to amend the MPFSO, including widening the membership of master trust schemes and that of employer sponsored schemes. To enhance the effectiveness of the Mandatory Provident Fund Schemes Authority (MPFA) in its regulation of MPF schemes and discharge of statutory responsibilities for overseeing and monitoring the operation of retirement protection schemes in Hong Kong, the bill also proposes a series of amendments in respect of the functions and powers of the MPFA. From this we can see that even though the MPF system has only been implemented for a short period of time, the relevant review work has indeed been ongoing during the actual implementation process.

During the initial stage of implementation, the impacts of the various MPF schemes on labour relations and employee's interest have aroused much attention and given rise to some complaint cases. However, to a certain extent, all these problems are attributable to the fact that both the employers and the employees are not fully familiar with this brand new retirement protection system, and that they have yet to understand to the full their respective responsibilities and interests. In fact, according to the original intent of the system, under the provisions of the MPFSO, the implementation of MPF schemes should not prejudice the interest of employees, as employers are required to make contributions with their own money. In the event of any employer seeking to capitalize on the implementation of MPF schemes to unilaterally change the terms and conditions of employment contracts to evade their MPF obligation, the employees concerned will also be protected by the Employment Ordinance. From the point of view of protection for employees' interests, the existing laws and regulations are sufficient to serve this purpose. A more important task is therefore to step up publicity efforts to enable employees to understand better their rights and interests on the one hand, and to enable employers to better understand their responsibilities on the other. At the same time, the efficiency

of law enforcement efforts should also be enhanced to combat violations of MPF legislation.

Under the existing legislation, although employees earning less than \$4,000 monthly are not required to make contribution, their employers are still required to do so. The objective of this provision is to alleviate the burden on low-income earners. But then, we need to understand that retirement protection means that both employers and employees have to bear the cost for providing protection for the employees' daily needs upon retirement. Under whatever circumstances, employers are required to make contributions in respect of their employees, and the amount of contribution made by employers will remain unaffected despite any drop in the amount of contribution made by employees. On the other hand, any reduction in MPF contribution on the part of an employee will be closely related to the future retirement protection for the relevant employee. As such, it is imperative to maintain the principle that where appropriate, employees should be encouraged as far as practicable to make reasonable amounts of contribution. As regards the minimum level of income below which employees will be exempted from making contributions, it must be determined very carefully to strike an appropriate balance between the existing economic burden on employees and their livelihood protection in the future.

Undeniably, the MPF schemes as occupational retirement protection schemes (ORSO schemes) are unable to provide retirement protection for all members of society. People out of employment are not covered by the system, and since they do not have any employment, they are not covered by any ORSO schemes either. As regards those people who have already retired, if they have not enrolled in any ORSO schemes in the past, they certainly will not enjoy any protection for their retirement life. Nevertheless, even for those people who have enrolled in a MPF scheme, it does not necessarily mean that their livelihood upon retirement will be fully protected, for not only investment fund may rise as well as fall, the fundings under the various MPF schemes may just be exhausted one day. To cater for this situation, it is necessary that the social welfare system intervenes to set up a safety net to provide appropriate assistance for eligible members of the public. As regards the proposal to set up a universal retirement protection scheme for persons not covered by the MPF system, there are in fact some conceptual problems. To begin with, how should those people who have participated in MPF schemes but eventually used their savings be dealt with? Would they be treated fairly? Besides, judging from the source of funding and mode of operation, this scheme is but a social welfare assistance

system by another name, which is not directly related to the question of retirement. From a social welfare assistance point of view, sooner or later society must consider carefully the question of how the limited public resources should be allocated and utilized.

Madam President, I so submit.

**MR JAMES TIEN** (in Cantonese): Madam President, how to enable people to lead a life with security after retirement has always been a matter of great concern to Hong Kong and to the rest of the world. But our discussions on this over the years have focused on whether or not employers should be made to shoulder all the benefits to be enjoyed by their employees following their retirement. I do not think that employers should be required to do so. I think that if a person really wishes to make proper arrangements for his life after retirement, then he must do some planning during his whole working life, such as by making investments, in the hope of getting some returns. So, he can then save them up to accumulate enough capitals for buying stocks and shares. Well, of course, if he spends his savings on buying properties, his assets may have become negative assets over the past few years; but then again, we should still note that in the long run, over a period of 20 to 30 years from now, properties may still appreciate. Apart from making savings and investments, some may also spend money on educating their children, in the hope that when they grow old, they can receive support from their children. This is very much a Chinese concept. In the United States, however, people would think that children should take care of themselves, and they should not be expected to support their parents. But I do not think that the people of Hong Kong should copy every American practice.

On provident funds, well, Madam President, I joined the Legislative Council in 1988, and I notice that our discussions on this topic have almost never stopped over the past decade or so. Frankly speaking, from the perspective of an employer, his relationship with his employees is very straightforward, the only thing that matters is the presence or otherwise of any employment relationship. This is quite different from the relationship between a couple. One fundamental consideration is that an employer is not supposed to look after his employees for their whole life, for at any time during their employment, his employees can always "quit"; people often argue that since employees work for their employers, the latter should assume full responsibility of providing the

former with retirement protection. I have always failed to buy such an argument. Initially, we talked about the need for employers to offer good wages to their employees, about employees' entitlement to maternity leave, compensation for injury at work, and so on, and we also viewed that the relationship between an employer and an employee should come to an end when the latter ceases working for the former, whether because the latter had a new job or because he was dismissed by the former. The views of the community changed subsequently, however, and people started to think that employers should do a bit more; so, they argued that if an employer wished to dismiss an employee, he should pay the employee a bit more, in the form of long service payment, for example. In any case, it was viewed that an employee should be given a bit more retirement protection, whether he was dismissed or laid off, because whatever the case might be, the fact would remain that his service was no longer required by his employer. Still later, several Members representing the labour sector emerged, and they joined hands to press employers to consider the establishment of a provident fund scheme. So, finally, during the late 1990s, employers agreed to the setting up a provident fund system. Since the very beginning, such a system has been meant to enable an employee to meet just 30%, rather than 100%, of his living expenses after retirement; and, such protection is supposed to come from the respective 5% contributions made by the employer and the employee during the latter's working life. The underlying principle is that while an employee can depend on his provident fund scheme to meet part of his living expenses after retirement, he must still count on his own savings, the support of his children and other sources to meet the remaining 70% of his living expenses.

For this reason, we are of the view that since it has been only half a year since the implementation of the MPF system, it is not actually the right time to carry out a review — be it aimed at reducing the contributions of the low-income group, or at examining the maximum and minimum levels of income for contribution purposes as suggested by Mr Bernard CHAN. I do not think that there is any need to carry out a comprehensive review until at least several years later. I certainly agree that in the meantime, there may be a need to improve some specific areas, such as the industry schemes and protection for employees, and there may also be a need to plug some loopholes and solve certain problems. We agree entirely that all these problems must be properly fixed. But I do have reservation about a large-scale review, in particular, about a review on people not covered by MPF schemes (that is, housewives). These people have been mentioned in discussions over the years. But we must note that the MPF system

is meant for employees, so how can employers be required to make contributions for people who are not working or who are unemployed? If it is argued that the Government, instead of employers, should be required to pay, then I must ask, "Is not the Government already spending money on these people?" For instance, when a housewife encounters difficulties in supporting her living, she can apply for Comprehensive Social Security Assistance (CSSA) and other forms of assistance provided by our safety net. The Government is in fact providing lots of assistance already. So, I just wonder why Miss Cyd HO should have put forward a proposal on setting up a separate retirement protection scheme for housewives who are not under any employment. I must also point out that even those Members who advocate such a scheme have failed to outline any concrete details. Suppose such a scheme is really set up, the only contributors will all be unemployed, and they therefore will not have the means to make contributions; and, since they do not have any employers, there will be no employers to make contributions for them. Suppose the Government is required to pay, then we will see that it will go back to a situation similar to the existing one, because when they apply for CSSA, the Government will always make provision for them. That being the case, why should a separate system be set up at all? And, is this type of retirement protection system going to be feasible?

Madam President, I also wish to say a few words on a point raised by labour sector Members. Years back, when the MPF system was endorsed, it was actually our intention to offset severance and long service payments against the 5% contribution by employers. Members representing the labour sector argue that the provision of all this can offer double protection, but we would think that this is nothing but double benefit. There is no reason for an employer to offer such double benefit, because whether it is long service payment or MPF payments, the underlying principle is still the provision of a lump sum to an employee to support his retirement life. An MPF scheme is a retirement protection scheme, and so is long service payment. When we were working on the formulation of the relevant laws, we debated this point over and over again. So, the picture should be very clear. Our consensus at that time was that an employer and an employee would each contribute 5%, and this should be taken to mean that the 5% contribution of the employer could be offset against long service payment.

Madam President, my last point is about the new proposal on domestic helpers. This issue was not discussed in our past debates. Domestic helpers are mostly foreigners; they live in the homes of their employers, with food

provided, which is why the relationship here is different from that between ordinary employers and employees. Some Hong Kong people also work as domestic helpers, but I believe most of them are not working full-time. They work only part-time, and some of them may even work part-time with several employers. There is a separate law governing the computation of provident funds for part-time workers. Therefore, I do not think that it is appropriate to amend the law just for the sake of a handful of Hong Kong domestic helpers, most of whom do not work full-time.

Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, today, my colleague Mr CHAN Kwok-keung has moved a motion on reviewing the MPF system, because we feel an urgency to do so. I also learn from the newspapers today that the Government intends to carry out a comprehensive review of this system in September. I very much welcome this move.

This system, which affects millions of "wage earners" in Hong Kong, may have developed some problems in the course of implementation. I think that some of these problems should have been expected beforehand, but the Government will not of course admit this. Others, however, as pointed out by Mr Bernard CHAN, may have come to our notice only during the actual implementation of the system. We can see that the Government might from time to time move legislative amendments in former Legislative Councils, and it is still doing so in the current Legislative Council. This is actually a process of learning from practical experience. But I do not agree that we should let the MPF system operate for some time more before we carry out a review, because the system affects several million people.

Moreover, I also wish to say a few words on the concept of retirement protection. The Hong Kong Federation of Trade Unions (FTU) has been struggling for this since the 1970s. We notice that some people worked for the same employers for several decades, but by the time of their retirement, they were offered no protection at all. The community has been discussing this issue for decades, but all of us seem to have become increasingly confused as to what the consensus should be. I am not just talking about the consensus of the labour sector, but also that of the community as a whole. Many employers actually share my viewpoint. Had our Government been willing to take positive steps to

deal with this matter years back, I am sure that we would not have had to implement the MPF system at the worst times of our economy. In the past, I came across many grass-roots people, who often asked me, "Miss CHAN, do you think that the establishment of the MPF system at this very time is actually a well-intentioned act that may achieve the opposite result?" But I patiently gave them an explanation, asking, "If, by the time the "wage earners" now retire several decades later, they are going to be as penniless as some old people now, what are they going to do?" They could see my point. But they still insisted that the MPF contributions now would only add to their plight. Besides, since many of these people, particularly those in the construction industry, had been forced by their irresponsible employers to become self-employed persons, they were especially angry. Fortunately, having listened carefully to my explanation of the rationale behind the MPF system, most of them eventually agreed that a retirement protection system must be set up.

I am of the view that the establishment of a retirement protection system would not only offer protection to "wage earners" after their retirement, but would also contribute to the stability of our enterprises. If this is not true, long service payment would not have been introduced in the 1980s. I wish very much to point out that had we put in place a retirement protection scheme much earlier, our elderly people would not have to suffer so much now, and they would not have been forced to apply for CSSA. At least, they would have some money to support their living, and their life would not be so miserable. Even detached on-lookers will be moved at seeing the plight and suffering of those elderly people who have neither any savings nor children, or whose children are just too poor to support them. Having said that, I must still state very clearly that the existing MPF system is not the best in the eyes of the FTU. To us, the best system should be a combination of CPF and OPS, that is, a Central Provident Fund plus an Old Age Pension Scheme. I am sure that you, Madam President, must have heard my colleagues putting forward such an integrated retirement protection scheme in this Chamber in the 1980s and 1990s.

Madam President, after listening to my remarks, you may find that while I support the establishment of a retirement protection system, I also criticize the existing system for not being satisfactory enough; you may wonder why we should have endorsed the implementation of the existing system. Well, that is because we thought that we must at least make a start first. We are of the view that we should first put in place a system, but we also think that a review should be conducted after implementation, and this leads us to consider the viewpoint

mentioned by me just now. That is why the original motion of Mr CHAN Kwok-keung actually asks for a recapitulation of the implementation of the MPF system. When we scrutinized the relevant bill and discussed the adoption of \$4,000 as the minimum income level for contributions, we considered the fact that \$4,000 would not constitute a major portion of the income of a family at that time, and decided to use it as the threshold. But toady, especially after the financial turmoil, local wages have gone down drastically. If no adjustment is made, then given the general levels of household income in Hong Kong, the threshold of \$4,000 will create unfairness. For this reason, I think there is a need to set up a review mechanism. Mr Bernard CHAN proposes to delete the part on protecting the grass-roots people from the original motion, and he just proposes to set up a review mechanism. We think this is unacceptable. We agree to the setting up of a review mechanism, but we do not think that we should arbitrarily set the threshold at levels such as \$5,000, \$6,000, and so on. Our agreement only goes so far as the establishment of a mechanism for adjusting the maximum and minimum levels. And, of course, with regard to the existing threshold of \$4,000, we would think that there should only be upward adjustment, not downward adjustment. The reason is that under the present circumstances, this sum already represents a very significant portion of the main income of an average family.

Madam President, as mentioned by my colleagues earlier, a significant part of my remarks today will be about the issue of offsetting. On the last occasion when the Legislative Council passed the relevant bill, I attempted in vain to move an amendment. I wish to say a few words to Honourable colleagues in this Chamber now, particularly Members belonging to the Liberal Party. They think that it is unfair to offset long service payment and severance payment against MPF. I suggest we may as well start by steering a middle-of-the-road course. At least, we now see that when some businesses close down, they are willing to pay both severance payment and provident fund benefits to their employees. One of these businesses is the Tokyu Emporium, which I once mentioned in this Chamber. It did exactly that when it closed down. Recently, a foreign department store also did the same. We all know that when a company closes down and its employees lose their jobs, the latter will have to rely on the severance payment from their employer as a temporary means of supporting their living. Under the existing system, if a person is unfortunately laid off five times in his entire working life, how much can he get when he retires? I very much hope that I can convince the Liberal Party, in particular, Mr James TIEN. I think we can discuss the matter. Can we just forget about long

service payment? Can we also give up the idea of offsetting MPF against severance payment? We should all realize that if a person suddenly loses his job, he will have to face the problem of how to meet his living expenses. Milk powder, tuition, and so on, will all require money. So, how can severance payment and MPF be lumped together? For this reason, I really think that if we can look at an issue from different perspectives, we may discover many new problems. I very much hope that my Members belonging to the Liberal Party can reconsider the whole issue, and I also hope that following this debate, we can consider it from different perspectives.

Madam President, I also think that the problems now are not connected with elderly people, retired elderly or housewives only. At present, all "wage earners" must have been under 60 days of continuous employment before they can be entitled to retirement protection. This requirement is indeed somewhat outdated by now. So, I think the Government must consider how best to ensure that all "wage earners" can enjoy retirement protection. To me, the best way is to set up a universal retirement protection scheme. Thank you, Madam President.

**MR HOWARD YOUNG** (in Cantonese): Madam President, I wish only to comment on two points raised by the Honourable Miss CHAN Yuen-han a moment ago. The first point is about offsetting severance payment against MPF. The Chairman of the Liberal Party has said repeatedly that the commercial and industrial sector used to oppose the establishment of any kinds of insurance systems. The argument of the industrial and commercial sector back then was employers were already required to pay long service payment and severance payment. But why did the sector subsequently change its position? The reason is that after some persistent lobbying, they finally accepted the idea of offset. This is my understanding of the historical background of the issue. I think the industrial and commercial sector will not accept a reopening of discussions on this issue.

I find it very difficult to understand a point raised just now by some Members, that is, those people earning less than \$4,000 a month are not required to make any contribution, so they asked whether it was possible to raise this lower threshold. I can still remember that this threshold of \$4,000 was computed with reference to 50% of the then prevalent median wage level. Members now say that the median wage level has gone down, and according to

the labour sector, wages have indeed declined. Following this line of reasoning, then I must say that we should not raise the threshold, but lower it instead. Well, the industrial and commercial sector has not asked for a downward adjustment of the \$4,000 threshold. But then, some people have asked for an upward adjustment. That really baffles us.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Mr CHAN Kwok-keung, you may now speak on Mr Bernard CHAN's amendment. You have up to five minutes.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, the amendment moved by Mr Bernard CHAN contains an additional proposal on "lessening the heavy burden faced by employers in complying with the complicated administrative requirements in the legislation". I agree with him very much. Some workers have told me that some sub-contractors have not tried to cheat their employees. In some cases, a sub-contractor simply gave \$30 to a worker and asked him to contribute it to the MPF scheme together with his own contribution of \$30. But surprisingly, the worker was not allowed to do this. Under the existing law, a worker is not allowed to do this. This is precisely a problem of formalities. I think we should try to streamline these formalities. Can we simplify all these formalities? For instance, can we just designate a code or an account for making contributions, so that an employer needs not make contributions in person? We must realize that sub-contractors are usually not so well-educated, and they may employ a worker for just one day or half a day. So, in any one month, they may have employed as many as several dozen or even one hundred or two hundred workers. It will be very difficult for them to keep records on the number of workers who have been under their employ.

Mr Bernard CHAN's amendment also contains a proposal on "setting up a mechanism for reviewing the maximum and minimum levels of income for mandatory contributions"; since he at the same time proposes to delete "lessening the burden on low-income earners in making contributions" from my original

motion, I am worried that his proposal is motivated by his self-interest. That is why I am not convinced at all to support this proposal. That said, I still support his other proposals. Though I oppose the amendment, I still hope that Members can support this motion. Thank you.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I am very grateful to Honourable Members for their valuable suggestions on the MPF System. The MPF schemes have been implemented for more than six months. Today's motion debate provides a good opportunity for us to share experience.

Six years ago, the Mandatory Provident Fund Schemes Ordinance (MPFSO) was enacted by the then Legislative Council. The Ordinance and the relevant subsidiary legislation established the mode of operation and implementation details of the MPF System. It also sets out the powers and responsibilities of employers, employees, service providers and the Mandatory Provident Fund Schemes Authority (MPFA) under the MPF System.

The MPF System was brought into full operation in December last year. At present, over 85% of employers, 93% of employees and 90% of self-employed persons have enrolled in MPF schemes. Besides, 150 000 people have enrolled in industry schemes. These compliance rates are encouraging and compare no less favourably with those of similar schemes in other countries. Extensive participation is a must for any major social scheme to achieve success. The present MPF compliance rates reflect the support from all sectors in the community for MPF schemes.

Over the years, only about one third of the local workforce are protected by retirement schemes set up by employers voluntarily. Subsequent to the implementation of the MPF, over 3 million members of the workforce are provided with retirement protection. So, considerable progress has been made in terms of coverage.

MPF is a brand new and massive scheme that affects over 240 000 employers, some 2 million employees and self-employed persons, 20 approved trustees, and some 30 000 registered MPF intermediaries. Given the far-reaching consequences of the schemes, we must ensure their effective operation having regard for the interests of all parties concerned. It is, therefore,

inevitable that the relevant statutory provisions are relatively complicated. During the initial implementation of the schemes, as the parties concerned had yet been able to grasp fully the implementation details and statutory requirements, some technical problems had emerged, such as hiccups in the handling of abundant data by trustees and employers, and also in delivery of contributions. Indeed, it takes a bit of time for all parties to adapt to the implementation details. Thanks to the joint efforts of the industries, trade unions, trade associations and the MPFA, and as the relevant parties are becoming more familiar with the operation of the System, the initial undesirabilities have been gradually improved.

Both Mr CHAN Kwok-keung's motion and Mr Bernard CHAN's amendment mention a review of the MPF System. As I have just pointed out, the MPF legislation serves to set out the details and requirements of the existing System. We understand that it is not perfect and there is still room for improvement. Our objective is to draw on experience, with a view to facilitating the smooth operation of the MPF System as far as possible to meet the overall needs of society. For example, in the course of making preparations for the implementation of the MPF, many people had put forward many views on the legislative provisions and details of the operation of the System. We would seriously take these views into consideration. The Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000 enacted last year and the Mandatory Provident Fund Schemes (Amendment) Bill 2001 tabled for First and Second Readings three weeks ago have been introduced as a result of our heeding the relevant views. The purpose of the legislative amendments is to give the Ordinance greater clarity to better the operation of the MPF System.

The MPFSO was enacted in 1995, with a subsequent amendment in 1998 and making of the subsidiary legislation in the same year. It was further amended last year. The MPFSO currently in force reflects the consensus and compromise that we reached in the past on this System with far-reaching consequences. Certainly, for any system and its legislation, there is always room for improvement. We consider it necessary to review the operation of the MPF System and the relevant legislation as appropriate. As to precisely when it is considered appropriate to conduct the review, I think it should be some time, say, one year, after the full implementation of the MPF before a comprehensive review should be launched. This will enable all parties concerned to put forth practicable improvement measures after they have accumulated substantial operational experience.

On the scope of the review, I think it should start with the operation of the MPFSO. Our objective is to identify ways to improve the operation of the existing Ordinance, rather than being entangled in issues that had already been thoroughly discussed before, or extending the discussion to other policy areas.

Mr CHAN Kwok-keung proposes that the review should include finding ways to lessen the burden on low-income earners in making contributions, whereas Mr Bernard CHAN's amendment calls for setting up a mechanism for reviewing the maximum and minimum levels of income for mandatory contributions.

I must point out that the design of the MPF System has taken account of the needs of low-income earners. In order not to subject low-income earners to financial difficulties, the existing Ordinance provides that employees earning less than \$4,000 monthly are not required to make mandatory contributions, but the employers' obligation to make MPF contributions remains unchanged. The Ordinance also stipulates that the maximum level of income for mandatory contribution is \$20,000. These minimum and maximum levels were set with the unanimous consent of all sectors of the community, including the legislature, in 1995. In May last year when the Legislative Council discussed the implementation of the MPF schemes, no objection was raised. In 1995 when the Government proposed the Mandatory Provident Fund Schemes Bill, it pointed out that a mechanism would be set up in future for adjusting the minimum and maximum levels of income for contribution under the MPF schemes.

Certainly, what we promise we will honour. We are currently considering how best to set up such a mechanism for adjustment of the minimum and maximum levels of income in an orderly manner, rather than revising the upper and lower income thresholds at any time or in any way as we like, which would only confuse employers and employees. In the review of the operation of the MPFSO to be conducted at the end of this year, we will examine in detail how to set up a mechanism acceptable to all.

As in the past, we will consult Honourable Members on the setting up of this mechanism. Putting in place a mechanism, of course, does not mean that adjustments will be made immediately. As to what mechanism is considered appropriate, or how long it will take — one year, two years or three years — for adjustments to be made, I believe these will also be covered in the review.

I appreciate that the Ordinance imposes certain requirements on all parties, whether it be employers, employees, trustees, or even the MPFA, in respect of the arrangements for registration, duration of contributions, schedule of contributions, the provision of monthly contribution records to employees, and so on. All these seemingly complicated requirements actually reflect the consensus reached among employees, employers, the industries and the regulatory authority when formulating the legislation back in those years.

Since the System came into effect, the MPFA has made every effort to assist employers and trustees to resolve the technical problems that emerged in the initial implementation of the System. It has also publicized the administrative arrangements of the schemes as far as possible to provide employers with a better understanding of their obligations.

The MPFA has plans to review the registration and contribution procedures in conjunction with the industries, representatives of employers and employees, as well as the relevant professional bodies within this year to ensure that the procedures can better meet the needs of users.

Earlier on some Members pointed out that improvements are still required in some aspects of the industry schemes. We share this view. I wish to point out that the mode of operation of industry schemes is actually a result of consultation with employers, employees and the industries. The Mandatory Provident Fund Schemes Committee, which comprises representatives of employers and employees and other relevant parties, makes recommendations to the MPFA concerning the supervision of the operation and development of industry schemes. The MPFA will also endeavour to liaise closely with employers and labour organizations, and it is happy to help employers and members of the industries in need of assistance.

On the compliance rate, the reason for the low compliance rate in the catering industry is that many employees are employed on a monthly basis, and their employers have chosen to enrol them in Master Trust Schemes, instead of industry schemes. With regard to the construction industry, given multi-layered sub-contracting, and as workers do not work at fixed locations and the status of some construction workers changes from employee to self-employed from time to time, the overall compliance rate has not been satisfactory.

The MPFA will continue to actively maintain close contact with the industries and members of the industries, and will work with them together to identify ways for improvement. We will pay attention to the timetable for

implementing the recommendations made by the Construction Industry Review Committee, for the proposed workers registration system will help in some measure to facilitate the enrolment of construction workers in MPF schemes.

Earlier in the debate, a number of Members stressed the need to study the setting up of an universal retirement protection scheme. I appreciate Members' concern over retirement protection.

The occupation-based MPF System is put in place after years of discussion and consultation among all parties concerned. In implementing the MPF System, we need to take care of those who cannot directly benefit from the MPF and who are in financial straits. It is the policy of the Government to provide financial assistance for people in need through the Comprehensive Social Security Assistance Scheme, in order to help them meet the various basic necessities of life. The Health and Welfare Bureau has drawn up a comprehensive "Care for Elders" policy and is actively studying ways to improve social security arrangements for the elderly.

The setting up of a statutory universal retirement protection scheme as proposed by Members in fact concerns old age protection for people who are not employed. I hope Members will agree that it is inappropriate to discuss this issue in the context of the review of the operation of the MPF. Instead, it should be considered with reference to other more suitable policy areas. In fact, we have discussed this issue for many times before and I believe our positions have been made crystal clear.

Members have expressed many valuable views on certain loopholes of the MPF legislation. I agree that the implementation of the MPF System will inevitably lead to some problems between employers and employees. Therefore, the MPFA and the Labour Department maintain regular and close contact with each other, and they have put in place complaint referral and co-ordination mechanisms to enable both parties to handle problems effectively in accordance with the Employment Ordinance and the MPFSO.

Regarding employment problems and complaints arising from the implementation of the MPF System, the Labour Department will investigate those involving the Employment Ordinance. The Department also provides mediation service to assist employers and employees to resolve disputes involving the Employment Ordinance or caused by changes made to the terms and conditions of the employment contract.

Some Members mentioned the unilateral change of an employee's status to self-employed by the employer. In fact, under the common law, such arrangement can be considered as dismissal in disguise and so, the employee has the right to claim compensation for his dismissal. Even if this change is made with the employee's consent, so long as the change in status is nominal and the employer-employee relationship remains unchanged materially, the Court can still order the employer to comply with the provisions of the Employment Ordinance and the Employees' Compensation Ordinance.

Madam President, the MPFA will continue to put in active efforts to carry out publicity, education and law enforcement work, with a view to reminding employers of the consequences of breaching the MPFSO. In respect of enforcement, in May this year, an employer who had failed to arrange for his employee to enrol in a MPF scheme was convicted by the Court. I believe this precedent will have a deterrent effect on other employers. To resolve problems between employers and employees, the attitude of both sides is very important. I hope that the MPFA, the Labour Department, employers and employees will continue to co-operate in future to facilitate the smooth operation of the MPF System.

I wish to respond to the points made by some Members in the debate. Mr CHAN Kam-lam mentioned that the recent investment performance of the MPF is unsatisfactory. I wish to point out that MPF is a long-term investment. We should not assess its long-term performance based on short-term return. I believe the investment performance for just a few months bears limited indications. In fact, statistics show that retirement funds in Hong Kong have an average return rate of 13% over the past 18 years, which is higher than the 6.4% inflation rate and the rate of salary increase of about 10%. Therefore, from past experience, we can infer that the investment return of similar funds should have steady growth, or else there will not be so many people making fund investments on their own initiative.

Concerning the offsetting arrangement, originally I did not wish to speak on this aspect. But I think Members are well aware of the history and the many debates held on this issue. In 1995 and 1998 when the MPFSO and the subsidiary legislation passed through the legislature, we had thorough discussions on the offsetting arrangement. I believe Members know very well that employers and trade unions hold diametrically opposing views on this issue. The existing statutory arrangements can be said as reflecting the agreement reached between them after protracted discussions. I believe today's debate

will not draw any conclusion on this, and today is definitely not the last debate on it. I believe employers and employees will continue to have discussions and so, I do not wish to say too much here. Regrettably, Mr LEE Cheuk-yan is not here in this Chamber. Earlier on he expressed his view on the word "甘". He came to this view perhaps because he has got into a muddle as a result of too much hard work in his studies. In fact, what we mean by the word "金" is that Mr Rafael HUI and colleagues in the MFPA will watch the operation of the MPF System with wide open eyes ("金"睛火眼), to ensure that participants of MPF schemes can receive hard cash (真"金"白銀), reap a good harvest after sweat and toil (苦盡"甘"來), and enjoy the fruits of their MPF contributions (積"金"成果). That is what the word "金" as in "強積金" actually means.

Lastly, Madam President, I wish to emphasize that the mode of operation of the MPF System and the relevant legislation is a consensus reached between Members and the community after years of detailed discussion and repeated consideration. The System may not be able to satisfy the demands of all parties concerned, but it strikes a balance among the interests of employers, employees and service providers, and is accepted as a retirement system that best suits the present needs of Hong Kong. Therefore, our prime task now is to better the operation of the System and the relevant legislation in line with three major principles, that is, to ensure that their operation is: First, simple and user-friendly; second, cost-effective; and third, safe and sound, thereby providing reasonable protection for the interest of scheme members.

Madam President, I wish to thank Honourable Members again for the valuable views that they have expressed on the review of the operation of the MPF System. The Government and the MPFA will certainly consider the views from all sides carefully to draw on collective wisdom, and in the review of the operation of the MPF which will start at the end of this year, we will find ways to further improve the MPF System on the basis of the three major principles mentioned by me just now.

In the debate earlier, Mr LAU Chin-shek drew an analogy between the MPF and a leaky umbrella. I wish to point out that while this umbrella may have some holes in it, the umbrella can be fixed. At retirement, the weather might be the same as it is outside this Chamber now, with strong winds and heavy rain. I believe if we have an umbrella with us then, we would know that there is a world of difference between having an umbrella and having none.

Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Bernard CHAN to Mr CHAN Kwok-keung's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Bernard CHAN rose to claim a division.

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

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

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

Functional Constituencies:

Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr Bernard CHAN and Dr LO Wing-lok voted for the amendment.

Miss Margaret NG, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr WONG Yung-kan, Miss LI Fung-ying, Mr LEUNG Fu-wah and Mr IP Kwok-him voted against the amendment.

Mr Kenneth TING, Mr James TIEN, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr

Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr LAW Chi-kwong, Mr Henry WU and Mr Tommy CHEUNG abstained.

Geographical Constituencies and Election Committee:

Ms Audrey EU voted for the amendment.

Miss Cyd HO, Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Mr LAU Kong-wah, Miss Emily LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG and Mr YEUNG Yiu-chung voted against the amendment.

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, 26 were present, five were in favour of the amendment, seven against it and 14 abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, one was in favour of the amendment, 12 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 amendment was negatived.

**PRESIDENT** (in Cantonese): Mr CHAN CHAN Kwok-keung, you may now give your reply. You still have five minutes 42 seconds.

**MR CHAN KWOK-KEUNG** (in Cantonese): I do not think that my reply will take as long as five minutes 42 seconds. I am very grateful to those 22 Members who have spoken today; most of them support my motion, and I must

take this opportunity to express my thanks to them. I must also thank the Government for agreeing to review the existing mechanism. In regard to the issue of contributions, I hope that the Government can consider our proposal.

I will always support the implementation of these schemes, be they MPF schemes or other provident fund schemes. I know that in Singapore, the rate of contribution for an employee is 20%, and that for an employer is 25%, making a total of 45%. Singaporeans can apply for loans from the relevant schemes to buy properties or for other purposes; so they can indeed lead a happy life with security. When their economy is in a bad shape, their provident funds can play a stabilizing role. Their wages may be cut, but there will not be any cuts of the actual wages they receive, for the cuts will be on the amounts of contributions. When the economy improves, employers will pay back the amounts of wages deducted. This is of immense help in fostering social stability. And, this is precisely what I admire most. I hope that the MPF System in Hong Kong can achieve the same effects in the future.

One who is well-fed often fails to appreciate the plight of a starving man. Similarly, one who has never been battered by poverty will never understand the suffering of the poor. I hope that Members can all appreciate the plight of the poor. Madam President, I hope that Members can support my motion. Thank you.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TIEN rose to claim a division.

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

**PRESIDENT** (in Cantonese): Voting shall now start.

**PRESIDENT** (in Cantonese): Have any Members still not pressed the voting buttons?

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

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, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr Henry WU, Mr Tommy CHEUNG and Dr LO Wing-lok voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the motion.

Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

Miss Emily LAU abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present, 11 were in favour of the motion and 16 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 21 were in favour of the motion, two against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**PRESIDENT** (in Cantonese): Second motion: Tenants Purchase Scheme.

## **TENANTS PURCHASE SCHEME**

**MR LAU KONG-WAH** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Madam President, over the past one year and a half, I have been asked by many public housing tenants, "When are they going to sell the public housing unit I am living in?" I am sorry that I cannot answer this question, because since December 1999, when the Hong Kong Housing Authority (HA) announced the list of units to be sold under Phase 6 of the Tenants Purchase Scheme (TPS), the fate of the TPS after 2003 has remained largely unknown. Public housing tenants who intend to buy their own homes are therefore at a loss as to what they should do. They do not know whether they should buy the Home Ownership Scheme (HOS) flats about to be put on sale or whether they should apply loans under the Home Purchase Loan Scheme to purchase private residential units, nor do they know whether they should wait for the sale of the public housing units in which they are living. If I were a public housing tenant, I would be at a loss too. I have moved this motion today precisely to urge the HA to continue with the implementation of the TPS and announce its future directions as soon as possible.

Since the introduction of the TPS in 1998, the HA has only selected Trident blocks with an age of eight years to 12 years for sale. The TPS has been well-received by tenants since its introduction. According to the statistics of the Housing Department (HD), the average purchase rate for the past three phases is higher than 70%.

Since the units put on sale in the first three phases were of a high quality, tenants' good responses should not come as any surprise. But whether there would also be good responses in the case of other housing estates is still largely unknown. In order to ascertain public housing tenants' desire to purchase the units in which they are living, the Democratic Alliance for Betterment of Hong Kong (DAB) recently conducted a questionnaire survey among some 1 400 tenants living in 36 public housing estates which are not included in the TPS. Almost 50% of the respondents said that they would consider the idea of purchasing the units they were living in, and only 25% of them said that they would definitely not consider such an idea. The rest of the respondents said that they had not made up their mind. I guess this last group of respondents would like to consider the problems of prices, repairs and maintenance and deeds of mutual covenant (DMCs) first.

I think that the findings of the survey have delivered a very clear message to us, that a considerable number of public housing tenants still wish to be offered some kind of choices under the TPS. It is their right to decide whether to make any purchase, but they also think that the Government is obligated to proceed with the TPS, and that it must discharge its obligation as quickly as possible.

I have asked the HA to announce the list of units to be sold as soon as possible, because I hope that tenants can thus make early planning and be offered some kind of choices. Once it becomes known some units will not be put on sale, then the tenants concerned will not have to wait indefinitely, and they can make other choices, such as buying properties in the private market. This is far better than asking them to wait.

Under the early phases of the TPS, the units selected by the HA for sale were Trident blocks with an age of eight years to 12 years. But the housing estates that can satisfy these requirements are getting increasingly small in number. If the HA continues to keep these requirements, one problem will inevitably arise: What types of public housing units will be sold in the future?

In the past, the public housing blocks put on sale were mostly Trident blocks, with also a small number of slab blocks, H blocks and twin-H blocks. The DAB is of the view that the scope of the TPS can be extended to cover these types of blocks. Naturally, there must be some kind of quality assurance for these blocks before they are put on sale.

As I said just now, the TPS has been able to command tenants' support in general. But tenants are also worried that poor quality may make the units they buy something like "chicken ribs" — tasteless to the tongue, but a bit of a waste to dispose of. Experience tells me that there were lots of disputes between tenants and the HD over the units sold under the past three phases of the TPS, and most of these disputes were related precisely to the repairs and maintenance of the units concerned.

Since some individual units have not been maintained properly, the HD cannot possibly fix all problems all at one go. This has proven to be a source of frustration for tenants. Very often, repair and maintenance works simply drag on for more than a year.

Our earlier survey relating to public housing units put on sale shows that 39.2% of the respondents think that the most important consideration involving the purchase of public housing units is the problem of maintenance and repair. If the HD wishes to maintain the popularity of the TPS among tenants, it must show its utmost sincerity by completing all maintenance and repair works before the housing blocks are put on sale. Only this can give tenants confidence. And, even after purchase, the HD must continue to undertake repairs and maintenance as promised.

In the past, when asked what factors they would consider in deciding whether to purchase the units they were living in, they would mostly refer to prices and maintenance and repairs. However, after the third phase, more and more tenants have started to focus on DMCs. The inclusion or otherwise of slopes and roads in a DMC and the sharing of maintenance costs under it have become the focus of a new round of struggle between the Government and tenants.

For private properties, the developer concerned will not even know who the buyers may be at the time when the DMC is drawn up. The biggest difference between the TPS and the purchase of private properties is that in the

case of the former, all potential buyers are already living in the units they may buy. But at the same time, the DMC is not yet drawn up. That being the case, the HA, as a responsible developer, should really consult tenants when it draws up the DMC.

What is actually happening now is that the tenants concerned will have access to the English version of the DMC only weeks before actual sale. And, the Chinese version will be available even months later. But in the meantime, the HD would encourage people to make purchase as early as possible, saying that purchases made in the first year would be given discount on discount. This is a complete disregard for consumers' right to information. Is this fair?

Therefore, we urge the HD to consult the tenants concerned on the contents of the DMC before actual sale, that is, three months before tenants are required to submit their letters of intent. Madam President, the primary aim of the motion today is to perfect the TPS now being implemented. It also aims to minimize the conflicts between the HD and tenants, so as to achieve a win-win solution for both. I sincerely urge Members to support the motion. Thank you.

**Mr LAU Kong-wah moved the following motion: (Translation)**

"That, in order to improve the Hong Kong Housing Authority's Tenants Purchase Scheme (TPS) and satisfy the needs of public housing residents, this Council urges the Housing Authority to:

- (a) expeditiously announce its plan for the sale of public housing flats after 2003;
- (b) extend the TPS to cover other types of public housing blocks apart from Trident blocks;
- (c) ensure that, before the sale of housing estates under the TPS, all the necessary repair and maintenance works are completed; and
- (d) consult the residents concerned on the contents of the deeds of mutual covenant for TPS estates not later than three months prior to the receipt of their letters of intent to buy the flats."

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

**PRESIDENT** (in Cantonese): Mr Frederick FUNG and Mr Albert HO will move amendments to this motion. Their amendments have been printed on the Agenda. In accordance with the Rules of Procedure, the motion and the two amendments will now be debated together in a joint debate.

I will call upon Mr Frederick FUNG to speak first, to be followed by Mr Albert HO; but no amendments are to be moved at this stage.

**MR FREDERICK FUNG** (in Cantonese): Madam President, I propose an amendment to the motion on the Tenants Purchase Scheme (TPS) today in the hope that the Government of the Hong Kong Special Administrative Region (SAR) would not sacrifice the interests of the participants in the TPS for the accomplishment of the ambition that 70% of households would own their flats by the end of 2007. Although tenants would enjoy "super-value concessionary sale prices", they would have to pay a heavy price in building maintenance in future. Since the implementation of the TPS in 1998, three phases of sale have been completed and the fourth phase is in progress. However, there have been many problems including the pre-sale repair and maintenance works as well as transparency in the formulation of the deed of mutual covenant (DMC) and the degree of participation by the residents. I would propose amendments to the Honourable LAU Kong-wah's motion in three aspects: selling price, maintenance and the DMC.

Concerning maintenance, if tenants buy their flats within the first two years of the launch of the TPS, they can enjoy special discount on the selling price. Let me take the selling price of a flat under Phase 4 of the TPS as an example. If the flat is bought in the first year, the selling price is as low as around 20% of the market value of the flat, but if the flat is bought in the second year, the selling price is around 33% of the market value. However, the pre-sale maintenance progress and the varied maintenance quality of the flat often deter families who intend to purchase their flats. Taking the King Lam Estate in Tseung Kwan O as an example, the flats will be sold within this year but the progress of pre-sale maintenance works has been very slow. A resident complained that he requested the HD to repair the leakage on the ceiling of his

flat after he had submitted a letter of intent but the contractor failed to finalize the date on which the maintenance works would be carried out. As a result, the resident lost confidence in the quality of the flat to be sold and he finally gave up buying the flat.

Although the HD has promised to replace the seriously rusted pig iron sewers of some buildings, three to four months have passed but it has not carried out any inspection work. Therefore, the residents of the King Lam Estate are worried about whether the HD would complete the repair works before the sale or whether it would bargain with them after they have bought their flats. The residents are also worried that they may have to bear the enormous financial responsibilities for the repair works in future. The residents of the sold Chuk Yuen (North) Estate in Wong Tai Sin have filed complaints with the Complaints Division of the Legislative Council and requested the HD to replace all the water pipes in the Yiu On Estate, the Wah Ming Estate and the Chuk Yuen (North) Estate with copper pipes.

Even though the HD has promised to carry out repairs works, the residents find the varied standards of the repairs works carried out by outsourced contractors worrying. Although the sale of flats with repairs works carried out last year has not yet closed, there have been problems with the repairs of individual units including the mending of sewers. This reflects that the HD has supervised and followed up the repair works insufficiently, as a result the residents lack confidence in the TPS. The residents think that the HD is just paying lip service in saying that there will be comprehensive repairs and maintenance because the contractors often carry out the repairs in a slapdash manner without any assurance in respect of time and quality. The residents who intend to buy their flats are really worried.

The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I think that, to ensure the quality of the public housing flats offered for sale, the authorities must provide basic assurance for the facilities and repair works of the housing estates for sale as well as formulate effective measures to monitor the repairs and maintenance of buildings. They should also provide suitable warranty periods for the repair works before sale so that the residents will really have a "cosy nest".

The residents are facing another problem in regard to the DMC, that is, the transparency of the formulation of the DMC and the degree of participation

by residents. At present, the Housing Authority (HA) does not consult the residents of the affected estates when formulating the contents of the DMC, and there is a chance that it may formulate provisions that are unfair to the residents. Let me take the King Lam Estate as an example again. The residents only knew that there were many unfair provisions in the DMC when they received the sale brochure but they could not amend such provisions. For example, the DMC specified that the owners of the King Lam Estate would be responsible for the expenses on the construction, repairs and maintenance of the two MTR exits in the King Lam Estate in future. The residents strongly reflected their views after they had become aware of the point, and contended that the undertaking made by the HD to the Mass Transit Railway Corporation should not be shifted on to the residents who bought their flats. The subsequent development was amazing. Thanks to the strong protests by the residents, the HD finally promised to bear the expenses of the construction of the two exits. Why did the HD not tell the residents clearly in advance what were the responsibilities of the HD and the residents and how they were demarcated in the DMC?

The residents of the Li Cheng Uk Estate to be sold in early 2002 are also worried about whether the DMC would contain unfair provisions. The most controversial point is whether the Han Garden should be incorporated into the scope of the DMC. The residents think that the Han Garden is designed to beautify the surrounding environment and it is a public amenity. The Han Garden is in tune with the adjacent tomb and the tomb should be merged into one tourist spot; thus, it should not be incorporated into the scope of the DMC of the public housing for sale. The authorities have not responded to the views expressed by the residents during the last two to three years and the residents are worried that the colossal Han Garden is beyond the management capability of an owners' corporation. We think that the authorities should publicly consult the residents on the contents of the DMC of the housing estates affected by the TPS. This can reduce controversies over the sale of public housing in future, and I believe a consensus reached between both parties would be helpful to the sale of public housing units.

Concerning the implementation of flexible selling prices for public housing, the ADPL and I hope that the authorities would consider the introduction of discount-on-demand under the TPS, for instance, from 10% to 50% of the market value of a flat, so that the residents who intend to buy their flats can make more flexible financial arrangements. For the first phase of public housing sold in 1999, the HA first gave the residents a 70% discount and then a further 60%

discount, thus, it sold the flats to the residents at 12% of the market value. In the latest phase, it first gave the residents a 55% discount and then another 55% discount, thus, it sold the flats to the residents at around 20% of the market value. Therefore, the selling price differs from year to year. The ADPL thinks that, if the authorities can flexibly allow the residents to choose a concessionary price according to their ability, it would facilitate the residents in choosing the proportion of the selling price that they would pay. I have only given 10% to 50% as an example and we should discuss the best percentage in the future. I think that the HA can determine in future the second discount on the basis of the market value. Regarding repair, the DMC and the selling price, if the Government can suit the needs and situation of the residents and make reasonable and fair arrangements, I believe the TPS would be more effective and successful.

If the SAR Government wishes to achieve the objective of having 70% of the households own their flats by the end of 2007, besides achieving the objective in terms of quantity, the authorities should also establish an effective monitoring mechanism and provide basic assurance for the quality of pre-sale repair work of the flats, before the residents can have confidence in buying their "cosy nests" and the Hong Kong society can become more prosperous and stable.

Madam President, I so submit.

**MR ALBERT HO** (in Cantonese): Madam President, the HA started the sale of flats under Phase 1 of the Tenants Purchase Scheme (TPS) in 1998 and it has so far sold over 100 000 flats. The response has been quite satisfactory. But problems have gradually emerged in the past few years in respect of the sale of public housing. Thus, the Democratic Party thinks that it is the right time to conduct a comprehensive review of the TPS.

The Panel on Housing has discussed the TPS thrice in this legislative year. It discussed whether transparency of the formulation of the deeds of mutual covenant (DMCs) of the TPS estates could be enhanced and explored the repair and management problems of TPS estates. I indicated to the representative of the authorities on each occasion that, before the sale of TPS estates, the Government should first comprehensively consult the residents, in particular, it should spend more time listening to the views of the residents on the lot boundaries and the contents of the DMCs. This point earned the support of many Honourable colleagues of this Council.

I understand that the authorities are considering Members' views and they would conduct a public consultation on the DMCs of TPS estates. The Democratic Party warmly welcomes this and I think that the authorities must also consider consulting the residents on the demarcation of lot boundaries. Merely conducting a consultation on the DMCs cannot solve the problem, besides, the authorities do not have a specific timetable and they have not specified how long before the sale would the consultation be conducted. Therefore, the Democratic Party has proposed in the amendment that the residents should be consulted on the demarcation of lot boundaries and the contents of the DMCs of TPS estates not later than six months or three months respectively prior to submitting of their letters of intent to buy the flats.

Madam President, the residents who have attended the residents' assemblies on the sale of public housing must know that the residents would certainly raise a hubbub when the Government explained the contents of the DMCs and the demarcation of lot boundaries. It was because most of the residents who wished to buy their flats had discovered that the HA very often demarcated additional public places for repair and some parts of the lot boundaries demarcated for management by the potential owners were out of their expectation, in particular, such lot boundaries included a large number of slopes. Taking the Chuk Yuen North Estate and the Leung King Estate in Tuen Mun as examples, the repairs of slopes really put mental pressure on the residents because they do not know when large-scale repairs of the slopes will be required. A lot of areas have long been used as public places but not for the exclusive use of a particular housing estate, yet, they would be demarcated as the boundaries of the housing estate to be sold, therefore, many residents are dissatisfied. We think that the owners should first discuss these problems and express their views before the HA prudently studies and considers them. The final decision to be made by the HA will certainly affect the desire of residents to buy the flats they are living in.

I have also mentioned in my amendment the hope that the HA will assist the owners in setting up owners' corporations (OCs) to protect the rights and interests of both owners and tenants. It is because the owners of TPS estates do not have any experience in the management of large estates and they have relied on the HD as their management agent for over a decade in the past, therefore, the Government should take the initiative to help these OCs. For instance, the Home Affairs Department should assist them in setting up OCs, and the HA should make transitional arrangements and provide professional support at the

initial stages after OCs have been set up. The HD as the principal owner should give advice on the daily operation of the OCs and assist in their smooth operation. As the HA participates in the work of the OCs as both an owner and a tenant, it has the responsibility of balancing the interests of owners and tenants.

The HA must ensure the completion of all the promised repair and maintenance work before the sale of public housing, and it should also bear responsibility for the repairs requested by the residents before they buy their flats for a reasonable period after the sale of the flats. The Democratic Party suggests a two-year maintenance and repair period to induce in the residents more confidence in buying public housing flats. Later, the Honourable Fred LI would further elaborate the position of the Democratic Party.

We basically support the original motion of Mr LAU Kong-wah. Based on the three-year rolling programme of the HA, the public will know what TPS estates will be available three years later. Around June to July every year, the HA will announce a new phase of the sale of public housing flats. As it announced the Phase 6A and Phase 6B sale of public housing flats in 2002 last year, it should announce the list for the sale of public housing flats in 2003. The Democratic Party thinks that it should expeditiously announce the future plans for the sale of public housing flats and we therefore support the original motion.

The Democratic Party also supports extending the scope of the TPS to cover other types of public housing blocks apart from Trident blocks because most of the TPS estates announced so far are Trident blocks and new linear blocks taken occupation between 1982 to 1992. I know that some residents in newer estates have earnest expectation for the flats they are living in. Therefore, the Democratic Party suggests the sale of some public housing estates such as harmony blocks taken occupation between 1993 to 1996 to meet the home ownership aspiration of public housing residents.

Yet, I must remind the Government not to think that it can put down the burden of looking after the housing needs of the lower class with the sale of all public housing flats. The Democratic Party emphasizes again that the Government has the responsibility to fulfil its promise of building not less than 50 000 public housing flats mainly for rental purposes and that it should take up the fundamental social responsibility of providing the needy families with housing.

Lastly, I would like to talk about Mr Frederick FUNG's amendment. The contents of Mr Frederick FUNG's amendment are actually very similar to our views. For instance, the points concerning the quality of facilities in the estates, the measures for monitoring the repairs of the buildings, the warranty period and the request for a consultation on the contents of the DMCs are almost entirely the same as our views. However, the Democratic Party has reservations about Mr Frederick FUNG's point in urging the HA to consider implementing a flexible pricing scheme for the sale of public housing flats where the residents are allowed to choose the levels of discount equivalent to, for example, 10% to 50% of the assessed market value. If a resident buys his flat at 10% of the assessed market value but if he will only buy 10% of the ownership, there will be significant problems in the future because 90% of the ownership is still in the hands of the HA. Although the resident can pay off the assessed market value very soon, he may mistakenly think that he is the owner but 90% of the ownership is actually still in the hands of the HA. So, the resident has to pay the HA 90% of the assessed market value when he sells his flat in the future. Therefore, he has only bought a rent-free lease. We will not support such a policy for the sale of public housing flats. Mr FUNG has just told me that it may be 10% after the discounted price but as the contents of the amendment are not too explicit, I am afraid that there may be some misunderstanding. Now that my amendment is almost the same as that of Mr Frederick FUNG, I hope Mr FUNG would not mind supporting my amendment, for both of us want to achieve the same objective after all. I so submit. Thank you, Madam President.

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, first of all, I wish to declare an interest. I am the representative of the Architectural, Surveying and Planning Functional Constituency in this Council. I am a professional surveyor, and the company that I work for has tendered for consultancy contracts for repair and maintenance projects of the HD.

Regarding the motion moved by Mr LAU Kong-wah, and the amendments of Mr Frederick FUNG and Mr Albert HO, I would like to focus on the repairs and maintenance of housing estates, formulation of the deed of mutual covenant (DMC) and demarcation of lot boundaries for housing estates, which are related to the surveying sector.

Overall speaking, I am in support of the TPS for public housing is, after all, a kind of public resources. After the tenants have lived in public housing flats for a certain period of time and as their financial conditions have improved with the government subsidies given to them, they should purchase flats under the Home Ownership Scheme (HOS) or flats in the private sector, so that their flats can be vacated for allocation to other citizens who are in greater need. But for various reasons, some tenants may not wish to move out but are willing to purchase the flats in which they are living. The TPS thus came into existence under such circumstances.

According to the information of the HD, as at May this year, a total of 60 952 flats have been sold since the TPS was launched in 1998, accounting for 56% of the flats put up for sale. Nevertheless, the overall subscription rate was dragged down by the fact that Phase 4 of the TPS has just been launched. So, if we do not factor in the figures of Phase 4, the subscription rate of Phases 1 to 3 should be 71%. From the perspective of the utilization of public housing resources, the TPS ceases the provision of subsidies to better-off tenants through the sale of public housing flats, but it cannot help increase the turnover rate of public housing flats. Nor can it help shorten the Waiting List for public housing because the more flats sold to sitting tenants, the less flats will be available for people on the Waiting List. At present, there are still 108 000 applicants on the Waiting List. Now that the TPS has been implemented for three years, I think it is now an appropriate time for the TPS to be reviewed with the HOS, the well-off tenant policy, and so on, altogether.

Mr LAU Kong-wah, Mr Frederick FUNG and Mr Albert HO all propose that the list of public housing estates to be put up for sale be announced expeditiously and that the scope of TPS estates be extended. Being a professional surveyor, I must point out that I have reservations about the suitability of some public housing estates to be offered for sale. The HA should clarify this as soon as possible.

In fact, housing estates under the HA are exempted from the regulation of the Buildings Ordinance. If public housing estates earmarked for sale are assessed against the standards of the Buildings Ordinance, some estates of new slab and double-H types may not meet the requirements of the Buildings Ordinance in respect of the width of fire exits and fire resistance of corridors. In the past, fire safety assessments had been carried out on trident blocks before they were put up for sale by the HA. While they were not found to be in full

compliance with the standards stipulated in the Buildings Ordinance, the results were still considered acceptable. I think if the HA will further put up public housing flats for sale, it should thoroughly resolve the problem of public housing flats failing to meet the Building Ordinance standards. The HA should at least conduct similar fire safety assessments on estates of new slab and double-H types.

Another issue of concern to residents is the repairs of their flats. In fact, the HD performs regular repairs and maintenance for public housing flats, whether they are for sale or rental. For flats earmarked to be put up for sale, the HD will carry out more detailed and comprehensive repair work. The most common complaints received now concern leakage and damaged main doors. If the leakage problem shows no improvement despite repeated repairs, it may be due to many reasons involving the original design, poor workmanship, and so on. As for disputes over whether the main door should be replaced or repaired, from the project management viewpoint, they can be settled through negotiation.

As far as I know, the HD has arranged for its repair and maintenance staff to meet with residents at public housing estates, so as to explain to residents the standard of various kinds of repair work, record complaints and clarify misunderstandings. The amendments of Mr Frederick FUNG and Mr Albert HO propose the provision of a defects liability period for the repaired items. In fact, comprehensive maintenance programmes mostly offer a defects liability period ranging from six months to one year. But as there are numerous causes of damage, sometimes it is indeed difficult to include them all in the tender documents.

After-sale maintenance is another issue that warrants concern. As I have just said, some of the public housing estates fail to meet the standards of the Buildings Ordinance and so, they can be considered as having congenital deficiencies. If the HD will assume the responsibility of maintenance, these deficiencies may perhaps be rectified. But after the public housing flats are sold, most of the residents will have become owners and only a minority of them will remain as tenants. As they have different considerations, it is very difficult to guarantee the quality of maintenance. For example, in Chuk Yuen (North) Estate which was put up for sale under Phase 2, the owners' corporation has not replaced the water pipes due to the cost of the repair work.

Concerning the DMCs for the sold flats, there was no DMC for these flats before as the HA was the sole owner. With the introduction of the TPS, the DMCs are generally drafted by the HD which will then commission private legal practitioners to formalize the terms therein. But I must add that the DMCs are governed by the Buildings Ordinance and need to be approved by the Lands Department. Therefore, I think the HA will not include in the DMCs terms that work to the disadvantage of tenants.

Another issue closely related to the responsibilities consequential to the DMC is the lot boundaries for TPS estates, which had been discussed in the Panel on Housing. As far as I know, the lot boundaries for TPS estates are already defined in the Vesting Order. A more contentious issue now is that the common facilities in the estates, such as slopes and playgrounds, may have to be redelineated and the costs for managing and repairing these facilities will have to be shared. Take a ball court in an estate as an example. Will there really be a great difference between vesting the ownership of the ball court in an adjoining school and vesting it in the estate? In the former case, the school may enclose the ball court with iron fencing, barring residents from using the court. If so, will there be opposition from the residents? On the contrary, if the ownership is vested in the residents, will the residents prohibit students from using the ball court? In fact, what we are discussing here is the use of common facilities in a community. So long as the costs of repair are shared in a reasonable manner, why argue over the ownership? By the same token, if slopes are not properly maintained, who will suffer eventually? So, on this very issue, so long as all parties can discuss it calmly, they should be able to find a solution acceptable to all.

Madam President, I so submit.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, Phase 4 of the TPS has just been implemented and residents who have bought or will buy their flats have reflected their views on the TPS. I would like to reflect their views on the pre-sale repair work, the announcement of all public housing estates earmarked for sale as well as the operation of the owners' corporations (OCs).

The residents will consider whether the selling prices are reasonable before buying the flats, but the quality of the flats is also an important factor for consideration. Therefore, they are very concerned about the pre-sale repair

work, especially for housing estates that are more than 10 years old. During the last four phases of the scheme, I organized several consultative meetings for the residents on the TPS. Hundreds of residents attended on each occasion, and I would immediately answer their questions on the TPS. The residents expressed that they were most concerned about the repair work because some of their flats were seriously dilapidated but their requests for repair were often turned down by the HD. Thus, the residents were very upset and they had complaints about the HD. Although the HD told them that there would be comprehensive pre-sale maintenance, it was misleading because their requests for repair were often turned down. How could they buy their flats? Although we know that the HD has a set of criteria for repairs, many residents are not clear about the criteria and the criteria are quite different from their requests. Moreover, the residents have misunderstandings probably because the brochures of the HA were exquisitely printed.

The relation between the contractor responsible for the repair works and the residents during the repair period is not pleasant. One example is that, before the contractor came to repair something, he would ask the residents to wait for him at home but he often failed to keep the appointment and the residents who had taken leave would be kept waiting for the whole day. This slowed down the progress of repairs and affected the work and daily life of the residents.

I have recently heard about an interesting phenomenon. The pre-sale repair work of some estates was suspended because the HD "lacked water", I was not talking about the water from the tap but that the HD did not have money to carry out the remaining repair work. Therefore, some residents who wanted to buy their flats became very anxious. While the flats were not repaired, the deadline for purchase at the most favourable prices were drawing nearer and nearer. This showed that the HA failed to improve communication with the residents after it had announced the TPS.

I eagerly support the suggestion made by Mr LAU Kong-wah that the HA should expeditiously announce its plan for the sale of public housing flats after 2003. This would really provide the residents with a comprehensive blueprint and they would have sufficient time to understand the particulars and progress of the TPS in order to make the relevant arrangements and plans. Announcing the lists would also help to provide sufficient time and space for the repair work in the housing estates and facilitate more flexible deployment of resources.

Lastly, after the sale of public housing flats, the HA would urge the owners to set up OCs so that it could be released earlier. But as the relationship between OCs and the original Mutual Aid Committees (MACs) has not been defined, there will be a lot of arguments. As some newly set up OCs will fail to appoint management agents in a short span of time, the owners have to rely on the management agents appointed by the HD to manage the housing estates. The residents who have just become owners are still accustomed to asking the HD to repair some public facilities in the estates, but the HD officials would very often say that the OCs are responsible and ask the owners to request the OCs to take action. Nevertheless, the OCs will say that it is impossible for the repair work to proceed because management agents have not been appointed. Therefore, the residents are pushed here and there, feeling that they are being made fools. Earlier, I proposed a motion urging the Government to assist in the operation of the OCs and the MACs because I understand how difficult it is for an OC set up under the TPS to manage a large housing estate with 7 000 to 8 000 residents. The above example shows that the HD, with its rich experience in estate management, should actively assist the OCs during the transitional period for the sake of effective estate management. Otherwise, the residents' confidence in estate management will ultimately be undermined. I hope that the HD will pay more attention to this.

The debate today gives the Administration a very good chance to understand the residents' views and requests so that it can effectively make improvements when launching other phases of the TPS in the future.

I so submit.

**DR RAYMOND HO** (in Cantonese): Madam President, since its implementation in 1998, the TPS has received both favourable and unfavourable responses. On the one hand, people are very delighted that they can purchase the units they are living in at very low prices, but on the other, they are worried that they may have to pay very high maintenance and repair costs in the future, and they also fear that they may even have to pay for the maintenance of the slopes situated in areas falling under their title. In this connection I have one question in mind: The TPS is basically meant to enable more people to buy their own homes, so that the Government can spend the resources which otherwise have to be used for providing public housing on other purposes. But can the TPS really benefit both the people and the Government?

Admittedly, since the prices of the units offered under the TPS are far lower than those of private properties, the TPS is indeed good news to potential home buyers. However, since many of the housing estates to be sold under the TPS are already ageing and their prospective owners may thus have to bear maintenance costs in the future, there is really a very big question mark over the attractiveness of the TPS. Take Tai Wo Estate as an example. It was included in the TPS last year, but it is already 11 years old. According to press reports, there was a complaint from a tenant there in the middle of last month about the poor quality of the original iron window frame fittings. It was reported that an iron window frame fell down onto the street. Suppose the tenant concerned is now the owner of the unit, he will have to replace the iron window frame at his own expense. But the costs of buying a new window frame and replacement are very high. Is this not a burden to prospective home buyers?

From the perspective of the Government, the TPS is also plagued with shortcomings. Public housing units are now sold at prices below construction costs, so this alone is already a blow to the Treasury. And, when we examine the TPS more carefully, we may discover that there are more serious problems. As we all know, many well-off tenants are living in public rental housing estates. Years back, the Government introduced the double rental scheme to induce these well-off tenants to vacate their units. Naturally, many of these so-called well-off tenants are not necessarily very, very rich as imagined, and their household income is just slightly over the prescribed level. But the point is that many others are indeed very, very rich — they do not only own private cars, but they also own private properties though they are living in public housing units. The rentals they get every month can already support their living. Under the TPS, there is a moratorium of two years, meaning that a unit purchased can be offered for re-sale two years after purchase. Does this not mean an opportunity of making money for these well-off tenants? I understand that the prices of the units purchased by some owners in 1998 have gone up instead of down since the financial turmoil. The rates of increase for Wah Kwai Estate have been especially high. There have since been four transactions, and the average rate of profits reaped by the owners in these transactions is higher than 120%, and in the case of one of them, the rate is even as high as 138%. This tells us the TPS may actually be used for making money, very much contrary to the original intent of the Government. I am of the view that instead of inducing those who are less well-off to buy their own homes, the Government should spend more resources on preventing people from fishing in troubled waters.

Since the financial turmoil, the property market has plunged into prolonged sluggishness. If the Government continues with the TPS, the situation of the property market will only become worse, resulting in waves after waves of layoffs. Actually, the rationale behind the TPS is very good, because it can enable people to buy the units they are living in at very low prices. The point, however, is that the economy of Hong Kong is still in bad shape. If people still purchase housing units in spite of their difficulties, they will only become even more hard up, and various social problems will probably arise. I am of the view that the focus of public housing operation of the provision should always be rental housing, and there should be a reasonable limit for construction of HOS units, lest the operation of the property market may be impeded. I also think that even if the Government wishes to encourage people to buy their own homes, the most it should do should be to promote economic development. As long as people are financially well-off, they will naturally long for a better living environment. When this happens, people will give up their public housing units and buy private properties. That way, more public housing units will be made available to those in genuine need.

The TPS has been implemented for quite some time. Irrespective of whether or not the motion can be passed today, still I sincerely hope that the Government can review the TPS at regular intervals, so as to serve the best interest of the people of Hong Kong.

Madam President, I so submit.

**MR FRED LI** (in Cantonese): Madam President, in the next two years, the HA will put up 15 estates for sale under Phases 5, 6A, 6B, and so on of the TPS. I notice that the TPS estates to be offered for sale are generally older, compared to those put up for sale under previous phases. Therefore, the authorities must conduct stringent pre-sale surveys to ensure that the buildings are in good condition.

Before putting up TPS estates for sale, the HA will distribute repair request forms among residents, and the flats will be offered for sale after the completion of repair and maintenance work. However, there is no express provision requiring the authorities to undertake the responsibility of maintenance for items repaired at residents' request. In some estates, residents are given an undertaking that a six-month guarantee will be provided for specified items

repaired at residents' request before the sale, but some estates are not given any undertaking of a defects liability period. For this reason, Mr Albert HO proposes that the HA should continue to undertake responsibility for the maintenance of the repaired items within a reasonable period of time — we propose that it should be the first two years — after the sale of such flats.

Take TPS estates in Kowloon East as an example. Many residents complained that the attitude of the HA was very good before they purchased their flats, but after they have purchased their flats, the progress of repair work is sluggish and the repair work invariably fails to rectify the problems, particularly the problem of plaster spalling from the ceiling, which is very serious. This has thus undermined public confidence in purchasing public housing flats.

At present, the HA provides a seven-year structural guarantee for each TPS estate, and will complete the repair work as required by the maintenance programme, such as inspecting the elevators and repairing water mains and ancillary facilities. However, problems such as seepage at ceiling, replacement of the existing pipes by copper pipes, and so on, have caused many disputes. I know that fresh water pipes of buildings are not replaced for TPS estates in Phases 1 and 2, but all fresh water pipes are replaced for all TPS estates under Phases 3 and 4. This handling method has resulted in complaints from the residents. In Chuk Yuen (North) Estate in Phase 2, for example, all fresh water pipes are replaced at a cost of \$12 million, with each household bearing about \$1,900 on an average. But it already accounts for one seventh of the maintenance fund financed by the HA. With the continued dilapidation of the buildings, the Democratic Party is concerned that the maintenance fund, which amounts to \$14,000 per flat, may not necessarily be enough to cover the repair and maintenance expenses.

In fact, the deed of mutual covenant (DMC) for Chuk Yuen (North) Estate has mentioned the repairs and maintenance of water pipes within the flats, but the provisions are unclear. DMCs for the TPS are drafted only in accordance with the guidelines issued by the Legal Advisory and Conveyancing Office of the Lands Department, without consultation with the residents. Prospective purchasers can only check the terms of the DMC at the estate office shortly before the sale. The authorities are now considering consultation with residents on the contents of the DMCs, which is an improvement. But as Mr Albert HO has said, consultation with residents is more important to the demarcation of the lot boundaries of TPS estates.

The Government's purpose in demarcating the lot boundaries of estates before their sale is to include the areas and facilities serving and affecting the estates in the lot boundaries under the control, ownership, management and maintenance by owners. From past experience, the lot boundaries are often different from the boundaries of the common areas in the past. So, the determination of the lot boundaries for TPS estates by the authorities has often aroused dissatisfaction from residents. Therefore, the Democratic Party proposes that the Government should communicate with residents on the demarcation of lot boundaries six months prior to the sale. On the one hand, so doing will enable the Government to listen to the views of prospective purchasers and discuss with them on all related matters, thereby avoiding unnecessary disputes. On the other hand, residents can be psychologically prepared for the extent of responsibility they will have to bear in future, and they can have ample time to consider whether or not to purchase the public housing flats where they live.

After the consultation on the lot boundaries is completed, at least three months should be allowed for consultation with the residents on the contents of the DMCs. If the demarcation of lot boundaries is settled, the responsibility for repairs and management should, therefore, be shared in proportion to the shares of ownership and so, the remaining problems concerning the DMC will be a lot more simpler. Should there be anything on which a consensus has yet been reached, the HD and the residents can still avail themselves to the last opportunity for discussion and communication. Therefore, prior consultation is greatly beneficial to both parties and can avoid many unnecessary disputes. For this reason, the Democratic Party reiterates that the HA must consult the residents on the demarcation of lot boundaries and the contents of the DMCs of TPS estates before the receipt of residents' letters of intent to buy the flats.

Recently, I have been to Hing Tin Estate, Lam Tin, one of the estates offered for sale in the current phase. Residents there drew my attention to one point and I hope the HD can consider it. Under the present arrangement, vacant flats in the relevant estates will be frozen three months prior to the sale, so that tenants who do not wish to buy the flats where they live can submit applications to buy these vacant flats when the estates are put up for sale, and the response is very good. The flats of tenants who have successfully purchased the vacant flats can then be vacated, so that other tenants of the estate who have not yet decided whether or not to buy their flats can have more choices. Therefore, we propose that within the first year after an estate is put up for sale, tenants

should be allowed to have a second or even third round of choice, so that tenants who do not wish to buy their flats can choose to buy flats vacated by other tenants of the estate. This is certainly better than allowing tenants only one round of choice and then putting up the rest of the vacant flats for sale in the open market. Giving more choices to the tenants will, I believe, provide an incentive for them to buy public housing flats. I hope the HD will consider this view in future when putting up estates Harmony type, and so on for sale.

Finally, I wish to emphasize that in selling public housing flats, the HD must continue to oversee the services provided for tenants. With regard to the interest of tenants, the Democratic Party hopes that the HA will take care of the needs of tenants who do not purchase their flats and ensure that the standard of housing services and quality in the estates will not fall. I learn that the estate office in some public housing estates will be closed, as a result tenants have to pay their rent at the office of another housing estate. This will cause great inconvenience to tenants, particularly the elderly. I hope that the HD will not merge three or even four estate offices into one, in which case tenants will have to run around in order to pay their rent. The Democratic Party hopes that the HA will maintain the service standard in the interest of public housing tenants and look after their needs. Madam President, I so submit.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, I must first emphasize that the TPS of the HA has been a success, with good responses from tenants. That said, I must add that buying a home is a major decision in one's life, and so those public housing tenants who are not so well-off will certainly not make any rash decision and spend all their savings on purchasing a poorly maintained housing unit which may give them big headaches in the future. The HA can also appreciate the concern of the tenants, which is why it has undertaken to carry out all the repairs required before putting a housing unit on sale. However, the actual situation is that the HD invariably cannot complete the repairs before the sale. Purchasers are offered discount on discount if they make their purchases during the first year. But it is still largely unknown whether the units they are going to buy will be properly repaired before sale. This is precisely the problem which I hope Members can look at today.

In order to encourage tenants to buy the units they are living in as soon as possible, the HA offers "discount on discount" to people who make purchases within the first two years after their units are put on sale. However, there are

still repair and maintenance problems with some units; people still do not know whether the problems can be effectively fixed, nor do they know when the repair works can be completed. This explains the hesitation of some tenants.

Our motion today aims to urge the HA to complete all required repair and maintenance works before sale. However, if the HD really cannot do so, I would think that it should make some alternative arrangements. One example is that it should re-define the special offer period. Put simply, I hope that the commencement of the special offer period can be deferred to the day when the repair works required are completed, instead of being fixed on the date when the units concerned are formally put on sale. I am sure that this will give people more confidence in making purchases. Besides, the HD should also select repair contractors very carefully and set down strict requirements in respect of the quality of their works and staff. The practice of sub-contracting should be strictly prohibited, so as to ensure that all repair works can be completed as scheduled.

I also wish to say a few words on the pace of outsourcing the management of housing estates. With the implementation of the TPS, more units are expected to be put under the management of private companies, and the role of the HD in housing estate management will continue to decrease. Moreover, the management of all newly completed housing estates under the HD are now outsourced to private companies, and the management of old estates is also being outsourced in stages. As far as I know, the HA task force on review of the privatization of public housing estate management has recently approved the proposal on increasing the pace of outsourcing. It is expected that the management of nearly 300 000 units will have been outsourced and taken over by private housing management companies during 2000-2004.

I think the HD should really consider very carefully whether it is a bit too fast to outsource the management of nearly half of its housing estates in a matter of just four to five years. I am worried that a quicker pace of outsourcing may create three problems. First, can the pace of structural rationalization within the HD keep pace with that of outsourcing? Three hundred thousand units constitute almost half of all public housing units. That being the case, does it mean that there will be massive cuts in manpower? If its existing staff choose not to resign, how is the HD going to deal with the problem of surplus manpower? Therefore, I hope that the HD can reconsider the urgency and necessity of quickening the pace of outsourcing. Failing this, co-ordination problems in respect of establishment will certainly emerge.

The second problem is connected with the quality of management companies chosen under the outsourcing scheme. The management of as many as 300 000 public housing units will be outsourced to private management companies. This number is by no means small. Many new management companies will no doubt spring up as a result, and some of them may even be able to bid successfully for the management of a dozen housing estates, but I am worried that these new companies may not necessarily be competent enough for such a heavy workload. Besides, the HD must also set down very clearly its own responsibilities and those of private management companies, in addition to strengthening its monitoring of these companies in their performance, or else both itself and residents are bound to suffer in the end.

The third problem is connected with the morale of HD staff. While attempting to bring in rationalization of establishment, the HD must seek to provide a good working environment for its staff and offer them training opportunities. I must stress that "rationalization" should not be treated as synonymous to "large-scale manpower curtailment". The HD must still maintain a certain level of housing management services of its own. Therefore, I am of the view that while trying to rationalize establishment, the HD must seek to ensure an adequate degree of competition between the Government and private companies in terms of quality of housing management. This can in turn ensure continuous improvements to service quality.

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

**MR ALBERT CHAN** (in Cantonese): Madam President, the TPS introduced by the Government is actually meant to kill two birds with one stone. On the one hand, it can enable the Government to dislodge its long-term responsibility of managing public rental housing estates. On the other hand, it can also give people the opportunity to purchase their own homes. Without the TPS, many grass-roots people will never be able to buy their own homes. Over the years, statistics of the Government have been showing that financially, public rental housing units on the whole are very much a baggage of the Government, a source of losses, for their maintenance and management are extremely costly. The real sources of profits for the HA are the construction and sale of HOS units and the revenue from HOS shopping arcades.

In regard to the overall operation of the TPS, I think that there is one merit of the HA which really deserves our commendation: the HA will return the authority of housing management to owners at the earliest possible time, in marked contrast both to many large consortia which always try to hold onto such an authority, and also to the Housing Society (HS). The HS will also hold onto such an authority, in an attempt to continue to charge exorbitant manager's fees. Very often, the HS may even refuse to assist owners in forming an Owners' Corporation. The attitude of the HA really deserves our commendation and support, and the HS should learn from it. Well, Madam President, whenever I say anything good about the Government, people always seem to be very much surprised. Perhaps, they may feel more comfortable with criticisms from me. Anyway, the HS must change its attitude and learn from the HA.

Madam President, about the TPS, I wish to focus on the issue of delineating the boundaries of those housing estates to be put up for sale, because it is a matter of far-reaching significance. The planning and land grant approval for public housing estates are fundamentally and conceptually different from those for private housing estates. We all know that the HA is an organization wholly controlled and owned by the Government. The grant of the rights over a piece of land to an organization wholly owned by the Government is an entirely different matter from the grant of a piece of land to a private developer. In the past, whenever a private developer applied for a change of land use, say, from oil depot or agricultural use to the construction of residential development, they had to undertake to construct many public facilities, but the costs of such undertakings could be compensated by the regrant premiums charged on them. Because of the related undertakings, the amounts of regrant premiums they had to pay were often reduced correspondingly. This could lessen their overall commitments, particularly financial commitments. For this reason, when the Government decides to sell a certain public housing estate and delineate its boundaries, it should not automatically adopt all the old boundaries of the housing estate as the new boundaries under sale.

Many Members have mentioned the management problems connected with the slopes, roads, footbridges and other public facilities in a public housing estate. I think the management responsibilities for all these should not be shifted onto those people who have become individual owners after purchasing public housing units. This is because if the land lot for an existing public housing estate had been planned for private property development, then when the Government gave its land grant approval, it might not grant that part of the lot

for common uses to the private developer; it might instead set aside the sites in question for the construction of public facilities. And, even if the Government really granted the sites in question also to the private developer, the latter might not have been willing to use them for the provision of public facilities. The sites might have been used also for housing construction.

Therefore, in terms of both planning principles and concepts, the designated land uses within a land lot used for public housing construction should be a matter very different from those relating to a land lot used for private housing development. Therefore, when the Government decides to sell a public housing estate, it should reassess all the sections and public facilities of the housing estate, examining each of them separately, and taking account of all relevant needs and justifications. It must not mechanically treat all these as a single entity.

If the Government can adopt such an attitude, I am sure that there will be lots of changes in demarcation. I also believe that public housing tenants will certainly find the new boundaries of their housing estates more acceptable. In this case, they will find the arrangement more reasonable when they decide to buy the units and become owners. I wish to point out that the targets of the TPS are just the masses, who are not quite so financially well-off. To them, exorbitant maintenance costs in the future will certainly be a very heavy financial burden. I also wish to point out that in the past, there were many cases of slope and road maintenance and even structural maintenance. Very often, the tenants concerned each had to pay a lot of money, even as much as \$50,000 in some cases, because slope and road maintenance often costs as much as millions.

I hope that the Government can realize what the sale of public housing units will involve, and I also hope that it can take account of the planning concepts and theories mentioned by me. I finally hope that when delineating public housing estate boundaries, it can consider the factors mentioned by me.

**MR HOWARD YOUNG** (in Cantonese): Madam President, the Liberal Party considers that the policy of the sale of public housing flats has its merits. It is because many public housing tenants have long been reasonably well-off, but they still cannot afford to private properties. The sale of public housing flats at concessionary prices can help resolve the home ownership problem of many grass-roots citizens. Moreover, as public housing tenants will become owners,

their sense of belonging can also be enhanced. On the other hand, the HA now has to expend considerable resources on the management and maintenance of public housing flats. The costs incurred are far higher than those in the private sector. The sale of public housing flats will help reduce expenses and streamline the structure.

The motion calls for the expeditious announcement of the plan for the sale of public housing flats after 2003. On this point, the HA will actually announce the estates to be put up for sale in the next three years. So far, announcements have been made only with regard to estates selected for sale in the first six phases up to October 2003. There will soon be an announcement on the subsequent phases, which will certainly give details on public housing flats to be put up for sale in 2004. We surely understand that in calling for the expeditious announcement of estates to be offered for sale three years later, Mr LAU Kong-wah hopes that residents can have ample time for consideration and preparation, and residents, having known the details, will then know which course to take. I do appreciate this point. But if details are announced much too early, it would lead to a lack of flexibility in the scheme. As a result, no adjustment could be made in response to changes in the market, and once adjustments are made in the light of the circumstances, residents would feel that the policy is confusing.

Regarding the plan of the HA to consider putting up for sale public housing blocks other than Trident blocks aged eight to 12 years from 2004 onwards, the Liberal Party considers that the HA must proceed cautiously if newer public housing blocks are offered for sale. Take the Harmony-type blocks as an example. As their design is better, basically they do not differ much from blocks of a similar type under the Home Ownership Scheme (HOS). If they are offered for sale at exceedingly low prices, will it unduly deal a blow to the HOS market and the private-sector market? I think the Government should consider this point. Will it even send a confusing signal to the market, giving people the impression that the housing policies are unclear and confusing market participants? But if they are sold at prices near market value, will it increase the burden of the people? Given the complexity involved, this issue warrants thorough consideration, particularly in view of weak public confidence in the property market. Therefore, we consider that the HA must handle this issue carefully on the principle that flats are sold in an orderly manner.

For the older public housing blocks, our view is that the HA should not deprive tenants of these old estates of the opportunity to purchase their flats. It is because many residents have developed strong emotional ties with the public housing units where they have lived for over a decade and with the community to which they belong as well. So, they do not really mind that their estates are comparatively old. Therefore, if any of the older housing estates is welcomed by residents and if no massive repair work is required, the authorities should actively consider offering them for sale to meet the demand of public housing tenants.

The amendments of Mr Frederick FUNG and Mr Albert HO both mention the repairs and maintenance of public housing flats offered for sale. I wish to add a point or two with regard to the amendments, and I believe these are also issues of concern to many residents.

We all agree that the HD should complete the comprehensive and essential maintenance programme in full before putting up the flats for sale, and all other projects in progress must also be completed prior to the sale of public housing blocks. The costs incurred must be borne by the HA, not by the new maintenance fund set up for owners. Some people may ask why this practice is not adopted for the sale and purchase of private property. It is because public housing flats are not offered for sale individually, but in batches. In other industries, say, an automobile company, a lot of work has to be done to re-finish vehicles before putting them up for sale. Such work is done at an inclusive price for the whole package of work, and the costs are not calculated on an individual basis. So, we should not draw an equal sign between them and individual flats in the private sector. We agree that the HD must strictly observe the principle of completing all repair work before sale, to ensure that pre-sale repair is properly done. Certainly, the Government can reflect these repair costs in the selling price of public housing flats, for it is a rule that the higher the price, the better the quality.

However, we consider that repairs and maintenance should be confined to items that genuinely require repairs as requested by residents before they purchase their flats. As the residents have lived in their flats for quite a long time, they should know well what in their flats require urgent repairs and so, they will be able to point out the necessary repairs by the HD before they purchase their flats. It is also reasonable for the HD to offer a defect liability period for the relevant repaired items. What we understand as "reasonable" is

six months or a period not more than one year, not long-term liability. We consider six months a reasonable period of time. But for problems found by residents after they have purchased the flats, the residents, who have become owners of their flats, will have the duty to shoulder all the repair costs. The HD should not be made to undertake long-term liability. This practice is the same as that in the normal sale and purchase of second-hand property.

These are the points I wish to add with regard to the two amendments. But I would also like to make two more points that warrant particular attention. Mr Albert HO proposes consultation on the demarcation of lot boundaries. I am concerned that this would lead to a "cherry picking" situation. No one would wish to have slopes included within their boundaries, hence no one would be willing to undertake responsibility for the slopes, and this would eventually lead to a quagmire. I think while consultation is necessary, we should at the same time ensure consistency with the practice adopted in the sale and purchase of private property. As to Mr Frederick FUNG's proposal of giving out discount, we certainly do not oppose allowing residents to choose the levels of discount, but most people now tend to choose a lower level of discount to avoid bearing a heavier burden in future. Our view is that while residents can be allowed such choices, is it necessary to offer a discount as much as 50%? We do have misgivings about it.

Madam President, I so submit.

**MR WONG YUNG-KAN** (in Cantonese): Madam President, my office is in Tai Po. There are six public housing estates in this district and the TPS was implemented in several of these estates last year and in the year before last. If we look at the implementation of the TPS and the after-sale services as a whole, we can describe them in this way: "Tenants buy their homes, and the seller shirks his responsibilities".

First, before launching the TPS in Fu Shin, Fu Heng, Wan Tau Tong and Tai Wo Estates in Tai Po, the HD emphasized that pre-sale renovation works would be carried out. In other words, the flats would be renovated free of charge. It is commendable if flats are neatly cleaned up before people move in. But in actually implementing the TPS, the HD was like a narrow-minded goods owner who honoured his promises half-heartedly. For example, the HD carried out lobby renovation works for Linear blocks only but ignored the

Trident blocks. Besides, it only replaced some items but not the others. For instance, the HD only replaced the bathroom and kitchen doors, but turned a blind eye at requests for replacement of damaged main doors lodged by residents before they moved in. Moreover, I think the contractors selected by the HD are of an extremely poor quality, for they have carried out the repair work frivolously, but the HD is not doing its part properly in monitoring their performance. As a result, no pre-sale renovation works have been carried out and many projects are not yet completed even one year into the implementation of the TPS.

The HD did not consult the residents before launching the TPS, and the deeds of mutual covenant were churned out somewhat by a "black-box" operation. As a result, facilities that even residents themselves do not know that they have access are included in the boundaries of the estates, and residents are made to shoulder increasingly higher repair costs. This is grossly unfair to residents of the estates. Besides, the Government has only provided each household with \$14,000 towards the maintenance fund, which is inadequate by any standard. Moreover, after the implementation of the TPS at the estates, the HD's estate offices are split into two offices, namely the tenancy office and the building management office. The tenancy office takes up the work of the former estate office, but it is virtually "a general without troops" in handling repair work. The outstanding repair and maintenance work of the HD is taken over by staff of the building management office. While the building management office works under the owners' corporation (OC) in name and its staff salaried by management fees payable by owners, the relevant executive officers belong to the establishment of the HD. They work according to the instructions of their superiors in the HD and are not under the control of the OC. Furthermore, the building management office is like a white-headed bat that claims itself as a bird in front of animals but an animal in front of birds. When faced with responsibilities of either side, it invariably has excuses to shirk its responsibilities. When the building management office is asked to perform the duties of the HD, it will make a clean break with the HD, saying that it does not represent the HD and listens only to the OC. But when there are actions against the HD, the building management office will rejoin the HD and act as the representative of the HD, trying to pass the buck to the OC.

On 9 May, a window fell off in Tai Wo Estate, causing serious injuries to a passer-by who is still in the hospital. The householder of the flat from which

the window fell off is actually the owner of the flat, and before the flat was sold to him, the HD had sent its staff to conduct checks and found no problem with the window grilles. At a meeting with Mr LAU Kong-wah and me on 11 May, representatives of the HD stated that they would assume some responsibilities of this incident and would take some follow-up actions, including carrying out repair work at the flat under question and even sending its staff to conduct door-to-door checks on the window grilles. In this connection, I also wrote to the building management office of Wan Tau Tong Estate, which replied two days later that they would conduct comprehensive checks on the three blocks of building in the estate within three days. On the contrary, in Tai Wo Estate where a window had fallen off, only one block of building has been checked so far, and residents of the other blocks have to fill in forms as to whether they require checks on window grilles. It is true that there are more cases of damaged window grilles in Tai Wo Estate. These cases totalled over 400, but only some 100 cases have been handled.

Several days ago, a window fell off again from the same block where the last incident occurred. Fortunately, no passer-by was hurt. But I think the HD is duty-bound to deal with this problem properly. For the same sort of building management work, why should the HD work tardily whereas a privately-run building management office can finish it immediately? Is it because officials of the HD have been accustomed to an overly easy life, so they do not wish to take up more duties?

Madam President, to give the matter its fair deal, with the implementation of the TPS by the Government, many tenants who foresee that they will have to pay 1.5 times or double of the present rental, as well as those who wish to move to a smaller flat due to a smaller household size, can keep the units where they currently live or identify suitable housing units. This will help strike a balance, for misuse of public housing resources will be prevented. Coupled with the protection for purchasers who are allowed to revert to tenants within the first two years, the TPS does have a part to play in maintaining social harmony and stability. I cited Tai Wo Estate as an example to illustrate the shortcomings of the TPS in the hope that the Government can learn a lesson and make improvements to better the TPS.

Thank you, Madam President.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, it has been the long-term housing strategy of the Government to continuously encourage citizens of Hong Kong to purchase their own homes. After the establishment of the Government of the Hong Kong Special Administrative Region, emphasis has been placed on enabling 70% of the people owning their homes. To this end, the Government has made continuous efforts to actively promote the TPS. Some people think that the TPS will enable them to have a comfortable home, but can residents really have a comfortable home in reality? In fact, while many people have misgivings about whether they can have a comfortable place to live in, they also have queries about the marketing practices adopted by the Government.

It so happened that the property market was at its peak when the Government introduced the TPS. When the HA put up public housing flats for sale at concessionary prices, many residents considered them very attractive. But as their appeal faded pursuant to a gradual fall in property prices, residents began to have doubts about whether these flats are value for money. Why? It is because the flats put up for sale by the HA are relatively old and so, they are of a very poor quality and riddled with problems such as leakage, exposure of reinforcing bars, rotten wooden doors, and so on. Despite comprehensive maintenance programmes, these inherent problems cannot be resolved, and many residents are therefore dissatisfied with their flats. In fact, the statistics published by the Government also bear evidence to my point. According to the Government's 1999 Survey of Housing Aspirations of Households, 11.9% of the public housing tenants indicated that they preferred living in public housing flats put up for sale. Please bear in mind that only 11.9% of them stated their preference for such flats, contrary to the general impression that many of them prefer living in public housing flats earmarked for sale. However, some may ask: If only a small number of residents like living in those flats, why a subscription rate of over 70% is registered whenever public housing flats are put up for sale? This is precisely the thrust of the question.

Earlier on many colleagues stated the reasons why many residents would wish to purchase public housing flats, including the implementation of many policies by the Government which I consider as draconian measures to push up sales, such as the well-off tenant policy and tightening the asset limit, making many residents pay double or three times of rental. Besides, changes are made to the tenancy system which makes it difficult for children of tenants to inherit the tenancies. As a result, residents have no alternatives but to purchase their public housing flats. Therefore, even though many people have purchased

public housing flats, they have done so not because they really consider public housing flats desirable, beautiful, ideal for living or a truly comfortable home, but for other reasons instead.

In this connection, public housing residents cannot really settle down and be spared of troubles after they purchased their flats. Regarding the comprehensive maintenance programme mentioned by me earlier, even statistics of the HD show that only 70% of the items in need of repair in the last three TPS phases was completed at the most, whereas 30% of them was gradually completed only after residents had paid for their flats. As we can imagine, would those repair works be completed seriously after payment had been made? This is doubtful indeed. In fact, we have received many complaints about the HD and contractors responsible for the repair works often dragging on their feet over the work and not working seriously, which is unacceptable to the residents.

We consider that in putting up public housing flats for sale, the Government is actually trying to shirk as many of its responsibilities as possible. The Government may contend that it is not shirking responsibilities, for it has also undertaken responsibilities and injected \$14,000 for each household into the maintenance fund which can be used to cover the costs of repair works. The maintenance fund for an estate will thus exceed \$100 million. With such a huge maintenance fund, what problems will there be? But in some older housing estates, the items that require repairs are by no means simple. The costs for replacing just an elevator is exorbitantly high, well over \$1 million. For an estate consisting of a dozen blocks of building with many elevators, it is not surprising that the repair works would cost tens of millions of dollars. So, the maintenance fund, which amounts to over \$100 million, will be easily exhausted, in which case owners will have to undertake the responsibilities. This is indeed painful to the residents, for they need to repair not only the building where they live, but also the common areas. The so-called comprehensive maintenance programme of the HD does not necessarily cover the proper maintenance of the common areas. So, owners have to bear even greater consequences.

The Honourable WONG Yung-kan opined just now that the Government has shirked its responsibilities. I cannot agree with him more. Having shirked its responsibilities, the HD will no longer need to undertake the responsibility for repairs and maintenance. This heavy burden will then fall on the owners who will be made to suffer a great deal. They originally hoped to purchase a comfortable home but what they have purchased is not a comfortable home by

any standard. The HD has shirked even more of its responsibilities after the public housing flats are sold, for the management of the buildings is passed onto owners' corporations (OCs) for them to handle on their own. We can see that there are many problems concerning the management of public housing flats put up for sale. As OCs are just "new-born babies", how can they manage so many confusing problems? Nevertheless, the HD has simply sat with folded arms, and worse still, it even said that it did not wish to intervene.

The HD is still forging ahead to put up public housing flats for sale. I hope the Government can do better in future. I have a number of points to make and I hope the HD can pay attention to them. Firstly, in the future sale of public housing flats, the costs for repairs, particularly those for the common areas, should not become a heavy burden of owners. Secondly, it must be ensured that there will be no confusion in respect of after-sale management. Thirdly, the HD should endeavour to safeguard the interest of tenants because the HD representatives very often do not reflect the interest of tenants when attending meetings of the OCs.

**MR IP KWOK-HIM** (in Cantonese): Madam President, since the 1980s, land prices in Hong Kong began to soar rapidly. Since then, home ownership is an impossible dream for the public at large. As property prices changed so quickly, people were getting less and less with the amount of money they paid for their flats. All they could buy were tiny match-box flats. This is something we have all experienced. Rentals and prices for flats have become so exorbitant that Hong Kong has become a laughing-stock of the world. In view of this, Mr TUNG Chee-hwa, the Chief Executive, put forward his sale of public housing flats policy in January 1998. The policy is meant to enable those with limited means to realize their dream of home ownership and to enjoy the security of a home of their own. The sale of public housing flats is undoubtedly a benevolent policy that enables the public to enjoy a sense of security by having a home of their own. This is no longer a luxury, but something affordable.

With the spectre of the Asian-Pacific financial turmoil in 1997 still looms over the territory, our economy is yet to recover. The income of the public falls and the people's sense of job security is dwindling all the time. Asset values fall drastically. There are some people who express the view that the sale of public housing flats like the Home Ownership Scheme (HOS) and the TPS is the main cause of the great drop in assets value. The move is also thought of

as having the effect of disrupting the operations of the free market. Such views, when considered carefully, would fail to convince.

If seen from the perspective of affordability, the purchase of public housing flats and private sector flats belongs to two different markets with different users. When the rock-bottom property prices are taken into consideration, the cheapest flats in the New Territories are priced at about \$2,000 per sq ft and the monthly mortgage payment and other expenses such as rates and management fees will total at least \$5,000. This is quite a heavy burden for the so-called well-off tenants in the public housing estates with a monthly income of about \$10,000 to \$20,000. With the greater part of their income spoken of by the mortgage payments they have to lead a miserable life without any savings. For these public housing tenants who are somewhat more well-off, it is doubtful if they are willing to give up a large portion of their household expenses and quality of life in return for a 400 sq ft or so flat in the New Territories and pay the mortgage payments every month. The case is one of supply and demand which is taught at any introductory course in economics and the answer is crystal clear without the help of conducting a survey. Do public housing flats put up for sale which would mean a monthly mortgage payment and expenses such as rates and management fees amounting from \$1,000 to \$2,000 have any effect on the private-sector property market? The crux of the problem is whether we can permit a substantial cut in the quality of life of the public as a means to prop up the private-sector property market? The sale of public housing flats and the private-sector property market are two entirely different things. Even if the public housing flats are not put up for sale, the private sector flats will not be affected. No one can blame anyone if these flats fetch no buyers.

In order that the quality of life of the public can be raised and that the right to decent accommodation of the public can be protected, the TPS should proceed and it should be extended to cover those Harmony blocks in new housing estates other than the Trident blocks. This will benefit more families. An announcement on the plans for the sale of public housing flats should be made as soon as possible so that more families can make preparations early. This policy of selling public housing flats is a benevolent policy to the people and the Government should be bold and decisive in the face of all obstacles and strive to enable the people to lead a better life.

Now regarding the sale of public housing flats there exist quite a number of issues leading to disputes, but these can be prevented. When public housing flats are offered for sale, often the residents are unable to know the contents of the relevant deed of mutual covenant (DMC) well in advance. When residents have a chance to read the DMC, often they do not have the time to read the terms carefully and they have to beat the deadline in submitting their letters of intent. Would it be not queer if the residents are required to put their money and assets at stake so hastily and not give them the time to think it through and consider the consequences? If the contents of the DMC are made known to the residents well in advance so that they are given ample time to think over this important investment of buying a public housing flat, it can make them feel more at ease when thinking about how to improve their quality of living. Since there is only a possession order which is quite similar to the DMC in terms of contents, and to turn this instrument into a DMC will involve many government departments and will take more than a year. That is an unacceptable procedure. What the Government should do is to make this more efficient and to streamline the procedures. If this cannot be made more expedient, the Government may consider providing possession orders of similar contents for the information of the public. The boundaries of the housing estate together with the facilities should be stated as well. In this way the public housing residents can have more time for consideration before making the decision to purchase.

For public housing flats for sale, what the residents are most concerned about are issues like the delineation of land boundary and the rights and responsibilities in respect of public areas delineated. The residents are particularly worried about slope maintenance works which will cost them a fortune. In the example of Wah Kwai Estate, which is fringed on three sides by slopes, if the slope maintenance costs are listed, that would exert a heavy psychological and financial burden on the residents. Moreover, the boundaries of common areas would involve the number of shares of ownership possessed by the HD in the estate concerned. That has enormous significance for the sharing of costs of maintenance and repairs later. All these are complicated and delicate issues that the HD should discuss with the residents before the public housing flats are offered for sale. A good approach to take is to allow residents to take part in the drafting of the DMC, and a consultation period of not less than three months is also a sensible arrangement.

Madam President, I so submit.

**MR ABRAHAM SHEK:** Madam President, the Honourable LAU Kong-wah's motion on TPS and the amendments of the Honourable Frederick FUNG and the Honourable Albert HO trigger a call for a thorough discussion and review on public housing.

Hong Kong's housing comprises three segments — that of public rental housing, the Home Ownership Scheme (HOS)/Private Sector Participation Scheme and the private sector developments. This golden triangle of housing has served Hong Kong well over the years, providing housing for the very poor and the very rich. And major alteration to any one side of this triangle would upset the equilibrium of the housing market and would have serious economic impact on our economy.

Public rental housing is for the purpose of providing rental housing to the underprivileged and the low-income groups, and not for sale. There are over 100 000 households on the Waiting List to be housed. If the Government is going to spend billions and billions of dollars in building flats for rental purpose for these 100 000 families, then it is illogical for the Government on the other hand to sell tens of thousands of its rental flats at giveaway prices to residents who should instead be persuaded to vacate their flats for the underprivileged who are waiting to be rehoused in the rental flats. Those residents who wish to be owners should be offered attractive loans and assistance to buy HOS flats or private sector flats. After all, the prices of private sector flats have come down substantially and their affordability is no longer an issue. Rental housing is a community welfare benefit to the underprivileged, but home ownership should not be sold. Mr LAU Kong-wah, Mr Frederick FUNG and Mr Albert HO have called on the Government to announce its plan for the sale of public housing after 2003. I agree with them in this regard, and I call upon the Government to announce the abandonment of the policy of selling rental flats, and also to take up fully the responsibility of building more rental flats for those people who are waiting to be housed. If the Government cannot abandon the sale of their rental flats, cannot take measures to persuade the well-off residents to move out and move up the housing ladder of HOS or private sector housing, or if the Government is to continue to sell its rental flats, they should only sell to those who could not afford to buy HOS or private sector flats — by setting an upper household income limit of say, \$15,000 per month. Those who earn more should not be entitled to the benefit of buying such flats. As regards the flats that the HA is selling, the HA should take up fully the responsibility of carrying out all repairs and maintenance prior to sale, and this is very important. They should not shift the burden of repairing and maintenance on to the residents.

Madam President, in concluding my speech, I call upon the Government to seriously review the TPS. I oppose the motion. Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, in the beginning of the 1990s, the Hong Kong Federation of Trade Unions (FTU) had very much different views on the TPS. It was because all along we had thought that the housing policy of the Government should centre around public rental housing being the backbone, Home Ownership Scheme (HOS) flats should be subsidiary and private-sector flats should be a kind of supplement. In our opinion, public housing offers a chance to the public to improve their accommodation with inexpensive rentals. Therefore, we have always been making our demands in respect of housing with reference to the housing policy as adopted by the Government.

However, in 1993 or 1994, as Honourable colleagues have said earlier, land prices soared in Hong Kong and members of the public, including those public housing tenants, were all affected by the rising property prices. Later, with the appearance of the well-off tenants policy, followed by the super-rich tenants policy and the high rental policy, the FTU thought that there was a need to make a fresh study on some of the changes in the views of public housing tenants. So in the mid-1990s, we put forward some amendment proposals and these were the results of a large number of questionnaire surveys conducted by us. When we had collected the questionnaires, we found that the public housing tenants felt urged or compelled to buy public housing flats due to a number of reasons. At that time, the FTU made a number of proposals to the Government and these included the payment of rents as a means to pay the mortgage payments. That is to say, if a tenant buys a public housing flat, he is buying it by paying the rent. When the Government proposed that the price of the flats should be about \$600,000 to \$800,000, we opposed the idea. It was only after the Government had proposed a lower price that we accepted it. However, during the process of discussion with the Government, we also proposed the idea that a maintenance fund be set up and that if an owner became unemployed, he might revert the flat he had purchased into a public housing rental unit, and so on. In the end, some of the views were adopted by the Government.

All along we have been keeping a close watch of the problems faced by the tenants in the sale of public housing flats. As I have said earlier, we have held that the public housing tenants should use a mortgage repayment amount equal to the amount of the rental to buy a flat. And the amount of rental should be inexpensive. However, if in the process of purchase, these residents encounter some problems, we will certainly reflect their views to the relevant authorities. For example, in the offer for sale of Phases 1 and 2 TPS flats, there appeared some very obvious unfair points. I think Mr LAU of the HA has been listening to our views. At that time, we asked the Government why in the sale of public housing flats, the deeds of mutual covenant (DMCs) were provided to the residents only a few days before the sale was due to start. And we know that when flats in an estate are offered for sale, the DMC would automatically come into force when only one flat is sold. So we have to ask why this sale of public housing flats is so unfair?

Another concern of the residents is that the flats put up for sale should have been properly repaired and maintained before they are handed over to them. However, the progress of repair and maintenance works has been far from satisfactory. That has happened not only in Phase 1, but also in Phase 3. And the same thing happens now in Phase 4. Theoretically, the flats should have been properly repaired and maintained before they are put up for sale some time later. But it may be due to the fact that the Government is selling flats in such great numbers that it has made the problem with the repair and maintenance works difficult to resolve. Even to date, some people who have purchased Phase 3 flats learn to their dissatisfaction that their flats have not been properly repaired and maintained.

In addition, we have also discovered that quite a large number of residents consider they were somewhat unfairly treated when they purchased the public housing flats. Take Chuk Yuen (North) Estate which I am familiar with as an example. The residents found that in the purchase of flats in that estate in Phase 2 of the TPS, the flyovers and slopes which do not belong to their estate are included in the boundaries of the estate as found in the sale brochure. And residents also have to bear the responsibility for the repairs and maintenance of a path leading to the car park. This is unfair because the charges collected by the car park go to the Government. At that time, the residents voiced their strong opposition. They even gave a small piece of pork with a large bone attached to the Government as a figurative manifestation of their protest. In the meantime,

the Government was making some improvements, while we continued to tell the Government what we were thinking as well as the opposing views of the residents and their demands. So when Phase 4 of the TPS started, certain areas which used to be causes of complaint had been improved. I would like to mention the case of Chuk Yuen (North) Estate again. In the past, I had raised the issue on the use of copper pipes, but the Government objected to this. Now when the residents want to change the pipes, they will have to pay a lot more money. These residents are preparing to lodge a complaint. At that time, the residents demanded some improvements, but their demand was turned down by the Government. But when the flats were put up for sale in Phases 3 and 4, it was found that copper pipes were used in Phase 3 flats to replace the old ones before they were sold to the tenants.

We have been following up the progress of the sale of public housing flats from Phase 1 to Phase 4. We find that the Government has not addressed squarely the issue of equity, nor has it considered the fact that the majority of public housing residents are grassroots. The mentality of the Government in selling these flats is just like dumping a burden off its shoulders. Now the sale of public housing flats has come to the fourth phase. Some time ago, we went to the HA and discussed the issue with the HA officials. Mr LAU of the HA undertook that he would consider the issues we raised and try to find a solution, including those mentioned by me, such as the problem with DMCs.

The FTU is willing to support the original motion today. In respect of the sale of public housing flats, the Government should pay attention to the following: first, the process must be equitable and transparent; second, consideration must be made of the fact that the buyers of those flats are low-income people and they are compelled to buy these flats due to a number of reasons such as market conditions, the fact that their children have grown up, the well-off tenant policy, the super-rich tenant policy and the rental of public housing flats, and so on. I would like to tell the President that on each residents' meeting convened by me, I would tell the residents not to buy these flats if they felt compelled to do so. I would like to make a particular point here and that is, the quality of public housing flats is not that good after all. Those who want to buy these flats must feel happy in doing so, and those who do not want to buy these flats should also feel happy as well. The decision not to buy these flats is a right of the residents and they have every reason not to buy these flats. The Government cannot force them to move out.

It remains of course that some improvements have been made to the TPS from its Phase 1 to Phase 4 now. However, there are still a lot of issues that warrant discussions, such as those related to repairs and maintenance, DMC and title deeds. Through this motion debate, I hope the Government will know clearly that the residents of the public housing estates in Hong Kong are a group of people whom the Government should look after. What I mean is, most of these people should be well cared for. I hope the Government can keep up with this policy and in the sale of public housing flats, the residents should be made to feel that the process is equitable and transparent. The Government should consider the fact that these residents come from the grassroots and this matter should never be handled with the mentality of discarding some unwanted burden. Thank you, Madam President.

**MR NG LEUNG-SING** (in Cantonese): Madam President, the people all know that the TPS has been in force since 1998 and up to February this year there has been four phases. There are 24 housing estates under this scheme and 5 800 tenants can have the chance to become owners. Presently the HA adopts a three-year programme approach whereby it will announce the TPS arrangements for every triennium. In other words, the names of the housing estates with flats due to be put up for sale in 2004 will be announced by the end of this year. Besides, the HA also plans to extend the scope of the TPS in 2004 to cover other types of public housing blocks apart from the Trident blocks. This would mean that the Harmony blocks will also be included.

Information shows that insofar as the building repairs and maintenance is concerned, the HA would usually invite residents of the flats concerned to inform it of the necessary items of repairs and maintenance nine months before the flats are put up for sale, and most of these works can be completed before the flats are due for sale. Given the large number of such works, it is inevitable, however, that certain delays may happen. In such circumstances, the practice adopted by the HA is to list clearly these items and inform the residents concerned of the specific dates that the HA will undertake to complete. Then the tenants can urge and monitor the completion of these works so that the relevant departments can effect improvements.

In addition, the HA provides a seven-year guarantee of the structural safety of the buildings. It also takes the initiative to inject funds into the maintenance funds for the estates. The sum of money injected into these funds

is \$14,000 for each flat under Phases 1 to 4 of the TPS. The amount is expected to cover large-scale repair and maintenance works apart from day-to-day works of such nature for a period of about 10 years. So with respect to repairs and maintenance, those tenants of public housing flats who intend to purchase their flats should rest assured that their flats are properly maintained.

As for the prices of these public housing flats, in Phase 4 of the TPS, for example, tenants are given three choices. First, if they buy the flats in the first year of the scheme, the price is only about 20% of the market value. If they buy in the second year, they are entitled to a concessionary price of about 33% of the market value. If they elect to do so in the third year or thereafter, they have to pay a price at 45% of the market value. Such an arrangement has in fact given a large degree of flexibility to the tenants. But as the flats put up for sale are part of the resources in public housing after all and they cannot be disposed of at bargain prices such as, for example, a further reduction of the current prices by about 10%, and so on. That is something we need to consider, for in doing so we are just being too generous with the taxpayers' money.

On the question of deeds of mutual covenant (DMCs), they are legal instruments which impose restrictions on the rights and responsibilities of the owners in the same housing estate. They are subject to the guidelines issued by the Legal Advisory and Conveyancing Office of the Government and its scrutiny. Developers in the public and private sectors alike should adopt the same mechanism of formulating DMCs. In fact, if the DMCs are formulated after consultation with the residents, there will also be many practical difficulties, such as different estates may require different provisions and prospective owners of the same estate may dispute over individual provisions. Moreover, there may also be some conflicts between those who want to continue renting the flats and those who want to buy the flats. The situation can become quite confusing. A realistic and practicable solution seems to lie in adopting a more open and transparent approach to enable prospective buyers to understand better the contents of the DMC so that they can make a prudent and reasonable choice.

Madam President, I so submit.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah, you may now speak on the two amendments. The time limit is five minutes.

**MR LAU KONG-WAH** (in Cantonese): Madam President, I wish to raise a few points in response to the amendments moved by Mr Frederick FUNG and Mr Albert HO.

The amendment of Mr Frederick FUNG puts forward a number of proposals in respect of the selling prices of public housing units. Certainly I understand that these proposals actually represent his relevant viewpoints all through the years. But I am a bit surprised by his proposal that the selling prices of public housing units should be determined with reference to prevalent market value. In fact, the DAB has always advised against such an idea; instead, it hopes that the Government can determine the selling prices of public housing units on the basis of replacement cost. For this reason, we cannot accept the amendment of Mr Frederick FUNG. In the last point of our motion, we also urge the HA to consult the residents concerned on the contents of the deeds of mutual covenant (DMCs) three months before actual sale. The amendment of Mr Frederick FUNG, however, proposes to delete this point, and this will render the consultation unable to serve any timely purpose. Many residents in fact voiced a strong demand for this to the HA at various meetings with us. They all think that the timing of consultation is very important, because with a sufficiently long consultation period, they will be able to express their opinions adequately.

Mr Albert HO talked about the demarcation of boundaries. Our original intent is to raise the issue of DMCs, and under a DMC, boundaries are usually clearly specified. During the past few phases of the TPS, when we discussed with the relevant residents, they invariably asked the Government to consult them on the contents of the DMCs three months before actual sale. Let me now quote from a letter sent by the Legislative Council Secretariat on behalf of several Members, including Mr Albert HO and I, on 25 March 2000: "Members and residents once again strongly demand the Government, in launching the TPS, to consult residents of the relevant estates on the contents of the DMC and to provide them with a Chinese version of the DMC for their consideration three months before the acceptance of letters of intent from residents." When I was working on the wording of the motion, I once considered the idea of conducting consultation as early as possible, say, even one year beforehand. But in the subsequent discussion with several Members, the idea was dropped because we

noted that a consensus had been reached at the case conference to ask the HA to consider the proposal of conducting consultation three months beforehand. At that time, the HA replied as follows in its letter to us: "Members and residents requested the Government to consult with residents of the relevant estates on the DMC contents prior to launching the TPC. This proposal was made as early as at the launch of TPS Phase 1 and the HA, after careful consideration, came to the view that the relevant proposal in respect of consultation was inappropriate." This was the reply of HA last year, and we of course hope that the Government can reconsider our proposal this year. There is nothing bad about our proposal, because the residents concerned can put forward their views during the consultation exercise. If the Government accepts our proposal today, we can say that it is willing to make improvement, to increase the transparency of the TPS. The whole TPS will then be able to achieve more satisfactory results.

Lastly, I hope that the Government can clarify a number of points raised by Members in the debate. I am especially concerned about two of these points. First, the Honourable LAU Ping-cheung asked the Government to check the fire escapes of those public housing blocks put on sale. His remarks lead us to suspect that the fire escapes of the slab blocks and twin-H blocks now put on sale may be plagued with problems. I hope that the Government can make a clarification on this. Second, for the Trident blocks now put on sale, although the fresh water pipes of Phases 1 and 2 were not replaced, those of Phases 3 and 4 have already been replaced. In the future, when the Government sells some even older housing blocks, will it undertake to replace their fresh water pipes? This is very important, because when residents decide whether or not to purchase the public housing flats, this is a very important consideration. Another factor that residents will consider is the sewers of their housing blocks. We know that when the Government considers whether to replace fresh water pipes, it will be guided by many criteria. One example is that it will take water samples and make a decision on the basis of the quality of the samples. From many residents, whether those who have made purchases or those who have not, we learn that many sewers of public housing blocks are heavily rusted. If the Government does not replace these sewers, the residents may have to bear a very heavy burden, and the works of replacing these sewers may even be far larger in scale than that of replacing fresh water pipes. That is why I hope that the Government can clarify this.

Finally, I hope that the Government can support the wording and proposals of my motion.

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, home ownership is the dream of a lot of families and the TPS launched by the HA in 1998 has had good response. Since the implementation of the TPS, 61 000 public housing tenants have become owners. From Phase 1 to Phase 3 of the TPS, around 70% of the tenants on average indicated their intent to purchase their flats within the first year of the introduction of the TPS, thus reflecting the extent to which the TPS was welcomed by public housing tenants.

I would like to respond to Members' remarks and elaborate the ideas of the TPS. Some Members questioned if the Government had launched the TPS to reduce the recurrent financial burden of the HA or to increase its income. In fact, the Government is convinced that home purchase by the public will bring advantages to the whole community and individuals, and will help to maintain social stability and nurture the sense of belonging among people. Although the Government and the HA have provided people with different channels of home purchase including application for HOS housing, the "buy or rent" scheme and the Home Purchase Loan Scheme, some public housing tenants may find it not easy to meet the increased expenditure on housing, approximately five times the average rent now, after they have purchased flats under the HOS. However, under the TPS, their expenditure on housing will be around twice the existing rent if they buy the flats they are living in. Thus, the TPS will precisely fill the gap between rental public housing and HOS housing on the so-called housing ladder, giving public housing tenants more alternatives of affordable home ownership.

The objective of the Government and the HA is to offer not less than 250 000 rental flats for sale from 1998 to 2007. The implementation of such an enormous and unique scheme covers a fairly wide scope and there are few foreign examples that we can learn from. Therefore, it is only understandable that Members have different views on the TPS. I am going to respond to the four proposals made by Mr LAU Kong-wah, and I would like to take this opportunity to let the public and Members understand more about the principle and operation of the TPS.

The first proposal made by Mr LAU is to expeditiously announce the plan for the sale of public housing flats after 2003. This is precisely the existing arrangement of the HA which has so far announced a list of six phases of housing estates to be introduced for sale before 2003, and it will later expeditiously announce a list of housing estates to be introduced for sale after 2003. Some

Members have indicated their hope that we would announce a list covering a longer period, but we hope to give the HA flexibility in making suitable plans and adjustment in relation to the TPS and other subsidized home purchase schemes in the light of market situation and the intent and needs of purchase of public housing tenants, thereby answering better public aspirations. Therefore, we think that the existing arrangement of the HA is more appropriate and it has fully taken care of the needs of the tenants.

The second proposal of Mr LAU is to extend the TPS to cover public housing blocks other than Trident blocks. When the HA selects housing estates to be incorporated into the TPS, it will consider the age of the estate, the regional distribution, the condition of maintenance as well as the interest and financial ability of the existing tenants. Along with the taking forward of the TPS, the HA anticipates that the scope of the sale will be extended to cover other types of public housing blocks apart from Trident blocks.

Whether the popularity of non-Trident public housing blocks is higher or lower than that of Trident blocks depends on the location of the blocks, the area of the flats, the age of the blocks and other factors.

The third proposal of Mr LAU is to ensure that all the necessary repair and maintenance works are completed before the sale of housing estates under the TPS. This proposal is actually the objective of the efforts made by the HA and the HD all along. According to the existing arrangement, around nine months before the sale of public housing flats, the HD would invite the relevant tenants to make requests for repairs of items in their flats. The HD would expeditiously complete the required repair through this arrangement. When the HD sells the relevant flats, it will again invite the interested tenants to make requests for repairs when they submit their applications, and the HD will endeavour to complete all the repair works within three months. With such a liberal mechanism, it hopes to meet the requirements of the potential buyers as far as possible.

According to the record of the HD, the HD had completed over 80% of the requested repair works before the sale under Phase 4 of the TPS was launched in February this year. As the repair works in common areas is generally more complicated in nature, it will take longer. Most of the works will have been completed or will almost be completed before the sale, and the costs will be borne by the HA.

Mr WONG Yung-kan referred to the Tai Wo Estate incident. The tenant had rented the flat for 11 years but when he bought the flat last year, he failed to report that there were broken windows upon the request of the HD. As he had not filled in this information, the HD was given the legal advice that the HD should not bear any responsibility.

Having talked so much about repair works, I would like to discuss the issue of housing construction by the HA and the regulation of the Buildings Ordinance as raised by Mr LAU Ping-cheung.

All the housing estates built by the HA are not subject to regulation by the Buildings Ordinance, but their design and specifications must comply with the existing Buildings Ordinance, so all the housing estates are safe. However, these flats are regulated under the Buildings Ordinance once they are placed under the TPS. The Director of Buildings will continue to authorize the Director of Housing to manage these buildings for the moment until 1 July 2002. During the interim period before the sale of these housing estates, the HD will inspect whether the flats and the common areas comply with the Buildings Ordinance and make the relevant improvements. If improvements are required, the expenses will be borne by the HA. As the Honourable NG Leung-sing has earlier mentioned, before the sale, the HA will offer each housing estate a seven-year structural safety assurance and it will also inject capital at \$14,000 per household to set up a maintenance fund. The fund is sufficient to meet the expenses on large-scale maintenance apart from the daily repair works of the relevant estates within the next 10 years.

A large number of flats are involved and residents have requested a large number of repair works. For instance, the HD received 23 517 applications for repairs before the sale of flats under Phase 3 of the TPS, and it later received 13 000 applications, therefore, the realistic situation may not allow the HD to complete all repair works before the transactions are completed. Nevertheless, the HA and the HD will endeavour to complete the repair works before the sale of public housing flats and provide the residents with quality homes.

The fourth proposal of Mr LAU is to consult the residents concerned on the contents of the deeds of mutual covenant (DMCs) of TPS estates not later than three months prior to the receipt of their letters of intent to buy the flats. At present, before launching the TPS, the HD will brief residents on the TPS through the Estate Management Advisory Committee (EMAC) so that the

residents will fully understand their rights and obligations as owners in order to help them make a choice.

Starting from the next phase of the TPS, the HD will provide the EMAC with a set of standard DMC and the Receiving Order of the estate concerned six months in advance so that the residents will better understand the details of the TPS, including the boundaries of the estate and the public facilities within the estate boundaries. At present, the HA is granted the right to manage the estate concerned under the Receiving Order issued by the Government, and it covers the housing estate, roads, recreational facilities and slopes in the estate and the related responsibility for repairs under certain circumstances, for instance, footbridges connecting housing estates. Generally speaking, the lot boundaries of the estates put up for sale under the TPS as specified in the land lease tallies with that in the Receiving Order. In fact, there is a well-tested mechanism for the formulation of DMCs under the TPS and the objective is to ensure the proper management of the buildings under the TPS, and to strike a fair balance of the interests of all parties. The case with the Han Garden in Lee Cheng Uk Estate mentioned by Mr Frederick FUNG precisely shows that we adhere to a fair and impartial principle. The HA has agreed not to incorporate the Han Garden into the lot boundaries of the Lee Cheng Uk Estate. Before and during the sale of each estate under the TPS, the Estate Office can provide the potential buyers with a sample of the DMC for inspection. Interested persons can also have a copy of the DMC at cost.

The gist of the key points of the DMC will be set out in the brochure on the sale of the estate. Before executing the agreement, the lawyer of the buyer also has the responsibility to explain to the buyer the contents of the DMC in detail. Such arrangement is identical to that for the sale of buildings to be completed by private and public organizations.

The HD will work out the land lease and the DMC together with the Lands Department and the relevant departments. Upon the consent of the relevant government departments, the government land lease will be vetted at a District Lands Conference chaired by the Lands Department.

When vetting all the provisions, as I have said, the Legal Advisory and Conveyancing Office of the Lands Department will ensure that the provisions of the DMC are fair and reasonable to all parties and have optimally balanced the interests of all parties.

I would like to respond to the amendments proposed by Mr Frederick FUNG and Mr Albert HO. Mr Frederick FUNG suggests giving residents discount-on-demand. Actually, the HA adopted his suggestion for Phase 1 and Phase 2 of the TPS, but 99.8% of the buyers chose the cheapest plan as anticipated. Thus, the HA subsequently offered only one discounted price on the basis of the market value to avoid putting a heavier administrative burden on the Government because of a variety of plans.

Mr Frederick FUNG and Mr Albert HO suggest that the HA should continue to be responsible for the repairs and maintenance of the flats sold for a certain period after the sale. In both the public and private markets, there is a well-established important principle that after the buyers obtain the ownership of the flat, they should have certain rights and obligations to the flats and the ancillary common areas. The transaction between the buying and selling parties for the sale of second-hand property is based on the existing condition of the buildings and it is unreasonable to ask for uniform quality assurance or request the selling party to offer a very long defect liability period. As I have just said, the existing practice of the HA includes indoor repairs upon the request of the tenants, the provision of a seven-year defect liability period for each estate as well as the injection of \$14,000 for each flat sold into the maintenance fund in future. It is practically unfeasible to request the HA for uniform quality assurance for every flat sold. As the flats sold under the TPS are not brand new flats, the condition of the indoor fixtures is different as it depends on how they are used by individual tenants, therefore, the HA cannot provide uniform quality assurance.

Mr Albert HO suggests assisting in the work of owners' corporations (OCs) in TPS estates so as to protect the rights and interests of both owners and tenants in such estates. According to the DMC, the HA will be responsible for the management of the TPS estates during the first two years and for assisting owners in setting up OCs. Just like in other private housing estates, these new OCs are independent statutory bodies and they have the full responsibility and initiative to manage the housing estates, subject to the provisions of the Building Management Ordinance (Cap. 344). A mechanism is set up under the Ordinance to balance the interests of owners and tenants. The tenants have the right to set up an association and select a representative to become a member of the management committee of the OC to represent their interests.

Concerning estate management agents, in line with the outsourcing programme in respect of TPS estates, the HD has set up an independent estate management unit to monitor the work of estate management agents. As these estate management agents must employ not less than 20% of the staff of the HD, they should have the requisite experience in managing public housing estates.

In conclusion, since the implementation of the TPS in 1998, fairly good effects have been produced. In working out the future plans for the sale of flats under the TPS in future, the HA and the HD will conduct a review in the light of market demand, including the types of buildings to be sold, prices and maintenance. The Government will actively make reference to the valuable views of Members in order to perfect the TPS and better meet the home purchase needs of public housing tenants.

The Government generally supports Mr LAU Kong-wah's motion, but I must say that land leases will be vetted at a District Lands Conference chaired by the Lands Department after consent has been given by the relevant government departments while the DMCs are vetted by the Legal Advisory and Conveyancing Office of the Lands Department. To handle the DMCs and the rights and obligations of various parties fairly and reasonably, the Government may fail to address the different appeals of various parties. However, as the amendments of Mr Frederick FUNG and Mr Albert HO run against some important principles of home ownership, I urge Members to oppose the amendments of Mr FUNG and Mr HO.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Mr Frederick FUNG to move his amendment to the motion.

**MR FREDERICK FUNG** (In Cantonese): Madam President, I move that Mr LAU Kong-wah's motion be amended, as printed on the Agenda.

**Mr Frederick FUNG moved the following amendment: (Translation)**

"To add "(c) consider implementing a flexible pricing scheme for the sale of public housing flats whereby residents who opt to buy their flats are

allowed to choose the levels of discount equivalent to, for example, 10% to 50% of the assessed market value;" after "(b) extend the TPS to cover other types of public housing blocks apart from Trident blocks;"; to delete "(c)" and substitute with "(d)"; to delete "ensure that, before the sale of housing estates under the TPS," and substitute with "provide unified basic quality assurance for the facilities of TPS estates, complete"; to delete "are completed" after "all the necessary repair and maintenance works" and substitute with "before the sale of the estates concerned, formulate effective measures for monitoring the repair and maintenance of the buildings, and offer an adequate maintenance period to ensure the building quality"; to delete "(d)" and substitute with "(e) publicly"; and to delete "not later than three months prior to the receipt of their letters of intent to buy the flats" and substitute with "before they are finalized".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Frederick FUNG to Mr LAU Kong-wah's motion, be passed.

I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Frederick FUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG 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:

Mrs Selina CHOW and Mr Howard YOUNG voted for the amendment.

Dr Raymond HO, Mr Eric LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Timothy FOK, Mr LAW Chi-kwong, Mr Abraham SHEK, Mr Henry WU, Dr LO Wing-lok and Mr IP Kwok-him voted against the amendment.

Miss LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

Mr Frederick FUNG voted for the amendment.

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr WONG Sing-chi, Mr NG Leung-sing and Mr Ambrose LAU voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendment, 14 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, one was in favour of the amendment and 18 against it. Since the

question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**MRS SELINA CHOW** (in Cantonese): Madam President, in accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed at this meeting in respect of the motion "Tenants Purchase Scheme" or any amendment thereto, this Council do proceed to such divisions immediately after the divisions bell has been rung for one minute.

**PRESIDENT** (in Cantonese): I now proposed the question to you and that is: That the motion moved by Mrs Selina CHOW be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

In the event of further divisions being claimed in respect of the motion, this Council do proceed to such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Now that we have dealt with Mr Frederick FUNG's amendment, Mr Albert HO, you may move your amendment.

**MR ALBERT HO** (in Cantonese): Madam President, I move that Mr LAU Kong-wah's motion be amended, as printed on the Agenda.

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

"To delete "; and" after "(c) ensure that, before the sale of housing estates under the TPS, all the necessary repair and maintenance works are completed" and substitute with ", and continue to undertake responsibility for the repair and maintenance of TPS flats within a reasonable period of time after the sale of such flats;"; and add "; (e) consult the residents concerned on the demarcation of lot boundaries for TPS estates not later than six months prior to the receipt of their letters of intent to buy the flats; and (f) assist in the work of owners' corporations in TPS estates, so as to protect the rights and interests of both owners and tenants in such estates" after "(d) consult the residents concerned on the contents of the deeds of mutual covenant for TPS estates not later than three months prior to the receipt of their letters of intent to buy the flats"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to Mr LAU Kong-wah's motion, be passed.

I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute.

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

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk, was your button not responding?

**MISS CHOY SO-YUK** (in Cantonese): Madam President, I have pressed the wrong button.

**PRESIDENT** (in Cantonese): Miss CHOY, would you press the button or proceed to vote once again?

**MISS CHOY SO-YUK** (in Cantonese): Madam President, I have done it.

**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:

Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Howard YOUNG and Mr LAW Chi-kwong voted for the amendment.

Dr Raymond HO, Mr Eric LI, Miss Margaret NG, Mr Bernard CHAN, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU and Dr LO Wing-lok voted against the amendment.

Mr CHAN Kwok-keung, Mr WONG Yung-kan, Miss LI Fung-ying and Mr IP Kwok-him abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, 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 Mr Frederick FUNG voted for the amendment.

Mr NG Leung-sing and Mr Ambrose LAU voted against the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk and Mr TAM Yiu-chung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, five were in favour of the amendment, eight against it and four abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 19 were present, 11 were in favour of the amendment, two against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah, you may now reply and you still have seven minutes 10 seconds.

**MR LAU KONG-WAH** (in Cantonese): Madam President, I will not use up all the seven minutes.

I would like to thank Honourable Members who have spoken earlier and the Government for supporting my motion. Actually, numerous debates have been conducted before with respect to the plan for the sale of public housing flats.

I have all along held the view that the plan is of paramount importance to the public housing tenants who aspire to home ownership and long-term social stability.

The Secretary has just responded to the proposal of holding a three-month consultation. I consider this a breakthrough and a further step for improvement. Many Honourable colleagues in this Council are very familiar with the plan. They have held a number of residents' meetings in various districts and numerous housing estates and toiled through many hard evenings. Therefore, we are already well versed in a lot of details. I hope the Government can fully reconsider the numerous questions raised by many colleagues.

Finally, I would like to say a few words on the Tai Wo Estate incident mentioned by Mr WONG Yung-kan. Actually, staff of the Housing Department (HD) had visited the flat before. As windows were not included in the repairs programme, no repairs could be carried out to the windows. However, that does not mean there is no problem. Therefore, I hope the HD can include windows into the repairs items to guarantee public safety.

Finally, I hope my motion can be passed.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAU Kong-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)

Mr Eric LI rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Eric LI has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Miss Margaret NG, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAW Chi-kwong, Miss LI Fung-ying and Mr IP Kwok-him voted for the motion.

Dr Raymond HO, Mr Eric LI, Mr Bernard CHAN, Mr Abraham SHEK, Mr Henry WU and Dr LO Wing-lok voted against the motion.

Mr Timothy FOK abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr WONG Sing-Chi and Mr Frederick FUNG voted for the motion.

Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 16 were present, nine were in favour of the motion, six against it and one abstained; while among the Members returned by geographical

constituencies through direct elections and by the Election Committee, 18 were present, 15 were in favour of the motion and two against it. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 3.00 pm tomorrow.

*Adjourned accordingly at eight minutes past Ten o'clock.*

**Annex****WRITTEN ANSWER****Written answer by the Secretary for Security to Mr WONG Yung-kan's supplementary question to Question 5**

According to the Customs and Excise Department's record on cases of smuggled meat detected in the past three years, the case involving the largest quantity of seizure was detected off Tsing Yi in June 2000. In that case, a total of 105 000 kg of frozen chickens and pork was seized.