

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 20 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 DAVID CHU YU-LIN

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

DR THE HONOURABLE YEUNG SUM

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.

MEMBERS ABSENT:

THE HONOURABLE HUI CHEUNG-CHING

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

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

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE YEUNG YIU-CHUNG

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

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

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

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

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

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

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

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

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

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>
Designation of Libraries (No. 2) Order 2001	138/2001
Public Health and Municipal Services Ordinance (Public Markets) (Designation and Amendment of Tenth Schedule) (No. 2) Order 2001	139/2001
Declaration of Markets Notice (Amendment) (No. 2) Declaration 2001	140/2001

Other Papers

No. 90 — Report of changes to the approved Estimates of Expenditure approved during the final quarter of 2000-01 (Public Finance Ordinance : Section 8)

No. 91 — 2000 Annual Report by the Commissioner of the Independent Commission Against Corruption of the Hong Kong Special Administrative Region

No. 92 — Independent Commission Against Corruption Complaints Committee
Annual Report 2000

Report of the Finance Committee on the examination of the Draft Estimates of Expenditure 2001-2002 (June 2001)

Report of the Bills Committee on Copyright (Suspension of Amendments) Bill 2001

Report of the Bills Committee on Revenue Bill 2001 and Revenue (No. 2) Bill 2001

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Mr Fred LI will address the Council on the 2000 Annual Report by the Commissioner of the Independent Commission Against Corruption of the Hong Kong Special Administrative Region.

2000 Annual Report by the Commissioner of the Independent Commission Against Corruption of the Hong Kong Special Administrative Region

MR FRED LI (in Cantonese): Madam President, as a member of the Advisory Committee on Corruption, I have great pleasure in briefing Members on the 2000 Annual Report by the Commissioner of the Independent Commission Against Corruption which was tabled to this Council today.

During the year, the Independent Commission Against Corruption (ICAC) received a total of 4 390 corruption reports, up by 829, or 23%, from 3 561 in 1999, the highest ever registered since the ICAC was established in 1974. Analysis carried out by the ICAC showed that after the Asian financial crisis, corruption-related frauds were discovered one after another, resulting to a surge in the number of corruption cases. Moreover, the extensive media coverage of ICAC operations raised the awareness of the public on potential corruption activities and more people made reports to the ICAC. The abrupt increase in the number of reports was due mainly to the increase in the number of reports on minor and simple cases. The number of people who are willing to reveal their identities when making corruption reports to the ICAC remains at a 68% high, showing that the people are confident about the ICAC and its ability to combat corruption. These are encouraging achievements.

In carrying out investigation during the year, the ICAC continued to make use of a proactive strategy in unearthing corruption. To cope with the increasing number of reports against corruption and mounting complexity in corruption cases, the ICAC adopted a number of measures to maintain its effectiveness in anti-corruption work, including the setting up of task forces to deal with corruption issues of concern to the public. In view of the drastic increase in the number of simple reports, the ICAC set up a "quick response team" to deal with them. During the past year, the ICAC succeeded in obtaining additional funding for the new financial year to formalize the set-up. To tie in with the development in new information technology and enhance the

professionalism of investigators, the ICAC would continue to provide computer forensic training for its staff and lay down standard computer investigation procedures.

As regards the work on community relations, the ICAC continues its close co-operation with the Civil Service Branch through the launch of the "Civil Service Integrity Programme" to help individual government departments map out tailor-made corruption prevention programmes. As regards the business sector, the ICAC actively promoted anti-corruption measures and business ethics through the organization of conferences, trade forums and on-site training in a variety of business organizations. These activities can certainly help improve the competitiveness of Hong Kong as an international business centre. Another important area of work of the ICAC was instilling positive values in our young people. During the year, the ICAC made use of multi-media programmes, youth websites and motion cartoons to nurture an ethical culture among the young people and help to keep the corruption issue on the public agenda.

In the area of corruption prevention, the ICAC completed 106 detailed studies of the practices and procedures of government departments and public bodies to reduce opportunities for corruption. In selecting work areas for examination, the Corruption Prevention Department gave priority to those where the Department's investigations had revealed corruption or related malpractice. Furthermore, the ICAC also continues to provide free and confidential corruption prevention advice to private firms. During the year, it received and promptly dealt with 300 such inquiries. Meanwhile, the ICAC also produced a series of Best Practice Packages for a selected area of work for the benefit of a wider audience.

Madam President, the Commissioner of the ICAC and I would like to take this opportunity to thank this Council and members of the public for their support, and the members of the Advisory Committee on Corruption for their valuable contribution. We would like also to pay tribute to all loyal and dedicated staff of the ICAC.

PRESIDENT (in Cantonese): Prof NG Ching-fai will address the Council on the Independent Commission Against Corruption Complaints Committee Annual Report 2000.

**Independent Commission Against Corruption Complaints Committee
Annual Report 2000**

PROF NG CHING-FAI (in Cantonese): Madam President, as a member of the Independent Commission Against Corruption (ICAC) Complaints Committee, I hereby table the ICAC Complaints Committee 2000 Annual Report to this Council on behalf of the Committee.

This is the sixth annual report published by the Committee. The report explains in detail the functions and mode of operation of the Committee, and summarizes the work handled by the Committee in the past year. In 2000, the Committee held three meetings during the year to discuss all papers and investigation reports and formed an independent view on the investigation findings concerning the complaints. An important and positive effect of this complaints handling mechanism is that through examination of issues brought up in complaints, both the ICAC and the Committee are able to carefully scrutinize the ICAC internal procedures, guidelines and practices to see whether they need to be updated, clarified or formalized, with a view to making improvements.

Through publishing the annual report, the Committee hopes to report to the public on a regular basis the work done by the Committee and to enhance public understanding on the ICAC complaints handling mechanism. Should Members have any comments regarding the annual report, they are welcome to forward them to the Secretary of the Committee.

I so submit.

PRESIDENT (in Cantonese): Dr Philip WONG will address the Council on the Report of the Finance Committee on the examination of the Draft Estimates of Expenditure 2001-2002 (June 2001).

**Report of the Finance Committee on the examination of the Draft Estimates
of Expenditure 2001-2002 (June 2001)**

DR PHILIP WONG (in Cantonese): Madam President, in accordance with Rule 71(11) of the Rules of Procedure, the President has referred the Draft Estimates

of Expenditure for 2001-02 to the Finance Committee (the Committee). The Committee has completed the examination of the Draft Estimates of Expenditure and I would like to present the Report on behalf of the Committee.

The Committee has held a total of six special meetings from 20 to 23 March 2001 to examine the Draft Estimates of Expenditure. The meetings consist of 18 open sessions. The purpose of the examination was to ensure that the Administration is seeking provision no more than is necessary for the execution of its policies in 2001-02.

Prior to the special meetings, Members have submitted written questions on the Draft Estimates. This year, a total of 1 501 written questions from Members were forwarded to the Administration for its reply. Starting from this year, to ensure that Members and the public could have access to the replies of the Administration promptly, the replies are available in electronic copies and uploaded to the website of the Legislative Council.

This Report gives an account of how the examination was conducted and contains a full record of the proceedings of the 18 sessions in Chapters II to XIX. At each of the sessions, the Policy Secretary concerned would give a brief presentation on the spending priorities and provisions sought under various programme areas. The briefing would be recorded in the appendix. Questions which are not asked at the meeting due to the time constraints would be asked as supplementary questions which would be dealt with by the Administration after the meeting in writing. The Legislative Council Secretariat would follow up the requests from Members for additional information after the meeting.

Madam President, I would like to express my sincere appreciation to Members for their enthusiastic participation in the special meetings and to the Administration for its active response. I also wish to thank the staff of the Treasury and the Legislative Council Secretariat for rendering relentless support to the work of the Committee.

I so submit. Thank you.

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. Supplementary questions should be as concise as possible. Members should not raise more than one question or make statements when asking supplementary questions.

Incorporation of Provisions of International Covenant on Economic, Social and Cultural Rights into Laws of HKSAR

1. **MS AUDREY EU** (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 its Concluding Observations on 11 May this year. The UNCESCR expressed concern that the provisions of the ICESCR had not yet been incorporated into the laws of the SAR, and stated that it was a mistaken understanding of the legal obligations arising from the ICESCR on the part of the States parties to hold the opinion that the ICESCR is "promotional" or "aspirational" in nature. In this connection, will the Government inform this Council whether:*

- (a) *it has implemented the ICESCR through the laws of the SAR, in accordance with Article 39 of the Basic Law; if not, whether it has assessed if the SAR has contravened this Article, and whether it will consider incorporating the provisions of the ICESCR into the laws of the SAR; if it will consider, of the details; if not, the reasons for that; and*
- (b) *it will follow the advice of the UNCESCR to not argue in court proceedings that the ICESCR is only "promotional" or "aspirational" in nature?*

SECRETARY FOR JUSTICE (in Cantonese): Madam President, with regard to the first part of this question, the relevant Concluding Observation was that:

"The Covenant's status in HKSAR's domestic legal order continues to be different from that of the International Covenant on Civil and Political Rights, the provisions of which have been incorporated into domestic legislation."

The Administration understands that the difference referred to is the different manner in which the two Covenants have been implemented in domestic law. The International Covenant on Civil and Political Rights (ICCPR) has been implemented largely through one particular ordinance, namely the Hong Kong Bill of Rights Ordinance. However, there is no equivalent single ordinance that implements the ICESCR.

However, provisions of the ICESCR are incorporated into our domestic law through many Articles in the Basic Law, and through provisions in over 50 ordinances.

Article 39 states that the provisions of the ICESCR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the SAR. That is the case. The Administration does not therefore consider that there has been a breach of Article 39 of the Basic Law in this respect.

However, the ICESCR requires the Administration to take steps with a view to achieving progressively the full realization of the rights recognized in it by all appropriate means. This process is an ongoing one, and the possibility of enacting further legislative provisions for this purpose is always kept in mind. For example, the Administration is currently considering the desirability of proposing an increase in the age of criminal responsibility, and is reviewing the issue of racial discrimination.

With regard to the second part of the question, the Administration notes that the UNCESCR has urged the SAR not to argue in court proceedings that the ICESCR is only "promotional" or "aspirational" in nature. The question of the precise nature of the ICESCR may, in future, arise in domestic legal proceedings in many different contexts. In each case in which it does arise, it must be our independent Judiciary that decides that question. The courts will be best assisted in that task if all legitimate arguments are put to them by counsel appearing for the parties.

The Administration, and counsel acting for it, like other counsels, have a privilege to defend the Administration's rights by the statement of every fact and the use of every argument that is permitted by the principles and practice of the law. That privilege is recognized in the Code of Conduct of the Bar of the SAR.

With the greatest respect to the UNCESCR there are distinguished legal experts who hold differing views as to the nature of the ICESCR. Where the nature of the ICESCR arises in legal proceedings, the Courts may well be aided in their task by being informed of those differing views. It would not therefore be appropriate for the Administration to undertake to withhold such views from the Courts, or to undertake not to support those views in any circumstances.

MS AUDREY EU (in Cantonese): *Madam President, the Secretary for Justice has stated in the last paragraph on the first page of her main reply that the Administration does not consider that there has been a breach of Article 39 of the Basic Law, and that the provisions of the ICESCR have been incorporated into our domestic laws through many Articles in the Basic Law, and through provisions in over 50 ordinances. However, she stated in the next paragraph that the Administration is currently considering the desirability of proposing an increase in the age of criminal obligations, and is reviewing the issue of racial discrimination. It appears to me that she was being self-contradictory. Would the Secretary inform this Council of the provisions of the ICESCR which have not been implemented through the laws of Hong Kong, and the reasons for that?*

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I would like to thank Ms Audrey EU for raising her question. As mentioned in page three of my main reply, the ICESCR requires the Administration to take steps with a view to achieving progressively the full realization of the rights recognized in the ICESCR. The steps may include legislation and other means such as administrative, economic and education measures. Insofar as the general spirit of the ICESCR is concerned, it is hoped that constant improvements can be made to the human rights situation, instead of meeting all demands in one day. I have stated in the main reply that the Administration is currently considering the desirability of proposing an increase in the age of criminal obligations, and is reviewing the issue of racial discrimination. All this can be taken as some of the examples.

When, I answered Mr SZETO Wah's question at a meeting held last week in this Council, I explained that the UNCESCR is actually a group of experts whose views are highly respected. However, that does not mean that the UNCESCR can make legal rulings. Although its views are highly respected by the Government and used for reference, that does not mean it will constitute a breach of the ICESCR if the Government fails to act according to the proposals of the UNCESCR. Therefore, we have not breached Article 39 of the Basic Law.

MS AUDREY EU (in Cantonese): *Madam President, the Secretary for Justice has not answered my question as to which provisions have not been incorporated into the laws of Hong Kong for implementation. May the Secretary point out the provisions in question and, if it is impossible to do so, provide supplementary information later?*

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I am pleased to provide the supplementary information to the Honourable Member later. It is not possible for the Department of Justice to unilaterally decide which provisions have or have not complied with ICESCR, or which provisions have been implemented. I believe we have to work with other Policy Bureaux and government departments to examine where we should make further improvements policy-wise. (Annex I)

MR JAMES TO (in Cantonese): *Madam President, Ms Audrey EU asked the Government in part (b) of the main question whether it considers the ICESCR "promotional" or "aspirational" in nature, or sees it as an obligation. I wonder if the Secretary can inform the Council of the position of the Administration. If, in accordance with the main reply of the Administration, the Government is required by the ICESCR to do something, it would seem that this is an obligation. Yet the Secretary for Justice insisted that she will hold on to the opinion that the ICESCR is "promotional" and "inspirational" in nature, claiming that she has the right to do so. Is the Administration currently holding the opinion that the ICESCR is "promotional" and "inspirational" in nature, or considering it an obligation to put the ICESCR into implementation?*

SECRETARY FOR JUSTICE (in Cantonese): Madam President, as this supplementary question involves certain provisions, please allow me to answer in English.

SECRETARY FOR JUSTICE: The ICESCR was held to be "promotional" by the Court in three Immigration cases. Those involve applications for judicial review of Removal Orders issued by the Director of Immigration against persons who have no legal rights to stay in Hong Kong. The Court considered the effect of the application of these three international covenants to those cases, namely, ICCPR, ICESCR and Convention on Rights of the Child, and the reservations in respect of the ICCPR and the Convention on the Rights of the Child on Immigration cases. In respect of ICESCR, the Court noted that there was no similar reservation on Immigration cases. The Court reached the conclusion that ICESCR was "promotional" in nature, after having taken into account provisions of ICESCR and writings of various human rights commentators. Of course, the Convention is obligatory on the part of the Government to implement, but on the other hand, as I said repeatedly, the way to implement the ICESCR is by progressive realization of the Convention obligations. And therefore, whilst every measure is taken to implement the ICESCR, it does not mean that all the obligations are to be fulfilled either by legislation or otherwise, or immediately.

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

MR JAMES TO (in Cantonese): *Madam President, I would like to seek your ruling on whether the Secretary for Justice has answered my supplementary question because I am confused. Here are two statements made by the Secretary in her reply: The Court held in a law case that the ICESCR was "promotional" in nature. Yet the Secretary added that the ICESCR is obligatory from the viewpoint of the Government. As such, does the Secretary hold the ICESCR to be "promotional" or "obligatory"? The Secretary stated in this Chamber that the ICESCR is seen by the Government as an obligation, yet the ICESCR will be held by her to be "promotional" in the Court.*

PRESIDENT (in Cantonese): Mr TO, this is not the first time you ask me to give a ruling on whether a reply has been given by a government official to your supplementary question. Under normal circumstances, and in accordance with

the practices for raising Questions and the Rules of Procedure, Members ask questions during the Question Time and government officials give replies. How the government officials are going to answer the questions is beyond the control of the President. If Members are not satisfied with the answers, or think that the officials have not answered their supplementary questions, they can ask follow-up questions. This is why I asked you if your supplementary question had been answered. Now that you have asked me to give a ruling, I am afraid I am not allowed to do so unless the Rules of Procedure has been amended.

The Rules of Procedure has been made subsequent to discussions among Members and voting in this Council. Therefore, not even the President can change the Rules. My duty is to execute the Rules of Procedure. Mr TO, if you are not satisfied with the answer of the Secretary for Justice, or think that her answer is questionable, you may take follow-up action through other channels provided by the Council. It is not appropriate for you to ask the President to give a ruling at this juncture.

Mr TO, I would like to take this opportunity to make this point clearer to you since you made a similar request at the last meeting too.

MR JAMES TO (in Cantonese): *Madam President, I did not mean to agree or disagree. From my point of view, I certainly hold the view that the Secretary has not answered my question. However, if the President considers that she has already answered my supplementary questions, I will stop following up the issue. I will take follow-up action on other occasions instead.*

PRESIDENT (in Cantonese): Mr TO, in that case, would you tell me which part of your supplementary question has not been answered by the Secretary?

MR JAMES TO (in Cantonese): *Madam President, my supplementary question is: Does the Government regard the ICESCR as "obligatory" or merely "promotional" or "aspirational" in nature?*

PRESIDENT (in Cantonese): Mr TO, please be seated. Secretary for Justice, do you have anything to add?

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I would like to explain that the Government is prepared to take responsibility when entering into any covenants. The overall objective of the ICESCR is to ask the signatories to progressively improve their situation, instead of requiring them to achieve a particular goal immediately. Therefore, "promotional" and "aspirational" should be interpreted as having no specific means of compliance. Yet the Government will fully comply with its commitment to the ICESCR. The crux of the matter rather lies in how we are going to define the obligation and how we can fulfill it. I believe the dispute may last one or two days even Mr TO decides to take the matter to the Court. Given so little time for debate, I do not think we can possibly debate the issue thoroughly here.

PRESIDENT (in Cantonese): Members are not allowed to debate during the Question Time.

MR ALBERT HO (in Cantonese): *Madam President, the nature of the ICESCR is obviously a fundamental issue: Can the ICESCR give rise to a legal obligation immediately because of its nature, or is it only "promotional" or "aspirational" in nature such that the ICESCR is expected to be implemented in a way deemed appropriate by the Government? I wish to draw the attention of the Secretary for Justice to the fact that, the United Nations Human Rights Committee (UNHRC), being the most authoritative international organization, has told the SAR Government in unequivocal terms that it was a mistaken understanding of the Government to hold the opinion that the ICESCR is "promotional" or "aspirational" in nature. By citing the views of the Court, the Secretary for Justice seemed to be hinting that the opinion of the UNHRC is wrong, and the SAR Government disagrees with that. May I ask the Secretary for Justice whether she is of the view that the interpretation authority of local Courts overrides that of the UNHRC? Moreover, has the Secretary noticed whether the Court's conclusion was made before the adoption of the Concluding Observations by the UNHRC?*

PRESIDENT (in Cantonese): Secretary for Justice, please wait for a moment, I need to take a look at the Rules of Procedure. *(Pause)*

Rule 25(1)(g) of the Rules of Procedure states that "A question shall not reflect on the decision of a court of law or be so drafted as to be likely to prejudice a case pending in a court of law." I read out this Rule to remind

Members to be careful when raising their questions. Nonetheless, I rule that the Honourable Albert HO may ask this supplementary question.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I would like to thank Mr Albert HO for his supplementary question. It is certainly true that there are a group of experts in the UNHRC, and their views are held in high regard. However, the views of these experts are not tantamount to rulings. In Hong Kong, a legal status is often dependent on the ruling made by such judicial organs as the Courts. As the UNHRC stated in the Concluding Observations, two recent cases in Hong Kong are related to the obligations of the ICESCR, and the Court has accepted that the ICESCR is "promotional" and "aspirational" in nature. The rulings in respect of these two cases, both happened this year, were made quite close to the time when the Committee examined the Report of Human Rights in Hong Kong. If Mr HO is interested, he may refer to *CHAN To Fun vs Director of Immigration* [11 April] HCAL 58/1998. The ruling made by the Court was based on the views of experts, including ROBERTSON & MERRILLS, co-authors of *Human Rights in the World* and Henry STEINER, author of *International Human Rights in Context*. They all hold the view that the ICESCR is "promotional" and "aspirational" in nature, a point accepted by the Court. Although this view and the conclusion made by the UNHRC are unidentical, they are made by authoritative experts. Being a Government Counsel, I am obliged to provide relevant information and justifications to the Court which will in turn make the ruling. I believe Honourable Members, like everyone else, will respect the Court's ruling. This ruling, made by the Judiciary, enjoys a legal status in Hong Kong.

MR ALBERT HO (in Cantonese): *Madam President, the Secretary for Justice has not directly answered my supplementary question. Was the ruling quoted by the Secretary made before the endorsement of the Concluding Observations by the UNHRC? I merely wish to clarify this point.*

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

SECRETARY FOR JUSTICE (in Cantonese): Madam President, the ruling was made on 11 April this year, precisely one month before the Concluding Observations were made by the UNHRC.

PRESIDENT (in Cantonese): Honourable Members, we have spent more than 19 minutes on this question. As I have spent some time elaborating on the Rules of Procedure during the question time, I would therefore allow a Member to ask the last supplementary question.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary for Justice stated in her reply to part (b) of the main question that, it is common for disputes to occur in the course of legal proceedings in Hong Kong. I wonder if there are any figures indicating the number of disputes arisen in the Courts over the nature of the ICESCR before or after the reunification.*

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I am afraid that it is difficult to provide these figures, for not all rulings are recorded in the annual report of the Courts. If we are to answer this supplementary question raised by Mr CHAN, we might need to go through all the rulings before we know which cases have mentioned the obligations of the ICESCR. However, comparatively important cases are recorded in the Judiciary annual reports.

PRESIDENT (in Cantonese): Second question.

Domestic Employees Exempted from MPF Scheme

2. **MR LAW CHI-KWONG** (in Cantonese): *Madam President, under the Mandatory Provident Fund Schemes Ordinance (MPFSO), persons who employ and those who are employed as "domestic employees" are exempt from joining the Mandatory Provident Fund Scheme (MPFS); the relevant employees are therefore not entitled to statutory retirement benefits. Furthermore, "domestic employee" is defined as an employee who "provides domestic services in the residential premises of the employer". In this connection, will the Government inform this Council:*

- (a) *among the persons employed to work for households as cooks, cleaners, chauffeurs, gardeners or other posts, of the ones who are exempted from the operation of the MPFSO and those who are not, and the criteria it adopts for the differentiation; and*

- (b) *if the answer to part (a) above is that cooks and cleaners are exempted whereas chauffeurs are not, and as most cooks and cleaners are female while most chauffeurs are male, whether a situation will arise in which the majority of female household employees are not entitled to retirement benefits whereas most male household employees are; if so, has the relevant authority assessed whether the above provision substantively constitutes sex discrimination and therefore contravenes the provisions in the Sex Discrimination Ordinance (SDO); if the result of the assessment is in the affirmative, of the time when it plans to revise the provision; if the result of the assessment is in the negative, of the justifications for that?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President,

- (a) Under the MPFSO, "domestic employee" is defined as "an employee whose contract of employment is wholly or substantially for the provision of domestic services in the residential premises of the employer". Such employees are exempted from the operation of the MPF legislation. According to the above definition, employees who are rendering services which are substantially domestic in nature would be regarded as providing "domestic services". "Residential premises" includes a flat or house for residential purposes or a residential building together with its land or ancillary buildings, including private gardens. Therefore, those who are covered by the above definition, for example cooks, cleaners and gardeners providing domestic services in their employers' premises, are exempted. Family chauffeurs are not exempted because most of their services are rendered outside the residential premises.

Domestic employees are exempted because of the difficulty in ensuring compliance with the legislative requirements. To ensure compliance, the Mandatory Provident Fund Schemes Authority (MPFA) would need to inspect and, if necessary, collect evidence in the employers' residential premises for the purpose of prosecution actions. It will be difficult for the MPFA to inspect tens of

thousands of private households. Furthermore, the public would not like the MPFA to conduct inspection in their residential premises and would not welcome any disturbances caused by such inspections.

- (b) Regardless of their gender, all those who fall under the definition of "domestic employee" are exempted from the MPFSO. The question of sex discrimination does not arise.

MR LAW CHI-KWONG (in Cantonese): *Madam President, since I do not quite understand the reason mentioned by the Secretary in the second paragraph in part (a) of the main reply, I hope he can give a further explanation. The Secretary mentioned that exemption was granted because of the difficulty encountered in carrying out inspection in residential premises. However, if chauffeurs are to be inspected, inspection might need to be conducted in the streets. It will definitely be more difficult to inspect chauffeurs than inspecting domestic employees. In that case, why are domestic employees but not family chauffeurs exempted? If inspection is done on chauffeurs, since the employment contracts of family chauffeurs will be kept at home rather than in the cars, why will it be easier for the authority to inspect family chauffeurs than domestic employees? Can the Secretary explain it?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): *Madam President, I would like to thank the Honourable Member for his supplementary question. It is certainly not easy to find out whether chauffeurs have joined the MPFS. Therefore, the MPFA has a very difficult job to do. I believe most people do not want the MPFA to inspect their residential premises to collect evidence because this will cause them disturbances. Indeed, if the MPFA really needs to do that, the situation must be very serious. Moreover, the MPFA is required to apply to the Court for a warrant before it can inspect a certain household. As regards chauffeurs, we find it difficult to ask them in the streets whether they have participated in the MPFS. Our general practice is to rely on a complaint mechanism. If an employer fails to contribute to the MPFS for the chauffeur employed by him, the chauffeur may lodge a complaint with the MPFA. In fact, we have received similar complaints. After the taking of follow-up action by the MPFA, the relevant employers have agreed to make contributions for their chauffeurs.*

I wish to add that the reason mentioned by me is just one of the reasons. There are, of course, many pertinent reasons. Moreover, as far as administrative burden is concerned, employers predominating as households must, under the law, maintain records of their employees such as statements of payment for seven years. This poses administrative difficulties too. However, all these reasons are not the major ones. I believe Members still recall that this issue was thoroughly debated in this Council in 1995 and Members eventually agreed that domestic employees should be exempted from the MPFSO. This was agreed upon by Honourable Members in the legislature.

MR LAW CHI-KWONG (in Cantonese): *Madam President, the Secretary's answer was very long. My supplementary question was in fact very simple. The Secretary seems to be saying that inspecting chauffeurs is as difficult as inspecting domestic employees but this is not the main reason for exempting domestic employees. Is this what he meant? I am not too sure.*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, this is not what I meant. The substantial difference lies in the fact that chauffeurs work outside the residential premises. Furthermore, the number of chauffeurs is smaller than that of domestic employees. Insofar as enforcement is concerned, we think we may make use of the complaints mechanism to ensure the relevant persons abide by the law. Most important of all, the present arrangement has been endorsed by the legislature.

MISS LI FUNG-YING (in Cantonese): *Madam President, the MPFSO seeks to ensure that employees' livelihood is protected after their retirement. However, the Secretary cited such reasons as high administrative fees or difficulties encountered in ensuring compliance of the law by the relevant persons. I think this is like putting the cart before the horse. Will the Secretary review the existing practice?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for her supplementary question. I do not agree that we are putting the cart before the horse. Let us refer back to history. If the decisions made by Members after discussion in this

Council are considered to be in the wrong order, Members would probably have put the cart before the horse at that time. I believe this is not the case. The problem has already existed when the decision was made in this Council. Many people consider it unreasonable for the MPFA to visit households in the evening for the purpose of conducting inspection. If the MPFA decides to do so, additional resources and manpower have to be provided before hundreds of thousands of households can be inspected. Nevertheless, if Members tell the Government that the people have changed their minds and welcome inspections by the MPFA at any time, or that it is now timely for a review to be conducted, I would be pleased to do so. My present view is that the MPFSO has just come into force for six months and, as a matter of fact, the difficulties mentioned by me earlier still exist. However, that does not mean we will not review the matter. We will be pleased to conduct a review at an appropriate time.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, let me start by declaring I objected to the part concerning domestic helpers in 1995. I think the reasons given by the Secretary in his answer today can serve as the best teaching material to illustrate how one "trims the toes to fit the shoe". Domestic employees are exempted from the MPFSO just because there are difficulties in enforcing the law. I need to remind the Secretary that the way he answered the question was very illogical because he said it was not justified to inspect so many households. But I want to remind the Secretary*

PRESIDENT (in Cantonese): Mr LEE, you need not remind the Secretary. Please state your supplementary question directly.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, my question is related to my "reminder". The Government has done a terrific job in workmen's compensation insurance, which also covers domestic helpers. Since no exemption has been granted, all employers are required to take out insurance for their employees. Given that the Government has done so well in workmen's compensation insurance, why has it failed to perform equally good in this area? This is totally illogical. Does the Secretary agree with this point? Furthermore, will the Secretary review this problem?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for his supplementary question. I trust Mr LEE is an expert in this respect. Workmen's compensation insurance and MPF are certainly different, which I hope Mr LEE will agree. Let me reply briefly to Mr LEE's question. As I said, we will be pleased to review the issue in due course.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I have not got the real reply from the Secretary. The Secretary said the two are markedly different. I do not understand where the difference lies. I hope he can explain it. When it comes to inspection procedures, the authorities certainly need to carry out inspections in relation to workmen's compensation insurance. Workmen's compensation insurance and MPF are identical for they both need to be regulated by the law.*

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

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I think they are in fact two different things. However, Madam President, I do not want to add anything.

MRS SELINA CHOW (in Cantonese): *Madam President, perhaps I should follow the example of Mr LEE by stating in advance that I agreed domestic employees should be exempted at that time. Will the Secretary clarify if it was the case that a large majority of the employers and their domestic helpers had raised no strong objection to the exemption when the relevant issue was discussed in this Council?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I think the Honourable Member knows it better than I do because I did not take part in the debate back in 1995. However, I have gone through the records and noted that most of the Members at that time agreed that difficulties, such as administrative difficulties or inspection difficulties mentioned by me

earlier, would arise if domestic employees were not exempted. In the final voting, most Members deemed it inappropriate to cover domestic employees. Nevertheless, Members did agree that the issue could be reviewed if the difficulties could be overcome after the implementation of the relevant ordinance. I have indicated that we would be pleased to carry out a review when I answered Mr LEE's question.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I also want to declare that I did take part in scrutinizing the Ordinance. I agree with the Secretary that since the issue was not an important discussion item at that time, we proposed that a review could be conducted after the Ordinance had been implemented for a period of time. What happened was like the debate on the MPFS initiated by Mr CHAN Kwok-keung last week. In the debate, we had raised a number of questions.*

In paragraph (b) of his main reply, the Secretary stated: "Regardless of their gender, all those who fall under the definition of 'domestic employee' are exempted from the MPFSO." Despite what the Secretary said, domestic helpers are in general female. This point is indeed disputable. If the Government does not review the Ordinance, it might give us the impression that there is in fact sex discrimination. In addition, I wish to raise an additional point for the information of the Government. Madam President, excuse me, now that we have long service payment

PRESIDENT (in Cantonese): Miss CHAN, you can raise only one question.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, fine, this is what I want to ask.*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for her supplementary question. I trust that the roles played by males and females are quite confusing. Nowadays, not all drivers are male. Cooks are not necessarily female too. I know that many females work as drivers and many males work as cooks. Gardeners may be male or female. To determine whether the Ordinance has

contravened the SDO, we must look at the Ordinance *per se* rather than the outcome or the number of people involved. We have exchanged views with the Equal Opportunities Commission in this respect. The Commission agreed that the existing practice is in line with the SDO.

DR TANG SIU-TONG (in Cantonese): *Madam President, most domestic helpers are expatriates. Are they exempted because they are expatriates? What will happen if they wish to participate in the MPFS on a voluntary basis?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for his supplementary question. The answer is negative for the first question. If they were exempted because they are expatriates, I believe Members will accuse us of contravening racial discrimination laws. I think this is not the case. The relevant issues have been discussed by Honourable Members at that time. As regards participation on a voluntary basis, many retirement funds are now available in the market. The most practical arrangement is for the domestic helpers, if they are interested, to participate in schemes they deem appropriate.

DR TANG SIU-TONG (in Cantonese): *Madam President, can domestic helpers participate in the MPFS on a voluntary basis?*

PRESIDENT (in Cantonese): Secretary for Financial Services, Dr TANG did mention that part in his supplementary question.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, the issue of whether domestic helpers should be allowed to join the MPFS on a voluntary basis was discussed in the legislature at that time but it was unanimously agreed that the MPFS should be kept as simple as possible. If some domestic helpers were allowed to join the MPFS whereas others chose not to do so, the situation would become very complicated. So, it was agreed that voluntary participation should be vetoed.

MR LAW CHI-KWONG (in Cantonese): *Madam President, the Secretary pointed out earlier that he would conduct a review if Members so request. I*

would like to quote the views of the Government at the time the Second Reading debate of the relevant Bill was resumed. A government official said: "....., it is not our intention to exempt these categories of people forever. Once it is considered administratively possible and desirable to do so, we shall review the provisions and bring them eventually back into the ambit of the MPF." Has the Government changed its stance?

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for his supplementary question. I did not say if Members wished to conduct a review, we would do so. This is not what I meant. If Members have listened to me clearly, I was saying if it was administratively possible, we would be very pleased to conduct a review. We are also very fair. Let me take the debate held last week as an example. Even though our ideas were rejected, we had agreed to review the relevant mechanism. This shows that we are conducting business with extreme fairness, instead of taking a "lose-hit, win-take" approach. We will be very pleased to conduct a review if Members consider that it is administratively feasible and no difficulties will arise.

PRESIDENT (in Cantonese): Third question.

Arrangement for Allocating PRH Units to the Elderly

3. **MR FREDERICK FUNG** (in Cantonese): *Madam President, regarding the arrangement for allocating public rental housing (PRH) units to the elderly, will the Government inform this Council:*

- (a) *of the measures being taken to ensure that the elderly who have been registered under the Proactive Registration Campaign for the Elderly will be allocated PRH units by the end of 2003;*
- (b) *whether it will consider allocating more urban sites in the next three years for building more self-contained PRH units for the elderly; if it will, of the specific plans; if not, the reasons for that; and*
- (c) *whether it will study if the current design of the units under the Housing for the Senior Citizens Scheme and its complementing*

services can meet the needs of the elderly; if it will, of the details of the study; if not, the reasons for that?

SECRETARY FOR HOUSING (in Cantonese): Madam President,

- (a) To ensure that the 14 279 all-elderly households which have applied for public rental housing before 31 March 2001 will be allocated flats before the end of 2003, the Housing Authority (HA) has earmarked a quota of 18 000 refurbished or new flats for allocation from now until the end of 2003. This quantity will be sufficient to meet demand.
- (b) The Government's policy is to provide a steady and sufficient supply of land all over the territory to meet demand for housing from both the public and private sectors. With the land already allocated or earmarked, the HA intends to make available a quota of 30 000 small flats, new or refurbished, suitable for allocation to elderly applicants in the five-year period from 2001-02 to 2005-06. This supply should enable the HA to shorten the waiting time by elderly applicants for public housing to two years by 2005. Of the new production of small flats, 38% will be located in the urban area while 43% will be in the extended urban area 90% of these new flats will be provided with toilets and kitchens.
- (c) To gauge the feedback of elderly tenants on housing design, the Housing Department (HD) conducted an opinion survey in late 1999 covering over 1 800 randomly selected elderly households living in different types of public housing. 91% were satisfied with the facilities and provisions in their flats. In particular, 95% of respondents living in hostel-type Housing for Senior Citizens were satisfied with the general living environment; 96% were satisfied with the provision of warden services; and 99% found the Emergency Alarm System useful. If given another choice, 43% elderly households prefer not to share facilities in flats, such as kitchens, dining rooms and bathrooms, with other tenants. In the light of this finding, the HA has decided to stop producing hostel-type housing for the elderly.

MR FREDERICK FUNG (in Cantonese): *Madam President, in part (b) of his main reply, the Secretary said the waiting time by elderly applicants for public housing will be shortened to two years by the end of 2005. However, it is now specified in the PRH application forms of the HD that elderly applicants normally have to wait two years before they can be rehoused. The Secretary said the waiting period can only be shortened to two years by 2005, while the HD said the current waiting period is normally two years, so does it mean that the Government is contemplating a retrogression in this policy?*

SECRETARY FOR HOUSING (in Cantonese): *Madam President, in fact, there is no retrogression in this policy. When the HD said elderly applicants can be rehoused in two years, it means that they are to be accommodated in a unit with other elderly persons, that is, three elderly persons sharing a unit, thus the waiting period can be shortened. If the elderly applicants wish to be accommodated in self-contained singleton units, they will have to wait longer. Earlier on, when I said the waiting period will be shortened to two years by 2005, I meant elderly applicants will be housed in singleton units. When these units are made available to elderly applicants, the average waiting period will be shortened to two years.*

MR LAU WONG-FAT (in Cantonese): *Madam President, are PRH units being built in the New Territories for elderly persons? If so, what is the percentage of such units compared to the total number of similar units in the whole territory?*

SECRETARY FOR HOUSING (in Cantonese): *Madam President, if we narrow down the scope and just focus on small units, the Government has already earmarked land for the construction of new units in the coming five years. About 18% of these newly constructed small units will be located in the New Territories. Of course, not all units allocated to the elderly are new. Sometimes, we just need to refurbish the old ones. Therefore, the percentage of actual supply may even be higher than what I said earlier.*

MR TAM YIU-CHUNG (in Cantonese): *Madam President, generally speaking, the adaptability of elderly persons is comparatively low, and those living in old buildings of the urban area will prefer to stay in that area. Can the Government*

tell us whether it will examine with the Urban Renewal Authority (URA) the feasibility of earmarking land in its urban renewal plan for the construction of PRH units for the elderly?

SECRETARY FOR HOUSING (in Cantonese): Madam President, I have mentioned in my main reply that 38% of the new flats to be built in the coming few years will be located in the urban area and this is a high percentage. Moreover, 43% will be located in the extended area and this is also a high percentage. Certainly, the usage of land resumed by the URA will depend on the territory-wide land requirement assessment of the Secretary for Planning and Lands. Therefore, these factors will need to be considered when determining land usage.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, in part (c) of his main reply, the Secretary said if the respondents were given another choice, 43% of the elderly households prefer not to share facilities in flats, such as kitchens, dining rooms and bathrooms, with other tenants. The Secretary has also indicated in the same part that the HA has decided to stop producing hostel-type housing for the elderly. This is certainly good news. However, a lot of elderly persons are still living in such units. In this connection, what will the authorities do to tackle their problem? The Secretary has also mentioned in part (b) that the waiting time for elderly applicants can only be shortened to two years by 2005. In other words, the Government has absolutely no plans to improve the living conditions of elderly persons now living in hostel-type units and to transfer them to self-contained singleton units.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, accommodation will be provided to the elderly after the HA has dealt with their housing applications. For the part of the HA, it naturally hopes that the elderly will continue to live in those units. If the elderly prefer other choices, that is, they have changed their mind and requested to be housed in other units, it is indeed unlikely for their applications to be approved easily. Nevertheless, I believe the HA will exercise discretion in considering the elderly persons' applications to move to other units after the Government has achieved its published commitment in relation to the housing of elderly persons.

MR FRED LI (in Cantonese): *Madam President, I would like to follow up on part (c) of the main reply in relation to the design of hostel-type PRH units. The Secretary said basically more than 90% of the respondents indicated that they were satisfied in every aspect. However, when I visited some PRH elderly residents last Monday, they were very eager in voicing their opinions and told me they were strongly dissatisfied with two designs in the units. First, since metal gates are not provided, the doors of hostel-type units have to be closed. This has resulted in poor air ventilation. Moreover, nobody will know if accidents occur in the units. Second, smoke detectors installed on the ceilings of the units are so sensitive that the alarm will be triggered even when someone fries a salted fish, thus causing great dissatisfaction among those living on the upper floors. These elderly persons hope that the Housing Bureau can expeditiously look into these problems and introduce improvements. Is the Government aware of these two problems? The Secretary said more than 90% of the respondents indicated that they were satisfied but I heard a lot of grievances when I visited them.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I would be more than happy to convey Mr LI's views on the design of units to the HA to see whether improvements can be made.

MR FREDERICK FUNG (in Cantonese): *Madam President, in part (c) of his main reply, the Secretary said that 43% elderly households express unwillingness to share facilities such as kitchens with other tenants of hostel-type elderly housing. Is the Secretary aware that the Shum Shui Po District Council has proposed a new design at its last meeting in relation to such complaints? It was proposed that in planning the construction of a building wholly used by the elderly, the ground floor can be designated as a social centre for the elderly, the second and third floors as a care-and-attention home, and the upper floors as home for the aged in general. In this way, when the elderly fall ill, they can still stay in the same building and need not move to care-and-attention homes elsewhere. Even if they are on their deathbeds, they can still be accompanied by their good friends. Is the Secretary aware of this design, and will studies be carried out?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, the Housing Bureau has not yet received such a proposal. Nonetheless, I will liaise with the

HA to see whether it is aware of this proposal and whether studies will be carried out in this connection.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, in part (b) of his main reply, the Secretary talks about future PRH housing arrangements for the elderly. He said 38% of the units will be located in the urban area while 43% will be in the extended urban area. In his earlier response to Mr TAM Yiu-chung's supplementary question, the Secretary said 38% is already a very high ratio. However, in carrying out redevelopment, the Government has absolutely not considered the fact that the elderly used to live in a certain district for a few decades, and they were given housing units in very remote areas. For example, elderly residents of the Ngau Tau Kok Estate, soon to be demolished, and the North, South, East and West blocks of the Wong Tai Sin Estate, now under demolition, were all rehoused in remote areas. The Government has absolutely not considered the feelings of these elderly people. Despite the ideal picture portrayed in its main reply, the Government has often lost sight of the elderly's wishes at the time of actual operations. It is the earnest hope of the elderly that they can remain in the same district to be with their good friends. Does the Secretary understand the wishes of the elderly?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, in fact, the HA is fully aware of the elderly's housing needs, and has therefore lifted one of the restrictions a few years ago. In the past, due to the relative shortage of housing units in the urban area, general applicants and elderly people were not allowed to apply for these housing units. For the sake of elderly persons, we lifted this restriction several years ago. Now elderly persons can live in the housing units in the urban area if such units are available.

I have also mentioned in part (b) of my main reply that according to our information, small flats in the urban area will be made available for elderly applicants in the coming five years. Moreover, the flats will not be confined to the urban area only. Generally speaking, the extended urban area is an ideal place too. I believe the elderly will wish to live there. On the whole, the HA and the HD will adopt a co-operative approach and try to understand the demands of the elderly so as to meet their needs.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I saw that you took a look around you, probably because no other Member has indicated a wish*

to raise a supplementary question. Will you allow me to ask one more supplementary question?

PRESIDENT (in Cantonese): Miss CHAN, you have my permission to ask a second supplementary question.

MISS CHAN YUEN-HAN (in Cantonese): *Thank you, Madam President. In response to my supplementary question, the Secretary said earlier that the authorities concerned are fully aware of the situation of the elderly applicants. However, at the district level, a lot of elderly residents complained to us that arrangements for local rehousing and neighbourhood community relations are not being taken into account when the Government draws up its overall housing policy. Earlier on, the Secretary seemed to suggest that he is fully aware of the local conditions, but I think he does not have any idea at all. May I ask the Secretary again whether he is fully aware that elderly persons living in PRH units desperately wish to maintain their community relations?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I think it is sometimes very difficult to make arrangements for local or internal transfer as referred to by Miss CHAN. The HA has not guaranteed that elderly people will definitely be relocated in the same estate or district when demolition is carried out to public housing. However, generally speaking, the HA is aware that elderly people like to live in urban areas, and will therefore try its best to make arrangements to relocate them in their old neighbourhood. In fact, the HA will endeavour to meet the request of the elderly in the light of their preferences.

PRESIDENT (in Cantonese): Last supplementary question.

MR FREDERICK FUNG (in Cantonese): *Madam President, the Secretary has not stated clearly in part (b) of his main reply how many of the 38% newly constructed units in the urban area will be allocated to elderly people. The Secretary has cited two data. One is 30 000 small new or refurbished flats will be reserved for elderly applicants. The other is 38% of the newly constructed units will be located in the urban area while 43% will be in the extended urban*

area. However, how many of the new flats will be allocated to elderly applicants since the answer can be zero? Madam President, may I ask the Secretary to give us the actual figure?

SECRETARY FOR HOUSING (in Cantonese): Madam President, Mr FUNG has asked a very smart question. As far as I understand it, general applicants are currently not allowed to apply for units in the urban area because these units are, relatively speaking, in short supply. However, when demolition is carried out to housing estates in the urban area, the HA undertakes that arrangements will be made for those affected to be rehoused in the urban area as far as possible. As some of the residents needed to be rehoused are not elderly persons but single persons under 60 who are eligible for singleton units, some of the urban units may be allocated to these people. However, these people only account for a very small percentage since it is roughly estimated that only about 10% of the small flats will be allocated to these single persons. In other words, most of the small flats, that is, about 90% of the new flats can be allocated to elderly tenants.

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

MR FREDERICK FUNG (in Cantonese): *Madam President, my question was: Of the 38% of new flats in the urban area, how many will be allocated to elderly tenants? I asked this question because the Secretary said that 38% of the new flats are in the urban area, and 43% are in the extended area. These figures represent the total numbers of flats, not exclusively the numbers of flats for the elderly. Can the Secretary tell us the percentage of units that will be allocated to elderly people out of the 38% units in the urban area?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, I thought I have already answered Mr FUNG's question. According to the rough estimate of the HA, of the 38% of new flats in the urban area, 90% can be allocated to the elderly.

PRESIDENT (in Cantonese): Fourth question.

Policies on Permanent Residence and Split Families

4. **MR JAMES TO** (in Cantonese): *Madam President, in its Concluding Observations, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) urged the Hong Kong Special Administrative Region (SAR) to take note of the following when formulating and implementing its policies on permanent residence and split families:*

- (a) *give the most careful attention to all the human rights dimensions of the issue;*
- (b) *reconsider extending the "concession" made by the SAR; and*
- (c) *enhance the transparency of all relevant processes, including appropriately disaggregating all data and making them public, and tabling such data in the Legislative Council every six months.*

In this connection, will the Government inform this Council how it will follow up these recommendations?

SECRETARY FOR SECURITY (in Cantonese): Madam President, in dealing with issues relating to permanent residence and split families, the Government pays full regard to all human rights dimensions and other pertinent factors. Our policy towards the entry of mainland residents is predominantly a family reunion programme. Every year some 54 750 mainland residents enter Hong Kong for settlement through the One-way Permit (OWP) scheme. This represents an annual intake rate of about 0.8% of our population, compared to 0.2% to 0.4% in other countries or regions with much more space than Hong Kong. Since the reunification of Hong Kong, more than 216 000 mainlanders have been admitted for settlement, over 98% of whom are children or separated spouses joining their families.

Given that there are close to 7 million Hong Kong residents living in an area of just 1 100 sq km, there is a practical need to facilitate family reunion in an orderly manner within the constraint of our social and economic infrastructure. In admitting those eligible to come to Hong Kong at the fastest rate possible, we need also to maintain a sustainable environment in the interest of the local population and the immigrants admitted for settlement. Thus the OWP scheme

is subject to a daily quota of 150. In accordance with Article 22 para 4 of the Basic Law, the quota is determined by the Central Government after consulting the SAR Government.

The OWP scheme is administered by the mainland authorities. Persons claiming right of abode under paragraph 2(c) of Schedule 1 to the Immigration Ordinance have to apply for a Certificate of Entitlement (C of E) from the Immigration Department (ImmD). The procedures for applying a C of E were published in the Gazette on 16 July 1999. Mainland persons holding a C of E issued by the ImmD affixed onto an OWP issued by the mainland side can enter Hong Kong to exercise their right of abode.

Mainland authorities administering the OWP scheme maintain a regular dialogue with the ImmD on the scheme's operation. A number of improvement measures have been introduced over the years to enhance the transparency of the scheme. These include:

- (a) the introduction of a points system in 1997 to determine the priority of entry;
- (b) daily publication of successful OWP applicants in a local newspaper since the latter half of 2000. The lists of successful applicants are divided into different categories, including those eligible for right of abode under paragraph 2(c) of Schedule 1 to the Immigration Ordinance, separated spouses, children coming to take care of parents, and so on. Relevant details on individual applicants, such as name, place of application in the Mainland, sex, date of birth and where appropriate, number of points attained, date of marriage, period of separation and names of parents are provided; and
- (c) the introduction of a complaints hotline by the Guangdong Public Security Bureau from 1 January 2001.

Turning to that part of the question relating to what has been referred to as the Government's "concession", it is the subject matter of the appeal now being heard by the Court of Final Appeal (CFA). We shall await the outcome of the appeal.

Finally, bearing in mind that detailed information on successful OWP applicants is already published by the mainland authorities in the local press, we see no need to table such information in this Council.

MR JAMES TO (in Cantonese): *Madam President, in part (b) of my main question, I quoted the UNCESCR in urging the Government to reconsider extending the "concession" made by the SAR Government. Can the Government tell us how many feasible options are available for extending the "concession" purely from a legal perspective? Furthermore, the Secretary pointed out in the main reply that the Government is awaiting the outcome of the appeal now being heard by the CFA. Does the Secretary mean that the Government will not reconsider extending the "concession" at the moment but will decide whether it will do so after the outcome of the appeal is known?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as regards Mr TO's question on the "concession" policy, after the Standing Committee of the National People's Congress (NPCSC)'s interpretation of the Basic Law has been consolidated, the Government is of the view that, of the mainlanders who claim to have the right of abode, a total of about 3 700 people are eligible under the concession policy. However, quite a number of those who claim to have the right of abode do not accept this view, and they think that they are entitled to the right of abode too. In this connection, their cases are now being heard at the CFA. I would like to ask the President for a ruling because in accordance with Rule 25(1)(g) of the Rules of Procedure as mentioned by the President earlier, I am not allowed to discuss this concession policy here.

PRESIDENT (in Cantonese): Mr TO, has the Secretary answered the second part of your supplementary question?

MR JAMES TO (in Cantonese): *Madam President, perhaps I should elaborate further. The first part of my supplementary question is: Purely from the angle of legal technicality, how many feasible options are available for extending the "concession"? I am not talking about the relevant cases. Regardless of whether there are such cases, the Government can still tell us the number of feasible options from the angle of legal technicality and analysis.*

PRESIDENT (in Cantonese): Mr TO, I think the Secretary has already answered this part of your question, but has not yet answered the second part of your supplementary question. Therefore, you may repeat that part of your question.

MR JAMES TO (in Cantonese): *I am sorry, Madam President, you mean.....*

PRESIDENT (in Cantonese): Mr TO, the supplementary question you asked earlier consists of two parts. The Secretary has already answered the first part. Though you think that she has not fully answered the first part, I rule that she has already provided you a reply. Now you may ask the second part of your supplementary question that has not been answered by the Secretary. Do you still remember that part of your question?

MR JAMES TO (in Cantonese): *Madam President, the second part of my supplementary is: The Secretary said the Government will not reconsider extending the "concession" at the moment, does she mean that the Government will reconsider doing so after the appeal has reached an outcome?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I have given a joint reply to both parts of the supplementary question. In fact, we have already stated the view of the Government at several court proceedings. As regards the concession policy, the Government maintains the view that, in accordance with Article 158 para 3 of the Basic Law, cases to which judgments have already been previously rendered shall not be affected by the interpretation of the NPCSC. Under this principle, our view is that: Only those who were present in Hong Kong and claimed that they have the right of abode and have applied to the ImmD before the CFA passed its judgment on 29 January 1999 are eligible.

We have repeatedly stated this view in the Court, and proceedings on the relevant cases are now underway. While we are awaiting the outcome of the appeal, we will not propose other legally feasible options. We will certainly abide by the judgment made by the Court. I have nothing to add at the moment.

MISS MARGARET NG (in Cantonese): *Madam President, let me first declare my interest: I am the legal representative of some of the claimants in some cases. Madam President, the Secretary mentioned other countries in her main reply, but those countries are dealing with immigrants, not with people having the right of abode, so the figures should not be used for comparison. Will the Secretary*

please tell us, firstly, as regards people who have the right of abode under Article 24 of the Basic Law, will they be given treatment different from that received by those who do not have the right of abode? Will this group of people be given any preference? Secondly, as regards the OWP scheme, the Secretary mentioned earlier that this group of people has to apply for an OWP and those who come to Hong Kong on an OWP will immediately enjoy the right of abode. In this connection, has the Government discussed with the mainland Government to see how special treatment can be granted? As China is also a signatory to the International Covenant on Economic, Social and Cultural Rights, has it considered issuing special OWPs so that holders of such OWPs will no longer need to give up their right to reside on the Mainland after coming to Hong Kong? Madam President, my two supplementary questions are: Firstly, what are the differences in terms of treatment? Secondly, has the Government discussed with the mainland authorities the feasibility of issuing special OWPs to facilitate the travel of those who have the right of abode?

PRESIDENT (in Cantonese): Miss Margaret NG, please sit down first. Now, you have put me in a difficult position, because you emphasized that you have raised two questions but Honourable Members can only ask one question under each supplementary question. Could you tell me how these two questions are related?

MISS MARGARET NG (in Cantonese): *Madam President, my two supplementary questions are related. Firstly, we have to establish that those people have a special status, because if they do not have a special status, we cannot carry on with our discussions. If the Secretary agrees that they have a special status, then I can ask my second supplementary question in respect of OWPs to see whether discussions have been held between the Government and the mainland authorities on the issuance of special OWPs.*

PRESIDENT (in Cantonese): Miss NG, I really do not quite understand your supplementary question. However, I cannot stop you from asking the question just because I do not understand it. So, the only way is to see how the Secretary for Security will answer this question.

SECRETARY FOR SECURITY (in Cantonese): Madam President, let me respond to several points raised by Miss NG in her question. Firstly, Miss NG indicated that the data I quoted for comparing different family reunion programmes, that is 0.8% for Hong Kong and 0.2% to 0.4% for overseas countries, might not be very appropriate. This is because the family reunion programmes of overseas countries do not cover those who have the right of abode. I do not agree to Miss NG's view because we consider those claiming to have the right of abode are having no such right. Whether they have the right of abode will eventually need to be judged by the Court. Generally speaking, in the case of overseas countries, if right of abode is considered to be the same as nationality, then a person must first become a citizen (such as an American citizen) before he can pass on his nationality or right of abode to his next generation. However, this does not apply to adult children born in his place of origin before his migration. If his adult children wish to be reunited with their families, normally they have to be put on a waiting list, and the waiting time is usually quite long. Therefore, the policy adopted in Hong Kong for dealing with adult children born to Hong Kong residents in their place of origin before they acquire the right of abode is no different from that of overseas countries.

As regards Miss NG's question on whether different treatments are given to those who have the right of abode and those who do not, my answer is in the affirmative. Before the reunification of Hong Kong, the then Hong Kong Government already noted that some people would acquire the right of abode after the Basic Law came into effect after the reunification. So, in the '90s, the Government consulted with the mainland security authorities and decided to increase the daily quota for OWPs. In 1950, the daily quota was 50; in 1982, it rose to 75. In the '90s, in view of the fact that many people would acquire the right of abode after the Basic Law came into effect, the Hong Kong Government consulted with the mainland authorities and decided to increase the daily quota for OWPs from 75 to 150 by stages: 105 in 1993, and 150 in 1995. During the consultation, we have made it clear that of the 75 additional places, 45 will be reserved for children with the right of abode, and 30 for mainland residents who have been separated from their spouses for more than 10 years. Under this arrangement, the mainland authorities formulated two policies for the issuance of OWPs: those who have the right of abode — mainly children of Hong Kong residents — are no longer subject to a points system. Once their permanent resident status is confirmed by the ImmD and the mainland authorities, a C of E will be affixed to their OWPs and they can come to Hong Kong without the need to be subject to a points system. As regards those falling in the remaining five

categories, including women separated from their spouses, children coming to take care of parents and so on, they will be subject to a points system. Such information is published daily in a local press. We can see that although those falling in the category of Hong Kong permanent residents have to obtain OWPs, they are not subject to a points system. As for people falling in other categories such as separated spouses, the newspaper will publish the number of points that are required before they can meet the requirement. Therefore, though there is only one type of OWPs, those having the right of abode and those having no right of abode are treated differently.

DR YEUNG SUM (in Cantonese): *Madam President, the Secretary mentioned that the particulars of those who are admitted to Hong Kong are published in a local press. Will the Government consider posting such information at the ImmD or on its website, so that the applicants' family members in Hong Kong can have access to such information?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we did consider this issue before. However, since those data belongs to the Guangdong Public Security Bureau, we consider it inappropriate for us to interfere with its business by publishing its data. Moreover, I understand that it has set up its own website and a telephone enquiry hotline. Recently, the mainland authorities have even formulated a measure to allow any aggrieved persons to lodge appeals if they object to the entry of a certain person into Hong Kong within 15 days after the publication of the list. This is because the Guangdong Public Security Bureau has changed its operational principle for it now accepts public scrutiny. So, we think it is inappropriate for us to publish the data on our website. However, if Members are interested, we can provide them with the list of people coming to Hong Kong on OWPs for reference. In fact, this is what we frequently do. For example, Mr LAW Chi-kwong used to ask me to provide him with a name list every year and I have provided him with the information as requested. I can even provide the breakdown of such information by age, sex and the number of applicants who are children of Hong Kong residents to Members on a regular basis.

PRESIDENT (in Cantonese): We have already spent 16 minutes on this question. We shall now proceed to the last supplementary question.

MISS EMILY LAU (in Cantonese): *Madam President, the Secretary said in her main reply that since 1 July 1997, more than 216 000 mainlanders have been admitted to Hong Kong, among which 98% belonged to the category of family reunion. Will the Secretary inform this Council whether the Government is aware of the number of people who are waiting to come to Hong Kong? Furthermore, will the Government consider consulting with the mainland authorities to increase the daily quota of 150, so that the target for family reunion can be realized as soon as possible?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I do not have the exact data on these applications on hand at the moment. I can make an inquiry to the Public Security Bureau of the Mainland through the ImmD to see approximately how many applications have been received and then report back to Miss LAU. (Annex II)

However, I understand that since the expansion of the quota for OWPs in 1993 and the implementation of the "points system" on the Mainland in 1997, the family reunion situation has been significantly improved. Let me take the Guangdong Province as an example. Women wishing to reunite with their husbands in Hong Kong used to wait for more than 10 years. Now the waiting time has been reduced to only about eight years, and five years for women in the Fujian Province. This situation is considered not bad. Even many Hong Kong adult children who wish to reunite with their parents in the United States or Canada have to wait for a long period of time. The waiting time for mainland applicants is constantly shortening. Moreover, we can see that among those coming to Hong Kong on OWPs, the percentage of children who are over 21 years old have been on the increase, showing that many younger children have already been admitted. The Guangdong Province has already started issuing C of Es to many applicants who are over 21 and claim that they have the right of abode in Hong Kong. I can check with my office for the detailed figures and then pass them onto Miss LAU. (Annex III)

As to whether we would consult with the mainland authorities to increase the existing quota of 150, I think this is a very important decision. In fact, with a daily quota of 150, there will be 54 750 people coming to Hong Kong every year. This figure is equivalent to the population of a small town in overseas countries. Moreover, as most of those who come to Hong Kong are women and young children, they will have definite demand on various facilities and services

of Hong Kong. I believe we should consider the acceptability of Hong Kong before making the request to expand the quota.

PRESIDENT (in Cantonese): Fifth question.

Safety of Foundation Works Handled by Contractors Involved in Piling Scandals

5. **MR ALBERT CHAN** (in Cantonese): *Madam President, the series of piling scandals in public housing revealed last year have aroused public concern about the safety of building foundations. Since June last year, the Administration has been checking comprehensively the quality of piles used in the foundation works which are in progress, but it has no plans to do so for those foundation works which have been completed. As the contractors involved have also undertaken other construction works, including flyovers, government buildings and private buildings, the piling incidents have a latent impact on the general public. In this connection, will the Government inform this Council:*

- (a) *whether it will consider conducting random checks again on the piles used in the foundation works completed by the contractors involved over the past three years; if not, of the reasons for that; and;*
- (b) *if there will be no checks on those piles, how it can ensure that the construction works which involved those contractors are free from substandard piles; and how it can ensure that the quality of the unchecked foundation has conformed to the safety standards and will not cause casualties and economic loss?*

SECRETARY FOR WORKS (in Cantonese): Madam President,

- (a) The Government has considered very carefully how to ensure the structural integrity of buildings and structures supported by piling foundations completed by the concerned contractors over the past three years, and concludes that there has been adequate re-examination of the concerned foundations. The reasons are as follows:

- (i) For concerned developments in the private sector the Buildings Department carried out an investigation of the piling records and the results of the completed piling tests last year. It also conducted a condition survey of the concerned development. No signs of building stress or settlement problem were identified. In June this year, the Buildings Department re-inspected the concerned buildings. Again, no distress or settlement problems were found, indicating that there is no structural safety problem in the concerned development;
- (ii) For concerned public works, the works departments have strengthened random checks on the completed piles before acceptance of the works. The concerned structures have been re-inspected after completion of the projects and no distress or settlement problems are found; and
- (iii) For public housing, the foundations including those in question have been reviewed by two independent consultants and an internationally renowned foundation expert appointed by the Housing Department in December 1999. The review findings confirmed that the buildings supported on the concerned foundations, except for the two blocks at Yuen Chau Kok Phase 2, have no structural safety concern caused by their foundations.

Furthermore, the buildings or structures supported on the concerned foundations have been subject to on-going regular inspections and no sign of structural safety problem caused by the foundations has been observed. We, therefore, see no reason to further re-test the piles on the concerned completed buildings or structures.

- (b) The Government continues to adopt the following enhancement measures and practices to ensure piling works comply with the standards and regulations:
 - (i) Regular inspections of the concerned projects have been carried out after completion of the works and no signs of distress have been observed. For concerned public works,

the relevant maintenance government departments will continue to mount regular inspections of the buildings/structures. For concerned private developments, the Buildings Department will continue to monitor the condition of the buildings. For public housing, the Housing Department has carried out settlement monitoring at regular intervals to all of the high-rise domestic buildings sitting on those concerned foundations. The monitoring results have not revealed any structural safety problem. In addition, the whole-block and flat-to-flat inspections prior to handover of the buildings have not indicated any sign of structural safety problem caused by the foundations.

- (ii) The construction of piling works in government and private projects is supervised by professionally qualified engineers and resident site staff who ensure that the contractor's works comply with the regulations and specifications. It has been the practice that before piles are accepted, samples are randomly selected for testing to assure their load carrying capacities. Therefore, foundation works that have passed the acceptance testings are proven to be complying with safety standards.
- (iii) Further enhancement measures for site supervision and quality checks of foundation works in private buildings and government projects have been implemented in August 2000, ensuring all foundation works are properly supervised and tested.

MR ALBERT CHAN (in Cantonese): *Madam President, the Government has only stated in the main reply that the past construction records and inspection results of the completed works would be examined. However, Members should know that these records and results can be falsified. In the Government's recent re-examination, some substandard piles on slopes have been found. This shows that there is a need to carry out formal examinations since records and surface tests can be deceptive. Let us take Kwun Lung Lau as an example. There was no sign showing the possibility of collapse prior to the incident. Since the Government is aware that such records can be falsified based on its professional*

knowledge and past experience, why does it refuse to conduct random checks on the works carried out by those contractors participating in government construction projects over the past three years and were found involved in problematic piling incidents? Why does the Government refuse to conduct substantial checks on piles to ensure that the piles are not problematic?

SECRETARY FOR WORKS (in Cantonese): Madam President, I have explained clearly in my main reply that in addition to random testing or inspection of the relevant records, the Government also carries out regular inspections on all completed buildings, but no signs of distress have been observed. All buildings and structures will usually show such signs as distress, tipping or fracture before the problems appear. No such problems were found when we carried out regular inspections.

MR ALBERT CHAN (in Cantonese): *Madam President, I was not talking about superficial inspection when I referred to random checks, what I meant is to conduct sampling to check whether the relevant piles meet the requirements in terms of length and quality. I think the Secretary has misunderstood what I have just said.*

SECRETARY FOR WORKS (in Cantonese): Madam President, we are talking about two separate issues. As to whether we should conduct random checks on piles after piling works have already completed and superstructures have already been built, I have mentioned earlier that we will examine the past piling records and monitor the situation at a regular interval for any signs of distress or other signs to determine whether or not random checks should be conducted. So far, there is no sign showing that random checks are needed.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, I think Members are aware that one of the reasons leading to substandard piling is the works carried out underground. May I ask the Secretary, if the condition permits and safety is observed, whether the authorities will consider the resumption of hand-dug caisson work? Members should know that the depth can most easily be seen in hand-dug caisson work and it is most difficult to use substandard piles in such work.*

SECRETARY FOR WORKS (in Cantonese): Madam President, this supplementary question might not be directly related to the main question.

Actually, the decision to abandon hand-dug caisson work was made after careful consultation. In the light of this proposal, I believe we should conduct comprehensive consultation before considering whether or not hand-dug caisson work should be reinstated.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, in paragraph (a)(iii) of the main reply, the Secretary mentioned that a full review had been conducted by two independent consultants and an internationally renowned foundation expert appointed by the Housing Department. Can the Secretary clarify whether all buildings were covered in the review? Will the Government appoint independent consultants to conduct re-inspection on the foundation works completed over the past three years?*

SECRETARY FOR WORKS (in Cantonese): Madam President, I cannot quite catch the supplementary question of the Honourable Member. May Mr SIN repeat his supplementary question?

PRESIDENT (in Cantonese): Mr SIN, please repeat your supplementary question.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, my supplementary question is related to the review. In paragraph (a)(iii) of the main reply, the Secretary mentioned that a full review of all construction works had been conducted by two independent consultants appointed by the Housing Department in December 1999. May I ask the Secretary what the review has covered? As the Housing Department has carried out re-inspection, will the Government appoint an independent consultant to re-inspect the foundation works of government projects? Both parts of my supplementary are related to re-inspection.*

SECRETARY FOR WORKS (in Cantonese): Madam President, now I understand the supplementary question of the Honourable Member. In my main reply, I mentioned that two independent consultants appointed by the

Housing Department in December 1999 have conducted a full review of all the works carried out at that time. As to works of the Works Bureau, besides resident site engineers, we have also deployed resident site staffs on every construction site. Construction works of superstructures will only begin after all piles have passed the acceptance testing. It can be seen that construction sites are strictly monitored. Therefore, there should be no problem in this respect.

DR RAYMOND HO : *The Secretary for Works mentioned in paragraph (a)(ii) of the main reply that inspections have been carried out on projects completed by the contractors concerned to check if there was any sign of distress or settlement. Would the Secretary tell this Council whether such inspections are confined to the identification of distress problems, that is, cracking or settlement, and no other inspection will be carried out regardless of whether there is a need to take immediate or long-term measures to increase the serviceability of the buildings, and whether this can avoid adding unnecessary costs when improvement measures are undertaken in future?*

SECRETARY FOR WORKS (in Cantonese): Madam President, upon the completion of public works, we will carry out regular inspections to see if there are any distress, cracking or settlement problems as the Honourable Member mentioned earlier. I do not quite understand the second part of Mr HO's supplementary question. I do not know whether Mr HO was talking about the long-term serviceability of buildings. If the answer is in the affirmative, we will certainly assess the safety and serviceability of the buildings concerned according to the inspection outcome and our professional knowledge.

DR TANG SIU-TONG (in Cantonese): *Madam President, in paragraph (a)(iii) of the main reply, the Secretary pointed out that there were no structural problems with foundations except for the two blocks at Yuen Chau Kok Phase 2. At present, remedial piling works are being carried out in two blocks of Tin Chung Court in Tin Shui Wai, can we take this as a proof that the two blocks concerned have problems?*

SECRETARY FOR WORKS (in Cantonese): Madam President, government works are divided into three categories, namely public works, private buildings, and works of the Housing Department. Paragraph (a)(iii) of the main reply was

provided by the Housing Department. I will liaise with the Housing Department again and give the Honourable Member a written reply afterwards. (Annex IV)

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that "The Government continues to adopt the following enhancement measures and practices to ensure piling works comply with the standards and regulations", and in paragraph (ii) of the same part, he mentioned that "The construction of piling works in government and private projects is supervised by professionally qualified engineers and resident site staff who ensure that the contractor's works comply with the regulations and specifications. It has been the practice that before piles are accepted, samples are randomly selected for testing". Was that actually the past practice? If the answer is in the affirmative, why did the substandard piling problem occur? What are the differences between the present improvement measures and the previous ones? I would like the Secretary to elaborate.*

SECRETARY FOR WORKS (in Cantonese): Madam President, in fact, many of these measures have long been taken with respect to public works though violations were sometimes detected. We have issued notices to our resident site staff again and required them to strengthen supervision, so as to ensure that no violation will happen again. As to why there were violations in the past, I know that the Legislative Council has set up a Selected Committee to study the matter. We would have better let the Committee study the matter first.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, I hope the Secretary can give us a clearer answer. Comparing the present and previous measures, does the difference only lies in "strengthen" supervision while no specific improvement has been made?*

SECRETARY FOR WORKS (in Cantonese): Madam President, I have mentioned in part (b) of the main reply that the Government will continue introducing enhancement measures, which are taken in three areas. Insofar as paragraph (iii) is concerned, we will carry out random checking on large-scale

piles one by one. Therefore, on the whole, there will certainly be enhancement.

PRESIDENT (in Cantonese): Sixth question.

Monitoring of Hong Kong Monetary Authority

6. **MISS EMILY LAU** (in Cantonese): *Madam President, in his speech concluding the Budget debate on 4 April, the former Financial Secretary said that he had mentioned the need to improve the monetary management system in his Budget speech because he would like to ensure that the Hong Kong Monetary Authority (HKMA) could continue to carry out its duties with a high degree of professionalism, fairness and transparency, and be free from political interference. The HKMA is monitored by the Exchange Fund Advisory Committee (EFAC) which is chaired by the Financial Secretary and has nine members, five of whom are members from the banking industry. In this connection, will the executive authorities inform this Council:*

- (a) *whether there is any conflict of interest in having the EFAC monitor the HKMA, since the HKMA regulates banking business;*
- (b) *whether there has been incidence of political interference with the operations of the HKMA; and*
- (c) *of the measures that will be taken to ensure independent and transparent monitoring of the HKMA?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, my answer to the Honourable Miss Emily LAU's question is as follows:

- (a) There is no conflict of interest because the function of the EFAC is not the supervision of banks. It advises the Financial Secretary on the investment strategy of the Exchange Fund, the development and operation of the Currency Board, the development of Hong Kong's monetary infrastructure, and other monetary policy matters. The

EFAC also acts as the board of directors of the HKMA in approving its annual budget, staffing establishment policies and other internal management matters. This is a very specialized function, requiring the appointment of persons with suitable experience and professional knowledge in investment management and monetary affairs, to ensure that the best advice is obtained. Members in the banking industry and related professionals possess the required experience and professional knowledge. The EFAC consists of not only professionals in banking but also in accounting and academia. All members are appointed in their personal capacity. Members are senior professionals, well respected in the community. Their integrity is beyond doubt. In accordance with standard government procedure, there is a mechanism for the declaration of interest. Once a member discovers that there is any personal interest involved in a matter being handled, a declaration will be made.

- (b) There has not been any incidence of political interference with the operations of the HKMA.
- (c) The HKMA is operating in a professional, fair and transparent manner. This does not mean there is no room for improvement. We will examine how to further improve Hong Kong's monetary management structure, to define in more detail the functions and responsibilities of the HKMA, and to reinforce its transparency and accountability. But I emphasize that the HKMA is operating well. Any change must be after careful consideration and would only be implemented if it is considered to be in the interest of the long term development of Hong Kong's monetary system.

MISS EMILY LAU (in Cantonese): *Madam President, the Secretary stated in the main reply that there is no conflict of interest in having the EFAC monitor the HKMA because the EFAC does not supervise the operations of banks. Madam President, we all know that the function of the EFAC is not the supervision of banks. However, the crux of the problem lies in the fact that five out of its nine members come from the banking industry. They are responsible for monitoring the HKMA while the HKMA is responsible for supervising banks, and this is the relationship between them. Madam President, in part (a) of the main reply, the*

Secretary pointed out that the EFAC acts as the board of directors of the HKMA. Therefore, its function is to monitor the HKMA. Given the fact that more than half of EFAC members are bankers whereas the HKMA is responsible for supervising the operations of banks, will the Secretary tell us more clearly if such supervision can be described as independent under this situation? Is such supervision filled with conflicts of interests?

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for raising her supplementary question. I believe Miss LAU's assumption is that the HKMA is responsible for monitoring the operations of banks. If bankers are appointed as members of the EFAC, Miss LAU worries that a conflict of interest will arise because on the one hand, their banks are monitored by the HKMA but, on the other hand, they supervise the HKMA. However, in my main reply, I have indicated that these people are appointed in their personal capacity. I believe Members know them — unfortunately Dr the Honourable David LI is not here in this Chamber. In fact, my view is very simple. Dr David LI is a member of the banking industry and a banker too, a fact that is known to all Members. Bankers who are appointed members of the EFAC will not refrain from expressing their personal opinions because their banks are monitored by the HKMA. Let me take Dr David LI as an example. In many public occasions, we could see that his views were totally different from those of the Chief Executive of the HKMA, Mr Joseph YAM. This example can clearly illustrate that although members of the EFAC might be bankers, they will not refrain from expressing their professional opinions because their banks are monitored by the HKMA. I believe the example I have cited just now is quite good.

MISS CYD HO (in Cantonese): *Madam President, I just wish to clarify the definition of "political interference". In the past, some very senior officers of the HKMA told newspapers that there had been political interference on the part of the Legislative Council with respect to the inquiry made by this Council on whether the HKMA had the power to spend \$3.7 billion on office accommodation. Now, the Secretary stated decisively that there had never been any political interference. May I ask if the authorities also agree that the inquiry made by the Legislative Council should not be considered as political interference? However, the course of "making inquiry" has not yet finished. If the HKMA eventually fails to secure the office accommodation after rational and legal facts*

have been defined clearly in the course of "making inquiry", will the Legislative Council be accused of making political interference? I hope the Secretary can clarify this.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for raising her supplementary question. The Honourable Miss Cyd HO just mentioned some possibilities like whether the HKMA will succeed in acquiring office accommodation in the future. I certainly cannot provide an answer with respect to something which has not happened. I can only provide an answer with respect to what has happened. Earlier on, Miss HO mentioned that Members of this Council have, on past occasions, expressed their views on the purchase of office accommodation for the HKMA. From my point of view, this does not amount to political interference.

MS AUDREY EU (in Cantonese): *Madam President, the Secretary cited an example when answering a supplementary question raised by Miss Emily LAU. I do not want to bring up personal matters with the Secretary. When the Secretary explained whether there was a conflict of interest, he seemed to suggest that it would depend on whether incidents involving conflicts of interests had actually occurred. Does the Secretary agree that views of outsiders should also be taken into consideration when we talk about conflicts of interests? Will this situation of mutual-supervision whereby the HKMA supervises banks and in turn the HKMA is monitored by people of the banking industry impresses people that a conflict of interest will arise? Therefore, the question is not purely about whether there is any concrete proof or whether it is possible to prove a conflict of interest has already occurred. I hope the Secretary can explain in this respect.*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for raising her supplementary question. We do not rely purely on our perception when we act since perception is not necessarily true. I think what matters most is whether there is actually a conflict of interest, and whether a mechanism is in place to prevent it. For example, if the EFAC holds a meeting and a certain discussion item is related to a member's company or bank, then we will have to ask if a mechanism is currently in place to restrict discussion on the relevant matter in

the presence of that member. I would like to point out that this issue is after all relevant to the mechanism. The most important point is whether there is a mechanism requiring a member to declare interest when a matter handled by the EFAC involves the personal interest of that member. And the answer is positive.

In the main reply, I have already explained why EFAC members must include bankers. Since the nature of the EFAC is highly specialized and the matters under scrutiny as well as the advice given are related to very specialized subjects such as investment, management, and so on, there is a great need for advice from these professionals. Under this prerequisite, it is necessary for people of the banking industry to be appointed as members of the EFAC in their personal capacity. We have put in place a sound mechanism to ensure that a conflict of personal interest will not occur.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, according to the Exchange Fund Ordinance, the HKMA is a "person". In other words, the Monetary Authority is a "person". How can a "person" has a board of directors? The Secretary expressed in his main reply that the EFAC has acted as a board of directors of the HKMA. However, after going through the laws of Hong Kong, I found that there is neither a Monetary Authority Ordinance nor the HKMA Board, in contrast to the Secretary's main reply that the EFAC has acted as a board of directors of the HKMA. What is the actual legal basis for the assertion that the HKMA has a board of directors? This is because after going through the laws of Hong Kong, I found that the HKMA does not have a board of directors.*

PRESIDENT (in Cantonese): Mr SIN, do you want the Secretary to explain?

MR SIN CHUNG-KAI (in Cantonese): *Yes, Madam President, I would like to ask the Secretary why the HKMA has a board of directors because it is clearly provided in law that the EFAC*

PRESIDENT (in Cantonese): Mr SIN, we have fully understood the contents of your supplementary question.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for raising his supplementary question. Mr SIN was certainly right for he can say that Mr Joseph YAM is legally and technically a Commissioner for monetary affairs. Combined with the staff assisting him in his office, the whole structure can be regarded as the HKMA. In fact, it is stated clearly in the Exchange Fund Ordinance that the Monetary Authority's cost in staffing, operation, and so on shall be charged to the Exchange Fund instead of the General Revenue Account of the Government. Besides, it is specified in the Ordinance that the Financial Secretary controls various expenses of the Exchange Fund. However, he must seek advice from the EFAC in the course. I have already stated in my main reply that the actual work of the EFAC includes approving the annual budget for the HKMA, staffing establishment policies, internal management matters, senior officers' performance, and deciding whether it is necessary for bonus to be distributed. Therefore, the EFAC can be said to be tantamount to a board of directors in nature.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, my supplementary question is whether the board of directors of the HKMA has a legal basis because it is not provided in the laws of Hong Kong that the HKMA has a board of directors.*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I feel that it will be easier for Members to understand the relationship if I describe the EFAC as a board of directors. When it comes to the legal issue, I have just indicated clearly in my reply to Mr SIN's question that it is specified clearly in the Exchange Fund Ordinance that the Financial Secretary is the controller of the Exchange Fund. Nevertheless, he is required to consult the EFAC when using the Fund.

MR HENRY WU (in Cantonese) : *Madam President, in part (a) of the main reply, the Secretary stated right from the start that there is no conflict of interest, but he has mentioned at the end of the same part that there is a mechanism in case there is a conflict of interest. In other words, the EFAC members must declare their interests. Will the Secretary tell us the number of occasions over the past three years in which declarations of interests were required and the nature of the conflicts involved?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I will provide a written reply to this supplementary question later because I need to liaise with colleagues of the EFAC and ask them to provide information on declarations of interests in the past. (Annex V)

I would like to take this opportunity to inform Members that apart from declaring interests, EFAC members are also required to declare the names of the companies they serve or own and the names of those in which they act as directors or partners, and whether they hold more than 1% of company shares, and so on. We have established a declaration mechanism and the relevant information is also available for public inspection.

MR JAMES TO (in Cantonese): *Madam President, I would like to raise a supplementary question with respect to part (c) of the main question concerning supervision. Are employees of the HKMA considered as civil servants as defined under section 3 of the Prevention of Bribery Ordinance? Can the Independent Commission Against Corruption conduct inquiry into HKMA staff alleged to be involved in crimes related to section 3 of the Prevention of Bribery Ordinance? In relation to the declaration of interests as mentioned by the Secretary just now, can information concerning interests declared by senior officers of the HKMA, like Executive Council Members and civil servants, be made public for photocopying and inspection?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to thank the Honourable Member for raising his supplementary question. Let me first answer the question concerning the Prevention of Bribery Ordinance. The stance of the Government in this respect is very clear and we have also explained this many times before. The HKMA is actually part of the government structure. Although colleagues of the HKMA are not civil servants, they are public officers. This structure is very clear. Like government departments, the HKMA has all along been regulated by the Prevention of Bribery Ordinance. HKMA staff are likewise regulated by the provisions applicable to government employees.

As regards the question raised by Mr James TO concerning whether the information on declaration of interests can be made available for public inspection, I understand that the information concerning interests declared by the

Chief Executive of the HKMA is available for public inspection. The remaining staff are required to declare their interests to the Chief Executive of the HKMA.

PRESIDENT (in Cantonese): This Council has spent more than 16 minutes on this question. Question time shall end here.

WRITTEN ANSWERS TO QUESTIONS

Industrial Safety

7. **MR AMBROSE LAU** (in Chinese): *Madam President, on 29 May this year, a serious industrial accident occurred in a construction site for a new bus depot of the Kowloon Motor Bus Company (1933) Limited in Cheung Sha Wan, resulting in one death and nine injuries. It was reported that officers of the Labour Department had visited the site in April but had not found any violations of safety regulations. Regarding industrial safety, will the Government inform this Council:*

- (a) of the frequency and details of construction site inspections conducted by officers of the Labour Department;*
- (b) of the specific measures in place to prevent the recurrence of similar accidents; and*
- (c) whether it will consider providing additional resources for launching promotional and educational campaigns targeted at contractors, sub-contractors and workers respectively, in order to enhance their awareness of industrial safety; if it will, of the details; if not, the reasons for that?*

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

- (a) At present, there are 140 Occupational Safety Officers in the Labour Department (about 50% of the total strength) who are responsible for construction site inspections. In conducting inspections, the Labour Department would deploy its manpower as appropriate

depending on the potential hazard and safety performance of the construction sites. On average, active construction sites are inspected once every two months. For those construction sites with unsatisfactory safety performance, serious offences committed or accidents occurred, the Labour Department will increase the frequency of inspections up to once every two weeks.

Where there is any offence discovered in an inspection, the Occupational Safety Officers will institute prosecutions and depending on the severity of the offences, take the following action:

- (i) issue improvement notices to require the proprietor or contractor to refrain from continuing or repeating the contravention and to take remedial measures;
- (ii) where the offence concerned may cause imminent risks of death or serious bodily injuries, issue suspension notices to require the proprietor or contractor to suspend the works immediately and take measures to eliminate the risks.
- (iii) if the proprietor or contractor has not taken any measure to improve the workplace within the specified time in accordance with the improvement notice or suspension notice, the Labour Department will institute further prosecutions.

Besides, the Labour Department will urge the contractors to promptly eliminate the risks jointly with other relevant departments (for example, the Housing Department and the Works Bureau) if the construction site concerned involves public works. If private development is involved, the Labour Department will notify the Buildings Department for action.

Details of inspections conducted on construction sites in 2000 are as follows:

	<i>Number</i>
Inspection	48 151
Issue of Improvement Notice	1 385
Issue of Suspension Notice	138
Prosecution	1 939

(b) Generally speaking, the recurrence of similar accidents may be prevented by improving occupational safety and building safety:

(i) Occupational Safety

Section 6A of the Factories and Industrial Undertakings Ordinance (the general duties provision) provides that every proprietor of an industrial undertaking (including contractor of construction site) has the duty to ensure, so far as is reasonably practicable, the health and safety at work of all their employees. The relevant measures include the provision of necessary safety training, information, instruction and supervision. Any person who fails to comply with the requirement is liable on conviction to a maximum fine of \$500,000 and six months' imprisonment.

To provide contractors with guidelines on good practices of the relevant trades so as to prevent accidents on construction sites relating to the collapse of falsework, the Labour Department published in 1998 a set of guidance notes entitled "Safety at Work (Falsework – Prevention of Collapse)". The Guidance Notes provide detailed guidelines on the safety measures for the design, erection, use and demolition of falsework. The Labour Department will shortly publish the "Code of Practice for Metal Scaffolding Safety" to provide detailed practical guidelines on falsework safety.

During construction site inspections, the Occupational Safety Officers will step up their efforts in urging contractors and professional engineers to carry out construction works and implement necessary safety measures in accordance with the relevant guidelines. As before, the Labour Department will work closely with other relevant departments (including the Buildings Department) and will institute prosecutions against the offenders where necessary.

(ii) Building Safety

The construction site concerned used precast columns, beams and floor slabs. To tighten up site safety supervision of similar works, the Buildings Department has introduced

interim measures for works which use this advanced construction method. These measures include the following:

- (1) requiring the responsible Registered Structural Engineer (RSE) to submit to the Buildings Department details of the works (including the design, and installation procedures for the temporary support works), prior to its commencement, for monitoring and auditing;
- (2) requiring the RSE to be more focused on site safety supervision for the relevant works on similar construction sites; and
- (3) conducting more frequent audits on the relevant works on similar construction sites.

Upon completion of the investigation of the accident concerned, the Buildings Department will consider other necessary measures to prevent the recurrence of similar accidents.

In fact, work safety on construction sites is closely related to every process of the works, ranging from design, planning to construction and involves different types of employees (including professionals, skilled workers, semi-skilled workers, and unskilled workers). To ensure work safety, contractors, employees and all other relevant parties should make concerted efforts, focus on safety and take early precautions, thereby preventing the occurrence of accidents.

- (c) In parallel with taking enforcement actions, the Labour Department also places great importance to raising the safety awareness among contractors, subcontractors and construction workers through publicity and educational activities.

On the publicity front, the Labour Department, in conjunction with other government departments, the Occupational Safety and Health Council, the Construction Industry Training Authority, and relevant

trade associations and unions, organizes large-scale publicity campaigns from time to time to raise the safety awareness in the construction industry so as to enable them to build up a safe and healthy working environment through self-regulation. In addition, the Labour Department would, in collaboration with relevant trade unions of the industry, hold various promotional activities such as seminars, quizzes, promotional visits, exhibitions and fun fair days, to carry the messages related to occupational safety and health across to construction workers and their families who participated in the activities. Over the past three years, the Labour Department has taken part in organizing more than 50 promotional programmes, including the large-scale publicity campaigns listed in Annex 1.

To facilitate wider dissemination of messages on occupational safety and health in the industry, the Labour Department has produced a series of TV Announcements of Public Interest (APIs) (see Annex 2) for broadcasting on television to promote safety and health measures on construction sites.

In future, the Labour Department will continue to promote occupational safety and health in the industry through publicity and promotional programmes, including the following activities planned for 2001:

- (i) publicizing the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation, which will be implemented shortly;
- (ii) continuing to hold roving exhibitions and distribute relevant guidelines and pamphlets at construction sites, in line with the full implementation of the Factories and Industrial Undertakings (Safety Management) Regulation in the near future; and
- (iii) taking part in organizing seminars, conferences, roving exhibitions and other publicity activities on occupational safety, such as the "2001 Construction Industry Safety Award Scheme".

On education and training, the Occupational Safety and Health Training Centre of the Labour Department regularly provides construction workers with free safety training courses. In addition, legislation has been enacted to provide for mandatory safety training for construction workers in order to raise their awareness of occupational safety, and thereby reduce accident rates. The legislation has come into effect since 1 May 2001. As at end-March 2001, over 350 000 construction workers have been awarded certificates on the completion of basic safety training.

Annex 1

Major publicity programmes launched over the past three years to promote occupational safety and health in the construction industry

1. Promotional Programme on the Wider Use of Safety Shoes (1998)
2. Promotional and Educational Programme on Hearing Conservation (1998)
3. Exhibition on Occupational Safety and Health Equipment (1998)
4. The Construction Safety Banner Campaign (1999)
5. The Personal Protecting Equipment Promotion Campaign (1999)
6. The Safety Award Scheme on Good Housekeeping for the Construction Industry (1999)
7. Construction Industry Safety Award Scheme (2000)
8. The ongoing Occupational Safety Charter Programme launched to call for a sense of "shared responsibility" among employers and employees and promote safety management through self-regulation
9. Ongoing roving exhibitions at construction sites and distribution of relevant guidelines and booklets to promote the concept of "safety management" among contractors, sub-contractors and construction workers in support of the imminent implementation of the Factories and Industrial Undertakings (Safety Management) Regulation.

*TV APIs for promoting safety and health
in the construction industry over the past three years*

1. "Green Card" training (1998)
2. Manual handling operations (1998)
3. Hearing conservation (1998)
4. Safety shoes (1998)
5. Safety precautions for working at height (1999)
6. Personal protective equipment (1999)
7. Good housekeeping for the construction industry (2000)
8. Safety precautions for fitting-out works (2001)
9. Mandatory safety training (2001)

Enforcement of Judgments Made by Mainland Courts

8. **MR ANDREW CHENG** (in Chinese): *Madam President, the Standing Committee of the National People's Congress of the People's Republic of China adopted the Amendments to the Marriage Law of the PRC on 28 April this year, which provide for the banning of bigamy, the prohibition of cohabitation with a third party by married people, the taking of legal action against bigamists for criminal liability and the right for the innocent party in a divorce case resulting from bigamy or cohabitation outside of marriage to claim damages. It has been reported that some women in Hong Kong plan to institute legal proceedings in mainland courts against their husbands for cohabitation with others in the Mainland. In this connection, will the Government inform this Council:*

- (a) *how judgements (including those concerning the disposal of assets in Hong Kong) delivered by mainland courts under the Marriage Law*

of the People's Republic of China will be confirmed and enforced in Hong Kong;

- (b) of the progress of the discussions held, under Article 95 of the Basic Law, by the Special Administrative Region (SAR) Government with mainland judicial organs concerning the enforcement of judgements in civil proceedings in each other's territories; and*
- (c) whether, given the substantial difference of the matrimonial laws between Hong Kong and the Mainland, it will consider establishing a body to provide information on mainland matrimonial laws and referral service to the people of Hong Kong?*

SECRETARY FOR JUSTICE (in Chinese): Madam President, with regard to part (a) of this question, there is no system in place for the summary enforcement of mainland judgements under the Marriage Law of the People's Republic of China. However, some of these judgements can nevertheless be enforced in Hong Kong in other ways.

For example, under common law principles, a judgement obtained in another jurisdiction that is directed against, or with reference to, a person is enforceable in Hong Kong if certain conditions are satisfied. These conditions include requirements that the judgement:

- (i) is for a definite or specific sum of money;
- (ii) is final and conclusive; and
- (iii) is not contrary to public policy.

Hence, money judgements given by mainland courts in matrimonial proceedings may generally be enforced in Hong Kong under these principles, but a local judgement must first be obtained in respect of them.

With regard to a decree of divorce obtained from a mainland court, section 59 of the Matrimonial Causes Ordinance (Cap. 179) preserves common law principles regarding the recognition of divorces obtained elsewhere. As a result, depending on the domicile of the parties, a mainland divorce may be recognized in Hong Kong.

With regard to part (b) of this question, no discussions have been held with mainland authorities in respect of the reciprocal enforcement of judgements in civil proceedings. Our first priority in respect of mutual legal assistance with the Mainland was to put in place arrangements for the reciprocal enforcement of arbitral awards and the service of judicial documents. We have succeeded in doing this. Currently, the Administration is discussing possible arrangements in respect of rendition and the transfer of sentenced prisoners.

With regard to part (c) of this question, members of the public can ascertain the content of the Marriage Law of the PRC from various websites on the Internet. In due course, it is expected that hard copies of that law will be available in local bookshops. If legal advice on mainland matrimonial laws is needed in respect of a particular matrimonial question, members of the public would be best advised to consult a qualified mainland lawyer, in the same way that they would consult a qualified Hong Kong lawyer in respect of Hong Kong's matrimonial laws. At present, the Administration has no plans to establish a body to provide information on mainland matrimonial laws or a referral service for the people of Hong Kong. However, if a significant need for such services develops, my department will, in conjunction with other relevant organizations, consider whether some assistance can be provided.

Management of PRH Estates by Private Property Services Companies

9. **DR TANG SIU-TONG** (in Chinese): *Madam President, regarding the Housing Department (HD)'s implementation of the scheme on greater private sector involvement in the Housing Authority's estate management and maintenance services, will the Government inform this Council:*

- (a) *of the names of the housing estates the management services of which have already been transferred, or will be transferred before the end of this year, to private property services companies (PSCs) and, in respect of each of these housing estates, the names of the companies awarded/to be awarded the service contracts, as well as the service items transferred/to be transferred by the HD;*
- (b) *of the ways in which the HD collects the views of tenants on the performance of PSCs and the views collected so far;*

- (c) *how the effectiveness of this services-outsourcing programme compares to the original estimation in achieving savings in public expenditure;*
- (d) *of the circumstances under which the service contracts of PSCs will be terminated, as well as the mechanism and the procedure for terminating such contracts;*
- (e) *of the division of responsibilities among the Property and Tenancy Service Section, the District Tenancy Management Office and the Estate Management Advisory Committee of the HD in monitoring and assessing the provision of management services by PSCs;*
- (f) *of the remaining duties of the HD's estate offices after estate management services have been outsourced; and*
- (g) *whether the HD is required to pay service fees to private management companies entrusted with the management of shopping centres and/or markets in housing estates, and of the sources of income of such management companies?*

SECRETARY FOR HOUSING (in Chinese): Madam President, under the Phased Service Transfer Programme launched by the Housing Authority since October 2000, management services for 43 public rental housing estates (at Annex) will have been transferred to private PSCs by the end of 2001. These companies are required to provide comprehensive estate management and maintenance services including tenant intake, security, cleansing, rent collection, community service (such as festive decorations and promotional activities), minor maintenance, and project management for maintenance and improvement works.

The HD collects feedback on the performance of private PSCs through regular meetings of Mutual Aid Committees and Estate Management Advisory Committees, and tenants' satisfaction surveys conducted on a quarterly basis. Both domestic and commercial tenants are satisfied generally with the performance of these companies. The last tenants' satisfaction survey conducted in February 2001 showed that 92% of respondents considered these companies' performance satisfactory or average, and 8% unsatisfactory.

At regards cost effectiveness, a comparison of contract prices of the first three batches of contracts with in-house staff costs indicates a saving of up to 33% which is in line with the Housing Authority's original estimate. Judging from tenants' satisfaction level and cost savings achieved, outsourcing of estate management and maintenance services is cost-effective.

The HD closely monitors the effectiveness of PSCs. Periodic and surprise audits according to an objective scoring system are carried out to assess the effectiveness of services provided by these companies. Assessments of Estate Management Advisory Committees and the results of quarterly surveys on tenants' satisfaction also form part of the total score, which will be considered by the Housing Department Performance Review Committee for any necessary follow-up action. The Housing Authority may terminate a contract if the company fails to deliver its contractual obligations satisfactorily.

As regards part (e) of the question, the residual duties of the Housing Department in respect of estate management after outsourcing fall under two major categories: supervision of private property services companies and handling of special tenancy management issues. They are undertaken by the Property and Tenancy Service Section which comprises Property Services Administration Units and District Tenancy Management Offices. Property Services Administration Units supervise and evaluate the effectiveness of these companies, while District Tenancy Management Offices deal with special tenancy management issues such as applications for rent assistance, overcrowding relief, household splitting and conditional tenancy. Estate Management Advisory Committees provide a formal liaison forum between tenants' representatives and estate management to discuss issues of common concern. Representatives of relevant Property Services Administration Units and PSCs attend regular meetings to listen tenants' views and to follow up tenant's suggestions as appropriate.

As regards management of shopping centres and markets within estates outsourced to private PSCs, the HD pays monthly fees at rates agreed in contracts. No payment in other forms is made.

Public Rental Housing Estates Outsourced
to Private Property Services Companies
under Phased Service Transfer Programme

<i>Estate</i>	<i>Property Services Company</i>
1. Sau Mau Ping	Colliers Jardine Properties Limited
2. Tsing Yi	Infolink Management Limited
3. Tin Shui Wai Area 105	Infolink Management Limited
4. Hing Tin	Colliers Jardine Properties Limited
5. Po Tat	Colliers Jardine Properties Limited
6. King Lam	Urban Property Management Limited
7. Oi Tung	Urban Property Management Limited
8. Leung King	Hsin Chong Real Estate Management Limited
9. Tin Shui Wai Area 102	Hsin Chong Real Estate Management Limited
10. Lower Wong Tai Sin (I)	Parkland Property Management Limited
11. Cheung Sha Wan (West)	Parkland Property Management Limited
12. Kwong Yuen	Rich Fortress Limited
13. Lai Chi Kok	Rich Fortress Limited
14. Tin Shui Wai Area 101	Hsin Chong Real Estate Management Limited
15. Tin Shui Wai Area 110	Hsin Chong Real Estate Management Limited
16. Pok Hong	Urban Property Management Limited
17. Cheung Kwai	Urban Property Management Limited
18. Chung On	Urban Property Management Limited
19. Cheung Chau	Urban Property Management Limited
20. Tsing Yi Area 10	Urban Property Management Limited
21. Tin Shui Wai Area 106	Urban Property Management Limited
22. Shek Lei (II)	Funing Property Management Limited
23. Kwai Hing	Funing Property Management Limited
24. Kwai Shing (East)	Funing Property Management Limited
25. Tai Yuen	Creative Property Services Consultants Limited
26. Cheung Shan	Eternal Union Development Limited
27. Cheung Hang	Easy Living Property Management Limited
28. Cheung Ching	Easy Living Property Management Limited
29. Cheung Wah	Good Yield Property Management Limited
30. Ka Fuk	Good Yield Property Management Limited
31. Wah Sum	Good Yield Property Management Limited

<i>Estate</i>	<i>Property Services Company</i>
32. Chuk Yuen (South)	Nice Property Management Limited
33. Choi Wan (II)	Nice Property Management Limited
34. Lei Cheng Uk	Under consideration
35. Tai Hang Tung	Under consideration
36. Tsui Ping (North)	Under consideration
37. Tsui Ping (South)	Under consideration
38. Tai Ping	Under consideration
39. Shun On	Under consideration
40. Lei Yue Mun Phase 1	Under consideration
41. Upper Ngau Tau Kok Phase 1	Under consideration
42. Tung Tau (II)	Under consideration
43. Ma Tau Wai	Under consideration

Delay in Opening New Cycling Park in Ma On Shan

10. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it was reported that, to facilitate the construction of the Ma On Shan Railway, the Government had closed the cycling park in Tai Wai this February and allocated a piece of land at Ma On Shan to the Sha Tin Sports Association (STSA) for constructing a new cycling park. However, construction works for the new cycling park had not commenced to date because the Government was considering an application from the contractor of T7 Road who sought to use part of the designated land as the construction site for the road. Recently, due to poor security arrangements at the site of the new cycling park, a number of bicycles stored there were stolen. In this connection, will the Government inform this Council whether:*

- (a) *it knows the original and the current forecast opening dates of the new cycling park; if the current forecast opening date falls behind the original date, of the reasons for that;*
- (b) *it knows the latest commencement and completion dates of the construction works on the new cycling park;*
- (c) *it plans to approve the application to use the above-mentioned land as a construction site for the road project;*

- (d) *it knows if owners of the bicycle-hiring stalls may receive compensation for delay in the opening of the new cycling park; if they may, of the relevant details; if not, the reasons for that; and*
- (e) *it will deploy more policemen to patrol the site of the new cycling park before the completion of the construction works?*

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

- (a) and (b)

The subject site at Tai Shui Hang, Ma On Shan is granted to the STSA under a short-term tenancy at a nominal rent for use as a cycle recreation ground. The site was handed over to the STSA in December 2000 and the cycle park was originally scheduled for opening in May 2001 following completion of site formation and construction works. However, the contractor chosen by the STSA to undertake the required works suddenly withdrew from the contract in late April 2001. In response, the STSA had to invite tenders again for the required works. With the recent completion of the re-tender selection process, the contract is expected to be awarded by end June 2001 and works would commence by then. The STSA anticipates that the cycle park would be opened upon completion of the works by September this year.

- (c) On 17 May, the Lands Department rejected the request of the contractor of the Trunk Road T7 project to use part of the subject site as works area for the T7 Road project on the ground that the site has already been granted to the STSA under a short-term tenancy.
- (d) Given its contractual relationship with the bicycle-hiring stall operators, the STSA is in a better position to consider issues regarding compensation.
- (e) Since the subject site has been handed over to the STSA, it is the responsibility of the Association to put in place measures to ensure the security of the site. Nevertheless, the site is also covered by routine patrol of the police. The police has stepped up their

surveillance of the site and will deploy more policemen to patrol the site if the situation warrants.

Sha Tau Kok Closed Area Permits Holders Allowed to Use Sha Tau Kok Control Point

11. **MR LAU KONG-WAH** (in Chinese): *Madam President, under the Frontier Closed Area (Permission to Enter) Notice (Cap. 245 sub. leg.), only "drivers of and through passengers on road vehicles to or from China" may use the Sha Tau Kok (STK) Control Point for entering and leaving the territory. STK residents are not allowed to use that control point for crossing the border unless they are the aforementioned drivers and passengers, and can only use other control points further away from their homes for entering and leaving the territory. This arrangement has caused much inconvenience to STK residents. In this connection, will the Government inform this Council whether:*

- (a) it will consider allowing holders of STK Closed Area Permits to use the STK Control Point for crossing the border; if so, of the additional amount of public funds that will be incurred each year; if not, the reasons for that; and*
- (b) it has discussed with the mainland border security units the feasibility of the arrangement mentioned in (a) above; if so, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): Madam President, at present, the Government of the Hong Kong Special Administrative Region (SAR) operates four Control Points south of our land boundary at Lo Wu, Man Kam To, Lok Ma Chau and STK. All residents of Hong Kong, regardless of where they live in Hong Kong, are allowed to travel between Hong Kong and the Mainland via any one of the land boundary Control Points. For persons holding STK Closed Area Permits, we do not have any restrictions on which Control Point they should go through when entering or leaving Hong Kong. As STK Control Point is specifically designed to cater for vehicular crossing, there are no pedestrian facilities leading to the Control Point nor is there any infrastructure enabling boundary crossing on foot. The STK Control Point Terminals on both sides are about half a kilometre apart. It would be difficult for boundary

crossers, especially those who are carrying luggage and accompanying children and elderly persons to cross the boundary on foot. On the other hand, cross-boundary trucks, coaches and private cars using the Control Point will pose dangers to pedestrian crossers threat. The physical layout of the Control Point is such that it is not suitable for people to cross the boundary on foot. Whether the boundary crossers hold Closed Area Permits or not is not a relevant consideration.

If pedestrian boundary crossing facilities are to be provided at STK Control Point, we need to re-design and reconstruct the whole Control Point Terminal. This will involve considerations of resources implications, availability of sufficient space, demand for boundary crossing facilities and also the question of making corresponding alterations to the Control Point facilities on the mainland side.

In view of the above considerations, we do not have plans to provide pedestrian boundary crossing facilities at the Control Point. As such, we have not estimated the additional public funds required and have not raised the matter with the mainland border security units.

Enforcement of "Dipped Headlamp" Stipulation

12. **MR LAW CHI-KWONG** (in Chinese): *Madam President, the Road Traffic (Traffic Control) Regulations (Cap. 374, sub. leg.) stipulate that a person driving a motor vehicle during the hours of darkness or in poor visibility conditions shall show lighted lamps at the front and rear of the vehicle; furthermore, where a system of street lights is in operation or in the face of approaching traffic, the lamps lighted at the front of the vehicle shall be dipped. In this connection, will the Government inform this Council of:*

- (a) *the number of persons prosecuted for breaching the "dipped headlamp" stipulation; and*
- (b) *the number of traffic accidents which involved non-compliance with the "dipped headlamp" stipulation, and the casualties which resulted from these accidents*

in each of the past three years?

SECRETARY FOR TRANSPORT (in Chinese): Madam President, the police issue from time to time fixed penalty tickets and summons to drivers for not complying with traffic regulations concerning the use of vehicle lights, which include failing to use headlamps with dipped beam where a system of street lights is in operation or in the face of approaching traffic. The total numbers of fixed penalty tickets and summons issued in respect of misuse of vehicle lights for the past three years were 3 945, 3 601 and 3 410 respectively. However, the Administration does not keep separate prosecution statistics in respect of the use of handlamps on dipped beam specifically.

The numbers of traffic accidents which were found to be attributed to drivers being dazzled by headlamps of on-coming vehicles as one of the contributory factors were two, four and four for the past three years respectively. In these 10 accidents, a total of three persons were seriously injured and 18 persons slightly injured.

Complaints about Hong Kong Central Library

13. **MISS EMILY LAU** (in Chinese): *Madam President, it has been reported that since the commissioning of the Hong Kong Central Library (HKCL) in mid-May, there have been complaints about its short daily opening hours, frequent false activation of its burglar alarm system, frequent computer breakdowns, as well as the hubbub of noises and the use of mobile phones in the Library. In this connection, will the executive authorities inform this Council whether they:*

- (a) are aware of the above situations; and*
- (b) will take any improvement measures; if so, of the details; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President, my replies to the Honourable Miss Emily LAU's questions are provided as below:

- (a) The Leisure and Cultural Services Department (LCSD) is aware of the situation mentioned in Miss Emily LAU's question.
- (b) Improvement measures taken by the LCSD are as follows:

(i) Opening hours

At present, the HKCL is open seven days a week for 68 hours in total, which is the longest among all the public libraries in the territory. After the Library has come into operation for a period of time, the LCS D will consider the need to change the opening hours in light of its actual usage and available resources.

(ii) False activation of the book detection system

At the initial stage of commissioning of the HKCL, some readers could not operate the self-charging terminals properly, and failed to complete the borrowing procedure for the library materials. As a result, the book detection system was activated when they left the Library. To rectify the situation, additional staff have been promptly deployed to assist borrowers in operation the terminals. The situation has improved since then.

(iii) Computer breakdowns

The computer system of the HKCL has been functioning well since its commissioning. So far only breakdowns of individual terminals have been reported. They were mainly caused by the opening of too many web pages at the same time or the improper use of the terminals by readers. Most of the cases were rectified immediately with the assistance of our staff. Besides, additional computer technicians have been deployed on each floor to advise readers on the correct use of the computers and to solve technical problems for them on the spot.

(iv) Hubbub from users and the use of mobile phones

The average daily attendance of the HKCL reaches about 30 000 since its commissioning on 17 May 2001. Initially, some first-time library users were not too familiar with the general library regulations. Problems such as hubbub from

users and the use of the mobile phones in the Library thus arose. In this connection, the HKCL has immediately reviewed the situation and taken appropriate remedial measures such as putting up notices at prominent places in the Library, distributing leaflets on library regulations at the entrance, deploying additional staff and security guards to patrol the Library and maintain order, advising readers to keep silent in the Library and switch off their mobile phones before entering, adopting crowd control measures in time of high visitor flows and calling upon users to observe library regulations through the media. The library is now being used properly and order is back to normal.

Safety Facilities of Golf Driving Range of HKSDB

14. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it was reported that the Hong Kong Sports Development Board (SDB) had spent \$16.5 million on building a golf driving range in Sha Tin, and not until the construction works had been completed was it found that the perimeter fencing of the driving range could not block all golf balls, and additional safety facilities had to be built as a result. In this connection, will the Government inform this Council:*

- (a) *whether it knows the cost involved in building the additional safety facilities, as well as the official opening date of the driving range;*
- (b) *whether the SDB had consulted the relevant government departments on safety facilities when designing the driving range; if it had, of the details; if not, how the SDB ensured that the design would comply with the safety requirements; and*
- (c) *how it supervises the SDB's spending on major projects?*

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

- (a) According to the information provided by the SDB, they are now conducting tests on the various facilities of the golf driving range including its safety aspects. As these tests have not yet been

completed, they cannot confirm the need for additional safety facilities nor can they confirm the official opening date of the driving range at this stage.

- (b) According to the SDB, in the course of their preparation of the tender document on the appointment of a Design-&-Build Contractor for the golf driving range project, the SDB management visited a number of golf driving ranges in Hong Kong and Shenzhen. They also sought advice from relevant parties including contractors of local golf driving ranges, management companies of these facilities, staff of the former Regional Services Department and golf professionals on matters including the design, construction and operation of golf driving ranges with special reference to the safety aspects.
- (c) This project is funded by the Sports Institute Trust Fund. We have been monitoring the expenditure of the SDB's capital projects through our membership on the main Board and its Committees.

Ranking of Hong Kong Environmental Conditions among Asian Territories

15. **DR RAYMOND HO** (in Chinese): *Madam President, a consultancy firm annually invites overseas employees posted to Asia to take part in a survey to give ratings in respect of air quality, water quality, noise levels and traffic congestion in the areas where they work. It has been reported that according to the survey findings this year, Hong Kong ranks seventh among 12 Asian territories, whereas Singapore and Thailand rank first and sixth respectively. In this connection, will the Government inform this Council whether:*

- (a) *it knows Hong Kong's ranking in the survey in each of the past three years;*
- (b) *it has examined the reasons for Singapore's topping the list; and*
- (c) *it has reviewed why Hong Kong ranked after Singapore and Thailand, and of the latest plans to improve air quality, water quality, noise levels and traffic congestion in Hong Kong?*

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

- (a) According to the company responsible for the survey, it did not give rankings in its 1998 and 1999 surveys. It ranked Hong Kong eighth in its 2000 survey.
- (b) As stated in the survey report, the rankings do not reflect the absolute magnitude of the problem of pollution in the places covered by the survey. The survey deals with perceptions of the problem by expatriates living in those places. As it is not possible for the Administration to ask respondents the reasons for the grades they gave, we are unable to establish the reasons why Singapore was ranked first.
- (c) The survey report makes it clear that the Hong Kong authorities are certainly not ignoring the problem of pollution, but that our efforts to date have not made a significant impact on the perceptions of expatriates living in Hong Kong. It further points out that the gap between perception and the extent of the problem may reflect the different structure of the Hong Kong economy and the type of expatriates that Hong Kong attracts.

A summary of the latest measures and the achievements made in controlling pollution is at the Annex. We will continue to work hard to inform the public, including the expatriate community, of what we are doing to protect the environment and the achievements we have made.

Annex

Measures to Improve Air Quality

We are implementing a comprehensive programme to reduce motor vehicle emissions with the target of reducing 80% of their respirable suspended particulate (RSP) and 30% of the nitrogen oxide (NOx) emissions by end-2005. The following measures are in the programme:

- Replace all diesel taxis with liquefied petroleum gas (LPG) taxis: we are providing a one-off grant of \$40,000 to encourage diesel taxi owners to replace their vehicles with LPG ones. Since

disbursement of the grant in August last year, over half of the 18 000 diesel have been replaced by LPG ones.

- Introduce ultra low sulphur diesel (ULSD): ULSD became the only motor diesel available at petrol filling stations since August 2000, about one month after the introduction of the duty concession for the environmentally cleaner diesel. All franchised buses have switched to ULSD since February this year.
- Particulate trap and catalyst retrofit programme: Over 12 000 particulate traps and catalysts have been installed on pre-Euro light diesel vehicles since the programme started in September 2001.

These and other on-going measures are taking effect. The average levels of RSP and NO_x in the air from August to December 2000 fell by 13% and 10% respectively compared with the same period in 1999. The number of days exceeding our short term Air Quality Objectives in 2000 was half of that in 1999. The number of smoky vehicles spotted by EPD in the first quarter in 2001 dropped by nearly 50% compared with the corresponding period in 2000.

Looking ahead, we would consider the way forward for replacing diesel light buses with clean alternative vehicles and retrofitting older heavy vehicles with catalytic converters to reduce their emissions.

The Hong Kong SAR Government and the Guangdong Government are conducting a joint study on the air quality of the Pearl River Delta Region. The data collection part has been completed. The two sides are analysing the data in conjunction with the consultant, with a view to identifying practicable improvement measures.

Measures to Improve Water Quality

Stonecutters Island Treatment Works, commissioned since May 1997, is treating 20% of all main area urban sewage.

The excavation of the deep sewage tunnels which forms part of Stage I of the Harbour Area Treatment Scheme (HATS) was completed this year. When State I of the scheme is fully commissioned around the end of this year, it will treat about 70% of all main area urban sewage and bring significant improvement to the water quality of the harbour.

The water quality of Hong Kong's rivers with excellent/good/fair ratings has increased from around 63% to 83% in 2000.

The water quality of gazetted beaches with good or fair water quality has increased from 74% in 1986 to 85% in 2000.

Measures to Address Noise Impact on the Community

We have adopted a three-pronged approach: adopt more active environmental participation in the land-use and infrastructure planning process to pre-empt noise problem; undertake abatement programmes including the school insulation programme and a road resurfacing programme to reduce the traffic noise impact on students and residents; and implement comprehensive noise control legislation to control noise from construction, commercial and industrial activities. These programmes have brought many noise sources under greater control and in some case eliminating them.

In November 2000, we introduced new measures to address the traffic noise impact of existing roads on residents living along them. Where technically feasible, noise barriers/enclosures will be retrofitted on existing excessively noisy roads, and low noise resurfacing materials will be used to repave other roads. We have currently identified 29 existing roads for retrofitting of noise barriers/enclosures subject to detailed feasibility study, at an indicative cost of \$2,340 million. We have also identified 72 existing roads as candidates for resurfacing with low noise materials, at an indicative cost of \$76 million. We estimate that 24 000 and 40 000 residential units will benefit from the noise barrier retrofit programme and the resurfacing programme respectively.

Measures to Address Traffic Congestion

In the past three years, the car journey speed during morning peak hours in the urban area of Hong Kong has maintained at an average of about 24 km per hour. This compares favourably with the figures of other major cities in the world.

The Administration is committed to continuously improving the traffic conditions in Hong Kong. We do this through further development of transport infrastructure including both the rail and road networks to relieve existing

bottlenecks and provide additional traffic capacities. Also, the Administration will continue to encourage the use of public transport services, especially railways, by constantly upgrading the public transport system. For more efficient traffic management, the Administration will be implementing a comprehensive intelligent transport system to better manage the road network and improve the overall capacity of Hong Kong's transport system.

Separately, the Administration will improve the pedestrian walkway systems and pedestrianize selected road sections to reduce the number of short motorized trips with a view to increasing mobility.

Occupancy Rates of Stalls and Shops

16. **MR DAVID CHU** (in Chinese): *Madam President, will the Government inform this Council of the occupancy rates of the following categories of stalls and shops, as well as the median per-square-metre rental of such occupied stalls and shops, as at 1 April this year:*

- (a) *shops in the shopping arcade of each public rental housing (PRH) estate;*
- (b) *market stalls in each PRH estate; and*
- (c) *stalls in each of the markets managed by the Food and Environmental Hygiene Department (FEHD)?*

SECRETARY FOR HOUSING (in Chinese): Madam President, the Housing Department has information on the average, but not the median per-square-metre rental of shops and market stalls in public rental housing estates. Such information, together with occupancy rates, is at Annexes 1 and 2.

For markets managed by the FEHD, the rentable area of stalls includes an expanded area for display purpose. In the absence of information on the size of display areas for some 10 000 stalls in older markets, the FEHD does not have statistics on per-square-metre rentals. Instead, median rentals of stalls are provided at Annex 3.

Annex 1

Occupation Rate and Average Rental of Shops
in Shopping Arcades of PRH Estates
(1 April 2001)

<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>	
1	Apleichau Estate	97	274
2	Butterfly Estate	96	239
3	Chai Wan Estate	100	98
4	Chak On Estate	59	143
5	Cheung Ching Estate	86	148
6	Cheung Fat Estate	100	154
7	Cheung Fat Shopping Centre	92	301
8	Cheung Hang Estate	100	163
9	Cheung Hong Estate	99	202
10	Cheung Kwai Estate	58	54
11	Cheung On Estate	100	235
12	Cheung Shan Estate	88	111
13	Cheung Wah Estate	87	183
14	Choi Fai Estate	100	186
15	Choi Ha Estate	100	192
16	Choi Hung Estate	93	261
17	Choi Wan Estate (1)	99	200
18	Choi Wan Estate (2)	100	123
19	Choi Yuen Estate	96	226
20	Chuk Yuen North Estate	100	156
21	Chuk Yuen South Estate	98	269
22	Chun Shek Estate	98	266
23	Chung Fu Shopping Centre	87	495
24	Chung On Estate	96	366
25	Fortune Shopping Centre	85	477
26	Fu Heng Estate	100	271
27	Fu Shan Estate	100	125
28	Fu Shin Estate	100	235
29	Fu Tai Shopping Centre	84	438
30	Fu Tung Estate	98	303
31	Fuk Loi Estate	100	207

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>
32	Fung Tak Estate	95	318
33	Fung Wah Estate	100	164
34	Hau Tak Estate (1)	69	169
35	Hau Tak Estate (2)	96	406
36	Heng On Estate	96	251
37	Hin Keng Estate	95	251
38	Hing Man Estate	97	154
39	Hing Tin Estate	96	230
40	Hing Tung Estate	92	265
41	Hing Wah Estate (1)	79	309
42	Hing Wah Estate (2)	73	127
43	Homantin Estate	38	149
44	Ho Man Tin Plaza	59	538
45	Hong Tung Estate	100	158
46	Hung Hom Estate	100	156
47	Ka Fuk Estate	91	391
48	Kai Tin Estate	57	495
49	Kai Yip Estate	99	204
50	Kin Sang Estate	95	203
51	King Lam Estate	99	318
52	Ko Yee Estate	53	151
53	Kwai Chung Estate	100	431
54	Kwai Fong Estate	96	493
55	Kwai Hing Estate	98	306
56	Kwai Shing East Estate	52	439
57	Kwai Shing West Estate	91	190
58	Kwong Fuk Estate	99	232
59	Kwong Tin Estate	99	330
60	Kwong Yuen Estate	97	292
61	Lai King Estate	95	96
62	Lai Kok Estate	89	136
63	Lai On Estate	100	138
64	Lai Yiu Estate	100	94
65	Lam Tin Estate (1)	100	92
66	Lee On Estate	100	326
67	Lei Cheng Uk Estate	99	158
68	Lei Muk Shue Estate (2)	99	135

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>
69	Lei Tung Estate	97	288
70	Lek Yuen Estate	99	229
71	Leung King Estate	99	247
72	Lok Fu Estate	97	151
73	Lok Fu Shopping Centre	99	275
74	Lok Wah North Estate	96	191
75	Lok Wan South Estate	79	234
76	Long Ping Estate	96	157
77	Lower Ngau Tau Kok Estate (1)	100	168
78	Lower Ngau Tau Kok Estate (2)	100	167
79	Lower Wong Tai Sin Estate (1)	100	129
80	Lower Wong Tai Sin Estate (2)	100	486
81	Lung Hang Estate	96	234
82	Lung Tin Estate	100	26
83	Ma Tau Wai Estate	96	264
84	Mei Lam Estate	93	215
85	Mei Tung Estate	100	111
86	Ming Tak Estate	81	431
87	Model Housing Estate	100	200
88	Nam Cheong Estate	93	157
89	Nam Shan Estate	100	149
90	Ngan Wan Estate	52	59
91	North Point Estate	100	171
92	Oi Man Estate	97	235
93	Oi Tung Shopping Centre	95	756
94	On Ting Estate	98	217
95	On Yam Estate	100	279
96	Pak Tin Estate	96	124
97	Ping Shek Estate	98	229
98	Ping Tin Estate #	100	426
99	Po Lam Estate	91	254
100	Po Tin Shopping Centre	94	482
101	Pok Hong Estate	95	231
102	Sai Wan Estate	100	154
103	Sam Shing Estate	94	115
104	Sau Mau Ping Estate (1)	98	94
105	Sau Mau Ping Estate (2)	100	110

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>
106	Sau Mau Ping Estate (3)	100	147
107	Sha Kok Estate	98	196
108	Shan King Estate	92	210
109	Shatin Pass Estate	100	127
110	Shek Kip Mei Estate	100	179
111	Shek Lei Estate (1)	100	206
112	Shek Lei Estate (2)	76	303
113	Shek Wai Kok Estate	93	158
114	Shek Yam East Estate	100	309
115	Shek Yam Shopping Centre	75	291
116	Sheung Tak Estate	100	578
117	Shui Pin Wai Estate	93	107
118	Shun Lee Estate	98	164
119	Shun On Estate	91	95
120	Shun Tin Estate	100	252
121	Siu Sai Wan Estate	91	375
122	So Uk Estate	90	114
123	Stanley Plaza	86	530
124	Sun Chui Estate	97	261
125	Sun Tin Wai Estate	77	212
126	Tai Hang Tung Estate	100	141
127	Tai Hing Estate	97	186
128	Tai Ping Estate	100	196
129	Tai Wo Hau Estate	95	207
130	Tai Wo Shopping Mall	97	260
131	Tai Yuen Estate	97	149
132	Tak Tin Estate	100	276
133	Tin King Estate	100	139
134	Tin Ping Estate	94	228
135	Tin Shui Estate (1)	100	150
136	Tin Shui Estate (2)	100	390
137	Tin Tsz Estate	96	460
138	Tin Wah Estate	100	240
139	Tin Wan Estate	92	323
140	Tin Yiu Estate (1)	100	452
141	Tin Yiu Estate (2)	100	130
142	Tsing Yi Estate	100	117

<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>	
143	Tsui Lam Estate	93	217
144	Tsui Ping North Estate	94	274
145	Tsui Ping South Estate	100	212
146	Tsui Wan Estate	98	270
147	Tsz Ching Estate	100	259
148	Tsz Lok Estate	100	150
149	Tsz Wan Shan Shopping Centre	98	343
150	Tung Tau Estate (1)	100	107
151	Tung Tau Estate (2)	89	201
152	Un Chau Estate	94	320
153	Upper Ngau Tau Kok Estate	100	125
154	Upper Wong Tai Sin Estate	100	251
155	Wah Fu Estate (1)	95	207
156	Wah Fu Estate (2)	99	114
157	Wah Kwai Estate	100	336
158	Wah Ming Estate	100	240
159	Wah Sum Estate #	100	497
160	Wan Tau Tong Estate	100	335
161	Wan Tsui Estate	96	226
162	Wang Tau Hom Estate	99	213
163	Wo Che Estate	98	197
164	Wo Lok Estate	100	120
165	Wong Chuk Hang Estate	96	179
166	Wong Tai Sin Shopping Centre	99	310
167	Wu King Estate	100	133
168	Yau Oi Estate	95	203
169	Yiu On Estate	97	269
170	Yiu Tung Estate	91	256
171	Yue Wan Estate	98	133
172	Yuen Long Estate	100	76

Single Operator Shopping Centre

Note:

Premises awaiting demolition or improvement, and premises where letting has been reserved for reprovisioning or restricted tender for redevelopment clearances, are excluded.

Occupation Rate and Average Rental of Market Stalls
in PRH Estates
(1 April 2001)

<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>	
1	Apleichau Estate	95	623
2	Butterfly Estate	88	755
3	Chak On Estate	66	202
4	Cheung Ching Estate	84	573
5	Cheung Fat Shopping Centre	98	721
6	Cheung Hang Estate	64	388
7	Cheung Hong Estate	79	669
8	Cheung Shan Estate	72	179
9	Cheung Wah Estate	69	884
10	Choi Hung Estate	84	335
11	Choi Wan Estate (1)	89	464
12	Choi Yuen Estate	42	685
13	Chuk Yuen South Estate	90	766
14	Chun Shek Estate	86	628
15	Chung Fu Shopping Centre *	100	458
16	Chung On Estate *	100	491
17	Fu Heng Estate *	100	257
18	Fu Shan Estate	77	442
19	Fu Shin Estate	79	869
20	Fu Tung Estate *	100	232
21	Fung Tak Estate	91	781
22	Hau Tak Estate (2) *	100	555
23	Heng On Estate	86	568
24	Hin Keng Estate	93	720
25	Hing Man Estate	50	346
26	Hing Tin Estate	78	401
27	Hing Tung Estate *	100	170
28	Hing Wah Estate (1) *	100	108
29	Hing Wah Estate (2)	27	336
30	Homantin Plaza	100	205
31	Ka Fuk Estate *	100	188
32	Kai Tin Estate *	100	338

<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>	
33	Kai Yip Estate	92	710
34	Kin Sang Estate	87	617
35	King Lam Estate	93	953
36	Kwai Chung Estate	81	870
37	Kwai Fong Estate	68	644
38	Kwai Hing Estate	87	510
39	Kwai Shing East Estate *	100	184
40	Kwai Shing West Estate	51	329
41	Kwong Fuk Estate	85	854
42	Kwong Tin Estate *	100	493
43	Kwong Yuen Estate	100	794
44	Lai King Estate	66	612
45	Lai Kok Estate	67	281
46	Lai Yiu Estate	68	243
47	Lee On Estate	98	820
48	Lei Muk Shue Estate (2)	94	366
49	Lei Tung Estate	72	784
50	Lek Yuen Estate	92	388
51	Leung King Estate	98	883
52	Lok Fu Shopping Centre	93	539
53	Lok Wah South Estate	97	851
54	Long Ping Estate	67	597
55	Lung Hang Estate	100	909
56	Mei Lam Estate	72	721
57	Mei Tung Estate	100	261
58	Ming Tak Estate *	100	359
59	Nam Shan Estate	86	400
60	Oi Man Estate	79	1,127
61	On Ting Estate	65	609
62	On Yam Estate	75	555
63	Pak Tin Estate	87	237
64	Ping Shek Estate	76	362
65	Po Lam Estate	87	989
66	Pok Hong Estate	96	817
67	Sam Shing Estate	78	284
68	Sau Mau Ping Estate (2)	100	205
69	Sau Mau Ping Estate (3)	100	113
70	Sha Kok Estate	98	997

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>
71	Shan King Estate	91	748
72	Shek Kip Mei Estate	94	478
73	Shek Lei Estate (1)	92	681
74	Shek Wai Kok Estate	76	579
75	Sheung Tak Estate *	100	437
76	Shun Lee Estate	90	745
77	Shun On Estate	100	296
78	Shun Tin Estate	86	862
79	Siu Sai Wan Estate	100	721
80	So Uk Estate	100	320
81	Sun Chui Estate	67	718
82	Sun Tin Wai Estate	76	502
83	Tai Hang Tung Estate	100	688
84	Tai Hing Estate	82	643
85	Tai Wo Hau Estate	89	566
86	Tai Wo Shopping Mall	87	847
87	Tai Yuen Estate	87	1,010
88	Tak Tin Estate	98	642
89	Tin Ping Estate	100	480
90	Tin Shui Estate (2) *	100	273
91	Tin Yiu Estate (1)	91	1,038
92	Tsing Yi Estate	64	693
93	Tsui Lam Estate	74	701
94	Tsui Ping North Estate	87	426
95	Tsz Wan Shan Shopping Centre *	100	578
96	Tung Tau Estate (2)	50	484
97	Upper Ngau Tau Kok Estate	100	142
98	Upper Wong Tai Sin Estate	47	495
99	Wah Fu Estate (1)	88	677
100	Wah Fu Estate (2)	28	555
101	Wah Kwai Estate *	100	316
102	Wah Ming Estate	100	908
103	Wan Tau Tong Estate	75	792
104	Wan Tsui Estate	68	387
105	Wang Tau Hom Estate	85	480
106	Wo Che Estate	91	740
107	Wong Chuk Hang Estate	77	629
108	Wong Tai Sin Shopping Centre	75	736

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/sq m)</i>
109	Yau Oi Estate	96	712
110	Yiu On Estate *	100	301
111	Yiu Tung Estate	54	701

* Single Operator Market

Note:

Premises awaiting demolition or improvement, and premises where letting has been reserved for reprovisioning or restricted tender for redevelopment clearances, are excluded.

Annex 3

Occupation Rate and Median Rental of Market Stalls of FEHD
(1 April 2001)

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/Stall)</i>
1	Aberdeen Market	85	2,076
2	Ap Lei Chau Market	97	2,382
3	Boundary Street Market	84	735
4	Bowrington Road Market	90	987
5	Bridges Street Market	43	830
6	Causeway Bay Market	82	945
7	Central Market	62	4,359
8	Centre Street Market	96	730
9	Cha Kwo Ling Market	67	769
10	Chai Wan Kok C/F Market	94	3,063
11	Chai Wan Temporary Market	75	1,090
12	Cheung Chau C/F Market	94	5,040
13	Cheung Chau Market	95	805
14	Cheung Sha Wan C/F Market	43	4,111
15	Cheung Tat Road C/F Market	100	7,895
16	Choi Hung Road Market	81	2,000
17	Electric Road Market	67	1,507
18	Fa Yuen Street Market	96	1,820
19	Fo Tan C/F (East) Market	83	5,950

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/Stall)</i>
20	Fo Tan C/F (West) Market	53	4,550
21	Haiphong Road Temporary Market	61	1,166
22	Heung Che Street Market	94	1,008
23	Hung Cheung C/F Market	73	7,000
24	Hung Hom Market	99	1,691
25	Hung Shui Kiu Temporary Market	92	385
26	Java Road Market	89	2,324
27	Ka Ting C/F Market	71	6,400
28	Kam Tin Market	88	560
29	Kik Yeung Road C/F Market	100	5,950
30	Kimberley Street Market	100	8,040
31	Kin Wing C/F Market	60	5,338
32	Kin Yip Street C/F Market	100	4,375
33	Kowloon City Market	81	725
34	Kut Shing Street C/F Market	82	3,745
35	Kwai Shun Street C/F Market	100	7,875
36	Kwong Choi Market	69	1,130
37	Kwu Tung Market Shopping Centre	99	560
38	Kwun Chung Market	83	1,149
39	Kwun Tong Ferry Concourse C/F Market	83	2,100
40	Lai Wan Market	100	4,200
41	Lam Tei Market	63	333
42	Lau Fau Shan Market	88	12
43	Lee Chung Street C/F Market	100	3,612
44	Lockhart Road Market	92	1,100
45	Mong Kok Market	47	840
46	Mui Wo C/F Market	100	7,000
47	Mui Wo Market	100	1,575
48	Nam Long Shan C/F Market	82	4,981
49	Ngau Chi Wan Market	89	1,399
50	Ngau Tau Kok Market	94	1,779
51	North Kwai Chung Market	94	840
52	North Point Market	100	1,119
53	On Ching Road Flower Market	23	1,600
54	Pei Ho Street Market	99	1,715
55	Peng Chau Market	60	400
56	Plover Cove Road Market	73	1,173

<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/Stall)</i>	
57	Po On Road Market	60	1,412
58	Quarry Bay Market	72	1,206
59	Sai Kung Market	82	1,120
60	Sai Wan Ho Market	82	1,556
61	Sai Ying Pun Market	99	2,310
62	Sam Ka Tsuen Market	75	2,200
63	San Hui Market	94	2,326
64	Sha Tau Kok Market	98	210
65	Sha Tin Market	99	3,500
66	Sham Tseng Temporary Market	86	1,917
67	Shaukeiwan Market	73	500
68	Shek Tong Tsui Market	80	1,835
69	Shek Wu Hui Market	99	1,426
70	Sheung Fung Street Market	94	1,680
71	Sheung Wan Market	89	2,313
72	Shui Wo Street Market	91	2,226
73	Smithfield Market	98	1,184
74	Soy Street Temporary C/F Market	84	6,300
75	Stanley Temporary Market	71	2,783
76	Sze Shan Street C/F Market	82	2,400
77	Tai Kiu Market	83	2,310
78	Tai Kok Tsui Temporary Market	75	1,212
79	Tai O Market	54	119
80	Tai Po Temporary Market	79	1,750
81	Tai Shing Street Market	92	2,625
82	Tai Tong Road C/F Market	100	6,213
83	Tai Wai Market	99	1,952
84	Tai Yuen Street C/F Market	35	840
85	Tang Lung Chau Market	58	1,998
86	Tin Wan Market	87	562
87	To Kwa Wan Market	91	1,294
88	Tsing Yeung C/F Market	89	1,680
89	Tsing Yi Market	78	5,275
90	Tsuen King Circuit Market	67	420
91	Tsuen Wan Market	97	1,540
92	Tsun Yip C/F Market	95	2,555
93	Tui Min Hoi Market	61	210
94	Tung Chau Street Temporary Market	36	515

	<i>Estate</i>	<i>Occupancy Rate (%)</i>	<i>Average Rental (\$/Stall)</i>
95	Tung Yick Market	64	1,855
96	Tung Yuen Street C/F Market	100	2,580
97	Wanchai Market	93	1,000
98	Wing Fong Street Market	97	1,690
99	Wo Yi Hop Road C/F Market	83	2,310
100	Wong Nai Chung Market	89	1,908
101	Yan Oi Market	94	1,890
102	Yau Ma Tei Market	82	2,425
103	Yee On Street Market	82	975
104	Yeung Uk Road Market	98	1,575
105	Yue Kwong Road Market	87	850
106	Yue Wan Market	80	908

Note: C/F Market = Cooked Food Market

Proposed Merging of MPFA and Office of the Commissioner of Insurance

17. **MR BERNARD CHAN:** *Madam President, it has been reported that the Government is considering a plan to merge the Mandatory Provident Fund Schemes Authority (MPFA) and the Office of the Commissioner of Insurance. In this connection, will the Government inform this Council of:*

- (a) details of the plan; and*
- (b) the impact on insurance companies upon implementation of the plan?*

SECRETARY FOR FINANCIAL SERVICES: Madam President,

- (a) and (b)

A consultancy study will soon be commissioned to examine the appropriate institutional arrangements for the Office of the Commissioner of Insurance. The consultant will examine different options. Merging the Office of the Commissioner of Insurance with the MPFA is only one of the possible options for consideration

and we have an open mind on the future institutional set-up of the Office of the Commissioner of Insurance. Since a decision has yet to be taken, it is too early at this juncture to comment on the impact of the future set-up on insurance companies.

Implementation of Safety Management System in Industrial Undertakings

18. **MR LEUNG FU-WAH** (in Chinese): *Madam President, on 24 November 1999, the Legislative Council approved by resolution the Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59, sub. leg.) (the Regulation) made by the Commissioner of Labour. The Regulation makes provisions regarding a safety management system for implementation in designated industrial undertakings, but its main provisions have yet to come into effect. Regarding the implementation of the safety management system, will the Government inform this Council of:*

- (a) *the reasons for not having set a commencement date for the main provisions of the Regulation;*
- (b) *the progress in implementing the safety management system; and*
- (c) *the present position regarding the adoption of the 14 elements of safety management system by the contractors and proprietors of the designated industrial undertakings?*

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

- (a) The Regulation requires proprietors and contractors to:
 - (i) implement a safety management system and conduct basic safety reviews in construction sites, shipyards, factories and "designated undertakings"¹ (the relevant industrial undertakings) in which 50 to 99 persons are employed;

¹ Under section 2 of the Regulation, "designated undertaking" means an industrial undertaking involving any of the following activities:

- (a) the generation, transformation and transmission of electricity;
- (b) the generation and transmission of town gas, or liquefied petroleum gas, within the meaning of section 2 of the Gas Safety Ordinance; or
- (c) container handling.

- (ii) implement a safety management system and conduct detailed safety audits in relevant industrial undertakings in which 100 or more persons are employed.

The Regulation also requires safety auditors who conduct safety audits for relevant industrial undertakings and operators of training schemes for safety auditors be registered.

The Regulation was enacted by the Legislative Council on 24 November 1999. Since then, the Labour Department has launched a series of promotional activities for the proprietors and contractors concerned. Provisions relating to the registration of safety auditors and operators of training schemes have also come into effect in June 2000 in order to prepare for the full implementation of the Regulation. The Administration has yet to implement the other provisions because:

- (i) the industries have reflected to the Administration that safety management system is a new concept in Hong Kong and the proprietors and contractors concerned need more time to prepare;
- (ii) we need to ensure that an adequate number of registered safety auditors are available to meet the market demand.

As at 11 June 2001, 236 safety auditors have registered with the Labour Department. The relevant industrial undertakings have been given considerable time to make preparations. According to the current progress in approving safety auditors, we believe that the Regulation should be able to come into full effect by the end of this year.

- (b) Since the enactment of the Regulation, the Labour Department has launched a series of promotional activities to enable the proprietors and contractors concerned to clearly understand the requirements under the Regulation and to assist them in devising safety management systems. As at May 2001, the Labour Department has:

- (i) conducted 89 roving exhibitions in the relevant industrial undertakings and shopping centres, during which more than 23 000 promotional publications were distributed;
 - (ii) organized 76 talks, 15 seminars and 198 training courses, in which more than 12 000 persons attended;
 - (iii) issued letters to the relevant industrial undertakings and conducted 6 048 promotional visits to brief the proprietors and contractors concerned on the requirements under the Regulation.
- (c) The Regulation requires proprietors and contractors concerned to adopt 14 elements of safety management system (see Annex) to provide the framework for safety management and assist the relevant industrial undertakings in achieving self-regulation through devising safety management systems. As safety management system is a new concept, proprietors and contractors of the relevant industrial undertakings would need time to adapt to the concept and implement the elements step by step. During the initial period of implementation, proprietors and contractors concerned will be required to implement eight to 10 elements of safety management. The Administration will review in due course the progress of, and experience in, the implementation of the Regulation, before considering further implementation of the remaining four elements.

Although the Regulation has yet to come into full effect, Occupational Safety Officers of the Labour Department have, during their inspections, observed that the majority of the larger relevant industrial undertakings have already implemented a safety management and can generally meet the requirements under the Regulation. Smaller establishments have also implemented some of the elements of safety management. Occupational Safety Officers will continue to advise the proprietors and contractors concerned, during inspections and promotional activities, to implement as soon as possible the elements of safety management as required by the Regulation.

14 Elements of Safety Management System

1. A safety policy which states the commitment of the proprietor or contractor to safety and health at work.
2. A structure to assure implementation of the commitment to safety and health at work.
3. Training to equip personnel with knowledge to work safely and without risk to health.
4. In-house safety rules to provide instruction for achieving safety management objectives.
5. A programme of inspection to identify hazardous conditions and for the rectification of any such conditions at regular intervals or as appropriate.
6. A programme to identify hazardous exposure or the risk of such exposure to the workers and to provide suitable personal protective equipment as a last resort where engineering control methods are not feasible.
7. Investigation of accidents or incidents to find out the cause of any accident or incident and to develop prompt arrangements to prevent recurrence.
8. Emergency preparedness to develop, communicate and execute plans prescribing the effective management of emergency situation.
9. Evaluation, selection and control of sub-contractors to ensure that sub-contractors are fully aware of their safety obligations and are in fact meeting them.
10. Safety committees.
11. Evaluation of job related hazards or potential hazards and development of safety procedures.
12. Promotion, development and maintenance of safety and health awareness in a workplace.
13. A programme for accident control and elimination of hazards before exposing workers to any adverse work environment.
14. A programme to protect workers from occupational health hazards.

Industrial Safety during Thunderstorms

19. **MISS LI FUNG-YING** (n Chinese): *Madam President, on the 5th of this month, two industrial accidents occurred successively in which four workers were suspected to have been struck by lightning, resulting in one death and three injuries. In this connection, will the Government inform this Council of:*

- (a) *the deceased's cause of death;*
- (b) *the means it has adopted to remind employers and employees of industrial safety issues they should pay attention to during thunderstorms, particularly the safety measures when it is necessary to work outdoors; and*
- (c) *the measures the relevant government departments will adopt to prevent the recurrence of similar incidents?*

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

- (a) The two accidents of 5th of this month occurred at A Kung Kok Villiage and the Hong Kong International Airport respectively. An engineer died in the accident occurred at A Kung Kok Villiage. The Administration is investigating the accident. It is preliminarily believed to be related to electric shocks, but the actual cause of death has yet to be confirmed.
- (b) In every rainy season, the Labour Department publicizes, through various publicity channels, among employers and employees the issues to which they should pay attention for work in inclement weather. These channels include:
 - (i) Broadcasting TV API to remind employers and employees to draw up, as early as possible, arrangements for work in inclement weather;
 - (ii) Publishing the "Code of Practice in Times of Typhoons and Rainstorms" to encourage employers and employees to work

out, in prior, work arrangements and contingency measures when rainstorm warning is in force, and to remind them of their liabilities under the Occupational Safety and Health Ordinance. Under the Ordinance, employers have the duty to ensure the safety and health of all their employees at work by providing them with a safe workplace as well safe plants and systems of work (for example, providing them with personal protective equipment, and so on). Where it is necessary for employees to work in inclement weather, employers shall ensure that the relevant risks are properly controlled and reduced to the lowest extent as is reasonably practicable. Employees, on the other hand, shall co-operate with their employers and comply with the safety rules and work procedures. Copies of the Code of Practice are available at the Labour Department's offices. The text has also been uploaded to the homepage of the Labour Department for online browsing.

- (iii) Arousing employers' and employees' awareness of the issues concerned through the "Labour Focus". (The "Labour Focus" is a bimonthly promotional publication published by the Labour Department for regular distribution to organizations with five employees or more.)

In routine inspections and safety conferences, Occupational Safety Officers of the Labour Department also remind employers and contractors of the need to conduct risk assessments for various work processes and working conditions, and to put in place a system for safety at work, including arrangements for work in inclement weather, such as in the events of typhoon or thunderstorm. Occupational Safety Officers also remind employers and contractors that where it is unavoidable for employees to work outdoor in inclement weather, they shall ensure that those employees fully understand the relevant system for safety at work and that proper supervision for such outdoor work is in place.

In addition, various works departments issue circulars before every rainy season to contractors and their employees to remind them of the necessary safety measures to be taken (including how to avoid

being struck by lightning) when outdoor work in inclement weather is required. Contractors are also required to organize site seminars on relevant safety measures. Safety officers from various departments also remind contractors to take appropriate safety measures at the meetings of the safety committee for the works contracts.

The Airport Authority issues the "Emergency Procedures Manual" which sets out in detail the contingency measures to be adopted by various units working at the apron area during thunderstorms. For example, staff should be notified to stay indoors or take shelter inside a vehicle and to keep away from aircraft or lampposts as far as possible. When a thunderstorm warning issued by the Hong Kong Observatory is in force, the Airport Authority would immediately notify all relevant units so that they may take appropriate safety measures in accordance with the Manual and the internal procedures of their respective companies.

- (c) The Labour Department will continue to enhance employers' and employees' safety awareness for work in inclement weather through publicity and education. During their inspections of workplaces, Occupational Safety Officers will step up their efforts in encouraging employers and contractors to set up, as early as possible, a system and draw up the respective code for safety at work and to urge their employees to comply. Occupational Safety Officers will also remind employers and contractors that where it is unavoidable for their employees to work in inclement weather, they shall ensure that the relevant work is only performed under strict supervision and in accordance with the stipulated code for safety at work. The Labour Department will take vigorous enforcement actions, including prosecution, against any person in breach of the safety legislation.

All works departments will continue to discuss at the safety committee for the works contracts the safety measures to be taken for outdoor work in inclement weather and monitor how the contractors and their employees implement the relevant measures in practice. Upon completion of the investigation regarding the fatal accident at A Kung Kok Villiage, the Works Bureau will inform all

works department of the cause of accident and the measures which require enhancement so as to prevent the recurrence of similar incidents.

The Airport Authority will, through various channels (such as Ramp Operations and Safety Committee, the "Airport Safety Bulletin" and so on) remind the companies concerned of the need to put in place safety measures to be taken during thunderstorms. In addition, it will urge them to review their internal procedures from time to time in order to prevent the recurrence of similar incidents.

Deformation of Bearing Units of Tsing Ma Bridge

20. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, it has been reported that the bearing units of Tsing Ma Bridge were found to have deformed last year and needed replacement. In this connection, will the Government inform this Council:*

- (a) *of the specific conditions of the deformed bearing units; and whether the safety of the Bridge has been affected;*
- (b) *whether it has investigated the cause of the deformation; if it has, of the details; if not, the reasons for that;*
- (c) *of the designed operational life of bridge bearings in general; and whether it is normal for bearing units to deform after having been used for only a few years;*
- (d) *of the costs of replacing the bearing units; and whether the costs were borne by the contractors of the Bridge; and*
- (e) *of the measures in place to step up the supervision of the maintenance and repairs of the Bridge?*

SECRETARY FOR WORKS (in Chinese): Madam President,

- (a) Bearings are used to support bridge decks allowing movements due to temperature variations and other external forces, such as the wind.

In Tsing Ma Bridge, there are 62 bearings in total. During a routine maintenance inspection in August 2000, squeezing out of a thin layer of plastic material from a bearing pad was observed in bearing No. 42. The extrusion which was elliptical in shape grew to about 250 mm in length in a month's time. Upon advice of the independent experts mentioned below, this bearing was replaced in March 2001 and the new bearing has been functioning satisfactorily since then. The bridge has been safe all the time and there was no disruption to both vehicular and rail traffic during the replacement process.

- (b) Squeezing out of plastic material from bearings in about three years' time is uncommon. In fact, prior to the discovery of the problem in bearing No. 42, minor plastic extrusion of about 30 mm in length was observed in two adjacent bearings in 1998 and the the Highways Department has since listed these two bearings as outstanding works to be rectified by the contractor. Two independent international experts experienced in bridge bearings and long span bridges have accordingly been appointed in October 2000 to look into what causes the problem. It is expected that the findings will be available when the experts submit their investigation report in late August 2001.
- (c) Normally, bridge bearings including the external and internal components should have a major overhaul maintenance cycle of about 25 years. With proper maintenance and regular repairs, the bearings should be able to give an adequate support to the bridge throughout the bridge's design life of 120 years. It is uncommon that failure of bearings occurs in such a short period of time.
- (d) The cost of the investigation and replacement work amounts to about \$4 million. The Tsing Ma Bridge contractor agreed to share half of the investigation cost of about \$1 million. However, the contractor denies liability for other replacement cost.

The Highways Department is working closely with the experts and would base on the findings of the investigation to initiate action against the responsible parties to recover all costs incurred.

- (e) The whole bridge has been under close monitoring commensurate with international practice by the Highways Department since its opening. According to the maintenance manual, the bearings should be inspected regularly once every two years, with external components examined in detail. The last inspection for all the bearings was completed in August 2000. Bearing No. 42 and the two bearings exhibiting minor extrusion, however, are being inspected in detail once a month to ensure that they are performing satisfactorily.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First Reading.

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2001

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2001

SUPPLEMENTARY APPROPRIATION (2000-2001) BILL 2001

HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001

CLERK (in Cantonese): Road Traffic Legislation (Amendment) Bill 2001
Landlord and Tenant (Consolidation) (Amendment)
Bill 2001
Supplementary Appropriation (2000-2001) Bill 2001
Human Organ Transplant (Amendment) Bill 2001.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2001

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, I move the Second Reading of the Road Traffic Legislation (Amendment) Bill 2001.

The main purpose of the Bill is to amend the Road Traffic Ordinance (Cap. 374), the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and their subsidiary legislation to introduce a driving improvement scheme.

The Government has conducted an analysis of traffic accidents and found that accidents attributable to driver behaviour consistently identify tailgating, negligently cutting lanes and manoeuvring turns without due care as the principal causes of traffic accidents. This indicates that improper driving attitude rather than a lack of skills is the source of the problem. Stringent punishment may not be the only effective means to rectify problematic driving behaviour. We think that there may be room to introduce some more positive measures to improve driving behaviour by way of education.

We therefore propose to introduce a Driver Improvement Scheme (DIS) as a channel through which road safety can be improved by educating drivers to pay attention to and improve their inappropriate driving attitudes and behaviour.

We propose to adopt a two-pronged approach to implementing the DIS. In addition to empowering the Court to order drivers to attend a DIS course as one of the penalty options, we also propose that drivers be allowed to join the DIS course voluntarily.

The purpose of introducing the voluntary scheme is to encourage drivers to pay attention to the problems of their driving habits and attitudes and make necessary corrections at an early stage.

Under the scheme, a driver would have three driving-offence points (DOPs) deducted from his/her total DOPs already incurred, subject to satisfactory completion of a DIS course.

To avoid possible abuse of the scheme, it is proposed that drivers who have a clean DOP record would not be allowed to store any credit for purposes of redeeming DOPs incurred in future. Also, each driver would only be permitted to deduct three DOPs for satisfactory completion of a DIS course once every two years. There is, however, no limit on the number of times he/she could attend the DIS course.

We are pleased to learn that the public and drivers in general welcome and support the implementation of the proposed DIS.

In addition, the Bill also proposes certain miscellaneous amendments to the existing road traffic legislation. These include transferring the power to determine appeals under section 55(4) of the Road Traffic Ordinance to the Administrative Appeals Board; including offences relating to speeding and crossing continuous double white lines committed within the tunnel areas of Tai Lam Tunnel and Discovery Bay Tunnel Link in the Schedule to the Road Traffic (Driving-offence Points) Ordinance to rectify the inconsistency in existing laws; and effecting straightforward adaptations to the Road Traffic Ordinance and the Road Traffic (Driving-offence Points) Ordinance.

Madam President, I commend the Road Traffic Legislation (Amendment) Bill 2001 to Members. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Road Traffic Legislation (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.

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2001

SECRETARY FOR HOUSING (in Cantonese): Madam President, I move that the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 be read the Second time.

The Bill was introduced into the Legislative Council in December 1999 but was not scrutinized by the Council before the end of the Legislative Session then.

Therefore, the Bill is re-introduced into this Council in the current Session. Apart from the original proposals, we would like to make use of the opportunity to incorporate the recommendations made by the Government Working Group on the Review of Statutory Procedures for Repossession of Domestic Premises and Recovery of Rent led by the Housing Bureau. I would like now to state the overall objectives and major proposals of the Bill.

The objectives of the Bill are to amend the Landlord and Tenant (Consolidation) Ordinance (LTO) to simplify tenancy renewal procedures, improve the basis of calculating compensation for tenants and sub-tenants occupying premises repossessed by the landlord for redevelopment, increase penalties for harassment of tenants and unlawful eviction, streamline the current repossession procedures and improve the operation of the LTO.

Firstly, on the issue of tenancy renewal procedures, the existing statutory procedures for renewing a tenancy are rather complicated. There are strict time limits on the exchange of statutory documents between the landlord and the tenant. Thus many landlords and tenants encounter many difficulties in compliance. The Lands Tribunal has also indicated that the complicated procedures and strict time limits are preventing it from determining applications for new tenancy solely on their merits. In view of this, the Government proposes to amend the relevant provisions and to shorten by three months the lead time for the landlord to serve a notice of termination of tenancy on the tenant and for the tenant to make a request for a new tenancy. This will facilitate the landlord and the tenant to make a proper decision in the light of the prevalent circumstances.

In order to better facilitate agreement between the landlord and the tenant on the level of rent for renewal of a tenancy without recourse to legal proceedings at the Lands Tribunal, provisions are added into the Bill to provide for the landlord and the tenant to apply to the Rating and Valuation Department for rental information of comparable premises.

Moreover, to vest more discretionary powers with the Lands Tribunal, the Bill empowers the Lands Tribunal to hear cases in which the landlord or the tenant fails to observe statutory time limits in serving or submitting notices.

Secondly, the Bill also recommends that change be made to the formula of calculating statutory compensation payable by the landlord to the tenant and

sub-tenant as a result of repossession for redevelopment. This proposal enables tenants and sub-tenants occupying smaller areas to receive more reasonable compensation to alleviate hardship arising from removal.

In addition, the Government also recommends that the Rating and Valuation Department may issue a certificate of statutory compensation payable in respect of the premises concerned as a basis of reference for the landlord and tenant in negotiating a mutually acceptable amount of compensation.

Thirdly, it is proposed by the Government to impose heavier penalties to deter acts of harassment of tenants and unlawful eviction. The Government considers these acts very serious offences. Members of the Legislative Council have urged the Government in the past to impose heavier penalties. The Bill therefore proposes to impose a fine of \$500,000 and imprisonment for 12 months on first conviction; and a fine of \$1 million and imprisonment for three years on a subsequent conviction.

Past experience has shown that there are difficulties on the part of the prosecution in proving the intent of the defendant in cases of harassment of tenants. The Bill therefore proposes to amend the relevant provisions to require the prosecution only to prove that the defendant knows or has reasonable cause to believe that his/her act is likely to cause the tenant to give up occupation of the premises involuntarily. The amendment is meant to replace the provision to requiring the prosecution to prove the intent of the defendant.

Fourthly, to address public concern for the lengthy and cumbersome statutory procedures for repossession of leased premises, the Bill proposes that the existing repossession procedures be streamlined. It is proposed that the mandatory relief period be shortened from the existing minimum of 28 days to a minimum of seven days following the granting of an order of possession in respect of arrears of rent. The Bill also proposes that where no notice of opposition by a tenant is filed, the landlord can apply to the Lands Tribunal for a default order and such application is not required to be supported by an affidavit. However, for an application involving a claim for mesne profits which are liquidated damages sought by the landlord for the illegal occupation of his premises following the expiry of the tenancy agreement, then the landlord is required to submit evidence to support such a claim.

Fifth, the Government also proposes a number of amendments to improve the operation of the LTO, and these include:

- to amend certain provisions to ensure consistency with the human rights provisions in the Basic Law;
- to transfer the power to amend the schedules of the LTO from the Chief Executive to the Secretary for Housing; and
- to make other technical amendments.

Madam President, I believe this Bill strikes a balance between the interests of the landlord and the tenant. It simplifies the procedures for termination of tenancy and repossession, shortens the mandatory relief period following the granting of an order of possession for default on payment of rent, provides for the landlord to terminate tenancy for default on payment of rent, and allows the landlord to terminate tenancy beyond the statutory time limits with good cause, and to dispose of the possessions left by the tenant after removal. All these proposals are meant to protect the landlord from being exploited by habitual delinquent tenants. The respective proposals on improving the formula for calculation of compensation payable to tenants where premises are repossessed for redevelopment, imposing heavier penalties on unlawful harassment of tenants, streamlining the procedures of renewal of tenancy agreements, allowing tenants to lodge an application for a new tenancy beyond the statutory time limits with a good cause, and so on will offer proper protection to the tenant's interests. I urge Honourable Members to support the above legislative proposals and to deliberate on the Bill for an early passage into law.

Madam President, I beg to move.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Landlord and Tenant (Consolidation) (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.

SUPPLEMENTARY APPROPRIATION (2000-2001) BILL 2001

SECRETARY FOR THE TREASURY: President, I move that the Supplementary Appropriation (2000-2001) Bill 2001 be read the Second time.

Section 9 of the Public Finance Ordinance states that "If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates".

The expenditure accounts for the financial year 2000-01 have been finalized by the Director of Accounting Services. The expenditure charged to 19 heads out of a total of 93 heads is in excess of the sum originally appropriated for those heads in the Appropriation Ordinance 2000. In each head, the excess expenditure reflects supplementary provision approved by the Finance Committee or under powers delegated by it. The Supplementary Appropriation (2000-2001) Bill 2001 seeks final legislative authority for the amount of supplementary provision approved during the year in respect of particular heads of expenditure by the Finance Committee or under powers delegated by it.

The total supplementary appropriation required in respect of the 19 heads of expenditure is \$1,180 million. This excess is largely attributable to payments for which no provision was made in the original estimates, including recurrent grant of \$522 million to the University Grants Committee-funded institutions; a one-off grant of \$266 million to encourage diesel taxi owners to replace their vehicles with liquefied petroleum gas vehicles; and a grant of \$200 million to the Language Fund.

Despite these exceptional un-budgeted payments, total expenditure from the General Revenue Account was within the amount originally included in the Appropriation Ordinance 2000 as a result of savings in various heads of expenditure and the provision made for additional commitments in the original estimates for the year.

President, I hope Members will support the Supplementary Appropriation (2000-2001) Bill 2001. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (2000-2001) 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.

HUMAN ORGAN TRANSPLANT (AMENDMENT) BILL 2001

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I move the Second Reading of the Human Organ Transplant (Amendment) Bill 2001.

When the Human Organ Transplant Ordinance was last amended in 1999, it was agreed that a comprehensive review of the Ordinance should be conducted following the enactment of the Amendment Ordinance. Where appropriate, further amendments should be introduced as Stage II amendment to the Ordinance.

We have subsequently undertaken the review. On the basis of the comments collected and in the light of the operating experience of the Ordinance, we have identified certain aspects that may prevent the Human Organ Transplant Board (the Board) from discharging its duties effectively. We are proposing to rectify these areas of deficiency in this legislative exercise. I would highlight some of the more significant amendments as follows:

First, we propose to set out in the Bill more clearly the definition of the terms "organ" and "payment". To cater for technology advancement in the medical field, we also propose to include a Schedule to the Ordinance listing out those human bodily parts that the commercial transaction of which are prohibited by the Ordinance, but transplants of them are not restricted for the purposes of sections 5 to 7 of the Ordinance.

Second, we propose that a vice-chairman and a panel comprising 14 members from the four categories of members, namely, registered medical practitioner, social worker, legally qualified person and other members, shall be appointed by the Secretary for Health and Welfare. This arrangement would help ensure that the Board can function properly and efficiently when the Chairman and some substantive members are not available.

Third, in view of the practical difficulties of fulfilling the stipulated procedures set out in section 5 of the Ordinance for cases where organs to be

used for the transplant, such as bone fragments, are removed previously for therapeutic purposes not directly connected to the subsequent transplant, we propose that transplants of this type are not subject to the requirements set out in section 5 of the Ordinance. As a safeguard, the registered medical practitioner is required to declare that no payment prohibited by the Ordinance has been or is intended to be made, and that the organ is removed primarily for therapeutic purpose of the donor.

Lastly, to specify clearly the role and functions of the Board in cases of imported organs, we propose to amend section 7 to the effect that before the transplantation of an imported organ, a registered medical practitioner or a person who is acceptable to the Board must supply a certificate to the Board containing all the necessary information and statements, and any other information the Board may require.

Apart from the above-mentioned proposals, we also propose to introduce other minor amendments to the Ordinance to facilitate the smooth operation of the Board when considering organ transplant applications.

I would like to reiterate that the amendments proposed in the Bill will not alter our established policy of prohibiting commercial dealings in human organ intended for transplant. We consulted the Legislative Council Panel on Health Services in April and there were general support for our proposals. I hope Members will accord favourable consideration to the Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Human Organ Transplant (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.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Copyright (Suspension of Amendments) Bill 2001.

COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001**Resumption of debate on Second Reading which was moved on 2 May 2001**

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee on the above Bill will address the Council on the report of the Bills Committee.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I hereby submit the report of the Bills Committee on the Copyright (Suspension of Amendments) Bill 2001 (the Bills Committee) in my capacity as Chairman of the Bills Committee and brief Honourable Members on the highlights of the deliberations made by the Bills Committee.

Since the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (Amendment Ordinance) came into effect on 1 April 2001, grave concern and heated discussions have arisen within the community, in particular with regard to the photocopying of newspaper articles and the use of such materials by business enterprises and schools. The crux of the problem lies in that the Amendment Ordinance has extended the scope of criminal provisions in the Copyright Ordinance. Organizations from various sectors are concerned that the possession of an infringing copy of a copyright work may be liable to criminal prosecution. The threat of criminal proceedings and the absence of a convenient mechanism to obtain the required authorization from copyright owners have hampered the dissemination of information in organizations.

The educational sector is concerned about the lack of a clear definition for copying within a "reasonable extent" in relation to permitted acts for educational copying provided in the Copyright Ordinance, thus affecting teaching and learning activities.

To allay the worries of the public, the Government introduced the Copyright (Suspension of Amendments) Bill 2001 (the Bill) to the Legislative Council on 2 May 2001. The Bill seeks to revert, with respect to all copyright works but subject to some exceptions, the key criminality provisions in the Copyright Ordinance to the position before the commencement of the Amendment Ordinance. The Bill also provides for the suspension to be lifted on 31 July 2002. In the course of the deliberations made on the Bill, the Bills

Committee received a total of 54 submissions, and met with organizations representing the copyright industry, the business sector, the educational sector and other interest groups to listen to their views on the Bill. The deliberations of the Bills Committee have focused on the need to suspend the Amendment Ordinance; the scope of copyright works to be excluded from the suspension and the extent of criminal liability applicable to an infringing copy of such works.

On the need to suspend the amendments, the Bills Committee notes that there is a diversity of opinions in the community. Some of the organizations such as the Hong Kong Reprographic Rights Licensing Association opposed the suspension of the amendments and considered it a retrograde step. It stressed that this would lead to and courage photocopying infringements with respect to books and other publications, thereby prejudicing the interests of copyright owners. The Bills Committee notes, however, that other deputations, in particular those from educational bodies and trade associations, supported the suspension and considered that it would address the concerns in society and enable the Administration to work on the authorization arrangements of copyright works during the suspension period, conduct extensive consultations and formulate a long-term solution to the problems. Due to these considerations, the Bills Committee supported the proposal to suspend the Amendment Ordinance. On the scope of copyright works to be excluded from the suspension, as explained by the Government, these were movies, television dramas, movies shown on television, sound recordings of a musical work and computer programmes. According to the Government, these works generally have substantial commercial value and are not normally "information" disseminated in enterprises or schools. Piracy of these works in Hong Kong and elsewhere is rampant. Therefore, the Amendment Ordinance with key provisions on criminal liability, which has the effect of providing a higher level of protection, should continue to apply to the infringing copies of such works.

The deputations generally agreed to the approach taken by the Administration to treat different kinds of copyright articles separately. However, some deputations considered that the Bill should not accord different treatments to various types of copyright works. The local television broadcasting companies considered that the exclusion of television drama and movies broadcast on television from the scope of the Amendment Ordinance would fail to afford their interests sufficient protection. However, the Bills Committee accepted the explanation offered by the Government, that even if non-drama television programmes were excluded from the suspension, that could

not allay the worries of the business enterprises and educational institutions about the possibility of incurring criminal liabilities. Moreover, this would defeat the original intent of the Bill. Therefore, the present exclusion of television drama and movies broadcast on televisions is not appropriate. Nevertheless, the Honourable Timothy FOK would propose a Committee stage amendment (CSA) in this respect in his personal capacity.

As for computer programmes, after the Amendment Ordinance came into force, the business enterprises and educational institutions have encountered difficulties in purchasing legitimate software. Some members suggested to the Administration to exempt the use of legitimate parallel-imported computer software in business from criminal liabilities, so as to reduce the financial burden of the enterprises and the pressure of criminal prosecution they may face.

The Bills Committee was happy to note that the Government accepted the suggestion made by the members and that it would propose a CSA to the effect that the use of legitimate parallel-imported computer software in the course of business would not constitute a criminal offence. To facilitate competition in the market, the Bills Committee also urged the Government to permit the parallel importation of computer software. The Government agreed in principle to relax the provisions on the civil and criminal liabilities for the parallel importation of computer software. It would consult all related groups in the sector on this proposal and would introduce another bill to this Council for this purpose.

As for other criminal provisions against copyright piracy in the scope of suspension, the Bills Committee was of the view that the scope covered by certain expressions in the amended Copyright Ordinance was too wide. The phrase "in connection with any trade or business" is considered to be confusing and the public has found it hard to understand precisely under what circumstances would an act constitute a criminal offence.

After studying the explanation and the examples provided by the Administration, the Bills Committee still doubted if the expression was wider in scope than its original legislative intent. Members then considered that it would be more appropriate to suspend this expression. We are also glad to note that the Government agreed to move a CSA after considering the views expressed by the Bills Committee. The CSA would suspend the effect of the expression "in connection with any trade or business" in the newly amended criminal provisions

in respect of copyright works excluded from the suspension. The Government has also accepted the suggestions made by the Bills Committee to delete and amend some expressions which have been explained in detail in the Bills Committee report. In the course of the deliberations, some members expressed reservations about the mode adopted by the Government to suspend the Amendment Ordinance. They are worried that the different treatments accorded to various types of copyright works in the Bill would easily lead to confusion and they also think that there is a need to study the criminality provisions in the Copyright Ordinance. Therefore, before these problems are resolved satisfactorily, they would prefer to have a suspension of all the criminality provisions in the Copyright Ordinance as made by the Amendment Ordinance.

The Bills Committee also notes that the Honourable Miss Margaret NG would move a CSA to this effect.

Lastly, the Bills Committee welcomes the Administration's decision to include in the Bill an end date of the suspension and that the Bill should commence with retrospective effect on 1 April 2001. These two arrangements would help allay the worries of the public. To this end, the Bills Committee must complete its scrutiny of the Bill within a very tight timeframe. In this respect, I would like to thank the Administration for its active response to the demands and suggestions made by the Bills Committee.

Madam President, the Bills Committee supports the resumption of the Second Reading of the Bill and agrees to the CSAs proposed by the Administration.

With your permission, Madam President, I will now speak in my capacity as the representative of the information technology constituency in the Legislative Council.

After the Amendment Ordinance came into effect on 1 April 2001, grave concern and heated discussions have been caused within the community. As the Chairman of the Bills Committee, I must admit that I have overlooked the extension of the scope of criminalization in the Amendment Ordinance as well as the impact on the public as a result of this criminalization of possession of infringing copies. I have also not specifically requested the Government to inform us of the progress of a public payment system for copying newspaper

articles. That has made newspaper users unable to pay copyright owners the fees for making use of copyright articles. I would like to apologize to the public for the inconvenience caused by the legislation.

Next I would like to make use of this opportunity to clarify some misunderstandings harboured by the public against intellectual property, in particular, those on the Copyright Ordinance.

Since Hong Kong is an international financial centre and that the Government is committed to developing the territory into a cutting edge digital city, the protection of intellectual property rights is vital to the overall economic development of Hong Kong. It is especially important for the innovative industries. As a professional in information technology, I can tell Honourable Members that the writing of computer programmes is a very difficult task, any error in spacing or a punctuation like a comma can paralyze a whole programme. It is more so the case with works like movies, art, music and literature where the time, efforts, talents and skills of the creator and the training he has undergone are all so vital. If intellectual property is not sufficiently protected and the works are infringed upon recklessly, then who would care to spend the time and efforts on creation? So sound protection in law is pivotal to the growth of innovative industries here.

Since the Amendment Ordinance has come into force, some people have asked whether it is too harsh to criminalize acts of copyright infringement. Please allow me to cite an example. Given the fact that shoplifting is a criminal offence, then can we say that it is too harsh to make the illegal reproduction of a movie, a piece of music or a computer programme a criminal offence? I would like to point out that intellectual property right is a kind of property right, and we should ensure that the interests of all property owners are protected. In fact, during the course of deliberations on the Copyright (Suspension of Amendments) Bill 2001, the Government and the International Federation of Reproduction Rights Organization (an international copyright organization) made a comparative study of the copyright laws in Hong Kong and other places, and it was found that the criminal sanctions imposed here on infringing acts are similar to those in other places.

With the more advancements in technology, intellectual property is all the more vulnerable to infringement. Reproduction of copyright works would be made much easier and inexpensive when they are digitalized. There would not

be any need of professional skills to make an exact copy of an original work. For example, the Napster.com of the United States enables its users to use some software to search the MP3 music files stored in the computers of other people and, with the application of peer to peer technology, the computers of two users can be linked up to exchange files. If people have broadband facilities in their homes, then it is possible to send a song from the United States to Hong Kong in just a matter of minutes. Napster used to be just one of the many up-start information technology companies in the United States, but it could once boast 80 million registered users and a record 250 000 downloads of music files a day. Many of the music scores downloaded are infringing copies. That has posed a great problem to the music distributors and the civil cases have been going on for almost two years. With the popularity of the Internet, it can be expected that infringed digital products can be sent via the Internet at any time. The copyright owners would have to face a stiff challenge if they want to protect their interests, for it would be hard to locate the persons making the infringing act and initiate legal proceedings against them. So it would be hard to impose civil sanction on the persons committing an infringing act and stop them from doing so.

There are criticisms that the criminalization of acts of infringement upon intellectual property is stifling the freedom of information. I do not agree to that idea. Let me cite an example. A famous local English newspaper has put the articles it has published from 1993 to the present on the Internet and the public can access these articles by paying \$10 only. If intellectual property is not protected, who would care to spend money to compile this rich source of information? And who would provide the capital for its dissemination? In fact, many newspapers put their articles on the Internet and let the public browse them for free. But if we make photocopies of these articles recklessly, then the copyright owners would be deprived of the chance to use the browsing rate as a means to bargain with the advertising agencies. It is doubtful that there will be any dissemination of information in the end. I think people who hold the above-mentioned view can consider the issue of whether the reckless reproduction of information or the protection of intellectual property would contribute more to facilitating the growth in the publishing industry and the dissemination of information. There may be some people who will criticize me for adhering to the principle of cost recovery and profit-making. But I think there is a value to information and the socialist utopia of having everybody taking what they need for free from public resources will not work in Hong Kong and it is not the cause for its thriving economy. Nor can it lead to the tremendous

volume of information that we can access. In my opinion, there is no contradiction between intellectual property and the freedom to information. If and only if intellectual property can be protected and that the copyright owners can recover their costs or to make profits, will there be more people who are willing to compile information and make it available to the public, hence enhancing the dissemination of information. The times of free access to information on the Internet will soon come to an end and the investors have borne the costs and the risks of developing webpages, and in the future users should bear part of the expenses of on-line information services and this is how the websites are going to survive.

On the issue of the price of computer software, as some people have rightly expressed their worries, the public at large and the small and medium enterprises will find it a heavy financial burden if the prices are too expensive. That I agree with the idea does not imply that we should abandon our efforts in protecting intellectual property, for it is a question of fair competition and digital divide. On the other hand, there are criticisms that the Copyright Ordinance has given impetus to Microsoft to enhance its monopoly of the local software market.

I would like to point out that the protection of intellectual property can make businessmen feel more at ease when they invest in innovative industries. When everyone is using legitimate software, there will be more room for market growth and software manufacturers can survive and make money. And the software manufacturers will then be willing to make further investments to make products which will compete direct with those companies enjoying a monopoly in the market. For example, the recently launched Chinese 2000 software is meant to take on Microsoft Office as a competitor. Only when there is competition then the market will not be monopolized.

For those socially disadvantaged who cannot afford to buy legitimate software, we must offer assistance to them so that they will be able to make use of information technology. Recently, I have published a research report on the issue of digital divide where a number of measures are proposed for consideration by the Government, the business sector and the non-profit-making organizations. I would not repeat the details here.

On the other hand, the Government should take the lead in promoting competition. For example, in receiving public submission of electronic

documents and opinions or in the delivery of electronic services, the concept of universal access should be used in the design. The needs of users of different computer systems should be taken into account to prevent any misunderstanding that a certain software manufacturer, for example, Microsoft, is adopted as the government standard. When submissions are invited, sometimes the Microsoft WORD format is specified. I think the Government should review this policy comprehensively so that other formats can be used in the submission of papers. The Government should also consider promoting competition when it invites tender for the procurement of computer equipment for departments and schools. It should not rely just on a specific system. Instead, it should adopt a more flexible approach to use, for example, LINUX servers and Microsoft personal computer systems that will permit change over to other systems later. In the long run, that will be more cost-effective and promote fair competition in the market. Moreover, the public will not find it inconvenient to use other non-mainstream computer systems.

There are many products in the market such as LINUX, an Open Source personal computer platform, which are becoming more and more popular in the United States. It is much cheaper than Microsoft products and it can permit users to modify the source codes to suit their needs. Besides, some multinational companies are also developing a software called COPYLEFT. The licensing terms of COPYLEFT provide that distributors cannot add any restrictive terms when modifying or distributing the software. This implies that all users have the right to reproduce, use, distribute and modify the software. So there are indeed alternatives in the market. I hope the Hong Kong Productivity Council or government departments can engage in more studies on this kind of Microsoft substitutes, find more information technology solutions which will suit the small and medium enterprises, thereby promoting the development of information technology in Hong Kong.

In the course of deliberating on the Bill, the relaxation of the restrictions on parallel importation of computer software was one of the key areas of discussions. The information technology sector generally supports the lifting of restrictions on the parallel importation of computer software. In fact, the 18-month restriction on parallel importation came not out of deliberations on the Amendment Ordinance, but it was introduced as early as in 1997 during the deliberations on the Copyright Bill, against a background of rampant infringement of copyright in movies then. I support conducting a review of the parallel importation restrictions on movies and music works and lifting all

restrictions on the parallel importation of works other than these two types of works.

The passage of the Copyright (Suspension of Amendments) Bill 2001 does not imply that work in this respect will come to an end. Next we have to make a detailed review of the existing Copyright Ordinance to ensure that not only the interests of copyright owners are protected, but that users will obtain the greatest convenience and their interest will be upheld.

I would like to make two proposals with regard to the review of the legislation:

First, the Government should liaise with various groups of copyright owners, such as those of movies, music, newspapers and periodicals and computer software as well as organizations of copyright users and to convene meetings to discuss how a balance can be struck between the interests of owners of intellectual property and users. This will enable the review to be made of the legislation be readily acceptable to the public.

Second, when a review of the legislation is to be made, there should be measures tailor-made for the protection of various kinds of copyright articles. With the advances made in society, the kinds of intellectual property and copyright articles are increasing all the time and there are great differences between them. In making copyright legislation, it may not be the best approach to take if the Government insists on or seeks to achieve neutrality in technology. It may be more appropriate and workable if regulations and ordinances are formulated to accommodate the different characteristics of various kinds of copyright articles.

Madam President, laws of intellectual property are very complicated, and with the passage of the Copyright (Suspension of Amendments) Bill 2001, the Copyright Ordinance will become even more complicated. Madam President, I hope the Government can use plain and simple language to produce webpages and leaflets to explain to the public what the latest situation of the relevant legislation.

With these remarks, I support the Bill and the amendments proposed by the Administration. Thank you.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 passed in the middle of last year came into effect on 1 April this year. It soon aroused much concern and heated discussions in the community. The scope covered by some of the provisions of the Amendment Ordinance is too wide and all members of the public fear that they may inadvertently fall into the copyright trap. For example, some teachers worry that photocopying exercises for their students will violate the Copyright Ordinance and they therefore only make hand-written copies. Members' offices may be accused of infringing upon the copyright of newspapers when they copy newspaper reports and information onto promotional posters for local residents' reference. Office workers who have copied information on the industry for circulation may have infringed upon copyright. Some naughty students even ask their teachers if they would infringe upon copyright if they are punished to copy textbooks.

The crux of the problem is that the amendments have extended the definition of copyright infringement. The phrase "for the purpose of trade or business" has been extended to become "for the purpose of, in the course of, or in connection with, any trade or business". The term "business" also covers educational, charitable or government activities, and is not confined to commercial activities. It has thus generated widespread disputes on the topic. Inevitably, as Members of the Council, we admit that we should be held responsible for oversight when we passed the Ordinance. Therefore, to avoid repeating the mistake, we disagreed with the Government's request for the completion of the three Readings on the same day in scrutinizing this (Suspension of Amendments) Bill. After repeated discussions and the amendments made by the Government to the Bill, the Democratic Alliance for Betterment of Hong Kong (DAB) believes that, although the draft provisions of the Bill are still not fully satisfactory, we agree that it should be passed as soon as possible. Therefore, we support the Bill so that the Government can make use of the period of suspension to conduct a comprehensive review on the Copyright Ordinance and submit a new bill to this Council.

Madam President, the Bill has excluded certain copyright works from the suspension, including movies, television dramas and movies, musical works and computer programmes. However, television programmes without a storyline are not included, and the DAB thinks that this is open to question.

The Administration believes that television programmes without a storyline have fairly low commercial value, and pirated recording of such

programmes is not as rampant as that of movies and programmes with a storyline, therefore, it disagrees to excluding these programmes. However, as pointed out by some representatives of the sector, some programmes without a storyline such as the documentaries on the National Geographic Channel of Cable TV have fairly high commercial value. I have also found some pirated VCD on the market, with pirated recording of programmes without a storyline such as the "Stories from Afar" produced by ATV. For this reason, the DAB will support the amendment to similarly exclude television programmes without a storyline, to be proposed by Mr Timothy FOK later. However, we also understand that criminalizing the dubbing of television programmes without a storyline would overlook the needs of educational, charitable and other non-profit-making activities and it may be too harsh. Therefore, we think that the Government should conduct a comprehensive consultation and review on this issue in order to balance the needs of the community.

The DAB also agrees that computer programmes should also be excluded from the scope of suspension of operation. However, I would like to emphasize that, the Copyright Ordinance aims at protecting the reasonable rights of the copyright owners, but it does not mean to secure or "guarantee" their monopoly in the market or that they can be profiteering.

Madam President, let me cite a practical example. At the beginning of the year, my ward office ordered certain software upgrades for some of the existing computer programmes. After the commencement of the Ordinance, we planned to purchase another set in mid-April. The staff of the computer company told us that the software was out of stock but more stocks would be available later at a higher price. I cannot figure out why. Let me cite another example of a Chinese font software. The contents of the home version and office version are identical, but the office version costs four times that of a home version. The software agent in Hong Kong explained that a higher price was charged because business operation would generate profits. Madam President, is the Copyright Ordinance overprotective of these irrational software manufacturers?

Madam President, the DAB supports the Government's amendment to decriminalize the use of parallel-import computer software for business. However, the versions of software launched in other regions will be more or less different. With respect to the Chinese font software mentioned just now, many Chinese characters in common use in Hong Kong are not available in a cheaper

Taiwanese parallel-import version. Therefore, although the amendment can give consumers one more option, they may have to give up some probably useful functions. In the long run, the Government should assist in the development of software, so that software companies that have monopolized the market will have to face competition, ultimately benefitting the buying public.

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

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

DR YEUNG SUM (in Cantonese): Madam Deputy, with Hong Kong's transformation into a knowledge-based economy, the importance of protecting intellectual property right is unquestionable. For a certain period in the past, infringing activities were rampant. Unruly elements openly sold pirated VCDs, CDs and computer software on the streets and in stores. I believe Members would not have forgotten that pirated VCDs were available before the movies were shown in the cinemas years ago, and pirated CDs and computer software were available everywhere.

Upon the request of the public, the Government has taken a number of measures, including making legislative amendments and stepping up enforcement actions. Schedule 1 to the Organized and Serious Crimes Ordinance 1999 and the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 came into existence under such circumstances.

The Copyright (Suspension of Amendments) Bill 2001 is the continuation and revision of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 that came into effect on 1 April this year, and it is also the continuation of the public consultation conducted by the Government in 1999.

The Democratic Party holds intellectual property rights in high regard. The existing Ordinance has been criticized for giving people a wrong impression that intellectual property articles have different grades. The Democratic Party believes that the implementation of legislation should take into consideration the realistic situation of society. As regards the four copyright articles protected by the Ordinance, namely movies, music, computer software and television dramas, it is easy for the public to identify the relevant copyright owners, and a

systematic charging mechanism has been established. However, the same may not apply to other articles, so, after the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 came into effect on 1 April, the public may not know how they can pay the copyright royalties even if they wished to do so.

The Democratic Party also opposes the fact that, due to the lack of a charging mechanism for some intellectual property articles, their due rights to legal protection should be forfeited. In view of the rampant infringement of musical works, computer software and movies in 1999, the Government issued a consultation paper on "Combating Intellectual Property Rights Infringement" in April 1999 and proposed a number of relevant measures. The Democratic Party believes that the public clearly understands and agrees that it is necessary to protect intellectual property. We also believe that public opinion at that time should not be refuted, therefore, the Democratic Party will not support Miss Margaret NG's amendment that proposes an across-the-board suspension. However, we support the Government's continuous review of the Copyright Ordinance, with the objective of giving various intellectual property articles the same protection.

In 1999, in view of the rampant infringement of musical works, computer software and movies, the Government issued a consultation paper on "Combating Intellectual Property Rights Infringement" in April 1999 and proposed a number of relevant measures. The Intellectual Property (Miscellaneous Amendments) Ordinance 2000 was later drafted specifically for these three types of articles. In order not to go beyond the scope of the original consultation paper, heavier penalty for intellectual property articles other than these three articles should not be included in this amendment. This should be further considered when a review and consultation is later conducted on the Copyright Ordinance. Therefore, the Democratic Party opposes Mr Timothy FOK's amendment.

Finally, the Democratic Party supports the amendments to be proposed by the Government at the Committee stage to delete the most controversial phrase "for the purpose of, in the course of, or in connection with, any trade or business", and to decriminalize the use of legitimate parallel-import computer software. Thus, the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 will have minimal impact on the use of intellectual property articles by small and medium enterprises and the general public. On behalf of the Democratic Party, I support the Government's amendment.

I so submit. Thank you, Madam Deputy.

MR KENNETH TING (in Cantonese): Madam Deputy, I would only state the position of the Liberal Party on the issue of parallel imports.

The Liberal Party supports the use of legitimate original copies. Therefore, we support the Copyright Ordinance and the protection of intellectual property rights. We also believe that, to uphold the principles of equity and fair competition, the Government should also consider relaxing the import time limitation on parallel-import computer software.

Currently, the law requires the software companies to import the software 18 months after it has been released in the market of origin, before it can be legitimately imported into Hong Kong.

The development in computer software is fast-growing, by the time the software can be legitimately imported in parallel after 18 months, it would have become outdated. In that case, the original intent of the legislation to protect copyright will become encouraging the use of "outdated" technology, in contrary to the objective of keeping track with high technology as suggested by the Financial Secretary.

Thanks to limitations under the current legislation, software companies have monopolized the market and the price for legitimate software has been soaring. It has become an extra heavy burden for small and medium enterprises (SMEs). Even if they bite the bullets to purchase legitimate software, they may not be able to get it as the supply is limited. This is not a situation that we would like to see.

The Liberal Party had intended to propose an amendment, but it was ruled to have gone beyond the theme of the Bill. However, the Liberal Party still believes that a balance should be struck. While protecting the copyrights, measures should be taken to prevent monopolization, to facilitate the SMEs updating their computer software without committing an offence.

The Government has committed to work on the issue of the time limitation on the parallel importation of goods. The Liberal Party urges the Government to propose an amendment and submit it to the Council as soon as possible when it resumes in October.

We appreciate the Government's expeditious proposal of an amendment to the Ordinance, to enable people who are currently using parallel-imports to be free from worries. We support this amendment.

The amendment proposed by Miss Margaret NG, though comparatively thorough and simple, would hinder the effort in combating piracy activities in Hong Kong, and tarnish Hong Kong's international image. Thus we will oppose it.

The amendment of Mr Timothy FOK covers non-drama television programmes, such as news programmes and documentaries. Since these programmes have commercial value, piracy of these works is also rampant. Therefore, the Liberal Party supports incorporating these works into the regulation regime.

With these remarks, Madam Deputy, we oppose the amendment proposed by Miss Margaret NG and support the amendment proposed by Mr Timothy FOK. Thank you.

THE PRESIDENT resumed the Chair.

MISS MARGARET NG: Madam President, on 28 June 2000, this Council passed the Intellectual Property (Miscellaneous Amendments) Bill. It amended provisions in the Copyright Ordinance of 1997 relating to infringement, principally by changing the expression "for the purpose of trade or business" to the expression: "for the purpose of, in the course of, or in connection with, any trade or business" whenever it occurred. This was to have disastrous consequences.

Although the amendments were presented as mainly a "clarification", the real effect was an extension of civil and criminal liabilities. The Administration explains to us that the intended purpose at that time was to make sure that the use of pirated computer software in business was an infringement punishable by law.

In fact, the effect of the amendment went far beyond that. It made the mere possession of any "work" copied without the permission of the copyright owner "for the purpose of, or in the course of, or in connection with, any trade

or business" an act of infringement for which a person may be sued for civil damages or prosecuted for a criminal offence. Because the word "work" covers all kinds of copyright works and not just computer software, and because the words "trade or business" covers much more than commercial business, all kinds of acts unthought of at that time are caught. For example, a charitable organization in possession of a pirated CD may have committed an offence. A professional body which photocopies an article for the purpose of discussion may have committed an offence.

There is no requirement that the quantity of the copies produced be above a trivial amount. There is no requirement that the person does it for commercial gain or with any particular criminal intent at all. Casual copying is not exempt.

Is it really right or justified to make even making one single photocopy of one newspaper article in the course of trade or business without prior permission punishable as a crime? What is supposed to be achieved by making every person seek the permission of the copyright owner before making so much as one single copy, unless one is sure that it is purely for personal use, wholly unconnected with any trade or business? A great deal of anxiety will be created all round by this restriction. What is all that in aid of? Such a law is not just harsh, it is downright demented.

Even with respect to the original target of prohibiting the use of pirated computer software in business, the amendment as drafted had gone too far. Not only is the expression "in connection with" as in "in connection with, any trade or business" much too wide and uncertain. The practical effect of this extension has not been given sufficient thought. Since mere possession of unauthorized copies of software may incur civil or criminal liability, was everybody expected to replace all their unauthorized software with new, licensed copies and possibly new hardware by the effective date? No consideration appears to have been given to any grandfathering provision, or to measures to ensure that there will not be a sudden demand which may be exploited to hike up prices.

Further, such a change of policy in favour of software companies was not balanced by corresponding consumer protection, for example, by repealing the ban on parallel import which acts to keep prices artificially high. Madam President, I am pleased that the Administration has agreed that the ban is not justified and should be removed, and has promised to tackle this after the present

Bill is passed. The point that I am trying to make is that a policy change such as the one that the Amendment Ordinance sought to introduce was improper without relaxing parallel import at the same time.

It is said that there was wide consultation and broad consensus at the time of the Amendment Ordinance. One wonders whether the consultation was so worded as to enable everybody to understand exactly what the practical consequences to him would be. If it was in terms of whether the use of pirated computer software in business should not be allowed, one can easily expect the gap in appreciation of the real effect of the law.

Madam President, the amendments passed were in themselves highly questionable. But to allow the Ordinance to come into effect on 1 April this year when the community is so plainly unprepared for it was in itself a further mistake. The mechanisms were simply not there for people to reasonably comply with the law. For example, many popular items of software were not available on the market or at the normal market price. Newspaper and other publishers have not yet put their acts together to set up a centralized mechanism to grant permission for photocopying at the reasonable rate. The conscientious citizen will have to get specific permission from each publication each time he makes a copy. To insist on going ahead in these circumstances cannot be right. There is no alternative but to suspend the effect of the amendments immediately.

In this regard, I must confess that I was disappointed by the position of some of the organizations which made representation to the Bills Committee. In spite of the realization of their own unreadiness to make available convenient ways for the public to comply with the new requirements, and in spite of the draconian effect of the law exposing large numbers of people to criminal liability for trivial acts of infringement, they have insisted on not suspending the amendments.

The reason given for this reckless attitude is the protection of copyright. Madam President, do not let us get hysterical and lose all sense of proportion. To protect copyright is our unquestionable duty. The extent to which copyright is to be protected is always a matter of policy and the right balance. It is not said that the Copyright Ordinance 1997 does not fully meet the internationally acceptable standard and scope of copyright protection. It does. Thus, do not let us have any more accusation that any attempt to revisit the amendments is to undermine copyright protection, similar to condoning theft or damage of

physical property. To steal this glass from you, I have to dishonestly and intentionally deprive you of it and appropriate it for myself permanently. I do not steal the glass from you every time I use it without your permission. The law of theft is straightforward. An infringement of intellectual property, however, is essentially to do with use and profit derived from licensing. The need to limit such rights is obvious from the start and is indeed inherent in the right itself, because the granting of monopoly always has to be specially justified by public interests and can be allowed only to the degree which is conducive to that interest.

In the course of vetting this Bill, we have been shown copyright legislation in other jurisdictions. We are told that some jurisdictions have adopted more severe restrictions than Hong Kong in protecting copyrights. I note, not without some cynicism, that the biggest software companies do not get the same favourable terms under the laws of their own country. Nor, I am told, does their software sell for as high a price there as here.

Madam President, when copyright protection operates to stifle the free flow of information or to allow greedy merchants to hold the consumer to ransom, then copyright protection has gone too far. The Amendment Ordinance has gone too far. I would support its suspension without hesitation. My only regret is that this Bill does not go far enough. I shall accordingly propose an amendment to extend the suspension to all categories. This has the support of many legal practitioners with great experience and expertise in the area of intellectual property. But I will speak more of that later, at the Committee stage.

Thank you, Madam President.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, the implementation of the Copyright (Suspension of Amendments) Bill 2000 has given rise to quite a few controversies in society. However, the Government has heeded good advice and promptly submitted a relevant Bill.

Our concern is that after the Ordinance came into effect, employers and employees would commit a criminal offence if they use infringing goods. The infringing goods involved in business operation are mainly computer products. Given the serious monopolization in the local software market, SMEs do not

have much of a choice. But the use of legitimate software means a heavy burden to them financially. Worse still, when the Ordinance was about to be implemented, software companies even effected a price hike.

We do not agree to allowing SMEs to use pirated software in order to reduce their operational cost. Holding intellectual property rights in high regard is the prerequisite for a developed society. However, the implementation of the Copyright (Miscellaneous Amendments) Ordinance 2000 is not matched with a relaxation on the use of parallel-import software. Nor has the development of application software been encouraged locally. As a result, monopolization has indirectly been encouraged.

Given the costing consideration, many SME entrepreneurs have been tempted to continue using illegal software after the Ordinance has come into force. If the employees do not resign, they are forced to use the illegitimate software. Under the current economic condition, the priority is to retain the job, therefore, they would not resign or report on their employers.

However, once a company is found using pirated software, the employees are also criminally liable. This is utterly unfair to the employees.

The Bill does not involve the criminal liabilities of using infringing software in business operation, but the Government will still need to review the Ordinance. The Hong Kong Federation of Trade Unions (FTU) urges the Government to review the relevant provisions and grant employees immunity against criminal liability in the event of employers failing to provide legitimate software.

We support the use of legitimate products, and combatting acts of copyright piracy and infringement. However, the implementation of the Ordinance without matching measures may encourage monopolization and exert pressure on employees. It warrants our deep consideration indeed.

Madam President, I so submit.

MS AUDREY EU (in Cantonese): Madam President, as the eminent writer, Mark TWAIN once said "Only one thing is impossible for God: to find any sense in any copyright law on the planet." It explains how complex such legislation is. As such, with respect to the all-embracing suspension approach advocated by (or

should I say suggested by) Miss Margaret NG, I would like to speak on my personal views. Firstly, it is undoubtedly the most expedient approach time-wise. Secondly, technically speaking, it is the easiest, therefore the amendment is quite appealing. However, with respect to the types of works which the Government has proposed to be excluded from the suspension, piracy of such works are rampant. It would be difficult to effectively combat copyright piracy if the criminal liabilities are not extended to the users and purchasers.

In addition, the Government did conduct a public consultation in 1999, during which the public did also recognize the fact that the piracy of certain types of works was particularly rampant, and therefore agreed that the users should also be held criminally liable. Technically speaking, it is a very complex issue. However, the Bills Committee conducted public consultation after a number of meetings. On the other hand, the Government also made a number of technical amendments based on the comments of the Bills Committee. The criminal liabilities were then narrowed down, with the effective date being backdated to 1 April. As for parallel imports, the amendment would allow the public to use such products. As such, it is likely to be an overkill if we are to adopt the all-embracing suspension, and it would also affect the international image of Hong Kong. I therefore would not support the all-embracing suspension approach proposed by Miss Margaret NG.

Madam President, as to Mr Timothy FOK's amendment that proposes to exclude non-drama programmes, I believe we should not make a value judgement on the issue, stating that a certain type of works is of higher value than the others. Judgement should be based on the seriousness of the piracy situation, whether it has become so serious that we have to extend the criminal liabilities to users. Insofar as this issue is concerned, I have in fact discussed with the two television companies from the sector represented by Mr Timothy FOK and entered into correspondence with the Government. According to the information I have acquired, piracy of non-drama programmes has not developed to such a serious situation that we should extend the criminal liabilities to users. In consideration of this, I must say with regrets that I cannot support Mr Timothy FOK's amendment.

Madam President, even if the suspension or non-suspension amendment is passed, it does not mean that the Copyright Ordinance of Hong Kong is a perfect Ordinance. The Government has undertaken to conduct a more extensive consultation as soon as possible. I particularly hope that the Government can

work more on establishing a clearer and more reasonable definition of the scope of exemption or defence. In addition, I would also propose to have a discussion as soon as possible on a very serious problem faced by Cable TV currently, that a large number of the public are using decoders to watch Cable TV programmes illegally. I hope that the Government will soon draft a more comprehensive Amendment Bill that will address all these problems and submit it to the Council for Member's discussion before the middle of next year. Thank you, Madam President.

MISS CYD HO (in Cantonese): Madam President, since the miscellaneous amendments to the Copyright Ordinance 2000 came into effect on 1 April, there have been widespread panic and concern because it was only after the amendments had come into effect that we realized the public might not fully understand many provisions in the Ordinance. They do not know the circumstances under which they may have committed an offence, and they are at a loss as to how to ensure compliance with the Ordinance. Even when the authorities tried to explain to the Legislative Council and when Members asked the authorities to define acts that would violate the law, all that the authorities could say was they had to make reference to precedents. However, we all know that there is little legislation on copyright in Hong Kong. It is unreasonable indeed to ask primary school teachers to find on their own international precedents concerning copyright legislation for reference. Therefore, I welcome the Government's decision to propose, at the request of the community and taking on board public opinion, this suspension Bill for there is no better option than this. I believe Members would also welcome the relaxation on the possession and use of parallel imports by the Government through this amendment exercise. However, this should be handled by the executive as it is not really related to the miscellaneous amendments and we, therefore, cannot handle this here. So, we welcome the Government's initiative to work on this.

Yet, the Government is not doing enough this time as the Bill has not proposed an all-embracing suspension, for exemption is granted to four items only. I am worried that the wordings used to define these four exempted items are not explicit enough. The Bills Committee also has diverse views on this. My greatest concern is that this suspension is proposed as a remedy to the confusion caused by the previous amendment, but if another round of confusion may be resulted in the process, then it may not worth the effort.

Madam President, I will therefore support Miss Margaret NG's amendment which proposes an all-embracing suspension. But to be realistic, I believe there will only be six or seven votes in support of it. If Miss NG's amendment is negated, I will support the Government's amendment. I have not said that we must go for an all-embracing suspension or none. But I would not be grateful if only the amendment to remove the business-related provisions as proposed by the Government is passed, unless the Government proposes an all-embracing suspension on its own initiative.

Madam President, the proposed suspension will only provide an immediate solution to the confusion caused by the previous miscellaneous amendments. We should earnestly conduct a comprehensive review of the current legislation on intellectual property rights in Hong Kong in the long run. In Hong Kong, the issue of intellectual property rights has not been thoroughly discussed in the community. The Government had conducted consultation in the past but only the relevant sectors which are all stake holders had expressed their views. The relevant sectors have expressed even more opinion this time around, and have been very enthusiastic to speak out. Thus, we can see that so long as their interests are substantially involved, the relevant sectors will naturally be eager to express their views. But the general public will stand to suffer. While the relevant sectors and the business sector can form a software alliance, there is no user alliance on the part of users, and the Consumer Council has not spoken out for consumers. In conducting the review after the implementation of the suspension, we must ask the Consumer Council to express its views. Members of the public are not aware of their rights, and as the saying goes, "one does not speak out until he is at death's door"; the public spoke out only after 1 April and eventually gave rise to the serious public panic.

Therefore, I hope that when a comprehensive review of this legislation on intellectual property rights is conducted in future, the Government will commit some resources for this cause. We have made reference to, say, the promotion of education reforms. Many workshops were organized, and parents and teachers were invited to the discussions. With regard to intellectual property rights, if we genuinely wish to develop Hong Kong into a knowledge-based society, we should pay particular attention to the protection of intellectual property rights. I hope that the Government will commit more resources to organizing more workshops in order to inculcate this concept in the public. Particularly, given the ever-changing information technology, the technical issues pertaining to intellectual property rights are also changing every day.

Understandably, it will be very difficult for the general public to catch up. If the Government does not proactively brief and update the public on the latest development, the public will not in the least be informed. By the time the 60 Members of us have finished discussions with the relevant sectors behind closed doors, the public would only be kept in the dark about their rights and responsibilities. I do not think this is the right approach to take. The Government has always come before us offering explanations and said that consultation had been conducted on the last occasion, but the fact was that the public was not consulted in the last consultation. The public certainly was not aware that they would face such considerable legal liabilities after the enactment of the Ordinance. Therefore, we hope that in the future review, the Government will adopt a more far-sighted approach and allow more time to tackle the issue, and I hope the Government can listen to public opinion more.

On the other hand, in our past discussions on this concept, we have not done so from the perspective of the education cost. Madam President, while we often stress the need to protect intellectual property rights, have we ever evaluated the increase in the cost of education if steps are taken to this effect? How much does society as a whole have to pay? We do not know. We may really need to pay a price in putting the legislation into effect, but at least some figures must be provided for public information. Undoubtedly, we need talents to research new technology and engage in creation, and these people deserve to be reasonably rewarded. Otherwise, who would be willing to take up these work if they do not earn enough to make ends meet?

So, the protection of intellectual property rights in the international community actually aims at making concerted efforts to advance human civilization and the sharing of new knowledge and creation, with a view to improving the quality of living. However, insofar as the current commercial activities are concerned, many copyrights have long been detached from their creators and most of them have been bought out by commercial organizations. As such, it turns out that the Ordinance is only protecting commercial organizations which have the means to buy out copyrights, and this has only increased the cost of information flow. What is more, these commercial activities may result in monopolization after the enactment of the Ordinance, consequently impeding the dissemination of information. These are not in line with our original intent of protecting intellectual property rights.

A recent example can be found in the United States where intellectual property rights are best protected. There are signs of rebound in their society.

Some institutions in possession of intellectual property rights have even applied to the court for injunctions against the release of some academic studies, for these studies teach people how to crack measures protecting documents on computers. The appeal proceedings are underway in the United States, and the Constitution may even be invoked to protect academic freedom. I hope that as far as these international experiences are concerned, the Government will not only copy the initiatives taken by others, but will also take into account the latest development before embarking on the future review.

Madam President, it is difficult for me to support Mr Timothy FOK's amendment. It is because as I support an all-embracing suspension, I certainly would not support an amendment which only seeks to extend the scope of exemption. Madam President, I so submit.

MR FREDERICK FUNG (in Cantonese): Madam President, I would like to speak on my personal views and those of the Hong Kong Association for Democracy and People's Livelihood.

With respect to this Bill, we support the approach taken by the Government because we think that intellectual property is a personal possession and it is a criminal offence if anyone plagiarizes or pirates copyright works.

We agree with the Secretary in his views on the issue, in that the legislation has covered some of the areas in principle, but that some activities in the dissemination of knowledge and practical needs have been overlooked and that may affect some developments in society. We think therefore that there are some inadequacies in the existing legislation, especially the bill which was passed in June 2000. Although its implementation was delayed to 1 April this year, there had not been a thorough discussion in the community and it was only after the legislation had been implemented that it was discovered that the provisions would create such a great impact on the community.

What then should we do in such a situation? We agree in principle to Miss Margaret NG's point, and that is, there should be a set of sound and complete laws for this. But the question is, this Ordinance is already an ordinance. Certain things have been done and it is not a question of something having gone wrong with the bill introduced by the Government then, or that this Council did not handle this bill properly. And we have conveyed a message to the community, that we are determined to protect intellectual property and that we have labelled acts which do not show any respect for intellectual property

unlawful and criminally liable. If we are to make an all-embracing exclusion of all copyright works from the Ordinance and suspend it up to and until 1 July 2002 when a more sensible and complete law will be enacted, then in the interim there will not only be a confusion of the messages to be sent to the public, but that another kind of confusion will arise, and that is, the Government will be at a loss as to what administrative measures it can employ to combat piracy.

So with respect to the amendment moved by Miss Margaret NG, we are not opposed to it as a matter of principle, but that certain things have been done and there is no turning back because time does not allow us to do so. We will therefore abstain from voting on Miss Margaret NG's amendment. That we are abstaining does not mean that there is any problem with the principles embraced in the amendment, only that this is not the right time for it.

As to the amendment proposed by Mr Timothy FOK, we consider it unacceptable. In my opinion, the most appropriate way to handle is for the Government to propose that certain provisions be excluded and suspended from operation. It remains of course that there is a possibility that a lot of grey areas may still exist in these provisions and many problems may need to be addressed, or that there may be many disputes during the interim between the passage of this amendment and July next year. However, I am sure that those parts which the Government proposes to suspend are the ones which have seen the most extensive discussions and controversies after the Ordinance came into force on 1 April. Given the short span of time to work with, it may not be possible for the Government to draft provisions which are the best possible. Maybe we have to wait as long as a year for this. In such circumstances, we hope that the matter can be handled with leniency before it re-submits the legislation to this Council before July next year when amendments can be made to fill the gaps and remove the grey areas. The legislation was passed during the previous term of the Council and the inadvertence made at that time has left the legislation with certain loopholes. If the Government or this Council can exercise greater leniency towards those affected, then this would perhaps be the best way to plug the loopholes in the legislation. So we would support the amendments proposed by the Government today. Thank you, Madam President.

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

(No Member responded)

PRESIDENT (in Cantonese): I will now invite the Secretary for Commerce and Industry to speak in reply.

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, we introduced into the Legislative Council on 2 May the Copyright (Suspension of Amendments) Bill 2001. It seeks to suspend the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 insofar as it applies to certain criminal provisions in the Copyright Ordinance. But the new provisions will continue to apply to copyright works involving computer software, movies, television dramas or music.

We are grateful that the Legislative Council accorded priority to the formation of the Bills Committee to scrutinize the Bill. The Bills Committee has worked actively in the past one month or so, giving careful consideration and conducting in-depth discussions on the Bill. It has also put forward many useful views. I wish to thank Mr SIN Chung-kai, the chairman of the Bills Committee, and other Members.

The aim of the new Ordinance, which commenced operation on 1 April, is to enhance the protection of intellectual property rights. Hong Kong is undergoing a rapid transformation into a knowledge-based economy. Our enterprises increasingly rely on knowledge, technology and innovative ideas to enhance their competitiveness. To cope with this development, it is very important that we adopt a proactive attitude in protecting intellectual property rights and cultivating public awareness in this aspect. To enhance the protection of intellectual property rights will also help attract foreign investments to Hong Kong, which will in turn contribute to our long-term economic development and create more job opportunities.

Madam President, the issue of intellectual property rights is a complex subject. In Hong Kong, different media are at different stages of developing their regimes for copyright protection and licensing mechanism. As regards computer software and works of films and music, the licensing mechanism is relatively simple and clear. The Government's determination and measures taken to combat pirated software and compact discs over the past few years have enhanced the public's awareness of copyright protection for these types of work. With the co-operation of the industries concerned, we have been very successful in curbing the piracy of these works at the production and retail levels. Our efforts are internationally recognized.

In comparison, the licensing and exemption regimes in respect of copyright works of other media such as books, newspapers and magazines, television and radio broadcasting and the Internet, have yet to be established or are being refined. After the implementation of the new Ordinance, the threat of criminal prosecution and the absence of a convenient mechanism for obtaining the required authorization have objectively hampered the dissemination of information in enterprises as well as teaching activities in schools and thus caused worries to society.

In view of this, I apologized to the public at the meeting of the Legislative Council Panel on Commerce and Industry on 12 April this year. Madam President, however, I can tell you that after more than two months, I still have great regrets for the inconvenience caused to the public. Mr SIN Chung-kai has offered his apology to the public in a most sincere and humble manner earlier and that is something I appreciate very much. And to make Mr SIN not feel too lonely in this respect, I would like to offer my apology to the public again in this Chamber.

To address the concerns of the public, we introduced the Bill to revert the criminal provisions in the recently amended Copyright Ordinance to the position before the amendments took effect. But the new provisions will continue to apply to copyright works involving computer software, movies, television dramas and music in line with our efforts in combating the rampant piracy activities associated with these works.

During the scrutiny of the Bill, the subjects that generated more discussions were the different treatment of different copyright works in the Bill, and the criminal liabilities regarding parallel importation of computer software.

Some Members suggested that the Bill should adopt an all-embracing suspension approach to cover all copyright works including computer software, film and music. We cannot agree to this suggestion. The suspension does not apply to computer software, film and music because these works are not normally information disseminated in enterprises or schools. Moreover, these products generally have substantial commercial value and the piracy activities associated with these works in Hong Kong and elsewhere are rampant.

I will further explain our position on this issue during the Committee stage.

As regards parallel importation of computer software, some Members suggested exempting criminal liabilities of enterprises that use or import such software. We welcome this idea which is in line with Hong Kong's free-market philosophy. Allowing parallel importation of computer software would increase competition and availability of products in the market, resulting in more choices at lower prices for consumers.

During the Committee stage, I will move amendments to suspend the criminal provisions regarding the use of parallel imported computer software in business.

As the parallel importation of computer software otherwise than for private and domestic use or the sale of such software constitute criminal offences under the pre-existing law, they have no direct relevance to the new Ordinance. The Bill cannot therefore suspend the criminal provisions in relation to these acts.

Regarding the relaxation of civil and criminal liabilities of importation and sale of parallel imported computer software, we have consulted the relevant bodies and secured majority support. We will draft legislative amendments shortly for introduction into the Legislative Council.

Apart from the suspension of criminal provisions in relation to parallel importation of computer software, I will also move other amendments during the Committee stage, for example, narrowing the scope of the criminal provisions as applied to computer software, film and music, and commencing the Bill retroactively on 1 April 2001. The Bills Committee has scrutinized and agreed to these amendments.

Madam President, the suspension is only a short-term measure which will end on 31 July 2002. After the enactment of the Bill, we shall consult widely the various sectors of the community with a view to formulating a long-term solution to the problem. Where necessary, we will introduce another Bill to make further amendments to the law.

Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

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

Council went into Committee.

Committee Stage

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

COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001

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

CLERK (in Cantonese): Clauses 1 and 3.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2.

CHAIRMAN (in Cantonese): Miss Margaret NG, the Secretary for Commerce and Industry and Mr Timothy FOK have separately given notice to move amendments to clause 2.

Committee now proceeds to a joint debate. In accordance with the Rules of Procedure, I will first call upon Miss Margaret NG to move her amendment.

MISS MARGARET NG: Madam Chairman, I move the amendment to clause 2 as set out in the paper circularized to Members. The effect of the amendment is to delete the four excluded categories in subclauses (2) and (3) with a result that the suspension introduced under subclause (1) applies to all copyright works of whatever form or category. Subclause (1) is itself amended so that the suspension takes effect from 1 April 2001.

Madam Chairman, suspending the amendments passed in 2000 does not mean decriminalizing infringement of copyright at all. It simply means the original Copyright Ordinance 1997 remains fully in force, and sections 118 and 120 of the original Ordinance criminalize infringement of copyright. It remains a criminal offence to make or trade in pirated copies of any copyright work, and to possess pirated copies for the purpose of trade or business.

Under section 35, infringement includes parallel import copies, and suspension means just that — a cooling off period, so that we can re-examine and re-evaluate the whole matter with the benefit of consultation with the public and the legal profession among others. The Administration accepts to a very large extent that it is necessary to rethink the whole matter. It is also accepted that

the suspension should date back to 1 April 2001. The only difference between my amendment and those of the Administration is whether some categories should be excluded from the suspension. Following lengthy discussions in the Bills Committee, the Administration has further narrowed down these categories. What I am asking is therefore just that extra mile, but going that extra mile will reap huge benefits. It would make the situation much simpler and clearer for all concerned. As everyone can see from the text of the Administration's proposed amendments that in order to hedge around those few areas of exception, very complicated devices have to be employed, making this difficult Bill even more difficult and complicated. Such a high degree of complexity exposes the whole legislation to very great and unacceptable risks.

Madam Chairman, one obvious advantage of supporting my amendment is that if it is carried, Members will be saved the awful burden of going through the Administration's complicated and highly artificial amendments, neither do they have to be concerned with the fine points of the amendment proposed by the Honourable Timothy FOK. Let me assure Members that there are very strong grounds of principles and public interests in support of total suspension.

I have already explained in some detail the problems created by the Intellectual Property (Miscellaneous Amendments) Ordinance in my speech during the Second Reading. The cause of the trouble was the adoption of the expression "for the purpose of, in the course of, or in connection with, any trade or business" which was, as one Member puts it, an "overkill". This mistake contaminates the whole Copyright Ordinance. It is rather like an illness which attacks the immunity system of one's body. Just as operating on one or another organs affected is no cure for the disease, a piecemeal treatment of the Ordinance cannot be the right approach. The right thing to do is to suspend the whole Ordinance immediately, and then start work to design a complete treatment by extensive consultation. This is the considered opinion of both the Bar and the Law Society of Hong Kong's Intellectual Property Committee.

As a matter of fact, it is not realistic just to suspend the criminal provisions. The fundamental concept of "infringement" is defined in the civil provisions and then used to define what constitutes the criminal offence. Moreover, the "overkill" in relation to the criminal provisions is just as much an overkill with the civil liability. To give one example, under the fair dealing part of the Copyright Ordinance, casual copying of trivial amounts is permitted for personal use, and is not an infringement for the purpose of the Ordinance. Yet, with the

amendment, the same casual copying of trivial amounts at once becomes an infringement if it is somehow "in connection with, any trade or business". This goes too far and must surely be unreasonable. To give another example, if it is not right to turn the mere possession of a pirated CD by a charitable organization into a crime, it is equally unjust to make it something for which the charitable organization can be sued by the CD company.

Since the scope of the Bill as introduced only covers the effect of the amendments on the criminal provisions, it is not practical for me to urge for anything to be done to civil liabilities. But if we have to confine ourselves to the criminal provisions, we should at least suspend the amendments relating to all of these provisions in all circumstances and for all categories. Clause 2(2) of the Bill excludes four categories from the suspension. This is not only the wrong approach, but each exclusion is highly questionable. It gives rise to protests of discrimination. The delineation of some of the categories are difficult to defend, and difficult for the public to follow. Differentiation sends out the wrong message, namely, that some works are entitled to better copyright protection than others. It confuses instead of assures the public. Moreover, the more complex the amendments to the Bill, the greater the danger that some unintended and unforeseen consequences would be created, when they are read together with other parts of the extremely long and complex Copyright Ordinance. Instead of helping, it may end up aggravating the present sense of grievance. Confusion creates opportunity for exploitation. The Bills Committee did not have the luxury of detailed consultation and explanation. Such consultation as the Bills Committee could carry out confirmed the great complexity of the matter. There is not sufficient time even to obtain the full views of experts in the legal profession. Such views as we have managed to gather to date strongly urge for total suspension.

Let me quote from the opinion of the Bar. The Bar says, "The draft suspension amendments as well as the original amendments have ramifications which are immensely far-reaching and serious. It must be remembered that the Copyright Ordinance, before the controversial amendments which recently commenced on 1 April 2001, was enacted after a long period of consultation and consideration by the Law Reform Commission and its Copyright Subcommittee which, after having studied the matter from 1987 to 1993, did not recommend criminalization of possession of infringing copies other than for purpose of trade or business with a view to committing an infringing act."

Further, the Bar says, "However, the recent amendments extended criminal liabilities with grievous and draconian consequences which do not exist in any other jurisdiction." The Bar has named a number of issues which would have to be addressed, now that the controversial amendments have to be reconsidered. It then concludes, "It would, therefore, be most unwise and unrealistic to approach the matter in a piecemeal and haphazard manner." Therefore, total suspension is the correct solution.

Let me now quote from paragraph 2 of the 18 June Opinion of the Intellectual Property Committee of the Law Society of Hong Kong. It says, "The Committee believes that any policy on criminalization of certain infringing acts should apply to all and should not favour particular industries, although the Committee accepts that certain industries suffer more from rampant infringements than others. The Committee, therefore, does not support the Government's approach to allow the Miscellaneous Amendments Ordinance to operate on works listed in subclause 2(2) of the Suspension Bill, neither does the Committee consider it a proper approach to tackle different types of copyright works on a piecemeal basis."

The Committee then supports my amendment. But in addition, the Committee does not support an arbitrary end date of that suspension.

Madam Chairman, in proposing my amendment, I want to make it clear that I do not oppose the amendments introduced by the Administration. As far as they go, their effect is to reduce the scope of the exclusion, and also to do something towards relaxing the effect of the ban against parallel import under the Amendment Ordinance. As such, they are improvements to the Bill. I particularly welcome the amendment to make the suspension date back to 1 April 2001. The effect is as if the Ordinance has not come into effect. This is sensible, fair, and necessary to avoid anomalies in enforcement. It is an amendment that I have incorporated into my own.

I also welcome the Administration's decision to accept my sustained complaint against the iniquitous inclusion of the words "in connection with", as in "in connection with any trade or business". I support the amendment gratefully. This allows many innocent members of the public to stay free of the wide net of criminal liability. But I have to emphasize that the danger is not by any means completely removed.

Madam Chairman, the Bills Committee has worked very hard, and I wish to say for the record that I appreciate the good will and diligence of the Administration team. I only wish that the Administration could agree to my approach which is far cleaner and safer, and compatible with advice from experts of this area of the law in the legal profession.

Thank you, Madam Chairman.

Proposed amendment

Clause 2 (see Annex VI)

CHAIRMAN (in Cantonese): I will call upon the Secretary for Commerce and Industry and then Mr Timothy FOK to speak on Miss Margaret NG's amendment as well as their own amendments. However, they may not move their respective amendments at this stage. If Miss Margaret NG's amendment is carried, that will by implication mean that the Secretary for Commerce and Industry and Mr Timothy FOK may not move their respective amendments.

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam Chairman, I now speak on Miss Margaret NG's amendment and the amendment proposed by the Government.

The Government opposes a full suspension of all the amendments as effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 to the criminality provisions of the Copyright Ordinance.

The suspension does not apply to computer software and works of films and music, for these works are not normally information disseminated in enterprises or schools. Besides, as the licensing mechanism of these works is relatively simple and clear, the public, in complying with the new ordinance, has not encountered the difficulties involving works in other media.

Moreover, these works generally have substantial commercial value, and the piracy of them in Hong Kong and elsewhere is rampant. Take computer software as an example. According to an unofficial estimate, about 50% of computer software used in business is pirated. As a result of widespread piracy,

very few local companies were willing to invest in the development of new software to compete with mainstream products in the market. The new ordinance has played a positive role in encouraging enterprises to use legitimate software, attracting investment by software manufacturers in the development of new products, and promoting market competition. In fact, after the new ordinance came into operation, new products have emerged one after another in the software market to compete with mainstream software, offering users a greater variety of choices.

We are glad to see that the industry and commercial sector as well as the education sector generally support greater copyright protection and the use of legitimate products. The practical problems concerning computer software that arose in the initial implementation of the new ordinance have been gradually resolved with the support of trade associations, the Hong Kong Productivity Council and the Business Software Alliance.

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

Furthermore, at the request of the Bills Committee, we have drawn a comparison between Hong Kong and other places in the world on the criminality provisions pertaining to copyright protection for computer software. The new

ordinance in Hong Kong is virtually consistent with the relevant legislation in Britain, Ireland and New Zealand. Our level of protection is also comparable to and even lower than that in Korea, Taiwan, India, Japan, Germany and the United States.

Therefore, if the amendment providing for an all-embracing suspension is accepted, it would certainly send a wrong message that Hong Kong takes a retrograde step in the protection of intellectual property. This would not only confuse the public and enterprises, but also seriously damage Hong Kong's international image and undermine foreign investors' confidence in Hong Kong.

For these reasons, I urge Members to oppose Miss Margaret NG's amendment.

Madam Chairman, I now speak on the amendments to subclauses (1), (2)(a), (2)(b), (2)(c), (2)(d) and (3) of, and the addition of subclauses (2A), (2B), (2C), (2D) and (2E) to clause 2, as set out in the paper circularized to Members.

The amendment to subclause (1) of clause 2 seeks to provide that the Bill commences retroactively on 1 April this year, so that the provisions of the Bill will apply to cases currently under investigation.

Subclauses (2)(a) and (2)(b) provide that subclause (1) does not apply to films that have been published or is intended to be published in Hong Kong or elsewhere. Some Members considered that the expression "and that has been published or is intended to be published in Hong Kong or elsewhere" can be deleted. This expression serves to clearly stipulate that the relevant works include works that have not yet been published. After studies, we agree that the removal of this expression would not cause any confusion.

Subclause (2)(c) seeks to define that the music or songs in a sound recording or film, including music TV and Karaoke discs, must constitute the whole or a predominant part of that sound recording or film. The proposed amendments can more explicitly reflect this legislative intent.

The deletion of subclause (2)(d) and the addition of subclauses (2A) to (2C) serve to suspend the criminal liabilities provisions in relation to the use of parallel-import computer software.

The addition of new subclause (2D) is a technical amendment. It provides that infringing copies of computer programme do not include copies in a printed form. Nor do they include copies produced in the course of downloading webpages, broadcasts or films from the Internet which technically require the downloading of computer programmes incorporating the works concerned.

The amendment to subclause (3) is also a technical amendment to tie in with the addition of new subclause (2D).

The new subclause (2E) will narrow the scope of criminality provisions applicable to computer software and works of films and music. To be more specific, the amendment will suspend an expression involving criminal liabilities provisions in the new ordinance, that is, "in connection with any trade or business". Many Members considered the scope of this expression too wide and therefore proposed its deletion. After detailed consideration, we considered that this proposal would not have any significant impact on law enforcement and agreed to propose an amendment to this effect.

These amendments have been scrutinized and endorsed by the Bills Committee.

MR TIMOTHY FOK (in Cantonese): Madam Chairman, after discussing the matter with the relevant industry for many times, I have proposed my amendment as I considered the suspension with respect to non-drama television programmes not appropriate. It is because television broadcasting companies either have to pay a high price to purchase or to use enormous manpower and resources to produce non-drama programmes, such as documentaries and game shows. As a result, their commercial and viewing values are no less than television drama. However, such programmes are also susceptible to the same infringement, and their chances of being infringed are no less than television drama.

If the business or the education sector needs any news excerpt or information, they can browse the Internet version of news archives of the television stations, and need not take the trouble of recording the programmes and storing the videotapes.

Moreover, as there is quite a large number of exemption provisions in the Copyright Ordinance, educational institutions and charitable organizations may request the relevant television station for preferential treatment if they need any specific information.

As a result, I propose that all television programmes, no matter they are drama or non-drama, no matter they are pre-recorded or live programmes, should not be included in the scope of suspension. In this connection, I beg Honourable Members to support my amendment.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate on the amendment moved by Miss Margaret NG as well as the respective amendments proposed by the Secretary for Commerce and Industry and Mr Timothy FOK. Does any Member wish to speak?

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, on behalf of the Hong Kong Confederation of Trade Unions (CTU), I support the amendment of Miss Margaret NG concerning the all-embracing suspension of the relevant copyright legislation.

Madam Chairman, I think today's debate is not about whether we should protect intellectual property, in fact, it is about criminalization of copyright infringement. First of all, I would like to raise a practical question. Once some people engaging in the business of small and medium enterprises (SMEs) asked me a question about the copyright legislation. They told me in a definite way that if it was implemented, they would probably be forced out of business. Of course I do not know whether or not the result would be that severe. I replied that using pirated computer software was wrong. They said to me that the price of licensed software was extremely high. For example, those in the printing industry might have to spend \$100,000 or more to purchase the computer software, and some were even as expensive as hundreds of thousand dollars. As a result, they were actually unable to afford these software. I think the major problem boils down to the bargaining power rather than price. No matter SMEs or the general public, in Hong Kong, under the monopoly of software suppliers, they do not have a very strong bargaining power, thus they

have to bear a heavy financial burden. The Commerce and Industry Bureau always says that it supports SMEs, thus it is necessary for the Government to consider the affordability of SMEs as well as the needs of economic recovery in Hong Kong. However, it is a pity that the Government has not considered the problems faced by SMEs in a serious manner. Even when the Hong Kong Productivity Council (HKPC) that we have mentioned earlier is giving their utmost assistance, cost is still a question we have to consider. I think unless we draw up a timetable to allow the industry to replace pirated copies with licensed software, we cannot solve the problem in a more practical way; however, if the relevant legislation is passed, we would be unable to help them in whatsoever way. As a result, I consider that the relevant legislation should be totally suspended.

Moreover, I would like to speak on the concept of intellectual property. I have read the column of YU Kam-yin in the *Hong Kong Economic Journal*, in which he quoted some remarks of Mr SIN Chung-kai and I just cite them as follows:

"Diminishing the rights of copyright holders will do no good to free flow of information and knowledge. You entirely misunderstood the spirit of intellectual property.

What is the difference between physical property and intellectual property? If I damage your car, I would get criminal sanctions. If I damage your intellectual property, why should I get a lesser penalty? Physical property is a superior kind of property while intellectual property is an inferior one."

Mr SIN Chung-kai has brought up a very important question. What is the difference between "intellectual property" and "tangible property"? Should these two kinds of properties be equally protected by the law?

According to Mr SIN Chung-kai, the protection afforded by law should not have any difference, otherwise, "intellectual property" would become an inferior kind of property. However, to my understanding, if we adopt the same legal principle to deal with everything in the name of "property", then it seems that this approach is too simplistic.

In Chinese, we have translated the concept of "intellectual property" of European origin into “知識產權”. In fact, we can put it in another way and

translate it into “智慧財產權”，which will sufficiently show that intellectual property is a form of property as opposed to "tangible property" and "physical property". If we take a look at a book of law about intellectual property, we would be able to distinguish the obvious difference between "intellectual property" and the ownership of ordinary physical property. According to the explanation found in one of these books, "physical property" is something unique, but "knowledge" is something which can be infinitely re-created or self-duplicated in space. Regardless of the constraints of region, nationality, specific substance and material, human beings may freely duplicate knowledge of the same form and structure simultaneously with the use of different carriers and there is no limitation in quantity for it. At the same time, they are free from the influence of each other. As a result, once knowledge is created and made public, it will objectively provide the opportunity for people to possess it jointly and share it. When other people obtain or utilize such knowledge, it will not be taken away from its creator. For example, when a car is stolen by someone, the car-owner has lost a car; but when some knowledge is duplicated, its creator will have nothing to lose, he still possesses it, he can still possess it jointly with many people and utilize it with them, as it is free from the restriction of quantity or interference from each other. However, tangible or physical property is different, for example, when a car is stolen by someone, the car-owner has lost a car, or when a shop is burglarized, the shop-owner will lose his property. These are the differences between physical property and intellectual property.

In fact, it is not necessary for the Government to draw up legislation specifically to protect the rights and interests in connection with physical property, because there are adequate stipulations in common law. However, intellectual property is different. It is absolutely necessary to control the scope of protection for the ownership of intellectual property and the rights and interests of its utilization through legislation. This also clearly shows that the two forms of properties are completely different, as intellectual property rights have never been deemed as absolute legal rights and interests. Therefore, when we discuss criminal liability which is now a more serious matter today, I believe it is all the more necessary for us to distinguish the difference between "intellectual property" and "tangible property" rather than to criminalize any acts of infringement of intellectual property in an across-the-board manner just for the sake of protecting intellectual property.

Actually, even under the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization, member states are required to impose criminal sanctions only on counterfeit and rampant

infringement activities on a commercial scale; as a result, the Copyright Ordinance here in Hong Kong considered an "overkill".

In the final analysis, I still feel that intellectual property and copyright are interests subject mostly to civil liabilities. If the copyright holder considers his copyright is used for profit-making purposes, he is absolutely entitled to recovering his financial losses through civil litigation, or he may even seek an injunction from the Court to prohibit further infringement. Apart from the reason of the Government being pressurized by sizable copyright holders thus it has to assist them just to ensure their rights of making profit are protected, I do not see any other convincing reason for imposing criminal sanctions on top of civil liabilities.

Madam Chairman, in a modern society, the effective diffusion of knowledge is indispensable with the enhancement of interpersonal communication. The free flow of information enables people from all walks of life to seize the information and gives them the opportunity to use the relevant knowledge; all of these form the basis for the progress of society. As a result, to strike a balance between the protection of intellectual property and the free flow of information is extremely important. Sadly, the relevant copyright legislation is now tilted heavily towards one side, emphasizing intellectual property alone without giving consideration to the policy of promoting the free flow of information.

Hong Kong has no legislation on the free flow of information, neither do we have anti-trust nor fair competition legislation. I believe we should not allow the infinite expansion of the scope of the legal protection for intellectual property, otherwise, knowledge will only get more and more restrictive and expensive. Ultimately, it will only hinder the exchange of knowledge and the diffusion of information.

With these remarks, I support the amendment moved by Miss Margaret NG for an all-embracing suspension of the relevant legislation. Thank you, Madam Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, we discuss today not the principle of whether or not intellectual property should be respected, but whether or not the Intellectual Property (Miscellaneous Amendments) Bill

2000 implemented on 1 April 2001 is an appropriate means to protect intellectual property, whether or not new problems would arise after its implementation, and how we should deal with such new problems. This series of problems, very much like a chain reaction, is something we must address at the present moment.

In fact, I feel that the key issue in the discussions on the Intellectual Property (Miscellaneous Amendments) Bill 2000 is whether this Bill can help to solve the major problem our society is facing. Actually, in today's debate, we should examine the rationality of the implementation of the relevant legislation, and its impact on society and the adaptability of the public if it is implemented in future.

Madam Chairman, in today's commercial world, I believe the importance of intellectual property has already been acknowledged, and the public also knows that only if intellectual property is respected and its creator may earn his fair share, then the desire of creation will be encouraged. However, along with the protection of intellectual property, should we consider its impact on society and should a balance be struck between the two? I think the answer is positive. I also believe that the Government recognizes the problem, thus it has introduced the Copyright (Suspension of Amendments) Bill 2001, which shows that there are problems with the Intellectual Property (Miscellaneous Amendments) Bill 2000.

Madam Chairman, the rationality of the Intellectual Property (Miscellaneous Amendments) Bill 2000 has been questioned already. As the rationality of the Bill is not accepted by the public, the new provisions have made employees all over Hong Kong live under the white terror of possible prosecution. We are especially concerned about the provisions on computer software. In this highly computerized commercial world, employees always need to use computer software at work. However, as licensed software are restrictively expensive, employers usually used pirated software in the past. If the Intellectual Property (Miscellaneous Amendments) Bill 2000 is to broaden the scope of criminal liability in connection with the use of infringing copies of copyright works in business, the implication is that the majority of employees are at the risk of being prosecuted at any time for contravention of the law, since their companies only provide pirated software for them to use. If employers are unwilling to provide licensed software, what option do employees have? They may consider quitting the job in order to stay away from lawsuit; otherwise, they have to stay and take the risk of breaking the law. May I ask the Government,

is it reasonable and appropriate to implement the relevant legislation and to make ordinary employees live under such pressure? In particular, as the unemployment rate is still high at the present time, a lot of employees do not have any option but to take the risk of breaking the law.

Perhaps government officials do not agree with us, they may consider people using pirated software guilty of the most heinous crimes and it is the responsibility of employers to provide licensed software. Besides, they think that Hong Kong has to integrate with the international community, thus intellectual property should be protected. Madam Chairman, I will talk about the liability of the employer later. Let me elaborate on the requirements of the international community. In fact, the Bill Committee has discussed a lot of dissimilarities in intellectual property legislation in Hong Kong and many advanced countries. For example, in Taiwan, criminal liabilities are only confined to the production of pirated copies and obtaining direct gains in the process; in Singapore, only the selling and production of pirated software are criminalized; in Germany, a country far more advanced in technology than Hong Kong, only the pirating of software is considered a criminal offence. As a result, we can see that although these countries have a far higher level of development in technology than Hong Kong, their intellectual property legislation is far less stringent than that of Hong Kong. I feel that if we have to protect intellectual property on the one hand and to facilitate technological development on the other hand, we should not try to win by drawing up more stringent and irrational legislation, but we should ask how should the Government help in the development of our society.

Just as I said earlier, some people consider it the responsibility of employers to provide licensed software. However, just as many Honourable colleagues have mentioned earlier, particularly to some small and medium enterprises (SMEs) operating under great difficulties, requiring them to spend several hundred thousand dollars to replace computer software within a short period of time is a very tall order; it will only force them to fold their businesses, which will do no good to anybody at all. At present, the economy of Hong Kong is just recovering, and the mainstays of Hong Kong are these SMEs. Will it be a good thing to push them to a corner and obliterate their survival? The Government once said employers might take another approach, that is, to purchase parallel-import software at lower cost. However, can we solve the problem by just purchasing parallel imports? My answer is negative. Although the use of parallel-import software for business purposes will not

constitute a criminal offence, the importation of parallel-import software not for personal and domestic purpose, and the sale of parallel-import software were already criminal offences before 1 April, and they were not included in the scope of the Intellectual Property (Miscellaneous Amendments) Bill 2000. As a result, I consider if the relevant legislation is not suspended, there will be no solution to the problem. Using parallel-import software will not only have the abovementioned problem, another issue should also be considered. That is, the licensed software are subject to warranty service. But if we purchase the parallel-imports, there will be no warranty at all, then what good is buying parallel-import software? Therefore, I feel that if the Government is reluctant to accept the all-embracing suspension proposal of Miss Margaret NG, at least the Government should wait for the enactment of the relevant legislation on a total lifting of restrictions on parallel-import software before implementing the relevant stipulations under the Intellectual Property (Miscellaneous Amendments) Bill 2000.

Furthermore, the community's adaptability to the legislation is also very important. When we were discussing the suspension of the legislation, the Government stressed many times that there was enough time for publicity. After the passage of the Intellectual Property (Miscellaneous Amendments) Bill 2000 last year, the postponement of its effective date to 1 April this year appeared to have provided adequate time for the public to adapt. However, is the little time and publicity provided by the Government sufficient? Has the Government made any matching efforts in software development? Before the public raised the request, has the Government taken the initiative to ask more organizations to develop alternative software at lower costs? Some of the enterprises are using older version software and hardware, if they are going to switch to the new and licensed software, they may have to replace the hardware too, thus it is quite costly. Just as I have mentioned earlier, not many enterprises can afford the cost. In this aspect, has the Government provided any assistance? Perhaps the authorities consider that they have already accomplished something by fighting for the so-called "downgrade" service from software suppliers, which allows buyers to use an older version of pirated software after they have purchased a newer version of licensed software. However, the public may ask, why do they have to purchase the newer version of licensed software at such a high price in order to buy the licence of using the older version software? Does this approach objectively allow or aid software suppliers to make exorbitant profits?

Madam Chairman, due to the fact that part of the contents of the Intellectual Property (Miscellaneous Amendments) Bill 2000 is not rational, that the overall impact on society has not been taken into consideration, and that the Copyright (Suspension of Amendments) Bill 2001 proposed by the Government as well as the other efforts it makes are unable to completely resolve the questions raised by me just now, I think we should suspend the Intellectual Property (Miscellaneous Amendments) Bill 2000 in its entirety before conducting an overall review to look for effective measures to help organizations in difficulty, otherwise, the impact on society will be very grave indeed. Therefore, I will support the amendment of Miss Margaret NG.

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

MR LAW CHI-KWONG (in Cantonese): Having listened to the speeches of the Honourable LEE Cheuk-yan and the Honourable LEUNG Yiu-chung, I now note their viewpoints on the relevant legislation. Nevertheless, I would like to clarify that the Democratic Party is undoubtedly giving full support to the free diffusion of knowledge, but we should not mix up the two different issues in today's discussion. We are not discussing the issue of knowledge; we are talking about the finished product of knowledge, that is, a book or a set of software. When we apply the theory of gravitational force discovered by Newton or the theory of relativity of Einstein to make something, we need not pay them any royalty, because everybody can make use of the theory and knowledge freely. But if a person has written a book about Einstein's theory of relativity, we have to respect the author when we wish to quote the content of the book. Therefore, we are discussing intellectual property, not the vague concept of knowledge, and we need not discuss so much about philosophical issues.

I feel there is one other thing that warrants for our consideration. In today's debate, many Honourable Members are of the view that as we have made computer software piracy a criminal offence, many people are forced to purchase licensed software (in particular, Microsoft software). Consequently, they think that such action is tantamount to helping a tyrant to do evil, because this will help these software companies to continue to monopolize the market. I think the situation is just quite the opposite. I hope Honourable Members will look at it carefully. For many years, we have not been addressing the copyright issue seriously enough, thus a lot of people were using Microsoft products without paying any price or with a very little price. Perhaps they had never thought of

the fact that they were actually helping the monopolization of Microsoft. Today, we can see that since we care about copyright, the development of other software companies has suddenly flourished tremendously. Software of these companies are mostly free of charge, thus everybody may take them home and use them, and some of these software can even be used together with certain Microsoft products. Therefore, more small and medium software companies are given vitality to develop only if we respect copyright. If we continue to not paying due respect for copyright today, the room for their development will be totally annihilated. As a result, for a short while, many small and medium enterprises as well as people using computer software may have to pay more for the purchase of legitimate software. However, would Honourable Members please imagine that as these people have already been using such gratis software for many years, some may even have been using them for 10 or 20 years, now they are just repaying the costs for their usage in the past. Therefore, sometimes we should not just look at the money that we have to pay now because we have to satisfy the copyright requirements; we should also look at the period we have been using such intellectual property, and we should consider whether or not this approach on the whole is more beneficial to the public in the long run.

Therefore, I feel that we should not judge the matter merely from the viewpoint that whether or not respecting the copyright of these software is helping others to monopolize the market at this present moment. I hope Honourable Members will look at this issue from a long-term perspective of the past and the future.

Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Commerce and Industry, do you wish to speak again?

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam Chairman, the Government does not agree that all television programmes be excluded from the suspension.

The term television drama used in subclause (2)(b) of clause 2 means a drama film produced primarily for television broadcast. Apart from those produced by local television stations, a significant number of television dramas produced in the Mainland, Taiwan, Japan and even America and Europe have been manufactured as optical discs for sale. Piracy of these works is also common. This clause does not cover non-drama television programmes, such as news and information programmes as well as documentaries. As television dramas are, in nature, the same as films under subclause (2)(a) of clause 2, we therefore consider it necessary to ensure consistency in treatment.

The amendment which excludes all television programmes from the suspension cannot allay the concerns of the education sector over the new ordinance. It is because teachers need to record information programmes on television from time to time for teaching purposes, but the relevant licensing mechanism, particularly those involving overseas productions, are neither clear nor convenient.

I must emphasize that after the enactment of the Bill, it is still an offence if a person unlawfully records television programmes, including games programmes, variety programmes or television documentaries, for sale.

The Government appreciates the nuisances and losses caused to pay television service providers as a result of unauthorized viewing of pay television programmes by many members of the public using illegal decoders. Our next stage of work is to consult various sectors of the community on the proposal of television stations to make unauthorized viewing of pay television programmes an offence. However, it is impossible to resolve this problem by this Bill.

For these considerations, I urge Members to oppose the amendment.

CHAIRMAN (in Cantonese): Mr Timothy FOK, do you wish to speak again?

(Mr Timothy FOK indicated that he did not wish to speak)

CHAIRMAN (in Cantonese): Miss Margaret NG, do you wish to speak again?

MISS MARGARET NG (in Cantonese): Madam Chairman, may I know how much time is left for me to speak?

CHAIRMAN (in Cantonese): You should have 15 minutes.

MISS MARGARET NG (in Cantonese): Thank you, Madam Chairman. I do not think I need to use up all of the 15 minutes. After listening to the speeches of Honourable Members, I can foresee that it is difficult for my amendment to be carried this time. Part of the reason is that the Government has made a final concession in the Committee stage by suspending the provision of "in connection with any trade or business".

However, Madam Chairman, I still insist on moving my amendment, as my standpoint is consistent with that of both the Hong Kong Bar Association (the Bar) and the Law Society of Hong Kong. These two professional bodies have made a clear and loud warning to the Government on the approach of suspending the legislation on certain types of commodities while not suspending the legislation on some other types of commodities.

The Government is concerned that a total suspension of the legislation will affect the international image of Hong Kong. However, if we just grant exclusion to certain types of commodities, it will not only be wrong in principle, actually, we are running higher risks. The Bar and the Law Society of Hong Kong pointed out that the approach would also lead to a more dangerous result, besides, they are doubtful whether or not the public can understand it thoroughly. In the event that anything under the amended legislation goes wrong again, the international image of Hong Kong will only be further damaged.

Madam Chairman, as the Bar and the Law Society of Hong Kong have both given a clear and comprehensive warning, I think both the Government and this Council should consider the matter in a more careful way. I beg Honourable Members to reconsider my proposal and support my amendment.

In fact, a lot of opinions were put forward in the debate earlier. I consider the legislation should be totally suspended before a deliberation is carried out again, because a total suspension will give us sufficient space. If we

continue to use the current piecemeal and haphazard approach to amend the legislation, it will definitely impose restraints on our long-term arrangement in future, which is a most inappropriate method. Madam Chairman, if my amendment is negated, I will turn to support the motion of the Government. It is because if we do not suspend the legislation or to narrow down the scope of suspension, the damage done to the public will be even greater. Here, I have to state clearly that this time my support for the Government's proposal is not tantamount to my agreement with the Government's approach. In fact, I do not agree with the Government's approach, because I only agree with the views of the Bar and the Law Society of Hong Kong.

Madam Chairman, the final issue I wish to talk about is that I can hardly agree with certain views raised by some Members earlier. Madam Chairman, whenever we want to amend the law, we should consult and take care of the people being affected. Even if we have to narrow down the scope of the protection of copyright in the long run, we still have to consider what measures we should adopt in order to achieve such goal in the shorter term. Some Honourable Members said that even if it will deal a severe blow to small and medium enterprises, or will make a lot of innocent people susceptible to criminal liabilities, they will still accept the partial suspension or no suspension at all as if they have to pursue justice with no turning back. This I cannot agree.

Madam Chairman, I would like to reiterate that my amendment is not an extreme amendment, it is in fact an amendment made with great prudence, because lawyers are by nature prudent people. I have proposed the amendment out of prudence, out of the fact that I cherish the reputation of Hong Kong, that I cherish the law, that I cherish our image in protecting intellectual property, in particular, our image in the international community.

With these remarks, Madam Chairman, I beg Honourable Member to support my amendment.

CHAIRMAN (in Cantonese): Before I put the question to you on Miss Margaret NG's amendment, would the Committee please note again that if Miss Margaret NG's amendment is passed, the Secretary for Commerce and Industry and Mr Timothy FOK may not move their respective amendments.

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

(Members raised their hands)

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

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for three minutes

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

CHAIRMAN (in Cantonese): Mr LAU Chin-shek, please cast your vote.

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

Functional Constituencies:

Miss Margaret NG, Miss LI Fung-ying and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mrs Miriam LAU, Mr Timothy FOK, Mr LAW Chi-kwong, Mr Henry WU, Mr

Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr LAU Chin-shek and Miss Emily LAU voted for the motion.

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, Dr TANG Siu-tong, Mr Albert CHAN, Mr WONG Sing-chi, Ms Audrey EU, Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

Mr Frederick FUNG and Prof NG Ching-fai abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, three were in favour of the motion and 19 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, five were in favour of the motion, 19 against it and two 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.

CHAIRMAN (in Cantonese): As the amendments moved by Miss Margaret NG have been negatived, I now call upon the Secretary for Commerce and Industry to move his amendments to clause 2 other than those to subclause (2)(b).

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendments to subclauses (1), (2)(a), (2)(c) and (3) of, deletion of subclause (2)(d) from and the addition of subclauses (2A) to (2E) to clause 2, as set out in the paper circularized to Members.

Proposed amendment

Clause 2 (see Annex VI)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): I now call upon Mr Timothy FOK to move his amendment to subclause (2)(b) of clause 2.

MR TIMOTHY FOK (in Cantonese): Madam Chairman, I move the amendment to subclause (2)(b) of clause 2.

Proposed amendment

Clause 2 (see Annex VI)

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

(Members raised their hands)

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

(Members raised their hands)

Mr CHAN Kam-lam rose to claim a division.

CHAIRMAN (in Cantonese): Mr CHAN Kam-lam has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Dr Philip WONG, Mr WONG Yung-kan, Mrs Miriam LAU, Mr Timothy FOK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted for the motion.

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted against the motion.

Miss LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Dr TANG Siu-tong, Mr NG Leung-sing, Prof NG Ching-fai and Mr Ambrose LAU voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, 16 were in favour of the motion, five against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, nine were in favour of the motion and 17 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

CHAIRMAN (in Cantonese): As the amendment moved by Mr Timothy FOK has been negated, I now call upon the Secretary for Commerce and Industry to move his amendments to subclause (2)(b) of clause 2.

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendments to subclause (2)(b) of clause 2, as set out in the paper circularized to Members.

Proposed amendment

Clause 2 (see Annex VI)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001

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

Copyright (Suspension of Amendments) Bill 2001

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

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

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

(Members raised their hands)

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

(No hands raised)

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

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

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Revenue Bill 2001.

REVENUE BILL 2001

Resumption of debate on Second Reading which was moved on 25 April 2001

PRESIDENT (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MISS MARGARET NG: Madam President, as Chairman of the Bills Committee on the Revenue Bill 2001 and the Revenue (No. 2) Bill 2001, I wish to briefly report on the deliberations of the Bills Committee on the Revenue Bill 2001.

The Revenue Bill 2001 seeks to amend certain ordinances to give effect to a number of revenue proposals in the 2001-02 Budget. It covers the proposed increase on tobacco duty, duty on alcoholic liquors and transport-related licence fees.

For revenue protection reason, the proposed increases have come into effect from 2.30 pm on 7 March 2001 under the Public Revenue Protection (Revenue) Order 2001, which gives temporary legal effect to the proposals for a maximum period of four months. Owing to the confidentiality of the Budget, no prior formal consultation has been conducted by the Administration specifically in respect of the proposals.

Regarding the increase from 30% to 40% of the duty rate on liquor with an alcoholic content of 30% or below, since wine is excluded, beer is the major type of liquor affected by the increase. The Bills Committee has met with representatives of the catering, karaoke and bar industries and the Hong Kong Beer Industry Coalition. They strongly oppose the proposed duty increase for the following reasons:

- (a) Raising the duty will not generate the additional revenue that the Government expects, since an increase in the retail price of beer will almost certainly lead to a further decline in overall consumption.
- (b) It would impose an unfair burden on consumers.
- (c) It would harm the catering and entertainment industries.
- (d) It would result in a further consumption shift across the border.

However, the Administration has pointed out that the proposal will practically only increase the duty amount per can of beer within a range from six cents to 26 cents for the more popular brands of beer. Given the modest nature of the proposed increase, the Administration does not believe that it will have caused any significant adverse impact on the consumption of beer.

As regards the transport-related fees, the Bills Committee notes that about 236 050 driving licences, 340 000 private car licences and 28 000 motor cycle/motor tricycle licences are affected by the proposed 10% increase in licence fees. As to the revenue gain, the Administration has estimated that it will bring about an additional revenue of about \$160 million in 2001-02, while the full-year effect of this increase proposal is \$240 million.

Some members of the Bills Committee have indicated their opposition to the proposed increases coming at the present time when the economy has not yet fully recovered. These members have stated their intention to vote against the proposals.

Thank you, Madam President.

MR LAU CHIN-SHEK (in Cantonese): Madam President, I will speak on both Bills concerning government revenue.

During the last couple of years, my position has been like this: it is not an appropriate time to adjust government and public utilities charges at this stage. I have been insisting on this position because of two points. Firstly, the general public and wage earners have not benefited from the economic recovery. On the contrary, many grass-roots wage earners have been facing threats of salary

cuts, retrenchment and economic restructuring in the last few years. Their standards of living have dropped substantially and they can see no prospects. Therefore, any measures imposing a heavier burden on their living will definitely "add salt to their wounds". Secondly, fee hikes will cause a domino effect. Even though the initial increases are confined to those related to the people's livelihood, they will cause a chain effect, in particular, in that public utilities will rush to follow suit and eventually, the burden on the public will become increasingly heavy.

I feel that after all this, it appears the Government has begun to share more of my views. The Government has recently decided to extend the period for the concessionary duty rate on ultra low sulphur diesel. The Financial Secretary has also indicated openly in this Chamber that the Government will continue to freeze its fees which have direct impact on the people's livelihood until the end of March next year. We can thus see that the Government also understands the impact of fee hikes on the economy and the people's livelihood. During the Question and Answer Session last week, the Chief Executive even indicated clearly that the Government would, for the purpose of relieving the hardships of the general public, endeavour to avoid raising government charges which will directly affect the people's livelihood in order that no extra burden would be imposed on them. I welcome the Government's change in its policy direction.

I have also noted that the Government has acted cautiously in handling applications for fee increases submitted by public utilities. For example, some public utilities were persuaded to "withdraw" their applications for fee increases. Some applications have not yet been processed though they have been submitted for a long time. However, as opposed to some small and less influential public utilities, the impacts of fare increases by the three railways operated by the two railway corporations appear to be more shocking and far-reaching.

The fee increases proposed by the two railway corporations have aroused "widespread indignation and discontent". I believe this is due to the fact that the daily carrying capacity of the three railways exceeds three million passenger trips in total and fare increases will directly hit the people's livelihood. Apart from this, the public is also greatly dissatisfied with these two corporations for ignoring the hardships of the general public and "digging into their pockets" despite making enormous profits last year.

PRESIDENT (in Cantonese): Mr LAU Chin-shek, I would like to remind you the question is related to the Revenue Bill 2001. Please confine your speech to it as far as possible.

MR LAU CHIN-SHEK (in Cantonese): I will confine my speech to the question.

The two railway corporations have not only suffered no losses, but also earned \$4 billion and \$2.3 billion respectively last year. What other justifications do they have to insist on fare increases?

By the same token, the proposals on increasing government revenue being handled in this Council today, I think, are also not essential. The current situation is: "The Government and the two railway corporations are the richest while members of the public are forced to tighten their belts." With fiscal reserves amounting to \$430 billion, the Government still insists on raising taxes and charges. How can it justify itself in demanding the two railway corporations not to raise fares?

In responding to the fare increases proposed by the three railways this morning, the Chief Executive expressed the hope that the two railway companies could make a wise decision by taking into account public opinions and the burden on the people. I believe his remarks are also applicable to government officials responsible for financial management. I hope they can also make a wise decision with respect to the Government's proposals of raising taxes and charges.

Madam President, I would like to reiterate that be they government proposals to increase taxes and charges or proposals by public utilities to increase fares, I will definitely oppose such proposals made at this time! Thank you, Madam President.

MR CHAN KAM-LAM (in Cantonese): Madam President, the two Bills under discussion today cover the major proposals for fee increases contained in the Budget this year. Regarding the wide range of fee increases, the Democratic Alliance for Betterment of Hong Kong (DAB) will support the adjustments on tobacco duty, liquor duty and air passenger departure tax. At the same time, it will oppose increases on the driving licence fee, vehicle licence fee and on-street parking meter charges.

Even if all the fee adjustments proposed by the Financial Secretary are passed, each item will only bring an additional annual revenue of \$100 million or so to government coffers and the total increase will range from \$600 million to \$700 million only. Compared to a total revenue of more than \$250 billion in the next fiscal year, the implementation of these measures to increase taxation can only boost the Government's revenue by approximately 0.25%, which is useless in coping with the \$3-billion or so deficit estimated by the Government. On the contrary, if the Government is willing to accept the DAB's proposal of slightly increasing by half a percentage point the profits tax levied on companies whose profits exceed \$50 million, it will be able to reap an additional revenue of more than \$1 billion and cut its deficit by half. Even in doing so, the profits tax rate in Hong Kong will still remain well below those of our major competitors. Besides, the increase is only aimed at companies making fat profits. Therefore, the burden on small and medium enterprises and the general public will not be aggravated.

Madam President, the DAB supports the duty increase on tobacco and beer mainly because these items are not daily necessities directly related to the people's livelihood. We cannot deny that tobacco and alcohol are major leisure goods for many people. However, Members should also agree with me that tobacco and alcohol have a definite impact on health. Besides, the Government has in recent years actively planned to implement anti-smoking measures to strictly prohibit smoking in food establishments and even ban all activities sponsored by tobacco companies. Therefore, slightly increasing tobacco and liquor duties will surely bring some positive effects.

As regards the increase items opposed by the DAB, the proposed increases in vehicle and driving licence fees and vehicle registration fees will have the greatest impact on professional drivers. Coupled with the fact that other car owners are mostly people living in more remote areas and the middle class, many of whom are still cornered by the financial turmoil that started more than three years ago and have failed to benefit from the economic recovery, a substantial increase in vehicle licence fee and driving licence fee will only further aggravate their burden.

Madam President, I so submit.

MR JAMES TIEN (in Cantonese): Madam President, regarding the Second Reading of the Revenue Bill 2001, I would like to first of all say a few words on

the views of the Liberal Party on the Government's overall charging system and its proposed increases.

The Liberal Party is of the view that since Hong Kong was still under the threat of deflation last year, many small and medium enterprises (SMEs) and even big enterprises had not yet recovered fully, and many wage earners were not given satisfactory pay rises. Hence, we opine that it is not appropriate for the Government to take the lead to propose any fee increases at this moment. The word "any" covers both livelihood-related and non-livelihood-related increases. We do not agree that the general public will be unaffected by non-livelihood-related increases so long as there is no fee increases for livelihood-related items. To most SMEs, their businesses will definitely be affected if the Government charge them more. Similarly, the general public will be affected because enterprises will transfer the increases on to consumers or refrain from giving wage earners a pay rise. Of course, some people in society will, on the basis of the "user pays" principle, criticize and question the logic of using taxpayers' money to subsidize individual trades and industries. I believe it is possible to keep revenue and expenditure at a near balance and no fee increases will be required if the Government can increase its efficiency, make improvements and save more money in respect of its overall expenditure.

In addition, I would also like to mention that Members of the Liberal Party will separately state their own positions and speak in the debate on specific proposals later. Overall speaking, we oppose the fee hikes proposed by the Government. As regards the six items of fee increase currently proposed, we will consider them on their individual merits. We hope the Government can take into account the current economic situation and stop making other proposals for fee increases this year. We also hope adjustments can be made next year or this year when the economy has improved and, as the Government said, after all people have shared the fruit of the economy. Thank you, Madam President.

MR TOMMY CHEUNG (in Cantonese): Madam President, the Government keeps saying that the economy of Hong Kong has started to recover gradually. However, in the minds of all government officials, Members and the general public, it is well understood that neither the public nor the retail consumption market can feel the least bit of economic recovery. The Government nevertheless has put forward various proposals on revenue increase in the Revenue Bill 2001 at the present time. As the representative of the catering

sector in this Council, I am especially concerned with the rate of increase in liquor duty.

The Government has proposed to increase the duty rate on liquors with an alcoholic content of 30% and below from 30% of the ex-factory price to 40%. The government official has described the rate of the increase as "modest". However, according to the information given by the Government, the rate of increase on one of the 10 most popular beers translates into a revenue increase of 19 cents only. But I have been given to understand that its retail price has been pushed up by \$0.4 to \$1.5, at a rate of increase at 5% to 10%. Given the current economic condition, the proposed increase is absolutely not "modest". This example aptly illustrates that despite a small duty rate increase, it will multiply by folds in the market at the retail level.

In the Government's estimation, the proposed increase on liquor duty can generate an additional revenue of approximately \$90 million for the Treasury in 2001-02. However, if consumers buy less beer because of the price hike proposed this time, or switch to buy some cheaper beers, then the Government's "ideal objective" of generating \$90 million may be defeated.

Information shows that the Government collected approximately \$252 million in revenue from the duty on beer in the year 2000-01. An increase in revenue of \$90 million would require the total sale of beer to grow by 5% in 2001-02. However, the fact is that since the mid-1990s, there has been an overall decline in local demand for beer. According to the latest figures of Hong Kong Customs, the total sales volume of beer has dropped by 6% during the 12-month period between 1 February 2000 and 28 February 2001. Will the sales volume of beer rise instead of fall after a price increase? I am not so optimistic about it.

Moreover, an increase in liquor duty will widen the price disparity between local and mainland beers, thus further encouraging people to go to the Mainland for consumption, and possibly giving rise to a beer smuggling problem. The Government must give this careful consideration.

Earlier, Miss Margaret NG mentioned that representatives from the beer industry, catering industry, bar and karaoke operators had attended the Bills Committee meetings and also expressed their opinions on the Government's proposal to increase liquor duty during the consultation. Representatives from

relevant sectors present at the meetings all believe that under the current economic environment, the proposed increase on liquor duty will certainly affect their businesses.

Some restaurant owners have also reflected to me that it is unlikely that they can pass the price increase on to consumers if the Government increases the liquor duty, because they fear that this will affect their businesses. Therefore, they would rather swallow the bitter pill and bear the increased cost.

To many petty citizens, beer may be a major beverage they consume to relieve pressure at their leisure time. The price increase for one can of beer may just be \$1 or so. However, many a little makes a mickle. To those petty citizens with earnings that can barely feed themselves, the increase will impose a great burden on them. Moreover, they may need to quit their hobby of seeping a can of beer during their leisure time because of the proposed increase. But is this reasonable? For those restaurants, eateries, bars, lounges and karaokes the businesses of which are "barely survival", an increase in liquor duty means an increase in their costs, aggravating their business environment and making life more difficult for them. Thus, there is no way that I can support the proposed increase for this item. Colleagues from the Democratic Alliance for Betterment of Hong Kong (DAB) have also mentioned earlier that professional drivers would be in dire straits with an increased vehicle licence fee. An increase in liquor duty will similarly affect over 10 000 restaurants in the catering industry, and they will have greater difficulties in running their businesses. I hope colleagues from the DAB will reconsider the proposal because this will seriously injure the business environment.

The Government has a fiscal reserve of several hundred billions of dollars now. Why has it haggled with an annual revenue of several millions of dollars and dug into the pockets of petty citizens and the catering industry, or even proposed a revenue increase in the only beverage of the grassroots for relieving pressure at their leisure time, while adding to the operation of restaurants a heavier burden?

With these remarks, Madam President, I oppose the Government's proposal on increasing liquor duty.

MRS MIRIAM LAU (in Cantonese): Madam President, the Government will "nail" car owners almost every time when it proposes a revenue increase, and every proposal on revenue or fee increase will invariably collect car owners in

the collateral damage. Although the Government said that the upward adjustment in vehicle licence fees for private cars, motorcycles and motor-tricycles is selective, without affecting the transport industry or the commercial vehicles, it said so simply because it hopes Members can apply a lenient hand to pass the motion on an increase in vehicle licences fees. But actually many people also use their private cars and motorcycles for commercial purposes. I wonder how the Government can distinguish between them.

We know fairly well the current business environment. An increase in driving licence fees and vehicle licence fees by the Government will only increase the business costs of vehicle owners. Even if the relevant vehicles are used purely as means of transport not for commercial purposes, can we then let the Government effect a fee hike casually and make people's burden heavier "at the expense of the grassroots and the middle class"? In fact, the grassroots and the middle-class vehicle owners have suffered in no small measure. Apart from bearing high fuel duties, they have to pay for the motor vehicle first registration tax, annual driving licence fee, vehicle licence fee, and so on. The Government has already collected substantial fees from them.

Of course, the Government might well say that if one cannot afford to "keep a car", why not simply give it up! Is it really that simple? We cannot underestimate the chain effect of fee hikes on the economy. At present, there are over 320 000 private car owners in Hong Kong. According to the estimate of the Hong Kong Automobile Association, 3% to 6% of private car owners will abandon their private cars if the Government increases the vehicle licence fee. This will have direct impact on 70 000 employees working in the automobile-related business and will adversely affect the existing poor consumption market.

Certainly, Madam President, many Members understand that car owners may not necessarily be rich people and in fact, most of them belong to the grassroots and the middle class, hence a revenue increase will certainly impact on the livelihood of this group of people. I only hope that the Government can really think twice before it squeezes money from car owners next time.

Madam President, I so submit.

MR ANDREW CHENG (in Cantonese): Madam President, on behalf of the Democratic Party, I would like to express our views concerning fees increase for vehicle licence, driving licence and on-street parking meters as proposed in the Bill.

Madam President, regarding the position of the Democratic Party on the above fee increase proposals, we think that they are closely related to the people's livelihood. Colleagues have earlier mentioned that the vehicle licence fee and driving licence fee will impact on professional drivers' livelihood. To many drivers, they may be the middle class on the surface. However, given the current economic situation, we must understand it is necessary for us to add the adjectival phrase "with negative equity" after the term "middle class", so in fact they are "middle class with negative equity", and a fee hike will subject them to a certain degree of financial pressure.

Madam President, I would like to tell the Government that price rise is price rise after all. Even though the actual rate of increase may be mild, the psychological impact of a fee hike will certainly affect people's desires for consumption in face of financial difficulties, and the Government might possibly incur losses that outweigh the gains as a result. I hope the Government can take heed that if licence fees or on-street parking meter charges are increased, the consumption desire of society as a whole will further be dampened, which will in turn further slow down the pace of economic recovery. I hope the Government can pay attention to this.

Insofar as on-street parking meter charges are concerned, the original government proposal was to increase charges for all parking meters in all districts from the maximum limit of \$2 per 15 minutes to \$3. With the Government lobbying support from Members strongly, a new proposal was put forward subsequently. In principle, the Government hopes very much that we will not oppose all or most transport policy-related items laid out in the Bill today, and it also hopes that some fee increase items can be passed. As regards the Government's proposal on increasing on-street parking meter charges to \$3 per 15 minutes in four districts with the highest utilization rates while keeping those in other districts unchanged, the Democratic Party did think hard about it initially. As administrative measures, the Government has decided to first increase charges in four districts where parking meters have comparatively higher utilization rates. Although we have doubts about this approach, I think this is also a desirable objective. In a moment, I would further talk about our proposal on behalf of the Democratic Party. Given the fact that this is after all an administrative measure instead of an approach through the relevant legislation such as the road and traffic regulations, and so on, or using a schedule of a relevant ordinance as the benchmark for a charge increase, we consider it unacceptable. After all, we respect the rule of law and the rules laid down in ordinances governing fee increases. However, in respect of the Government's new proposal on fees increase, we cannot accept it and will vote against it.

Firstly, we think the proposal on divisional charges appears to be more reasonable on the surface than an across-the-board approach in increasing charges. However, from our judgement, even charges for the busiest areas in Tuen Mun, Tsuen Wan, Yuen Long and Yau Tsim Mong have been increased, the utilization rates of on-street parking spaces there will remain high. Although the utilization rates may drop at the beginning, it is believed that the effects of increase will quickly be digested in a short period of time. The Government's policy objective in maintaining a 15% availability of on-street parking spaces at any time will be defeated. We think the Government has focused more on the revenue perspective with less consideration being given to the angle of a transport policy in considering this proposal. The Government has simply put forward the fee hike proposal which is simple, quick and time-efficient, but it has failed to consider how the existing problem of insufficient parking spaces can be ameliorated as a whole. Furthermore, after the charges for those districts have been increased, the charge disparity between carparks at different locations in the same district cannot be narrowed effectively either. Thus, it can be predicted that carpark operators will increase the hourly rentals for parking spaces. If this really happens, the hope of the Government to narrow differences between the two will vanish completely.

Madam President, since the Government does not have a better way for setting down the principle on prescribing on-street parking meter charges to date, we think it should start from the bottom up by changing the current practice of making annual adjustments to on-street parking meter charges under the Revenue Bill. Since the Transport Department will levy charges by divisions through administrative means after the maximum limit of the charges has been determined, meters in busy areas will charge more and less in less busy areas. This method is flexible but lacks transparency. It is the rule of man and a pursuit of the principle of executive-led government. Besides, the executive arm is vested with too much discretionary power. Take the new proposal put forward by the Government this time as an example. If an upward adjustment is imposed on the maximum limit of the charges levied in Tsuen Wan District, charges for metered parking spaces at other locations with lower utilization rates in the same district may be lower than the maximum limit, yet the actual level of charges will be determined by the Transport Department, the executive arm.

Madam President, in order to make on-street meter parking charges more reasonable, transparent and acceptable to the general public, the Democratic Party proposes that the Government should conduct a relevant study on taking

on-street parking meter charges away from the Revenue Bill and add new provisions to the Road Traffic Ordinance to divide such charges into three categories. For example, charges for each category should be determined by its average utilization rate. Areas with a utilization rate of 79% and below will be graded as non-busy; 80% to 85% will be graded as busy while 86% or above will fall into the very busy category, that is, the four divisions proposed by the Government in its current proposal

PRESIDENT (in Cantonese): Mr Andrew CHENG, hold on please. Mr IP Kwok-him, are you raising a point of order?

MR IP KWOK-HIM (in Cantonese): Madam President, I do not know which Bill is under discussion now. I have been listening but it seems that on-street parking meter charges should come under the Revenue (No. 2) Bill 2001. I would like to know which Bill we are debating now.

PRESIDENT (Cantonese): Mr IP Kwok-him, your question is absolutely correct. We are now debating the Revenue Bill 2001, and parts of Mr Andrew CHENG's speech just now concerned the Revenue (No. 2) Bill 2001 which will be debated later. I allowed Mr Andrew CHENG to speak on both Bills together because several Members spoke in the same way before Mr CHENG claimed the floor. As I did not wish to interrupt Members in the course of their delivery and then allow them to speak again later, I made a decision which some Members may disagree with, that is, to allow Members to speak on both Bills together. Mr LAU Chin-shek was the first Member who spoke in this way and he pointed out at the outset that he would express his views on both Bills.

Therefore, Mr IP, the question you raised is perfectly correct. I have consciously made a decision. If you do not accept it, you can continue to raise this point.

MRS SELINA CHOW (in Cantonese): Madam President, I think this is a matter of the Rules of Procedure. In fact, Members should take this as a joint debate on two Bills or an individual debate on one Bill? If Members are not sure about it, some Members would take it as a debate on one Bill and speak only

on the Revenue Bill 2001 while some Members would speak on both Bills together. Would the President please state whether we should regard the current debate as a joint debate, or a debate on one Bill? If we have decided to have a joint debate on both Bills while some Members handle the Bills separately, then they will have no opportunity to speak on the second Bill after they have spoken on the Revenue Bill 2001. If so, will they be given one more opportunity to supplement their points?

PRESIDENT (in Cantonese): Mrs Selina CHOW, you have raised a very good question. In fact, when I consciously decided to allow Members to continue with their speeches, I also decided at the same time that if Members wish to speak on the Revenue (No. 2) Bill 2001 when this Council comes to discuss it, I would allow them to do so. When Members speak with their speeches in hand, they wish to finish them at one go. Therefore, I do not wish to stop them in the middle. However, if Members think that this is not a right decision, I can enforce the Rules of Procedure strictly.

MRS SELINA CHOW (in Cantonese): Madam President, I raised the question not because I am in objection or disagreement. Most importantly, Members must know clearly whether we are having a debate on one Bill or a joint debate on both Bills. If it is a joint debate, I think the President must inform Members so that we can adopt the same approach.

MR IP KWOK-HIM (in Cantonese): Madam President, I requested a clarification as I would like to ascertain the manner of our ongoing debate, and I would respect the President's decision.

PRESIDENT (in Cantonese): Honourable Members, if the manner of debate for both Bills had been clearly defined when you first started to speak, it would be the most satisfactory situation. However, some Members have expressed their views on both Bills altogether in the ongoing debate. To those Members who have not spoken on both Bills together, it would be unfair to stop them from speaking on the Revenue (No. 2) Bill 2001 later if they wish to express their views. So if Members wish to speak only on the Revenue Bill 2001 now and would like to speak again when we come to the formal debate on the Revenue

(No. 2) Bill 2001, they will also have the opportunity to do so. I am simply handling the situation in a flexible way now. Therefore, I think that it is absolutely right for both of you to raise questions in connection with a point of order. If other Members do not wish to speak on both Bills together now, they can certainly wait until the other three proposals on fee increase or reduction are under debate to speak.

Mr Andrew CHENG, please continue.

MR ANDREW CHENG (in Cantonese): Madam President, so can I continue? I am sorry because I did not hear your ruling clearly just now. Can I continue?

PRESIDENT (in Cantonese): Yes.

MR ANDREW CHENG (in Cantonese): Thank you Madam President, the Revenue Bill 2001 and the Revenue (No. 2) Bill 2001 were scrutinized by the same Bills Committee and the crux is that the two Bills involve vehicle licence fees and on-street parking meter charges, and I speak on behalf of the Democratic Party in respect of transport policies. Therefore, I would like to speak at one go in order to save time. Madam President, my speech will end shortly.

Earlier, I proposed a three-tier charging regime, under which districts with an average on-street parking meter utilization rate at 86% or above should be graded as very busy, similar to the proposal on charges for the four divisions proposed by the bureau, that is, grading on-street parking meters into different categories. I think the level of charges for each category under the three-tier system should first be set out in the new provisions, and the charges should be determined by the utilization rate of the respective tiers. And then, we should list out which category the on-street parking meter charges on each road has fallen into. With the support of the data and the scrutiny of the Legislative Council on the level of charges for relevant parking meters on every road in every district, there will be a more objective basis for determining the relevant charges.

The Democratic Party hopes the Government will consider the above proposal. Of course, there are still some minor technical problems with our

proposal that require further consideration. We aim to achieve our objective by adopting a legislative approach or in the form of a schedule, unlike the Government's practice of using the utilization rate as the basis for proposing a price increase and incorporating it into the Revenue Bill annually as a measure to tie in with administration. I hope a principle for determination of on-street parking meter charges can be laid down for adherence through this proposal, so that the Government needs not argue incessantly with us every time in future when it seeks to revise the parking meter charges.

Madam President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, first of all, I wish to inform Honourable Members that I will be speaking on the two Bills together and I hope the President will permit me to do so because I consider it not meaningful to discuss just a single revenue item or tax increase proposal. In my view, an overall principle is involved here. As I have made it very clear in the past, so long as the economy has not yet fully revived, I will oppose any proposal to increase fees and charges or tax rates.

I remember that when the Government put forward its revenue proposals last year, the question of whether or not fee increases would impact on the people's livelihood was raised. At that time, we pointed out that the question did not lie in whether or not the proposed increases in fees and charges would affect the people's livelihood, but the crux remained that any attempt made by the Government to increase its fees and charges would be followed by other institutions, thereby giving rise to a trend towards increase on rates of charges. That way, the people's livelihood would either be directly or indirectly affected adversely. At that time, our view was criticized by government officials, certain Honourable colleagues and members of the public as not scientific, representing only our own subjective thinking. Madam President, the truth will not lapse with time. Over the past few months, following the implementation of those fee increase proposals claimed by the Government as not having any effect on the people's livelihood, our concern has really become a reality. With the Pacific Century CyberWorks Limited and Hongkong Electric, both of which are making huge profits every year, taking the lead in giving notice of tariff increases, the New World First Bus Services then followed suit. Recently, the Kowloon-Canton Railway Corporation and the Mass Transit Railway Corporation Limited have also indicated their plans to increase fares. Most

probably public utility services such as trams, ferries, and so on will also announce their plans to increase fare as well. Actually, we are not boasting of our foresight, but this theory has been tested in history for many times. So, the Government's argument that the trend of charge rate increase triggered off by it will not impact on the people's livelihood just cannot stand.

The editorials of certain newspapers have started to share our view. For instance, the editorial of a newspaper said this yesterday: "What the public fears most is that the proposed fare increases (of the two railways) would encourage operators of other public utility services relating to the basic necessities of the people to increase their tariff rates one after another. In which case the accumulated increase in expenditure will add enormously to the burden of the middle and lower classes in the midst of their economic hardships." Madam President, from this we can see that members of society are beginning to subscribe to our view regarding the trend of charge rate increases. For this reason, I believe the proposals to increase fees and tax rates which the Government is bent on seeing through will not be accepted by the public. What is more, the discontent among members of society will continue to intensify.

As a matter of fact, another newspaper has also expressed a similar view: "At the Question and Answer Session of the Legislative Council held earlier, the Chief Executive of the Special Administrative Region (SAR), Mr TUNG Chee-hwa, pointed out in his speech that we were currently undergoing an economic restructuring, and that the SAR Government appreciated very much the impact and pressure endured by the low-income families and was making every effort to identify ways to help them resolve their problems. The Chief Executive also pointed out that in order to avoid adding to the burden on the public and to encourage domestic consumption, government fees and charges affecting directly the people's livelihood should not be increased as far as practicable; and that the social acceptability and overall economic impact of the relevant proposals must be taken account of when considering any necessary fee adjustments." While one of the passages read out by me just now represented the view of the editors concerned, the other one was a report of on the Chief Executive's view. But then, they were both raising the same important point that tax and fee increases must not be taken lightly because they would bring about grave consequences and impact significantly on the low-income families in particular.

Madam President, we are just in the middle of the week, but the public has already heard two pieces of bad news, one of which is that the two railway

corporations have formally announced their plans to increase fares. Another piece of bad news is that a supermarket chain has folded, leaving hundreds of employees jobless. The implication of these two pieces of bad news is that the economic situation is not so satisfactory, and that although the economy has started to revive, things have not really brightened up. If the Government should insist on increasing fees and duty rates, it would only further impact on the consumer sentiment and the domestic demand for goods, thereby increasing the chances of enterprises folding their business. When will our economy really revive? If the Government continues to take the lead in increasing fees and charges, I am afraid economic recovery is just a distant dream.

With regard to the proposed increase in duty rates, the Government has kept saying that they would not affect the people's livelihood directly; yet at the same time it is also saying that the rate of increase is so mild that the public will not be affected significantly. As I pointed out just now, in implementing fee and tax increases the Government has triggered off a trend of charge rate increases, thereby impacting directly on the consumer sentiment of the public and hindering the recovery of the economy. So, the people's livelihood is being affected fundamentally. Moreover, it is obvious that the proposed increase in duty rates of liquors and tobacco will affect directly the lives of the grassroots even if we consider it from the point of view of the Government's theory. In this connection, the Government has tried to confuse the public view on its fee and tax increase proposals by putting forward some high-sounding reasons like health protection. However, I hold that health protection and increases in duty rates and fees are two different stories. If the Government really cares very much about the health of the public, it should step up its publicity and education efforts in this respect, as well as identify feasible methods to help people to resolve their smoking and drinking problems, rather than increasing the fees and duty rates concerned. Bearing in mind that proposed increases are in effect different forms of punishment to the people concerned, I will never give them my support.

With the exception of those relating to duties on liquors and tobacco, the proposed increases in other fees and tax items are by no means mild. For instance, while the fees for driving licences will be increased by \$25 to \$50, vehicle registration fees will increase by \$120 to \$1,125. To the SAR Government which has more than \$400 billion in fiscal reserves, the effect of such increases is indeed negligible. Why must the Government be a skinflint that pays no regard to the affordability of the public?

The Government always uses the "user pays" principle or the "cost recovery" principle as excuses for increasing fees and charges. What is more, it also emphasizes that the rate of increase is so mild and the number of people affected is so limited that not much can be added to its revenue, thus the fee increases must be implemented to uphold those principles. For our part, we have all along opposed the Government applying the "user pays" and "cost recovery" principles to all of its fees and charges. In our view, some of the public services should be provided by the Government free of charge. Let us argue not the appropriateness of the "user pays" and "cost recovery" principles, but are these two principles the supreme and only principles? Has it ever occurred to the Government that a slight increase in tax revenue would impact on the consumer sentiment of the public, thereby causing Hong Kong to suffer heavy losses because the recovery of the economy would be impeded? During the course of deliberations on the two Bills, representatives of the relevant industries expressed their concern that the public would be pushed to visit the Mainland for spending if the duty on liquors and tobacco should be increased. In the end, not only the Government would suffer a zero increase in tax revenue, the retail and service industries in Hong Kong would also be dealt a heavy blow. Should that be the case, why must the Government insist on doing so? What good would it do?

Madam President, I hope the Government can really seriously consider the remarks made by Mr TUNG in this Council last week. Mr TUNG said he appreciated very much the pressure on members of the grassroots. If this is true, the Government really should not implement any fee and tax increases. Most importantly, today Mr TUNG has openly urged the two railway corporations to reconsider carefully their fare increase proposals and listen to the opinions of the public before making a wise decision.

With regard to the appeal made by Mr TUNG, I just hope he will not consider himself an exception. Since he has urged others to make careful reconsideration, why does he not reconsider carefully the proposed increase in fees and duty rates? Why must decisions be made on the sole basis of the "cost recovery" and "user pays" principles? Why must the Government be so stubborn? Why can the Government not consider the affordability of the general public and make an effort to give an impetus to the recovery of the local economy?

Actually, the public does not oppose fee increases indiscriminately. In many a case, the public will accept increases in charges for public utility services

so long as they are well grounded. Indeed, we have seen that the public did accept public utility services increasing their charge rates in many past cases. But then again, the public will certainly raise their strong objection if the rate of increase is unreasonable or a most inopportune increase is proposed.

Mr LAU Chin-shek will go on a hunger strike tomorrow to protest against the proposed fare increases by the two railway corporations. Why does he choose to do so, bearing in mind that he did not take any actions against the many increases in fees and charges introduced earlier on? I believe this is because he fears that the proposed fare increases may give rise to some chain effect the pressure of which is too heavy for the general public to sustain at the moment.

I just hope the Government will reconsider what it should do when it urges others not to increase their fees and charges.

Madam President, I so submit.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I rise to speak for the Hong Kong Federation of Trade Unions (FTU). The proposed increases put forward in these two Revenue Bills actually involve six revenue items and the maximum amount of deduction for self-education expenses under salaries tax. The six revenue items are, namely, tobacco duty, duty on liquors, vehicle registration fee, fees for driving licences, air passenger departure tax (APDT) and on-street parking meter charges. With regard to the two Revenue Bills, I wish to emphasize that the FTU opposes any increase that is directly related to the people's livelihood. As such, we will not support the revenue proposals under the two Revenue Bills that are related to the duty rate on liquors, vehicle registration fee, fees for driving licences, the APDT and on-street parking meter charges. Honourable Members may note that I have not mentioned two items, namely, tobacco duty and the maximum amount of deduction for self-education expenses. This is because, on the one hand, I can hardly find any reason for opposing the proposal to increase the maximum amount of deduction for self-education expenses; and on the other hand, I support the proposal to increase tobacco duty.

Let me first explain why we do not support the proposals to increase duty on liquor, fees for driving licences, the APDT and on-street parking meter charges. With regard to the liquor-related proposal, the Government claims

that the proposal to increase the duty on alcoholic liquor with alcoholic content not more than 30% (other than wine) is largely a technical issue. But then, when I discussed the proposal with members of the catering industry (by that I mean the employees in the sector), I was told that they were very much concerned because they considered that they would be affected by the increased duty rate on beer. So, from their point of view as wage earners, they held that the Government should not impose a duty rate increase on such items.

As regards vehicle registration fee and the fees for driving licences, I believe the proposal will increase the licence fees for private cars, motorcycles and motor-tricycles. According to my consultation results, this proposal will affect mostly wage earners at the middle level and in particular the so-called middle class. Many of the middle class are faced with problems like wage cuts, cuts in benefits or other terms and conditions of employment in the wake of the regional financial turmoil, and some of them are even owners of negative assets. So, their lives are by no means easy. Actually, these people are also wage earners. At this juncture when the economy is not doing well, I therefore feel that the Government should appreciate the hardships confronting these people rather than adding to their burden in this respect. Further still, I also wish to point out that these proposed increases would also impact on those people who seem to be self-employed. Since the situation of these people is no different from that of other workers, I feel that it is all the more undesirable to increase those fees. Why must the Government introduce these fee increase proposals now?

Now I should like to switch to the APDT. When we were in the process of scrutinizing the Bills, we received some papers prepared by the Government to lobby us. In these papers the Government cited an example to support its claim that increasing the APDT would not affect Hong Kong or impact on our tourism industry. The Government quoted the situations in 1996 and 97 as examples. According to the Government, when the APDT was increased then, the number of visitors coming to Hong Kong has increased rather than decreased. When we were scrutinizing the Bill, I asked the Government why it chose 1996 and 97 as its examples. We all know what was going on in those two years. Since Hong Kong was going to reunite with China, many foreigners believed that they must pay a visit to Hong Kong. That being the case, we considered the example cited by the Government not appropriate. In view of the present economic situation, the Government really should not take the lead in increasing fees and charges. We therefore oppose the Government's proposals

to increase the APDT. Regarding the on-street parking meter charges, although the Government made some compromise in the end, all in all, we still wish to urge the Government to not introduce at this moment any changes to these charges which affect the people's livelihood.

Madam President, I made it very clear from the very beginning that I oppose the various duty rate increases proposed in the two Revenue Bills. Then, why does the FTU agree to the proposal to increase the duty on tobacco? As a matter of fact, we have solicited opinions from a number of people and we also understand that many grass-roots wage earners are smokers. Over the past few years, when consulting Members on the items to be covered by the annual budget, the Government would invariably ask us to suggest ways which could enable it to provide more welfare services and at the same time raise its revenue. Our response was that the Government might consider increasing the duty on tobacco, and we made this suggestion from a health protection point of view. In this connection, I need to declare that I am a member of an anti-smoking organization. I disapprove of smoking but this is not the reason why I support the Government increasing the duty on tobacco. It is purely out of my concern for wage earners' health that I feel that the Government may consider increasing the rate of tobacco duty. As I recall, when we made this suggestion to the Government last year, the Government told us that this suggestion would not achieve any significant effect. I still remember that after Mr CHAN Kwok-keung put forward this suggestion, the then Financial Secretary, Mr Donald TSANG, told us that this would not achieve much effect because cigarette smuggling activities were so widespread then, and that increasing the duty on tobacco would only serve to encourage more people to participate in cigarette smuggling. We could not subscribe to his view at that time because we held that our suggestion was made from an anti-smoking and health protection point of view. Therefore, we will support the current proposal to increase the duty on tobacco.

As regards the proposal to increase the maximum amount of deduction for self-education expenses under salaries tax from \$30,000 to \$40,000, we will certainly give this measure our warmest welcome. So, as I have made it very clear, we oppose four of the six proposed increases put forward in these two Revenue Bills but support the proposals to increase tobacco duty and to increase the maximum amount of deduction for self-education expenses under salaries tax.

Thank you, Madam President.

MR SIN CHUNG-KAI (in Cantonese): Madam President, the Democratic Party supports several revenue proposals, including the proposed increase on tobacco duty and duty on liquors, but opposes the proposed increase relating to driving licences. I should like to draw the Secretary's attention to a question I have been pondering for quite some time and that is: Why is there a so-called tax element in the fees for driving licences? I think this question warrants some thinking.

Since tobacco and liquors are specified dutiable commodities, naturally the Government will levy duties on them. But then, driving licences are issued to certify that their holders are capable of driving the specified vehicles. Regardless of whether they are rich or poor, people who want to drive a vehicle must be holders of a relevant driving licence. As such, the Government should not seek to increase fees for driving licences with this Revenue Bill. I hold that fees for driving licences should be charged on a cost-recovery basis, although the Honourable LEUNG Yiu-chung may oppose my view. In my view, any person who wishes to drive a vehicle must first obtain a relevant driving licence. Of course, he must pass the relevant driving test to obtain a driving licence. As for the Government, it should only charge holders of driving licences the costs for issuing the licences, since the issuance of driving licences should not carry any tax element at all.

With regard to revenue proposal on helicopter service — I should like to discuss the two Revenue Bills together, since other Members also did that before me — extending the air passenger departure tax (APDT) to cover all helicopter passengers is the result of the Financial Secretary's painstaking deliberation on ways to raise revenue. If the purpose of this proposal is to achieve consistency in policy, there is naturally no cause for us to complain. If aeroplane passengers departing from Hong Kong are required to pay the APDT, helicopter passengers departing from Hong Kong should also be required to pay the APDT. However, the Government should really review its overall policy on helicopters, which is a part of its air service policy. At present, we only have policies covering matters relating to the Hong Kong International Airport at Chek Lap Kok; and I believe officials from the Economic Services Bureau should be aware of this situation. When the Democratic Party was in the process of considering the Bill, relevant companies have made submissions to the Bills Committee and some of their points were really worth consideration. Perhaps we should also consider their points from a revenue angle. In fact, not much revenue is generated from helicopter passengers departing from Hong Kong. But then, the

Government may consider introducing more flight routes in future to encourage passengers to travel to the Pearl River Delta Region via Hong Kong. Besides, this may also be a convenience for certain business visitors from Hong Kong. I believe this idea is worth considering. I understand that this should be the work of the Economic Services Bureau rather than the Finance Bureau, and I believe the Government will do its job.

Although the Honourable Andrew CHENG has already spoken on the revenue proposal relating to on-street parking meter charges, still I should like to raise one point. There are two revenue items with which the Government will do something every year, particularly in the Revenue Bill, and they are, namely, on-street parking meter charges and vehicle registration fees. Actually, these two revenue items do not have too significant an influence on the income of the Government. Whether or not parking meter charges should be increased is a question to be considered from a traffic management point of view. Rather than being incorporated into the Revenue Bill, proposals to increase such charges should be submitted to the Legislative Council Panel on Transport for discussion at appropriate times, and then presented to this Council upon winning the support of the Panel.

Madam President, I support very much the proposal to increase the maximum amount of deduction for self-education expenses under salaries tax, which is also a goal the Democratic Party has been striving for over the years. At present, more and more people are enrolled in various self-education courses. The expenses on these courses indeed cost a fortune. Taking the courses offered by tertiary institutions as an example, in most cases a tuition fee of over \$40,000 will be charged for courses operating on a self-financing basis. I wish to emphasize that while the proposal is to increase the maximum amount of deduction, the fees for many courses are in fact higher than the proposed maximum amount of \$40,000. To cite an example, the tuition fee for a MBA course offered by any of the local universities will certainly be higher than \$40,000. I believe the purpose of the Government in increasing the maximum amount of deduction from \$30,000 to \$40,000 is to encourage lifelong learning. As Mr TUNG Chee-hwa has said, and I believe Members will all agree very much, everyone should participate in lifelong learning. On the other hand, mortgage loan repayments, costs involved in getting married and family expenses have already formed an enormous burden on young people, to say nothing of the burden on those who intend to pursue further education. So, engaging in lifelong learning will certainly add to their burden, and the

Government should look into ways to encourage them by means of tax concession. The Democratic Party supports the proposal to increase the maximum amount of deduction to \$40,000, yet at the same time we still hope that the Government will continue to make reference to the fees charged by the universities in Hong Kong for such postgraduate courses as Master degree and equivalent courses when considering the maximum deduction amount in future. Last but not least, I hope the Government will review the maximum amount of the various tax deduction and allowance items from time to time.

Madam President, the stance of the Democratic Party on the two Revenue Bills today is that we will oppose three of the revenue proposals but give support to another three. Thank you, Madam President.

MR FREDERICK FUNG (in Cantonese): Madam President, I rise to speak on the two Revenue Bills together. Actually, I believe the Government has already heard speeches like today's many times before, since Members have responded to the Government's several motions on fee increases with the view that no increases in fees should be implemented for the moment.

I should like to make reference to some information on public housing tenants furnished to us by the Census and Statistics Department. Why do I wish to refer to this information? It is because the income level of these tenants is lower than that of the people of Hong Kong in general. According to the information provided, the average income of a family of four, which was \$15,000 in 1997, has dropped to \$12,500 this year, representing a fall of more than 10%. With regard to the rate of unemployment, I believe Honourable Members have all read yesterday's press reports that in the past year or so, although the unemployment rate had dropped from its peak level of 5.1% to 4.3%, it rose again in recent months and is currently at 4.6%. These two pieces of information tell us that the economic situation as well as the income situation of the general public have not improved significantly, or even have not improved at all.

As Members all know, there have been voices in society urging the people of Hong Kong to adapt to the economic restructuring through personal betterment and improved performance. On the other hand, there is also a world trend towards globalization and countries are all looking into economic measures that are conducive to a value-added society. Apart from that, countries are also

conducting research on the long-standing issue of polarization between the rich and the poor during this globalization process. Polarization between the rich and the poor is also an issue in Hong Kong and it has been worsening in recent years. Under the circumstances, the Government should think it over very carefully if any proposed increase in fees and charges would impact on the poor. Even though it seems that the economy of Hong Kong has improved slightly over the past two years, the two-digit growth recorded last year has fallen to a single-digit and is still falling. In other words, although our economy recorded a two-digit growth rate last year, and our economy performed better in the past two years than in 1997, 1998 and 1999, the general public so far has yet to enjoy the fruits of economic growth. Actually, as we all know, the majority of the gains brought about by any economic growth will be pocketed by import and export traders as well as the upper class, thereby making the lives of the middle and lower classes even worse during times of recession.

We therefore hold that the Government should not implement any proposals to increase fees and charges if such proposals would add to the burden on the general public. This Council will debate a motion on suicide later today or tomorrow. I do not intend to discuss this issue at this moment, I just wish to tell the President that it has been pointed out by a number of press reports that many people committed suicide because they were under huge financial pressure because of unemployment and other reasons. What is more, there were also other people who committed suicide just because their applications for Comprehensive Social Security Assistance had been rejected. We can thus see that some people will be particularly hit harder by the economic conditions than others. Hence, the Government really should not dial up the pressure on the public at this stage.

The second point I wish to discuss with the Government through the President is that any measure taken by the Government will be followed as an example. As Mr LEUNG Yiu-chung mentioned earlier, on the first occasion when the Government put forward its tax increase proposals, we already pointed out that even if the proposals for fee increases put forward by the Government did not have any direct impact on the people's livelihood, they would still set an example because public utility companies or other companies would be encouraged to apply for tariff increases. Indeed, about seven to eight public utility companies are currently prepared to submit their tariff increase applications to the Government, while some others have already raised their charge rates. So, from this we can see that a trend of fee increase can really be

induced. In particular, if we should allow the Government to increase its fees and charges, we could hardly oppose any public utility companies raising their charge rates. Discounting the surpluss gained last year and the year before, the Government still has a fiscal reserve of over \$400 billion, which can cover more than a year's total expenditure. I mentioned to the Financial Secretary during our meeting that we hoped the fiscal reserve could be maintained at a level slightly higher than a year's total expenditure, and that the remaining surplus could be considered for other uses. Given that the Government is proposing to increase its fees and charges even though it has a fiscal reserve of over \$400 billion, and that public utility companies can hardly have a year's or even a month's expenditure in reserve, they will naturally question why they cannot raise their charge rates if the Government is allowed to increase its fees and charges. Obviously, public utility companies will follow the example set by the Government.

Speaking of proposals to increase fees and charges, the Government always uses the "cost recovery" and "user pays" principles to justify its proposals. Although the Government has not cited these two reasons in its papers this time, still I wish to point out that I have always considered these two reasons rebuttable and unacceptable. Taking the "user pays" principle as an example, although a number of the proposed increases are said to be introduced on the basis of the "user pays" principle, in many cases the increased charges could be shifted onto the consumers fully. For instance, merchants may shift the burden of increased duties on tobacco and liquors to people who buy tobacco and liquors from them. As regards the increase in fees for driving licences, likewise, driving instructors may shift the burden of the increased fee for their driving instructor's licence to learner drivers instead of shouldering the burden themselves. From this we can see that the "user pays" principle is not applicable in many of the revenue proposals.

As regards the "cost recovery" principle, speaking in the last Budget debate I cited a rather good example which I should like to remind the Government of. Among the items discussed then, there was a proposed 10% increase on fees for photocopies of court documents, raising the charge rate to \$6 per page. According to the Government, it still could not recover the cost even after the charge rate was raised 10% to \$6 per page. I therefore suggested that people should go to Sham Shui Po District to make photocopies of documents because they would have to pay only \$0.3 per page there. So, the fee charged by the Government was 20 times of the rate payable in Sham Shui Po. Upon

hearing the Government's explanation on how it calculated the cost for making photocopies and why it must raise the charge rate to \$6 in order to recover the cost, I was totally unconvinced and could hardly believe in what the Government said. If the Government could only recover the cost that way, the cost calculated by the Government must be exceedingly high and unreasonable; the cost must be incorrect or even wrong. I therefore hold that the Government cannot justify its fee increase proposals with reasons like these.

Among the various increases proposed in the Revenue Bill, I support the proposal to raise the maximum amount of deduction for self-education expenses under salaries tax. Perhaps some may criticize me for supporting those proposals that offer gains but opposing those that do not. My view is quite the contrary. I have found the practice of the Government a "one treat, two tricks" measure, as it has tried to offer people a small concession in putting forward its fee increase proposals. In view of the current economic recession, I just cannot understand why the Government cannot give the public a clear message that the Government is willing to ride out the storm together with the people and to put in efforts to enable the public to pursue personal enrichment and self-improvement, thereby contributing towards the betterment of our economic situation; and that it will also create more employment opportunities to let the people know that it is doing good. If the Government could only give the public a small "treat" among the many fee increase proposals, I am afraid the public could only see the cons but not the pros of the Revenue Bills.

Madam President, with the exception of the proposal to increase the maximum amount of deduction for self-education expenses, I will vote against all the other proposals put forward by the Government. Thank you.

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

(No Member responded)

PRESIDENT (in Cantonese): I will call upon the Secretary for the Treasury to reply.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, first of all, I would like to thank Miss Margaret NG, Chairman of the Bills Committee

on the Revenue Bill 2001 and the Revenue (No. 2) Bill 2001, and other members for speedily completing the scrutiny of these two Bills as well as supporting the resumption of the Second Reading debate today.

The Revenue Bill 2001 aims at giving effect to three revenue proposals proposed in the 2001-02 Budget, that is, increasing the duty on tobacco by 5%; increasing the duty on alcoholic liquor with an alcoholic strength not more than 30% (other than wine) from the existing *ad valorem* rate of 30% to 40%; and increasing the vehicle licence fees for private cars, motorcycles and motor-tricycles and all driving licences by 10%.

As we anticipate that the Government will have an overall fiscal deficit in the year 2001-02, and that there will persistently be a deficit from the year 1998-99 to the year 2004-05, we must try endeavour to increase revenue, especially recurrent revenue. These three revenue proposals aim at attaining a break-even and reducing a deficit within the period of the Medium Range Forecast. Given their narrow scope of impact and moderate rates of increase, these revenue proposals do not impede economic growth or affect the people's living standards.

I am pleased to know that Members generally support the proposal to increase the duty on tobacco by 5%. This proposal will not only increase revenue but also help the Government to achieve the purpose of encouraging the public to reduce smoking in order to protect their health.

Although the proposal to increase the duty on alcoholic liquor is supported by some Members, some other Members oppose it. Members who oppose it think that it will hit the beer industry because beer is a major beverage to be affected by the relevant rate of increase. These Members also worry that the proposal will affect the business of the catering industry, bars and karaoke premises. In fact, the Government has proposed a very moderate rate of increase. Taking the more popular types of beer as examples, the proposal will only increase the duty on a can of beer by about \$0.06 to \$0.26, so, we think that the proposal will not impact on the beer industry and the relevant industries. According to the Customs figures, the quantity of duty-paid beer from March to May this year (after the increase in the duty on alcoholic liquor) has in fact increased by 3.7% as compared with that of the same period last year, and there have been more obvious increases in April and May, at a rate of 6.5% and 5.4% respectively. This reflects that the sale of beer has not decreased as a result of the increase in duty.

The third proposal of the Bill, that is, the proposal on increasing the vehicle licence fees for private cars, motorcycles and motor-tricycles and all driving licences by 10%, has aroused the strongest opposition in the Council. Most Members who oppose it think that the proposal is pinpointed at the middle class and will put an unbearable burden on drivers. This the Government disagrees.

Firstly, the Government has not adjusted these charges for 10 years since 1991 while the accumulative inflation rate during the period was 52%. We believe there is room for a small adjustment to these charges so that we can reduce the operating deficit of the Government without affecting car owners. For the owners of private cars, motorcycles and motor-tricycles, a 10% increase in the fees for driving licences is quite moderate. For private cars the engine capacity of which does not exceed 2 500 cc, which account for around 80% of the total number of petrol-engined private cars registered, the annual rate of increase is between \$385 and \$570; for private cars with a capacity between 2 500 cc and 3 500 cc, which account for 15% of the total number, the annual rate of increase is only \$755; and for private cars with a capacity that exceeds 3 500 cc, which account for only 5% of the total number, the annual rate of increase is between \$940 and \$1,125. I believe the proposal will not put a heavy burden on vehicle owners. In fact, according to the figures of the Transport Department, from March to May this year (after the increase in licence fees), the number of new vehicle licences for private cars and motorcycles has increased by 7.4% and 25% respectively compared to that of the same period last year. This proves that the moderate revenue proposal will not impact on vehicle owners or the automobile industry.

The increase in all driving licence fees by 10% will have a negligible effect on the daily expenses of drivers because the rate of increase for each driving licence is only \$5 to \$75 and some licences have a validity period of 10 years. Moreover, according to the data of the Transport Department as of May, among 1.54 million holders of full driving licences and renewable driving licences, over 90% hold licences that are valid for 10 years. Therefore, the fee increase will not have any immediate effect on them.

I implore Members to consider and support the various proposals in an objective and rational manner.

Later, I would propose an amendment during the Committee stage to implement two proposals. The first proposal is to incorporate into the fee

increase proposal the fee for temporary driving licences for motorcycles. The second proposal is to make technical amendments to the formula of calculating the surcharge payable for the renewal of expired vehicle licences.

I urge Members to support the Revenue Bill 2001 and the amendment I will later propose at the Committee stage.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Revenue Bill 2001.

Council went into Committee.

Committee Stage

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

REVENUE BILL 2001

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

CLERK (in Cantonese): Clause 2.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That clause 2(a) stand part of the Bill.

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

MR TOMMY CHEUNG (in Cantonese): Madam Chairman, I would like to respond to what the Secretary said earlier. She said the duty would be increased only by a few cents. I have in fact stated my opinion, but I would like to say it again.

While there may be just an increase of a few cents for the importers, the ultimate increase would be more than that as the goods go from the importers to wholesalers to the restaurants or from importers to wholesalers to retailers and then to the public. Our colleague, Mr Andrew CHENG from the Democratic Party, already pointed out that the Government would in fact obtain less revenue from the increase. Why does it still insist on the increase? This is exactly the rationale I hold in opposing the increase on this tax item. I hope colleagues from the Democratic Party may change their decision made last week or yesterday and object to the increase in duty on liquor. I also hope colleagues from the Democratic Alliance for Betterment of Hong Kong may, after listening to the opinion from their colleagues in the Hong Kong Federation of Trade Unions, try to understand how very much worried the 160 000 employees are about the effect the increase in liquor duty may have on them. I hope Members can change their mind and object to the increase in duty on liquor.

MR JAMES TIEN (in Cantonese): Madam Chairman, I recall that on a past occasion when the Government proposed an increase in the duty on red wine, many Members felt that red wine was relatively a luxury for the enjoyment of the rich only. Therefore, they thought that even an increase of 60% of the duty was reasonable. But we are now talking about beer, which is obviously not just consumed by the rich; it is also consumed by the middle class and the grassroots. So, the proposed increase will affect all classes of people. Though the Government says the proposed increase is not great, we are talking about the percentage. With deflation still plaguing Hong Kong, the proposed 10% is no

small amount. Moreover, I do not understand how this can be related to cost recovery.

Moreover, Madam Chairman, the Government frequently says it wants to promote tourism. What kind of liquor would tourists, on their visit to Hong Kong, drink, other than enjoying cheap food made possible by a dwindling business? As duty on red wine is so high, they would not drink red wine. They would then drink beer! But now, duty on beer is also being increased. If the duty on beer is increased by 40% at the wholesale level rather than retail level, I trust few countries in the world would levy such a high duty rate. This will certainly affect the tourism industry.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for the Treasury, do you wish to reply?

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I wish to repeat the point I just made, that is, after we have increased the duty on beer, between March and May this year, the quantity of duty-paid beer increased by 3.7% as compared with that of the same period last year. In other words, the increase in the duty on beer has no effect on Hong Kong people, including tourists, and there was conversely an increase in the quantity of beer consumed.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2(a) stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for three minutes.

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

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

Miss Cyd HO, Dr Raymond HO, Mr Martin LEE, Mr Fred LI, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr CHAN Kam-lam, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr Ambrose LAU, Miss Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Dr TANG Siu-tong, Miss LI Fung-ying, Mr Henry WU, Mr Albert CHAN, Dr LO Wing-lok, Mr WONG Sing-chi, Mr IP Kwok-him and Ms Audrey EU voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr LEE Cheuk-yan, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Tommy CHEUNG and Mr Frederick FUNG voted against the motion.

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

THE CHAIRMAN announced that there were 45 Members present, 32 were in favour of the motion and 12 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

MRS SELINA CHOW (in Cantonese): In accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed in

respect of each of the other clauses or amendments to the Revenue Bill 2001, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of each of the other clauses or amendments to the Revenue Bill 2001, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That clause 2(b) stand part of the Bill.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2(b) stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Heading before clause 2.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 3.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move the amendment to clause 3, as set out in the paper circularized to Members.

The purpose of the amendment is to include the fees for issue and renewal of temporary driving licences for motorcycles in clause 3 of the Bill so that such driving licences will be included in the types of driving licences for which a 10% increase in fees has been proposed in the 2001-02 Budget. When we drafted the Bill earlier on, we unwittingly omitted these two items of fees that took effect since September last year. For the sake of fairness, we propose amending clause 3 so that the proposed 10% increase in fees for all driving licences will also apply on the fees for these two types of driving licences.

It is stated in the amendment that the fee for issue of temporary driving licences will increase by \$5, from \$52 at present to \$57 while the fee for renewal of temporary driving licence will increase by \$3, from \$26 at present to \$29.

Madam Chairman, I beg to move.

Proposed amendment

Clause 3 (see Annex VII)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

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

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

Miss Cyd HO, Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mr Bernard CHAN, Dr Philip WONG, Miss Emily LAU, Mr TAM Yiu-chung, Mr Henry WU, Dr LO Wing-lok and Ms Audrey EU voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Dr TANG Siu-tong, Miss LI

Fung-ying, Mr Tommy CHEUNG, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Mr IP Kwok-him voted against the motion.

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

THE CHAIRMAN announced that there were 45 Members present, 12 were in favour of the motion and 32 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As your amendment to clause 3 has been negatived, Secretary for the Treasury, you may not move the relevant amendment to clause 1.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 3 stand part of the Bill. The clause is related to the increase by 10% of the fees for issue or renewal of full driving licences, driving instructor's licence, learner driver's licence, temporary driving licences, duplicate driving licences, international driving permits and duplicate international driving permits.

Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

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

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

Miss Cyd HO, Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mr Bernard CHAN, Dr Philip WONG, Miss Emily LAU, Mr TAM Yiu-chung, Mr Henry WU, Dr LO Wing-lok and Ms Audrey EU voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Dr TANG Siu-tong, Miss LI Fung-ying, Mr Tommy CHEUNG, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Mr IP Kwok-him voted against the motion.

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

THE CHAIRMAN announced that there were 45 Members present, 12 were in favour of the motion and 32 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the motion that clause 3 stand part of the Bill has been negatived, clause 3 is therefore deleted from the Bill.

CLERK (in Cantonese): Heading before clause 3 and clause 4.

CHAIRMAN (in Cantonese): As the heading before clause 3 and clause 4 relate to clause 3, I order that they be deleted from the Bill.

CLERK (in Cantonese): Clause 6.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 6 stand part of the Bill.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

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

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

Miss Cyd HO, Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mr Bernard CHAN, Dr Philip WONG, Miss Emily LAU, Mr TAM Yiu-chung, Miss LI Fung-ying, Mr Henry WU, Dr LO Wing-lok and Ms Audrey EU voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Dr TANG Siu-tong, Mr Tommy CHEUNG, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Mr IP Kwok-him voted against the motion.

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

THE CHAIRMAN announced that there were 46 Members present, 13 were in favour of the motion and 32 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the motion that clause 6 stand part of the Bill has been negatived, clause 6 is therefore deleted from the Bill.

CLERK (in Cantonese): Heading before clause 5, clauses 5 and 7.

CHAIRMAN (in Cantonese): As the heading before clause 5, clauses 5 and 7 relate to clause 6, I order that they be deleted from the bill. The Secretary for the Treasury may not move his amendment to clause 5 and the relevant amendment to clause 1.

CLERK (in Cantonese): Clause 1.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

REVENUE BILL 2001

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, the

Revenue Bill 2001

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

With your leave, Madam President, I would like to take this opportunity to explain the special arrangement to be adopted by the Government as a result of the negating of the proposals to increase vehicle and driving licence fees.

Since the 10% increase in driving licence fees and in vehicle licence fees for private cars, motorcycles and motor-tricycles was negated at the Committee stage, if the Revenue Bill 2001 as amended passes through the Third Reading, the Government will advance the gazettal of the Revenue Bill 2001 as amended to this Friday (that is, 22 June). This means that the Public Revenue Protection Order 2001 will lose effect on the same date. The purpose of this special arrangement is to enable the Transport Department to collect driving licence fees and licence fees for private cars, motorcycles and motor-tricycles according to the old scales as early as possible, so that the work of future refund can be obviated and the inconvenience to the public reduced.

Detailed notices will be issued later by the Transport Department on the specific arrangement relating to the refund of licence fees.

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

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Revenue Bill 2001.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Revenue (No. 2) Bill 2001.

REVENUE (NO. 2) BILL 2001**Resumption of debate on Second Reading which was moved on 25 April 2001**

PRESIDENT (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MISS MARGARET NG: Madam President, as Chairman of the Bills Committee on Revenue Bill 2001 and the Revenue (No. 2) Bill 2001, I wish to briefly report on the deliberations of the Bills Committee on the Revenue (No. 2) Bill 2001.

The Revenue (No. 2) Bill 2001 seeks to amend certain ordinances to give effect to a number of revenue proposals in the 2001-02 Budget. It covers the proposals relating to the maximum amount of self-education expenses deductible for calculation of salaries tax, the air passenger departure tax and the maximum fees for the use of on-street parking spaces.

Members have no comments on the proposal to amend the Inland Revenue Ordinance to increase the maximum amount of self-education expenses deductible from assessable income from \$30,000 to \$40,000.

The Bills Committee has met with representatives of the Helicopters Hong Kong Limited regarding the proposals to increase the air passenger departure tax from \$50 to \$80 and widen the tax base to include helicopter passengers departing from the heliport at the Macau Ferry Terminal. The company has pointed out that while the proposed increase represents only a small fraction of the overall cost of international travel for airline passengers, the impact of imposing the air passengers departure tax on its passengers will be much more significant, representing 5% of their average fare. It has also pointed out that the tax will penalize the helicopter operator relative to its competitors in the price-sensitive Pearl River Delta, such as ferries and buses. Since many alternative modes of transport are available, the company is very concerned that the proposal will stifle its passenger growth.

The Administration has explained that apart from broadening the tax base and raising revenue, the proposal to extend the air passenger departure tax to

cover passengers departing from the Macau Ferry Heliport is made on equity grounds. The Administration considers the proposal fair and equitable as helicopter passengers departing from the Hong Kong International Airport are already required to pay the air passenger departure tax under the existing Air Passenger Departure Tax Ordinance.

To mitigate the impact of the proposal, the Administration has proposed to remove the requirement imposed on the Helicopter Hong Kong Limited to pay the passenger embarkation fee at the rate of \$18 per passenger, when the legislation to extend the air passenger departure tax to all helicopter passengers has been enacted.

As regards the parking meter charges, the Administration proposes to increase the maximum level of on-street parking meter charges from \$2 to \$3 per 15 minutes for both revenue-raising and traffic management reasons.

The Bills Committee notes that at present, there are about 16 900 metered parking spaces in the territory. For traffic management reason, it is the Government's target to contain the utilization of the metered parking spaces to below 85%. As the utilization rates of the majority of these parking spaces have increased in 2001 with most utilization rates well over 85% during peak hours, the Administration considers that the proposed increase would help achieve the objective of maintaining a 15% availability of the metered parking spaces at any time, while bringing about additional revenue for the Government.

Some members of the Bills Committee have indicated their opposition to the proposal to extend the air passenger departure tax to cover all helicopter passengers and the proposed increase in parking meter charges. These members have stated their intention to vote against the relevant provisions.

Thank you, Madam President.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the proposals to increase the maximum amount of self-education expenses deductible for calculation of salaries tax and to levy the air passenger departure tax on air passengers leaving Hong Kong at the Macau Ferry Terminal Heliport. The DAB, however, cannot support the proposed increase in on-street parking meter charges despite the

Secretary for the Treasury had earlier promised to increase parking charges for this financial year only for meters in Yau Tsim Mong, Tsuen Wan, Tuen Mun and Yuen Long districts if the Bill was passed. Firstly, the Secretary did not inform us about the proposal when the Bill was deliberated by the Bills Committee. As the proposal was hurriedly put forward, Members could not find sufficient time for consultation. Secondly, as the Secretary pointed out in her letter, the four districts in which parking charges will be increased are those where there is an acute shortage of on-street parking meters. We do not think the proposal will serve the purpose of reducing the use of on-street parking spaces because drivers will pay the new fees anyway, given the hourly rate for private parking spaces in those districts ranges from \$10 to \$16, with a higher rate for public parking spaces in Yau Tsim Mong District. On the contrary, once the Government raises the meter charges, private car parks will find good reasons to increase their charges. If the Government wants to curb the prolonged occupation of parking spaces by certain persons, I do not think increasing the charges alone will achieve the purpose. Nevertheless, we agree that the Government may consider further or examine how a reasonable utilization rate of on-street parking spaces can be attained for the convenience of drivers.

MRS SELINA CHOW (in Cantonese): Madam President, I rise to speak on behalf of the Liberal Party on some of the proposed increases in charges contained in the Bill.

First of all, I would like to speak on the proposed air passenger departure tax for passengers leaving the territory by helicopter at the Macau Ferry Terminal Heliport and the proposed increase in air passenger departure tax. The Liberal Party supports both proposals. However, the Liberal Party would like to state clearly that we do appreciate the very strong opinions expressed by the Helicopters Hong Kong Limited (HHKL) on the overall policy of the Government on the rent and other charges payable to the Government for the use of the Macau Ferry Terminal — and on the departure tax proposed. The Liberal Party regards the request of the HHKL as justified because it asks the Government to consider a charging policy on helicopters taking into account of the position of helicopters in transportation. It seems that the Government, after some preliminary study, tends to increase the rent and other charges. Though the Liberal Party regards it barely acceptable to impose a departure tax on helicopter passengers, we strongly request that the Government adopt a more

objective attitude in considering other charges on helicopter services, bearing in mind the role played by helicopters in the entire transport industry in Hong Kong.

Regarding the increase in air passenger departure tax, the Liberal Party accepts the government proposal to increase it to \$80. We think the amount is acceptable for the general tourist in comparison with charges in neighbouring airports. So, the Liberal Party would accept the increase.

As regards the proposed increase in on-street parking meter charges, the Liberal Party would barely accept the increase though the Government indicated the increase was modest and localized. We do not think the increase from \$2 to \$3 would cause much consequence. Moreover, the Government has for many years kept the charge at the \$2 level. In fact, the number of car parks has increased greatly. The Liberal Party does not think an increase of \$1 would lead to some drastic increases in car park charges as the two may not be linked. Rather, we think it is the number of parking spaces that will have a determining effect on the charges of car parks. However, we take a different view on the management of on-street parking meters. At the moment, the Government thinks that by increasing the charges, it may temporarily ration the demand and supply of parking spaces. However, the Liberal Party does not think it is the best method. When we look at overseas examples, big cities such as London and Los Angeles, we may see many on-street parking meters there. However, they are there for short-term parking only. The cities do a very good job in inspecting the meters. Therefore, they do not have the problem of abuse of parking spaces. In Hong Kong, however, one may insert a number of coins in the on-street parking meters to buy extended parking time so that some parking spaces are occupied for a whole day, making it impossible for people in need of parking for a short period to find a space. We must understand that some of the parking spaces are located in busy urban areas and some shoppers may need to park their cars there for a brief period of time.

Indeed, the Government is duty-bound to find a way of management to achieve the purpose. Take the example of London again. Insofar as I understand it, they contract out the management and inspection of parking spaces to a third party on a profit-sharing basis. Hence, the contractor will be very keen on inspecting the parking spaces to prevent abuse. I hope the Government may borrow this example to ensure parking spaces are not occupied for unduly long periods by abusers. I think this is a better solution.

With these remarks, and on behalf of the Liberal Party, I support the proposed increases as stated.

MRS MIRIAM LAU (in Cantonese): Madam President, I have no objection to the Government's proposal on increasing air passenger departure tax (APDT), but I do not agree with the government proposal to extend the tax base to include helicopters by way of including heliports in the definition of airport, in addition to the Hong Kong International Airport (HKIA), thus enabling the Government to levy departure tax on helicopter passengers. As representative of the transport and shipping sector, I do not think it is fair to the helicopter operators. The proposal is not just a matter of revenue, but a change in policy. I cannot endorse a policy change by the Government without prior consultation.

The reason is very simple. For example, the Government has been levying duty on diesel against diesel-engined vehicles, except franchised buses. If, however, one day the Government, without discussion or consultation, extends the duty to franchised buses or industries that use diesel, can we accept that this is a matter of revenue rather than policy?

In fact, even when the Government raised or lowered the APDT in the past, its consideration was not just revenue. For instance, in 1994-95, the Government lowered the APDT from \$150 to \$50 per person. It pointed out that a relatively high APDT might have adverse effects on tourism and the economy. In 1997-98, the APDT was reduced from \$100 to \$50 and the Government said the reduction was meant to attract tourists.

Many have the misconception that helicopter services are exclusive to the rich and punters. In fact, a look through the passenger information provided by the helicopter service operators will show that among the passengers are many ordinary people, unknown businessmen and certainly tourists and inevitably some who took the flight to Macau for gambling. However, there were many who took the helicopter to save time for making a business deal.

With the imminent accession of China to the World Trade Organization, there will be more trade activities between China and Hong Kong. As a cosmopolitan city in Asia, Hong Kong, like other cosmopolitan cities, must have the helicopter as a more efficient means of transport for businessmen, especially transport between Hong Kong and the Pearl River Delta Region. Obviously,

the tax may directly injure the development of helicopter services, affecting trade activities between China and Hong Kong. Therefore, we should conduct a review of the relevant policy before deciding whether or not to levy the APDT on helicopter passengers.

If the Government refrains from levying the APDT on helicopter passengers for the time being, it does not mean the present helicopter service operators and passengers do not need to pay tax to the Government. Years ago, the Government entered into an agreement with the private developer to the effect that the heliport at Shun Tak Centre was to be built by the developer and handed over to the Government, which would then rent it to helicopter service operators. The Government is thus making a profit without incurring any costs. Last year alone, the operators paid \$4.7 million in rent to the Government, calculated as a function of the number of passengers (at \$50 per passenger). A rough calculation will show that the cost of each landing and take-off at the heliport at Shun Tak Centre is almost \$1,750. If a helicopter lands or takes off at the HKIA, each exercise will take only \$552. In other words, a helicopter that lands and takes off at Shun Tak Centre pays much more to the Government than otherwise at the HKIA. Is it fair to increase the tax under the circumstances?

Moreover, compared to the price of an air ticket, the \$80 APDT is small, whereas it is not when compared to the charge of taking a helicopter. For airplane passengers, the increase from \$50 to \$80 means a 60% increase but for helicopter passengers, it is a jump from \$18, when they board a helicopter at Shun Tak Centre, to \$80, the new rate if the Bill is passed. That means an increase of over \$60, or an increase of more than three times. I hope Members can consider this point.

Madam President, for the reasons stated above, I, as representative of the transport and shipping sector, cannot at this stage lend my support to the proposed levy of APDT on helicopter passengers.

MR JAMES TIEN (in Cantonese): Madam President, I would add some idea to the speech of the Honourable Mrs Selina CHOW speaking on behalf of the Liberal Party on the proposed increase in on-street parking meter charges.

When the Government first put forward the proposal to increase the on-street parking meter charges in all of the 18 districts in Hong Kong, we raised

our objection to it. We asked the Government: For whose use are on-street parking meters meant? As Mrs CHOW said, and the Government confirms, they are intended for use by drivers in need of short-term parking. Hence, the charge is \$2 for every 15 minutes, not \$8 per hour. For this reason, there is no competition between on-street parking and car parks. The Government, after learning from us that the utilization rate of some on-street parking meters was not high in certain districts, excluded from the 18 districts those four where the utilization rate was as high as 85%. It then decided to keep the charges unchanged for the rest of the districts where the rate is low. This is the main reason for our change of heart.

I note that in the 14 districts where no increases are proposed for on-street parking meter charges, there are adequate car parks, charging at about \$20 per hour. However, car parks do not charge at 15-minute intervals and the minimum charge is for one hour or even two in some car parks. So, despite the new rate of \$12 per hour proposed for the four particularly busy districts, I do not believe car parks would increase their charge to anything more than \$20 per hour because of the new rate.

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

(No Member responded)

PRESIDENT (in Cantonese): I will call upon the Secretary for the Treasury to reply.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, let me first thank the Bills Committee on the Revenue Bill 2001 and the Revenue (No. 2) Bill 2001, in particular its Chairman, Miss Margaret NG, for completing the scrutiny work so quickly and for their support for the Second Reading of the Bills.

The object of the Revenue (No. 2) Bill 2001 is implement three of the revenue proposals made in 2001-02 Budget, that is, the proposals to increase the maximum deductions for training expenses under salaries tax, to increase the air passenger departure tax (APDT) and to widen the tax base to include passengers

departing by helicopter, and to raise the maximum charge of on-street parking meters.

The Government is very pleased to learn that Members in general are in support of the proposed increase in maximum deductions for training expenses under salaries tax as a means of encouraging working adults to pursue continuing and lifelong studies. Members in general also support the proposed increase in APDT from \$50 to \$80. A Member has just now expressed opposition to widening the scope of APDT to include passengers departing by helicopter, saying that this would have a direct impact on the only helicopter services operator at the helicopter pad of the Hong Kong-Macau Ferry Terminal, and that the development of helicopter services in Hong Kong would also be injured.

I wish to point out that the proposal to widen the scope of APDT to include passengers departing by helicopter is actually made on the principle of equity. This is not only because passengers departing by helicopter and those departing from the Hong Kong International Airport are both air passengers, but also because passengers departing by helicopter at the Hong Kong International Airport are already required to pay APDT under the Air Passenger Departure Tax Ordinance. Actually, for both short-distance air ticket and helicopter ticket prices, the \$80 APDT should represent roughly the same percentage proportion in ticket prices.

Although the proposal may result in higher helicopter ticket prices, those who choose to depart by helicopter at the helipad of the Hong Kong-Macau Ferry Terminal should have no difficulty at all in paying APDT. But in order to reduce the impact of APDT on helicopter passengers, we have decided to abolish the embarkation fee of \$18 per passenger collectable by the operator following the passage of the relevant legislative proposal.

We do not think that the levy of the \$80 APDT on passengers departing by helicopter will impede the development of helicopter services in Hong Kong. Actually, in recent years, the Government has put in place a series of measures to facilitate the development of helicopter services. For instance, steps have been taken to identify suitable sites in the urban areas and a helicopter island for helicopter landing; a review on the air traffic arrangements for helicopter services has been conducted; and, operators of commercial helicopter services have been permitted to share the facilities of the Government Flying Service. The Civil Aviation Department is now conducting a consultancy study on the

potential demand for helicopter services, including the potential demand for shuttle helicopter services to and from the Pearl River Delta Region, and the relevant facilities. The study will be completed later this year, and we will consider the possibility of introducing any additional measures as may be required.

As for the lease arrangements between the operator and the Government in respect of the helipad at the Hong Kong-Macau Ferry Terminal, they are specified in the relevant agreement executed by the two parties, and the relevant provisions were laid down following the operator's negotiations with the Government and are subject to regular review. As for how much of the rental is shifted on to helicopter passengers, it should be a commercial decision for the operator. This means that since the rental concerned is not a form of taxation, and also since it is not a fee imposed by the Government on helicopter passengers, it should not be dragged into our discussions on the proposal of extending the scope of APDT to passengers leaving Hong Kong at the helipad of the Hong Kong-Macau Ferry Terminal. Besides, we also do not think that it is at all appropriate to compare the lease arrangements for the helipad with the circumstances of the Hong Kong International Airport, because the locations of the two, their scope of services and respective market demands are vastly different. In fact, the Airport Authority (HA) has drawn up separate agreements with the various airlines, requiring them to use the facilities of the Hong Kong International Airport in accordance with the relevant commercial terms and conditions. The HA will pay part of the revenue and profits from these agreements as dividends to the SAR Government, a shareholder of the Hong Kong International Airport.

Another proposal of the Bill which has aroused controversies among Members is the one on increasing on-street parking meter charges. We have proposed to increase the charges from a maximum of \$2 per 15 minutes at present to a maximum of \$3 per 15 minutes mainly because of financial and traffic management reasons.

For financial reasons, the Government must increase its recurrent revenue to cope with its operating deficit, which started in 1998-99, and which is expected to last into 2004-05. Since on-street parking meter charges have not been increased since 1994, we are therefore of the view that there is room for a mild upward adjustment of the charges.

With respect to traffic management, the policy of designating metered parking spaces is to achieve an appropriate regulation of the demand for parking spaces, so as to ease the traffic congestion caused by circulating vehicles searching for parking spaces, thus achieving a more effective utilization of on-street parking spaces. In this connection, the objective of the Government is to keep the utilization rate of metered parking spaces below 85%. Following the implementation of the proposed maximum charges, the maximum hourly charge for an on-street metered parking space will be \$12, which is still far below the hourly carpark charge of \$20 or more in busy areas. In spite of this, we are still convinced that this rate of increase will reduce the price difference between on-street metered parking spaces and car parks. We therefore believe that the problem of long-term occupation of on-street metered parking spaces during peak hours can be alleviated.

The Transport Department has been conducting regular reviews on the utilization rate of on-street parking spaces. The surveys on metered parking spaces conducted respectively in March 1999 and March 2001 show that the utilization rate of on-street parking spaces continues to be high. The findings of these two surveys show that most on-street metered parking spaces saw increases in utilization rate in 2000. In most cases, the utilization rate during peak hours was far above 85%, and this means that the demand for short-term parking cannot possibly be adequately catered for.

During the scrutiny of the Bill by the Bills Committee, some members expressed reservations about this proposal, mainly because of some recent survey findings of the Transport Department, which indicated that the utilization rate of the on-street metered parking spaces in some particular areas had been lower than 85%. They therefore feared that if the Bill was passed, the Government might introduce a uniform increase in the maximum charges for all metered parking spaces in Hong Kong.

We appreciate the worry of these members, which is why we undertake to implement the proposal as follows after the passage of the Bill:

First, the proposed maximum charge will initially be implemented in four of the 18 districts of Hong Kong only, namely, Yau Tsim Mong, Tsuen Wan, Tuen Mun and Yuen Long. The reason for this is that the problem of excessive demand for on-street parking spaces is most acute in these districts. The average utilization rate of on-street metered parking spaces in these districts is far higher than 85%, and during peak hours, the average rate is even over 90%.

Second, in these four districts, the maximum charge of \$3 per 15 minutes will only be introduced for those parking meters currently charging \$2 per 15 minutes; for the rest of the parking meters, the charges of which are lower than the current maximum level, there will be no adjustment to the proposed maximum level of \$3 per 15 minutes.

Third, we will not implement the proposed maximum charge of \$3 per 15 minutes in the remaining 14 districts during the year 2001-02. We will conduct a review on the utilization of metered parking spaces in these districts in the first half of 2002 and then consult the Legislative Council Panel on Transport on the proposed maximum metered parking charge for these parking meters before making a decision.

The Government expects that although its additional revenue will be reduced as a result of the arrangements mentioned above, it can still effectively alleviate the problem of operating deficit during the Medium Range Forecast period. We are of the view that this administrative measure of phased implementation in different districts is both pragmatic and transparent. Besides, we also think that this arrangement can strike a proper balance between increasing revenue and improving traffic management. For this reason, I sincerely hope that Members, especially those who expressed their opposition earlier on, can consider our proposal objectively and rationally and support it.

To sum up, for fear of adding to the burden of the general public during the period of economic recovery, we have just proposed to introduce very mild adjustments for some individual items on a very selective basis in the 2001-02 Budget. Therefore, the revenue proposals mentioned above are all meant to increase the recurrent revenue of the Government and reduce the overall fiscal deficit and operating deficit in the Medium Range Forecast period without affecting our overall economic growth and people's basic livelihood.

With these remarks, Madam President, I urge the Legislative Council to pass this Bill.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Revenue (No. 2) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Revenue (No. 2) Bill 2001.

Council went into Committee.

Committee Stage

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

REVENUE (NO. 2) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Revenue (No. 2) Bill 2001.

CLERK (in Cantonese): Heading before clause 2 and clause 2.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4 and 6.

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

MISS MARGARET NG (in Cantonese): Madam Chairman, I agree to the proposals in the Bill on the whole, but I have reservations about the proposal to extend the air passenger departure tax to cover helicopter passengers departing Hong Kong at the Macau Ferry Terminal. The main reason for my reservations is that I do not think the proposal is just a revenue proposal. Rather, it represents a change in the policy on traffic and transport. If the Government wants to change a policy, it should do so via proper procedures, that is, it must consult the Legislative Council, allow the Council to solicit opinions from the trades affected and then effect the change by amending existing laws only after discussions. The Government should not try to achieve a policy change by passing a bill on revenue proposal.

Madam Chairman, I have no fixed stance at this stage on the question of whether the tax base of air passenger departure tax should be widened. However, I will vote against the relevant proposal on the grounds that a law must be enacted in accordance with proper legislative principles and procedures. Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for the Treasury, do you wish to reply?

(The Secretary for the Treasury indicated that she did not wish to reply)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 3, 4 and 6 stand part of the Bill.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for three minutes.

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

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

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Martin LEE, Mr Fred LI, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr LAU Wong-fat, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Mr Henry WU, Mr Tommy CHEUNG, Mr Albert CHAN, Dr LO Wing-lok, Mr WONG Sing-chi and Mr IP Kwok-him voted for the motion.

Miss Cyd HO, Mr LEE Cheuk-yan, Miss Margaret NG, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Mrs Miriam LAU, Mr Ambrose LAU, Miss Emily LAU, Dr TANG Siu-tong, Miss LI Fung-ying, Mr Michael MAK, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

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

THE CHAIRMAN announced that there were 44 Members present, 28 were in favour of the motion and 15 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

MRS SELINA CHOW (in Cantonese): Madam Chairman, 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 each of the other clauses or amendments to the Revenue (No. 2) Bill 2001, this Council do proceed to such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies

through direct elections and by the Election Committee, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of each of the other clauses or amendments to the Revenue (No. 2) Bill 2001, this Council do proceed to such divisions immediately after the division bell has been rung for one minute.

CLERK (in Cantonese): Clause 5.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That clause 5 stand part of the Bill. Will those in favour please raise their hands.

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Heading before clause 3 and clause 1.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Heading before clause 7 and clause 7.

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

(No Member indicated a wish to speak)

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

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

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

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

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mrs Selina CHOW, Dr Philip WONG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Mr TAM Yiu-chung, Dr TANG Siu-tong, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok and Ms Audrey EU voted for the motion.

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

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

THE CHAIRMAN announced that there were 44 Members present, 18 were in favour of the motion and 25 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the motion that heading before clause 7 and clause 7 stand part of the Bill has been negatived, heading before clause 7 and clause 7 are therefore deleted from the Bill.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

CHAIRMAN (in Cantonese): Bill: Third Reading.

REVENUE (NO. 2) BILL 2001

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, the

Revenue (No. 2) Bill 2001

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue (No. 2) Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Revenue Bill (No. 2) 2001.

MOTION

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Dutiable Commodities Ordinance.

PROPOSED RESOLUTION UNDER THE DUTIABLE COMMODITIES ORDINANCE

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I move that the resolution as set out on the Agenda be approved. The resolution seeks to extend the existing concessionary duty rate on ultra low sulphur diesel (ULSD) of \$1.11 per litre for another nine months, that is, from 1 July 2001 to 31 March 2002.

Under the existing Dutiable Commodities Ordinance, the duty rate on regular motor diesel is \$2.89 per litre and that on ULSD will be adjusted from the existing \$1.11 per litre to \$2.00 per litre with effect from 1 July this year. The ULSD duty rate so adjusted will remain a concessionary duty rate, as it will still be lower than the duty rate on regular diesel by \$0.89 per litre. Nevertheless, the transport sector is concerned that the duty rate adjustment by \$0.89 per litre will drive up the pump price of diesel, and hence impose an unbearable burden on the industry. Having considered their views, the Government has decided to further defer the adjustment of the duty rate on ULSD. We have taken this decision in the light of both the likely effect of the recent slowdown in our overall economic growth forecast on the transport and related sectors, and the Government's current overall fiscal position.

Madam President, I believe Members will recall that the Government has made a series of concessions on diesel duty for different reasons in the past three years. The duty rate on regular diesel was \$2.89 per litre before June 1998. In June 1998, the duty rate on regular diesel was reduced by 30%, from \$2.89 per litre to \$2 per litre, as a measure to provide economic relief for the transport sector during the Asian financial crisis. In July last year, to tie in with the introduction of ULSD, we provided further duty concession by lowering the duty rate to \$1.11 per litre, so as to facilitate a switch to the cleaner ULSD, on environmental grounds. This duty rate was scheduled for revision to \$2 per litre on 1 January this year and then to \$2.89 per litre on 1 January next year. In December last year, the Government postponed the adjustment of the duty rate

to \$2 per litre by six months till 30 June this year, again as a special relief measure for the transport sector. The above relief measures have cost the Government a total of \$2.7 billion in recurrent revenue.

We estimate that the extension of the existing duty rate on ULSD for another nine months will result in a revenue loss of \$680 million for 2001-02, thereby increasing the projected deficit for 2001-02 from \$3 billion to \$3.7 billion.

I would like to point out that since ULSD has now completely replaced regular diesel as fuel for diesel vehicles in Hong Kong and filling stations are no longer selling regular motor diesel, from the sheer environmental protection perspective, the Government considers there is no longer any need to continue using duty concession as a means of encouraging the supply of ULSD by oil companies and encouraging its use by the transport sector. In other words, the existing duty differential of \$1.78 per litre between ULSD and regular diesel has become entirely a special economic measure for the transport sector. As such, any reviews on the ULSD duty rate in future will mainly be conducted having regard to the overall fiscal position of the Government, the economic environment and the state of the transport sector. It is worth noting that the duty on ULSD is an important source of recurrent revenue for the Government, and we estimate that we will have to face with successive operating deficits from 1998-99 to 2004-05. We will announce the appropriate duty rate of ULSD in the context of the 2002-03 Budget. Pending this announcement by the Financial Secretary, the duty rate on ULSD effective on 1 April 2002 will remain at \$2.89 per litre, which is equivalent to the existing duty rate on regular motor diesel.

Madam President, I believe that the majority of Members will support this resolution moved by the Government. Thank you.

The Secretary for the Treasury moved the following motion:

"That the Dutiable Commodities Ordinance be amended, in Part III of Schedule 1 –

(a) in paragraph 1A(a) –

(i) by repealing "30 June 2001" and substituting "31 March 2002";

- (ii) by adding "and" at the end;
- (b) by repealing paragraph 1A(b) and substituting -
" (b) from 1 April 2002, at \$2.89 per litre. ";
- (c) by repealing paragraph 1A(c). "

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

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

MRS MIRIAM LAU (in Cantonese): Madam President, I welcome the Government's proactive move to propose a resolution on extending the concessionary duty rate on ULSD from 30 June this year to 31 March next year.

Earlier on, a few dozen or so transport associations of different types diesel vehicles petitioned the Chief Executive and Members of the Executive Council on an extension of the concessionary duty rate period on ULSD to such time until our economy recovered. This is the aspiration of the industry. Regrettably, the Government has only extended the concessionary period to 31 March next year and this has, in fact, not met the request of the industry. Nevertheless, members of the industry are deeply grateful to the Government for adopting such a sympathetic attitude towards the industry. Moreover, this also shows, to a certain extent, that the Government is also aware of the difficulties currently experienced by the transport industry.

In fact, different economic data indicate that the economy of Hong Kong has not yet fully recovered. The high unemployment rate in the industry reflects that both the passenger and freight transport industries are still in a very difficult situation. What is even worse is that the economic outlook of Japan is bleak and there are signs of slowdown in the United States economy. Under the influence of these external economic factors, the outlook of trade is not optimistic and the operating conditions of the transport industry will face even more serious difficulties. If the Government does not freeze the duty rate on

ULSD, it will not only plunge the transport industry into a plight, but also undermine the competitiveness of our freight forwarding industry as well as that of our import and export industries. This will also slow down the pace of our economic recovery.

The extension of the concessionary duty rate period for ULSD will certainly offer temporary relief to the transport industry. However, the fate of the industry is still in the hands of the Government, for the current concessionary period will only be extended to March next year and nobody knows what our economy will be like at that time. Naturally, I hope that the economy of Hong Kong can fully recover by then. The transport industry requests to extend the concessionary duty rate period to such time when the economy of Hong Kong recovers, but the Government has decided to extend the concessionary period to March next year only. I hope the Government has really got a crystal ball and can thus foresee that our economy will become better by March next year. This is actually our common wish.

In November last year, a motion was unanimously passed by this Council. In addition to asking for an extension of the concessionary period, we also urged the Government to carry out an earliest possible review before it decided on an appropriate duty rate for ULSD in 2002. Although the Government has once again extended the concessionary period, I still hope it can keep a close watch on the domestic and external economic conditions of Hong Kong. Moreover, it should also conduct a comprehensive review before March next year before determining an appropriate duty rate for ULSD to be implemented after 1 April next year.

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

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

MR CHAN KWOK KEUNG (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) and the Hong Kong Federation of Trade Unions (FTU) support the Government's extension of the concessionary period. The Government has proposed to extend the effective period for nine months.

In December last year, I remarked that I hoped the unfavourable forecasts made by the then Financial Secretary for 2001 would not become true. Unfortunately, the performance of the Hong Kong economy is not favourable at present and the transport industry is now experiencing the full adverse impact. We may even say that the business of the transport industry is even worse than that of the first half of last year.

In mid-May, the FTU, DAB and a group of representatives from the transport industry met some officials from the Finance Bureau, to reflect the difficulties of the industry to the Government, and to ask for an extension of the concessionary period. On that day, an official of the Finance Bureau said the Government noticed a phenomenon, that is, that there had been a recent increase in the number of people joining the freight transport industry. He said that under normal circumstances, an industry that attracted newcomers must pay well. So, he wondered why the industry still claimed that its business was very difficult.

The representatives of the container truck industry explained that many of the newcomers were formerly employees of transport companies. However, more and more transport companies had forced their drivers to switch over to self-employment and their burden had increased greatly for they had to make instalment payments on their vehicles, take out insurance, and so on. This greatly increases their expenditure and their income is unstable. This is the background to such a phenomenon. I think if the Government only notices that there is an apparent increase in the number of newcomers without understanding the reason behind the change, then it cannot really appreciate what difficult lives the grassroots are leading.

On the same day, the representatives of the taxi industry also said that the poor business of the taxi industry, in particular during night shifts, was beyond the imagination of outsiders. Though the taxis of Hong Kong are now switching over to LPG, more than 10 000-odd taxis are still using ULSD, and the drivers concerned also hope that the Government can extend the concessionary period for ULSD. In fact, the business condition of the taxi industry is no longer what it used to be. At present, during holidays, most of the Hong Kong people who wish to do some spending do not do so in Hong Kong, and taxis really do not have too many passengers these days. Besides, the number of people taking taxis home after attending banquets or social functions has also decreased. This is not only due to competition from buses, but also because

there are actually fewer banquets and night-time entertainment. Well, all those in the freight forwarding or passenger industries would have to spend an additional sum ranging from several hundred dollars to \$2,000 or \$3,000 on fuel, if the Government does not extend the concessionary period. This will have a great impact on them and their families.

The willingness of the Government to extend the concessionary period will alleviate the pressing difficulties of drivers and vehicle owners in the transport industry. However, today I dare not be too optimistic about the progress of our economic recovery, and about any improvements to the livelihood of drivers and owners nine months down the road. Though Hong Kong has once or twice experienced double-digit economic growth over the past few years, most of the masses have been unable to benefit as a result. There is obviously a major problem with the structure of our economy. At present, people in various sectors are predicting that the downturn in the European and United States economy will have an adverse impact on the export demand of Hong Kong and China. Moreover, it is yet unknown as to when the domestic consumption of Hong Kong can start to improve. The transport industry, as an industry that relies on busy economic activities to prosper, can only wait until the economy of Hong Kong truly recovers. Therefore, I do not think that the ULSD duty rate applicable after April 2002 should be set at too high a level. The DAB and the FTU urge the Financial Secretary and the Secretary for the Treasury to continue to pay regard to the needs of the people and show concern about the livelihood of those in the transport industry. They should also carefully assess the effect of the duty rate of ULSD on the transport industry as a whole before deciding on the actual duty rate.

Madam President, I so submit.

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

(No Member responded)

PRESIDENT (in Cantonese): Secretary for the Treasury, do you wish to reply?

(The Secretary for the Treasury indicated that she did not wish to reply)

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

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Honourable Members, it is now 9.44 pm and I now adjourn the Council until 2.30 pm tomorrow.

Suspended accordingly at sixteen minutes to Ten o'clock.

WRITTEN ANSWER

Written answer by the Secretary for Justice to Ms Audrey EU's supplementary question to Question 1

Legislative provisions amended in the light of the
Bill of Rights Ordinance/International Covenant on Civil and Political Rights

*Amending legislation**(Date of Commencement of Operation)**Legislation*

- | | |
|---|--|
| 1. Prevention of Bribery (Amendment) Ordinance 1992 (29 May 1992) | 1. Prevention of Bribery Ordinance (Cap. 201) sections 16, 17, 18 and 30 |
| 2. Independent Commission Against Corruption (Amendment) Ordinance 1992 (29 May 1992) | 2. Independent Commission Against Corruption Ordinance (Cap. 204) sections 10 and 13 |
| 3. Police Force (Amendment) Ordinance 1992 (26 June 1992) | 3. Police Force Ordinance (Cap. 232) sections 50, 51, 54 and 56 |
| 4. Crimes (Amendment) (No. 2) Ordinance 1992 (17 July 1992) | 4. Crimes Ordinance (Cap. 200) sections 9(3) and 160 |
| 5. Immigration (Amendment) Ordinance 1992 (4 June 1992) | 5. Immigration Ordinance (Cap. 115) sections 13, 17, 28, 29, 31, 36, 37K and 53 |
| 6. Immigration (Amendment) Ordinance 1993 (26 November 1993) | Immigration Ordinance (Cap. 115) section 37K

Immigration Regulations (Cap. 115 sub. leg.) |

WRITTEN ANSWER — *Continued*

<i>Amending legislation</i>		<i>Legislation</i>	
<i>(Date of Commencement of Operation)</i>			
7.	Societies (Amendment) Ordinance 1992 (17 July 1992)*	6.	Societies Ordinance (Cap. 151) sections 2, 3, 5-25, 27-38, 40-42
8.	Dangerous Drugs (Amendment) (No. 2) Ordinance 1992 (26 June 1992)	7.	Dangerous Drugs Ordinance (Cap. 134) sections 45, 46, 47 and 48
9.	Dangerous Drugs (Amendment) Ordinance 1994 (1 October 1994)		Dangerous Drugs Ordinance (Cap. 134) sections 47 and 52
10.	Acetylating Substances (Control) (Amendment) Ordinance 1992 (26 June 1992)	8.	Acetylating Substances (Control) Ordinance (Cap. 145) sections 10 and 11
11.	Control of Chemicals Ordinance (1 January 1996)		Acetylating Substances (Control) Ordinance (Cap. 145) section 10
12.	Securities and Futures Commission (Amendment) (No. 2) Ordinance (1 February 1993)	9.	Securities and Futures Commission Ordinance (Cap. 24) section 18
13.	Pensions Modification Ordinance 1993 (1 February 1993)	10.	Widows' and Children's Pensions Ordinance (Cap. 79) sections 1, 2, 3, 5, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19 and 24
14.	Pensions Ordinances and Regulations (Miscellaneous Amendments) Ordinance 1993 (15 January 1993)	11.	Pensions Ordinance (Cap. 89) sections 18 and 19A Pensions Regulations (Cap. 89 sub. leg), Regulations 9 and 21

* Those amendments made to the Societies Ordinance in 1992 and to the Public Order Ordinance in 1995 which contravened the Basic Law were not adopted by the Standing Committee of the National People's Congress of the People's Republic of China as part of the laws of the Hong Kong Special Administrative Region. Further amendments to the two Ordinances were subsequently made in 1997.

WRITTEN ANSWER — *Continued*

<i>Amending legislation</i> (Date of Commencement of Operation)	<i>Legislation</i>
	12. Widows and Orphans Pension Ordinance (Cap. 94) section 19
	13. Pension Benefits Ordinance (Cap. 99) sections 19 and 25
	Pension Benefits Regulations (Cap. 99 sub. leg.) Regulations 8 and 21
	14. Pension Benefits (Judicial Officers) Ordinance (Cap. 401) sections 20 and 27
	Pension Benefits (Judicial Officers) Regulations (Cap. 401 sub. leg.) Regulations 8 and 20
15. Parent And Child Ordinance (19 June 1993 and — in relation to the Guardianship of Minors Ordinance — 19 March 1993)	15. Guardianship of Minors Ordinance (Cap. 13) sections 3, 4, 10, 11, 12 and 21
	16. Intestates' Estates Ordinance (Cap. 73) sections 2 and 3A
	17. Deceased's Family Maintenance Ordinance (Cap. 129) section 2
	18. Civil Aviation (Births, Deaths and Missing Persons) Ordinance (Cap. 173) section 2

WRITTEN ANSWER — *Continued*

<i>Amending legislation</i> (Date of Commencement of Operation)	<i>Legislation</i>
	Civil Aviation (Births, Deaths and Missing Persons) Regulations (Cap. 173 sub. leg.) Regulations 6 and 7, Forms 1 and 3 in the Schedule
	19. Births and Deaths Registration Ordinance (Cap. 174) sections 12, 12A, 12B, 12C and 12D
	20. Legitimacy Ordinance (Cap. 184) sections 10 and 11
	21. Adoption Ordinance (Cap. 290) section 2
16. Television (Amendment) Ordinance 1993 (2 April 1993)	22. Television Ordinance (Cap. 52) sections 14, 27, 29, 33, 35, 36 and 39
	23. Telecommunication Ordinance (Cap. 106) section 13M
	24. Broadcasting Authority Ordinance (Cap. 391) section 18
17. Inland Revenue (Amendment) (No. 3) Ordinance 1993 (9 July 1993)	25. Inland Revenue Ordinance (Cap. 112) section 77
18. Brewin Trust Fund (Amendment) Ordinance 1994 (22 April 1994)	26. Brewin Trust Fund Ordinance (Cap. 1077)
19. Travel Agents (Amendment) Ordinance 1994 (3 June 1994)	27. Travel Agents Ordinance (Cap. 218) section 29

WRITTEN ANSWER — *Continued*

<i>Amending legislation</i> (Date of Commencement of Operation)	<i>Legislation</i>
20. Building (Amendment) Ordinance 1994 (16 November 1994)	28. Buildings Ordinance (Cap. 123) sections 3, 11, Parts VI and VII
21. Road Traffic (Amendment) (No. 2) Ordinance 1994 (28 October 1994)	29. Road Traffic Ordinance (Cap. 374) section 17
22. Administration of Justice (Miscellaneous Provisions) Ordinance 1995 (1 April 1995)	30. Summary Offences Ordinance (Cap. 228) sections 8(d), 30 31. Theft Ordinance (Cap. 210) sections 28(2), 29(6)(a) 32. Massage Establishments Ordinance (Cap. 266) section 4(4) 33. Criminal Procedure Ordinance (Cap. 221) section 83XX(3)(a)
23. Newspapers Registration and Distribution (Amendment) Regulation 1995 (22 June 1995)	34. Newspapers Registration and Distribution (Cap. 268 sub. leg.), Regulations 3 and 14
24. News Agencies Registration (Amendment) Regulation 1995 (22 June 1995)	35. News Agencies Registration Regulations (Cap. 268 sub. leg.), Regulation 4
25. Emergency (Requisition) (Repeal) Order 1995 (23 June 1995)	36. Emergency (Requisition) (Use of Land by Her Majesty's Military Forces) (Calfs Head) Order, Emergency (Requisition) (Use of Land by Her Majesty's Military Forces) (Chau Tau Range) Order, Emergency (Requisition) (Use of Land by Her Majesty's Military

WRITTEN ANSWER — *Continued**Amending legislation**(Date of Commencement of Operation)**Legislation*

- | | | |
|-----|--|---|
| | | Forces) (Sam Po) Order and
Emergency (Requisition) (Use of
Land by Her Majesty's Military
Forces) (San Wai) Order (Cap. 241
sub. leg.) |
| 26. | Emergency (Deportation and Detention)
(Forms) (Repeal) Order 1995
(23 June 1995) | 37. Emergency (Deportation and
Detention) (Forms) Order
(Cap. 241 sub. leg.) |
| 27. | Appointment of Places of Detention
(Consolidation) (Repeal) Notice 1995
(23 June 1995) | 38. Appointment of Places of Detention
(Consolidation) Notice (Cap. 241
sub. leg.) |
| 28. | Emergency Regulations (Repeal) Order
1995 (23 June 1995) | 39. Emergency (Deportation and
Detention) Regulations, Emergency
(Principal) Regulations and
Emergency (Requisition) Regulations
(Cap. 241 sub. leg.) |
| 29. | Emergency (Deportation and Detention)
(Advisory Tribunal) (Repeal) Rules 1995
(23 June 1995) | 40. Emergency (Deportation and
Detention) (Advisory Tribunal) Rules
(Cap. 241 sub. leg.) |
| 30. | Public Order (Amendment) Ordinance
1995 (22 December 1995)* | 41. Public Order Ordinance (Cap. 245)
sections 6, 9, 13, 14, 17, 17D |
| | | 42. Summary Offences Ordinance
(Cap. 228) section 4(29) |

* Those amendments made to the Societies Ordinance in 1992 and to the Public Order Ordinance in 1995 which contravened the Basic Law were not adopted by the Standing Committee of the National People's Congress of the People's Republic of China as part of the laws of the Hong Kong Special Administrative Region. Further amendments to the two Ordinances were subsequently made in 1997.

WRITTEN ANSWER — *Continued*

<i>Amending legislation</i> <i>(Date of Commencement of Operation)</i>	<i>Legislation</i>
31. Public Entertainment and Amusement (Miscellaneous Provisions) Ordinance 1995 (28 July 1995)	43. Places of Public Entertainment Ordinance (Cap. 172) section 8(2)
32. Administration of Justice (Miscellaneous Provisions) (No. 2) Ordinance 1995 (1 September 1995)	44. Judicial Proceedings (Regulation of Reports) Ordinance (Cap. 287) section 3(1)(a)
	45. Defamation Ordinance (Cap. 21) section 6
	46. Complex Commercial Crimes Ordinance (Cap. 394) section 19
	47. Criminal Procedure Ordinance (Cap. 221) section 123
	48. Probation of Offenders Ordinance (Cap. 298) section 3(6)
	49. Community Services Orders Ordinance (Cap. 378) section 5(3)(b)
	50. Protection of Children and Juveniles Ordinance (Cap. 213) section 34(1A)
	51. Juvenile Offenders Ordinance (Cap. 226) section 3D(4)
	52. Summary Offences Ordinance (Cap. 228) section 17

WRITTEN ANSWER — *Continued*

<i>Amending legislation</i> (Date of Commencement of Operation)	<i>Legislation</i>
33. Electoral Provisions (Miscellaneous Amendments) Ordinance 1995 (21 July 1995)	53. Electoral Provisions Ordinance (Cap. 367) section 18(2)
	54. Legislative Council (Electoral Provisions) Ordinance (Cap. 381) section 20(2)
34. Television (Programmes) (Amendment) Regulation 1995 (21 July 1995)	55. Television (Programmes) Regulations (Cap. 52 sub. leg.), Regulation 4
35. Commercial Television (Advertising) (Amendment) Regulation 1995 (21 July 1995)	56. Commercial Television (Advertising) Regulations (Cap. 52 sub. leg.), Regulation 6 [The Regulations were repealed on 30 May 1997 and replaced by Television (Advertising) Regulation]
36. Interpretation and General Clauses (Amendment) Ordinance 1995 (1 August 1996)	57. Interpretation and General Clauses Ordinance (Cap. 1) Part XII
37. Telecommunication (Amendment) Ordinance 1996 (1 November 1996)	58. Telecommunication Ordinance (Cap. 106) sections 13C and 28
38. Mental Health (Amendment) Regulation 1996 (1 November 1996)	59. Mental Health Regulation (Cap. 136 sub. leg.) Regulations 1A, 4, 5, 5A, 5B, 5C, 5D, 5E, 5F, 6, 7, 8, 9, 10
39. Prison (Amendment) Rules 1997 (28 June 1997)	60. Prison Rules (Cap. 234 sub. leg.) Rules 47, 47A, 47B, 47C, Rules 55, 56, 61, 63, 65, 76, 114(2), 206, 210, 214 and 245 Rules 102 and 239(1)(e) deleted.

WRITTEN ANSWER — *Continued*

<i>Amending legislation</i>		
<i>(Date of Commencement of Operation)</i>		<i>Legislation</i>
40.	Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance 1997 (27 June 1997)	61. Marriage Ordinance (Cap. 181) sections 14, 15, 17, 18A, 39 and Third Schedule added
41.	Stamp Duty (Amendment) (No. 2) Ordinance 1998 (1 May 1998)	62. Stamp Duty Ordinance (Cap. 117) section 14

Annex II

WRITTEN ANSWER

Written answer by the Secretary for Security to Miss Emily LAU's supplementary question to Question 4

The following statistics on One-way Permit holders entering Hong Kong in 2000 are provided by the Administration for Members' reference.

Table (a): Number and percentage of One-way Permit holders entering Hong Kong in 2000 by age by sex

<i>Age group</i>	<i>Male</i>		<i>Female</i>		<i>Total</i>	
	<i>No.</i>	<i>%*</i>	<i>No.</i>	<i>%*</i>	<i>No.</i>	<i>%*</i>
Below 5	3 699	2.3	3 352	2.2	7 051	2.2
5 - 9	2 721	1.3	2 649	1.3	5 370	1.3
10 - 14	3 503	1.5	3 700	1.7	7 203	1.6
15 - 19	1 316	0.6	1 338	0.6	2 654	0.6
20 - 24	382	0.2	461	0.2	843	0.2
25 - 29	1 637	0.7	5 631	2.1	7 268	1.4
30 - 34	1 363	0.5	8 538	2.5	9 901	1.6
35 - 39	888	0.3	5 531	1.4	6 419	0.9
40 - 44	613	0.2	1 996	0.6	2 609	0.4
45 - 49	381	0.1	1 282	0.4	1 663	0.3
50 - 54	242	0.1	1 154	0.5	1 396	0.3
55 - 59	137	0.1	1 018	0.8	1 155	0.4
60+	541	0.1	3 457	0.6	3 998	0.4
All ages	17 423	0.5	40 107	1.1	57 530	0.8

* : % refers to percentage in the same age group of Hong Kong end-2000 population.

Figures are rounded to the nearest one decimal place.

WRITTEN ANSWER — *Continued*

Table (b): Number and percentage of Certificate of Entitlement holders entering Hong Kong from the Mainland in 2000 by age by sex

<i>Age Group</i>	<i>Male</i>		<i>Female</i>		<i>Both Sexes</i>	
	<i>No.</i>	<i>%*</i>	<i>No.</i>	<i>%*</i>	<i>No.</i>	<i>%*</i>
Below 5	3 522	95.2	3 151	94.0	6 673	94.6
5 - 9	2 208	81.1	2 163	81.7	4 371	81.4
10 - 14	2 725	77.8	2 939	79.4	5 664	78.6
15 - 19	917	69.7	1 057	79.0	1 974	74.4
20 - 24	369	96.6	406	88.1	775	91.9
25 - 29	1 546	94.4	1 757	31.2	3 303	45.4
30 - 34	1 040	76.3	1 231	14.4	2 271	22.9
35 - 39	456	51.4	441	8.0	897	14.0
40 - 44	172	28.1	153	7.7	325	12.5
45 - 49	9	2.4	7	0.5	16	1.0
50 - 54	4	1.7	1	0.1	5	0.4
55 - 59	-	-	1	0.1	1	0.1
60+	-	-	-	-	-	-
All ages	12 968	74.4	13 307	33.2	26 275	45.7

* : % refers to percentage in the same age group of all One-way Permit holders entering Hong Kong in 2000. Figures are rounded to the nearest one decimal place.

WRITTEN ANSWER — *Continued*

Table (c): Number and percentage of One-way Permit holders entering Hong Kong to join immediate family member(s) (that is, spouse/parent/children) in 2000 by age by sex

<i>Age Group</i>	<i>Male</i>		<i>Female</i>		<i>Both Sexes</i>	
	<i>No.</i>	<i>%*</i>	<i>No.</i>	<i>%*</i>	<i>No.</i>	<i>%*</i>
Below 5	3 698	100.0	3 350	99.9	7 048	100.0
5 - 9	2 719	99.9	2 647	99.9	5 366	99.9
10 - 14	3 500	99.9	3 694	99.8	7 194	99.9
15 - 19	1 314	99.8	1 336	99.9	2 650	99.8
20 - 24	378	99.0	455	98.7	833	98.8
25 - 29	1 623	99.1	5 620	99.8	7 243	99.7
30 - 34	1 343	98.5	8 526	99.9	9 869	99.7
35 - 39	850	95.7	5 518	99.8	6 368	99.2
40 - 44	580	94.6	1 984	99.4	2 564	98.3
45 - 49	352	92.4	1 278	99.7	1 630	98.0
50 - 54	239	98.8	1 151	99.7	1 390	99.6
55 - 59	137	100.0	1 017	99.9	1 154	99.9
60+	541	100.0	3 446	99.7	3 987	99.7
All ages	17 274	99.1	40 022	99.8	57 296	99.6

* : % refers to percentage in the same age group of all One-way Permit holders entering Hong Kong in 2000. Figures are rounded to the nearest one decimal place.

WRITTEN ANSWER — *Continued*

Table (d): Number of One-way Permit holders by age group by educational attainment, 1997-2000

<i>Educational Attainment</i> *	<i>1997</i>		<i>1998</i>		<i>1999</i>		<i>2000</i>		<i>Change in % point(s) of</i>	
	<i>% to</i>		<i>% to</i>		<i>% to</i>		<i>% to</i>		<i>2000/</i>	<i>2000/</i>
	<i>No.</i>	<i>total</i>	<i>No.</i>	<i>total</i>	<i>No.</i>	<i>total</i>	<i>No.</i>	<i>total</i>	<i>1999</i>	<i>1998</i>
<i>(1) Persons aged below 5</i>										
No Schooling/Kindergarten	2 139	100.0	2 272	100.0	9 144	100.0	7 051	100.0	-	-
Total	2 139	100.0	2 272	100.0	9 144	100.0	7 051	100.0		
<i>(2) Persons aged 5-9</i>										
No Schooling/Kindergarten	1 385	27.8	2 196	18.1	3 761	44.8	1 840	34.3	-10.5	16.2
Primary	3 602	72.2	9 934	81.9	4 639	55.2	3 530	65.7	10.5	-16.2
Total	4 987	100.0	12 130	100.0	8 400	100.0	5 370	100.0		
<i>(3) Persons aged 10-14</i>										
No Schooling/Kindergarten	76	1.0	189	1.2	137	2.2	135	1.9	-0.3	0.7
Primary	5 424	70.2	12 425	78.8	4 490	72.8	5 512	76.5	3.7	-2.3
Secondary	2 224	28.8	3 155	20.0	1 539	25.0	1 556	21.6	-3.4	1.6
Total	7 724	100.0	15 769	100.0	6 166	100.0	7 203	100.0		

WRITTEN ANSWER — Continued

<i>Educational Attainment *</i>	1997		1998		1999		2000		<i>Change in % point(s) of</i>	
	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>2000/ 1999</i>	<i>2000/ 1998</i>
<i>(4) Persons aged 15-19</i>										
No Schooling/Kindergarten	15	0.4	22	0.8	18	0.7	20	0.8	#	-
Primary	225	6.5	277	9.5	136	5.6	308	11.6	6.0	2.1
Secondary	3 184	91.4	2 575	88.6	2 246	92.8	2 279	85.9	-6.9	-2.7
Tertiary	61	1.8	32	1.1	20	0.8	47	1.8	0.9	0.7
Total	3 485	100.0	2 906	100.0	2 420	100.0	2 654	100.0		
<i>(5) Persons aged 20-24</i>										
No Schooling/Kindergarten	25	0.6	26	1.6	7	1.0	11	1.3	0.3	-0.3
Primary	317	7.8	97	6.0	34	4.7	64	7.6	2.9	1.6
Secondary	3 146	77.2	1 218	75.1	548	75.6	599	71.1	-4.5	-4.0
Tertiary	586	14.4	281	17.3	136	18.8	169	20.0	1.3	2.7
Total	4 074	100.0	1 622	100.0	725	100.0	843	100.0		
<i>(6) Persons aged 25-29</i>										
No Schooling/Kindergarten	43	0.9	25	2.2	49	1.1	52	0.7	-0.4	-1.5
Primary	472	9.9	133	11.7	353	7.9	1 374	18.9	11.0	7.2
Secondary	3 448	72.2	771	68.0	3 639	81.2	5 207	71.6	-9.5	3.6
Tertiary	812	17.0	204	18.0	442	9.9	635	8.7	-1.1	-9.3
Total	4 775	100.0	1 133	100.0	4 483	100.0	7 268	100.0		

WRITTEN ANSWER — *Continued*

<i>Educational Attainment *</i>	1997		1998		1999		2000		<i>Change in % point(s) of</i>	
	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>2000/1999</i>	<i>2000/1998</i>
<i>(7) Persons aged 30-34</i>										
No Schooling/Kindergarten	96	2.4	202	7.3	246	2.9	136	1.4	-1.5	-5.9
Primary	777	19.8	939	33.7	2 076	24.2	2 992	30.2	6.0	-3.5
Secondary	2 530	64.4	1 449	52.0	5 856	68.4	6 260	63.2	-5.2	11.2
Tertiary	523	13.3	195	7.0	383	4.5	513	5.2	0.7	-1.8
Total	3 926	100.0	2 785	100.0	8 561	100.0	9 901	100.0		
<i>(8) Persons aged 35-39</i>										
No Schooling/Kindergarten	358	6.5	645	11.3	325	4.3	174	2.7	-1.6	-8.5
Primary	2 137	38.9	2 382	41.6	2 293	30.1	2 190	34.1	4.0	-7.4
Secondary	2 686	48.9	2 557	44.6	4 772	62.6	3 760	58.6	-4.1	14.0
Tertiary	311	5.7	148	2.6	228	3.0	295	4.6	1.6	2.0
Total	5 492	100.0	5 732	100.0	7 618	100.0	6 419	100.0		
<i>(9) Persons aged 40-44</i>										
No Schooling/Kindergarten	436	7.3	565	14.1	198	6.7	128	4.9	-1.8	-9.2
Primary	3 003	50.2	1 930	48.1	1 087	36.9	896	34.3	-2.5	-13.7
Secondary	2 275	38.0	1 370	34.1	1 520	51.5	1 434	55.0	3.4	20.8
Tertiary	269	4.5	150	3.7	144	4.9	151	5.8	0.9	2.1
Total	5 983	100.0	4 015	100.0	2 949	100.0	2 609	100.0		

WRITTEN ANSWER — *Continued*

<i>Educational Attainment *</i>	1997		1998		1999		2000		<i>Change in % point(s) of</i>	
	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>No.</i>	<i>% to total</i>	<i>2000/ 1999</i>	<i>2000/ 1998</i>
<i>(10) Persons aged 45-49</i>										
No Schooling/Kindergarten	374	11.2	343	15.3	133	8.9	117	7.0	-1.8	-8.3
Primary	1 873	56.2	1 252	56.0	650	43.4	752	45.2	1.9	-10.8
Secondary	951	28.5	561	25.1	644	43.0	699	42.0	-0.9	16.9
Tertiary	133	4.0	80	3.6	72	4.8	95	5.7	0.9	2.1
Total	3 331	100.0	2 236	100.0	1 499	100.0	1 663	100.0		
<i>(11) Persons aged 50-54</i>										
No Schooling/Kindergarten	272	17.1	328	22.9	106	13.6	153	11.0	-2.6	-11.9
Primary	838	52.5	786	54.8	353	45.3	682	48.9	3.6	-6.0
Secondary	379	23.8	270	18.8	267	34.2	503	36.0	1.8	17.2
Tertiary	106	6.6	49	3.4	54	6.9	58	4.2	-2.8	0.7
Total	1 595	100.0	1 433	100.0	780	100.0	1 396	100.0		
<i>(12) Persons aged 55-59</i>										
No Schooling/Kindergarten	275	26.5	421	35.3	97	21.6	212	18.4	-3.2	-16.9
Primary	444	42.8	566	47.4	200	44.5	511	44.2	-0.3	-3.2
Secondary	205	19.7	162	13.6	101	22.5	368	31.9	9.4	18.3
Tertiary	114	11.0	45	3.8	51	11.4	64	5.5	-5.8	1.8
Total	1 038	100.0	1 194	100.0	449	100.0	1 155	100.0		

WRITTEN ANSWER — Continued

<i>Educational Attainment</i> *	1997		1998		1999		2000		Change in % point(s) of	
	No.	% to total	No.	% to total	No.	% to total	No.	% to total	2000/ 1999	2000/ 1998
<i>(13) Persons aged 60 and above</i>										
No Schooling/Kindergarten	730	42.0	1 534	54.6	657	45.9	1 452	36.3	-9.6	-18.2
Primary	513	29.5	937	33.3	463	32.4	1 541	38.5	6.2	5.2
Secondary	300	17.3	227	8.1	207	14.5	761	19.0	4.6	11.0
Tertiary	195	11.2	114	4.1	104	7.3	244	6.1	-1.2	2.0
Total	1 738	100.0	2 812	100.0	1 431	100.0	3 998	100.0		

Overview of all persons aged 15 and above

No Schooling/Kindergarten	2 624	7.4	4 111	15.9	1 836	5.9	2 455	6.5	0.5	-9.4
Primary	10 599	29.9	9 299	35.9	7 645	24.7	11 310	29.8	5.1	-6.1
Secondary	19 104	53.9	11 160	43.1	19 800	64.0	21 870	57.7	-6.4	14.6
Tertiary	3 110	8.8	1 298	5.0	1 634	5.3	2 271	6.0	0.7	1.0
Total	35 437	100.0	25 868	100.0	30 915	100.0	37 906	100.0		

* refers to the educational level attained in the Mainland before they entered Hong Kong.

refers to percentage point of within ± 0.05 .

Figures in the percentage columns may not add up to totals because of rounding.

Annex III**WRITTEN ANSWER****Written answer by the Secretary for Security to Miss Emily LAU's supplementary question to Question 4**

Information on the number of One-way Permit applications being processed by the mainland authorities is not yet available. The relevant information will be passed to Members once it is ready.

Annex IV**WRITTEN ANSWER****Written answer by the Secretary for Housing to Dr TANG Siu-tong's supplementary question to Question 5**

The review conducted by the independent consultants mentioned in part (a)(iii) of the Secretary for Works's reply to the main question was commissioned after discovery of structural problems besetting those two building blocks. Hence, they have been excluded from the review and were not mentioned in the Secretary for Works's reply.

Members can be assured that when the remedial works to strengthen the foundations of these two blocks have been completed, the structural defects would be rectified.

Annex V**WRITTEN ANSWER****Written answer by the Secretary for Financial Services to Mr Henry WU's supplementary question to Question 6**

In the Exchange Fund Advisory Committee (EFAC) meetings held between June 1998 and May 2001 inclusive, a total of nine declarations of interest by Members were made on a total of eight agenda items. The declarations were made by Members who had interests (as employees, partners, or directors) in companies employed by the Hong Kong Monetary Authority (HKMA) as consultants, external managers or master custodians, or in negotiation with the the HKMA for contracts, when agenda items involving those companies were put to EFAC for information or advice.

In addition, the papers relating to two further agenda items, involving the award of contracts, were not circulated to Members who either had a possible commercial interest in the information in the papers or were employed by companies tendering for the contract in question.

Annex VI

COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1), by deleting "subsection (2), with effect on and from the commencement of this Ordinance" and substituting "subsections (2) to (2C), with effect on and from 1 April 2001".</p> <p>(b) In subclause (2)(a), by deleting "and that has been published or is intended to be published in Hong Kong or elsewhere".</p> <p>(c) In subclause (2)(b), by deleting "and that has been published or is intended to be published in Hong Kong or elsewhere;" and substituting"; or".</p> <p>(d) In subclause (2)(c) -</p> <p>(i) by deleting "substantial" and substituting "predominant";</p> <p>(ii) by deleting "或任" and substituting "及任";</p> <p>(iii) by deleting "; or" and substituting a full stop.</p> <p>(e) By deleting subclause (2)(d).</p> <p>(f) By adding -</p>

"(2A) Subsection (1) does not apply in relation to an infringing copy of a computer program that is an infringing copy by virtue of

ClauseAmendment Proposed

section 35(2) of the Copyright Ordinance (Cap. 528).

(2B) Subsection (1) does not apply in relation to an infringing copy of a computer program that -

- (a) is an infringing copy by virtue of section 35(3) of the Copyright Ordinance (Cap. 528); and
- (b) was not lawfully made in the country, territory or area where it was made.

(2C) Subsection (1) does not apply in relation to an infringing copy of a computer program that -

- (a) is an infringing copy by virtue of section 35(3) of the Copyright Ordinance (Cap. 528); and
- (b) was made in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired.

(2D) For the purposes of subsections (2A), (2B) and (2C), "infringing copy" (侵犯版權複製品) does not include an infringing copy -

ClauseAmendment Proposed

- (a) that is in a printed form; or
- (b) that incorporates the whole or any part of a work not being a computer program itself and that is technically required for the viewing or listening of that work by a member of the public to whom a copy of the work is made available.

(2E) With effect on and from 1 April 2001, for the purposes of any offence under section 118 or 120 of the Copyright Ordinance (Cap. 528) relating to an infringing copy of any of the works described in subsections (2), (2A), (2B) and (2C) -

- (a) the reference to "for the purpose of, in the course of, or in connection with, any trade or business" in sections 31(1)(a) and (c), 32(1)(c), 95(1)(a) and (c), 96(5) and (6), 109(1)(a), 118(1)(d) and (e), 207(1)(b), 211(1)(b) and 228(1) of that Ordinance shall be read as a reference to "for the purpose of, or in the course of, any trade or business";
- (b) the reference to "otherwise than for the purpose of, in the course of, or in

ClauseAmendment Proposed

connection with, any trade or business" in sections 31(1)(d), 95(1)(d) and 118(1)(f) of that Ordinance shall be read as a reference to "otherwise than for the purpose of, or in the course of, any trade or business"; and

- (c) the reference to "for the purpose of, in the course of, or in connection with, any trade or business" in sections 118(4), (5) and (8), 120(2) and 273(2)(a) of that Ordinance shall be read as a reference to "for the purpose of, or in the course of, any trade or business".

- (g) In subclause (3), by deleting "The terms" and substituting "Except as otherwise provided in subsection (2D), the terms".

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COMMITTEE STAGEAmendments to be moved by the Honourable Margaret NGClauseAmendment Proposed

- 2
- (a) In subclause (1), by deleting "Subject to subsection (2), with effect on and from the commencement of this Ordinance" and substituting "With effect on and from 1 April 2001".
 - (b) By deleting subclauses (2) and (3).

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COMMITTEE STAGE

Amendments to be moved by the Honourable Timothy FOK Tsun-ting

ClauseAmendment Proposed

2

By deleting subclause (2)(b) and substituting -

"(b) a broadcast or a cable programme commonly known as a television programme;".

Annex VII

REVENUE BILL 2001

COMMITTEE STAGEAmendments to be moved by the Secretary for the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
3	(a) By adding - "ca) in item 1A, by repealing "52" and substituting "57";".
	(b) By adding - "i) in item 2(k), by repealing "26" and substituting "29";".

The following information was provided by the Administration on 11 March 2002 in respect of Annex III at page 6619:

According to the information provided by the Bureau of Exit-Entry Administration (BEEA) of the Public Security Ministry in the Mainland, as at the end of November last year, there were approximately a total of 160 000 such applications which were under processing in various provinces and cities in the Mainland. As explained by the BEEA, this figure does not cover all the Mainland residents who wish to settle in Hong Kong at present. For instance, according to the "Points System" the priority for entry into Hong Kong for separated spouses is determined according to the length of separation of the couple, not the timing of submission of applications. Hence currently many mainland residents falling under the category of "separated spouses" would choose to lodge their applications only when they have reached the requisite points.