

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 4 July 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, G.B.S., J.P.

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

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

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, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

### **PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE 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 LAM WOON-KWONG, G.B.S., J.P.

SECRETARY FOR HOME AFFAIRS

MRS LILY YAM KWAN PUI-YING, J.P.

SECRETARY FOR THE ENVIRONMENT AND FOOD

MRS REGINA IP LAU SUK-YEE, J.P.

SECRETARY FOR SECURITY

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

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

MR CLEMENT MAK CHING-HUNG, J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR THOMAS YIU KEI-CHUNG, J.P.  
SECRETARY FOR HEALTH AND WELFARE

MR THOMAS TSO MAN-TAI, J.P.  
SECRETARY FOR PLANNING AND LANDS

**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/Instrument	<i>L.N. No.</i>
-----------------------------------	-----------------

Tax Reserve Certificates (Rate of Interest) (No. 7) Notice 2001 .....	151/2001
--	----------

**Other Papers**

No. 97 — Hong Kong Export Credit Insurance Corporation  
Annual Report 2000-2001

No. 98 — Sir David Trench Fund for Recreation Trustee's Report  
2000-2001

No. 99 — Report of the Public Accounts Committee on Report  
No. 36 of the Director of Audit on the Results of Value for  
Money Audits  
(July 2001 - P.A.C. Report No. 36)

Report of the Panel on Manpower 2000/2001

Report of the Panel on Commerce and Industry 2000/2001

Report of the Panel on Public Service 2000/2001

Report of the Panel on Administration of Justice and Legal Services  
2000/2001

Report of the Panel on Transport 2000/2001

Report of the Panel on Security 2000/2001

Report of the Panel on Constitutional Affairs 2000/2001

Report of the Panel on Food Safety and Environmental Hygiene 2000/2001

Report of the Panel on Education 2000/2001

Report of the Panel on Planning, Lands and Works 2000/2001

Report of the Panel on Health Services 2000/2001

Report on the Financial Systems in the United Kingdom and the United States of America based on the findings of the overseas duty visit paid by the delegation of the Financial Affairs Panel and the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 in April 2001

Report of the Bills Committee on Dutiable Commodities (Amendment) Bill 2001

Report of the Bills Committee on Attachment of Income Orders (Amendment) Bill 2001

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Addresses. Mr Eric LI, Chairman of the Public Accounts Committee, will address the Council on the Committee's Report on Report No. 36 of the Director of Audit on the Results of Value for Money Audits.

### **Report of the Public Accounts Committee on Report No. 36 of the Director of Audit on the Results of Value for Money Audits (July 2001 - P.A.C. Report No. 36)**

**MR ERIC LI:** Madam President, on behalf of the Public Accounts Committee (PAC), I have the honour to table our Report No. 36 today.

The Director of Audit's Report No. 36 was submitted to you on 30 March 2001 and tabled in the Legislative Council on 25 April 2001. The Report tabled today contains the conclusions reached by the PAC on the Director of Audit's Report.

In line with our usual practice, we have selected for detailed examination only those chapters in the Director of Audit's Report No. 36 which, in our view, referred to more serious irregularities or shortcomings. The Report tabled today covers our deliberations on four of the six subjects selected. Examination of the other two subjects, that is, "Follow-up review on control of utility openings" and "Review of the Hong Kong Sports Development Board" is continuing. We have held hearings to receive evidence on these two subjects. Additional information has also been sought. To allow ourselves more time to consider the additional information and the various issues involved, we have decided to defer a full report on these two subjects for the time being, and will endeavour to finalize our report to the Council at the earliest opportunity.

I would like to take this opportunity to record the PAC's view on the need for us to have free access to documents relevant to the issues which we have to examine in considering the Director of Audit's reports, so as to enable us to fully discharge our duty to study the Director of Audit's reports and report to the Council.

In examining the chapter on "Provision of slaughtering facilities for supplying fresh meat", the PAC requested the Secretary for the Environment and Food and the Director of Food and Environmental Hygiene to provide us with documents relating to the issues examined in the Audit Report. However, the PAC initially encountered difficulties in obtaining the discussion paper submitted in September 1986 to the Lands, Works, Transport, Housing and Environmental Protection Policy Group of the Chief Secretary's Committee; minutes of the Urban Council Food Hygiene Select Committee meeting held on 5 June 1986; minutes of the meeting held on 23 September 1987 between the Urban Services Department and Ng Fung Hong Limited (Ng Fung Hong); and a letter dated 7 December 1989 from Ng Fung Hong.

In refusing to provide the PAC with the Policy Group paper, the Administration claimed that it had been its long-standing principle to keep discussion papers of all Policy Groups of the Chief Secretary's Committee confidential to ensure free presentation and exchange of views at Policy Group meetings which were internal government meetings.

Regarding the minutes of the Urban Council Food Hygiene Select Committee meeting, the Administration said that as the meeting was held behind closed doors, it had to preserve the confidentiality of the opinions of individual members of the Committee.



As for the minutes and the letter involving Ng Fung Hong, the Administration said that it was not able to provide the documents to the PAC without the company's consent.

The PAC considers that the Administration's refusal to let the PAC have sight of the above documents would impede our understanding of the issues examined in the Audit Report, thereby preventing us from fully discharging our duty. After exchange of correspondence, the PAC was eventually provided with extracts of the documents, and minutes of the Urban Council Food Hygiene Select Committee meeting with the names of the Urban Council Members obliterated.

The PAC feels strongly that, to perform our function and to enable us to make an independent and fair judgment, we should have access to all the documents which have been made available to the Director of Audit for examination.

To facilitate our work in studying the Director of Audit's future reports, we consider that the question of access should be resolved as soon as possible. Therefore, we are arranging to meet the Secretary for the Treasury, the Director of Administration and the Director of Audit to discuss the matter.

Turning to the four substantive issues covered in this Report, I would like to highlight first the provision of slaughtering facilities for supplying fresh meat.

The PAC is gravely dismayed and finds it inexcusable that there was a significant delay in implementing the privatization programme of the Cheung Sha Wan Abattoir (CSWA), one of the main causes being the unduly long time taken by the then Urban Services Department (USD) to negotiate with Ng Fung Hong on the land premium of the Sheung Shui Slaughterhouse site. The USD had failed to fully recognize the heavy costs to the taxpayers in continuing to operate the CSWA, and had missed a number of opportunities to privatize or close down the CSWA. By allowing the continued operation of the CSWA, the then Urban Council failed to avoid a cumulative operating loss of \$883 million incurred during the eight-year period from 1992 to 2000.

The PAC is seriously concerned that while the USD was formulating an important strategy for its negotiations with Ng Fung Hong, it never took the opportunity to report to the Executive Council the average annual operating loss

of about \$100 million incurred by the continued operation of the CSWA; and the stance of Ng Fung Hong and the then Planning, Environment and Lands Branch regarding the concessionary land premium, which would have required the Executive Council's approval, so that further guidance for negotiating the most optimal outcome could be sought and the Government's strategy could be made more flexible.

The PAC recommends that, in order to improve the planning and implementation of future similar programmes, the Administration should provide the Executive Council and the other decision-making bodies with all the important information during the critical stages of the negotiation, so as to enable them to fully assess the implications of the programmes, make informed decisions and approve practicable implementation plans.

On the management of public housing construction, the PAC has considered in detail the question that the efficiency ratios of Home Ownership Scheme courts are lower than those of the buildings designed by private-sector developers. We note that the joint Practice Note will provide further flexibility for the Housing Authority (HA) to revise the existing standard designs of public housing, and the Housing Department has, where appropriate, adopted some design features of private-sector developments, which may improve the efficiency ratio.

We acknowledge that, in the light of recent developments, the HA would use more non-standard designs by adopting a site-specific layout approach and review its standard designs.

We recommend that the Director of Housing, in reviewing the HA's standard designs, should take into account the HA's core value of providing quality housing, the impact of innovative façade designs and varied building heights on the environment of the whole district, the need to provide sufficient public areas to the residents, and the efficiency ratio to be achieved.

The PAC is gravely concerned and finds it unacceptable that the progress of extending the Preferential Tender Award System for building services and piling contracts has been slow. We are also seriously concerned that the establishment of a premier league of contractors by the HA may discourage potential bidders and inhibit fair competition among bidders in the tendering exercises for HA contracts. We, therefore, urge the Director of Housing to

review the premier league scheme to ensure that there is fair and sufficient competition in the HA's tendering exercises, and to consult the Legislative Council in the course of the review.

Furthermore, we are seriously dismayed that the Housing Department's current practice of requiring two final flat-to-flat inspections by separate teams causes delay in the handover of new flats to occupants. We note that the Chairman of the HA has agreed to streamline the process.

We are also concerned that the HA has different roles to play in public housing development which may result in conflict of interests. We urge the Chief Secretary for Administration to expeditiously finalize and announce the recommendations of the Committee on the Review of the Institutional Framework for Public Housing on the initiative to put the HA's building projects within the purview of the Buildings Ordinance.

Regarding the provision of staff for Departmental Accounting Units, the PAC is concerned that the Treasury is currently playing a reactive role in offering assistance to government bureaux and departments, and the support services of the Treasury's Financial Management Services Division have not been well-utilized, although such services are available to all bureaux and departments.

The PAC notes that, in the light of the current review of the Government Financial Management and Information Systems and the major change in the Government's Financial Reporting Policy, the Treasury is likely to have a more significant role to play in assisting bureaux and departments in assessing their need for financial management and accounting expertise.

We recommend that the Secretary for the Treasury should take proactive action to address the financial management needs of bureaux and departments, especially those which control significant financial resources.

I now turn to the Government's efforts to promote e-business in Hong Kong. The PAC is seriously concerned that there is a significant variance between the estimated and actual numbers of e-Certs issued. Although the popularity level of e-Certs has improved recently, the number of e-Certs issued is still far below expectations. Moreover, although the Hongkong Post's certification authority service is intended to be financially self-sufficient, it is in fact operating at a significant loss.

The PAC urges the Postmaster General to keep the size of the Hongkong Post's certification authority operation under constant review, so as to minimize its recurrent cost and operating loss and to ensure that it is appropriate for the level of demand in the market. We also recommend that the Postmaster General should closely monitor the usage level of e-Certs, make vigorous efforts to promote the wider use of the certification authority service and liaise closely with certification authorities abroad to meet future challenges.

Madam President, as always, in performing our duty, the PAC is mindful of our mission to play our role in safeguarding the public interests by continuing to prod for the delivery of high quality public services in an efficient and cost-effective manner.

Finally, I wish to record my appreciation of the contributions made by members of the PAC. Our gratitude also goes to the representatives of the Administration and other organizations who have attended before the PAC. Last but not least, we are grateful to the Director of Audit and his colleagues as well as the staff of the Legislative Council Secretariat for their unfailing support and hard work.

Thank you.

**PRESIDENT** (in Cantonese): Mr LAU Chin-shek will address the Council on the Report of the Panel on Manpower 2000/2001.

### **Report of the Panel on Manpower 2000/2001**

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, as the Chairman of the Panel on Manpower, I now present to the Legislative Council the report on the work of the Panel during the year 2000-01, and highlight a few major areas of work of the Panel.

According to the findings of the Manpower Projection to 2005, up to 2005, there would be a projected surplus of manpower supply of 136 700 at lower secondary education level or below. On the other hand, a shortfall of manpower supply at post-secondary level or above was projected at 116 900. The projected mismatch in manpower requirement and supply was of great

concern to the members. Members considered that the Administration should increase the provision of post-secondary education, provide more training opportunities and undertake effective measures to upgrade the skills of workers of low skill and low education attainment. Some members also suggested that the Administration should consider introducing a training leave wage subsidy scheme, providing grants to trainees receiving fundamental and mid-level skills training, and establishing a skill assessment system to enable employees' skills and qualification to be recognized by employers.

The Panel had jointly discussed with the Panel on Welfare Services the different programmes introduced by the Government to help the unemployed find employment. The Administration assured members that although there were 13 different programmes initiated by the Labour Department, the Social Welfare Department and the Employees Retraining Board to provide assistance to the unemployed, there was no wastage or duplication of resources as each of these programmes served a distinct client group and a different purpose. Members hoped that close liaison between the relevant government departments and other service providers would be maintained to avoid duplication of efforts and to ensure optimum use of resources.

Some members pointed out that with the implementation of the Mandatory Provident Fund (MPF) Scheme, there were employers who had changed the terms of the employment contract, for example, forcing their employees to change to the status of self-employed to evade employers' MPF contributions. Members expressed concern that employees who had changed to the status of self-employed would be deprived of the rights and protection as provided in the various labour legislation. The Administration informed members that under the Employment Ordinance, an employer could not unilaterally vary the terms of employment. Even if an employer had changed the status of his employee to self-employed, he still had to fulfil his obligations under the various labour legislation if the employer-employee relationship had not changed in essence. Members urged the Mandatory Provident Fund Schemes Authority and the Labour Department to proactively undertake inspections and prosecutions to deter malpractice of employers.

The Panel had divergent views on the Admission of Mainland Professionals Scheme. Some members were in support of the Scheme, however, some other members worried that as no quota or minimum wage would be imposed, the unlimited admission of mainland professionals would adversely affect the employment opportunities and wage level of the local workforce. The

Administration assured members that an uncontrolled influx of mainland professionals would not be allowed. A review on the Scheme would be conducted one year after its implementation. The Administration has also undertaken to provide the Panel with reports on the progress of the Scheme on a regular basis. After detailed discussion, the Panel voted to pass a motion to request the Administration to impose a quota on the number of mainland professionals to be admitted; set up a vetting committee with representatives from the labour sector to monitor the Scheme; stipulate that the salaries to be paid by the employers to the admitted mainland professional should not be lower than the median market wages of the same trade; and increase vocational training and university places to meet the projected shortfall.

The Panel also discussed with the Administration the proposals on the improvement of the Employees Compensation Assistance (ECA) Scheme. Members considered that the fines collected from employers for non-compliance with the insurance requirements under the Employees' Compensation Ordinance should be brought into the ECA Fund for the funding of ECA Scheme. Members urged the Government to consider increasing the amount of such fines and stepping up enforcement action. Members also considered that the administrative costs of the ECA Board should not be charged to the Fund. Members suggested that the loan of \$60 million to be provided to the ECA Board should be regarded instead as a capital injection by the Government. The Panel hoped that the Administration would accept members' views.

I would like to take this opportunity to thank members for their contribution to the Panel in its work.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr Kenneth TING will address the Council on the Report of the Panel on Commerce and Industry 2000/2001.

### **Report of the Panel on Commerce and Industry 2000/2001**

**MR KENNETH TING** (in Cantonese): Madam President, as the Chairman of the Panel on Commerce and Industry, I now present to the Legislative Council the report on the work of the Panel during the year 2000-01, and give a brief account of a few major issues in the report.

The Panel had examined in detail the impact on the community of the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 when it came into effect on 1 April 2001. The implementation of this amending Ordinance had given rise to much concern and impact within the community, in particular with regard to the photocopying of newspaper and the use of such materials in business enterprises and schools. The Panel noted that the major worry of the business community was that criminal prosecution would be brought against business enterprises for the ownership and usage of replica that infringed copyright in business.

To understand the concern of different sectors of the community, the Panel had held a number of special meetings. Government officials and interest groups representing different sectors were invited to appear before the Panel to give their views. The Panel also deliberated on the legislative amendments proposed by the Government, that is, the draft Copyright (Suspension of Amendments) Bill 2001.

In the course of its deliberation, the Panel noted that small and medium enterprises (SMEs) had experienced particular difficulties in complying with the law, as there was an inadequate supply of computer software in the market and the prices of these software had gone up considerably, thereby increasing the operating costs of SMEs. In this regard, the Panel specially invited the Government to brief members on the strategy of the Government for promoting the use of information technology in the business community and on the measures taken by the Hong Kong Productivity Council to facilitate the use of software by SMEs.

The Panel was also consulted on the proposal to liberalize the parallel importation of computer software. The Panel considered that this proposal would help increase competition in the market and availability of products to consumers, thus relieving the financial burden of SMEs. Therefore, the Panel urged that a relevant bill should be drafted and submitted for the consideration of the Legislative Council as soon as possible.

As regards the support for SMEs, the Panel had met the representatives of the Small and Medium Enterprises Committee (SMEC). The Panel noted that the SMEC had studied the overall strategy for supporting SMEs, and identified the problems faced by SMEs in the areas of financing, business environment, human resources, technology applications and market access. The Panel knew

that the SMEC had completed the study and a report had submitted to the Chief Executive on 27 June 2001. The SMEC would also brief the Panel on the report and listened to members' views on various proposals on 9 July 2001.

As regards infrastructural facilities, the Panel had studied the proposed merger of the Hong Kong Industrial Estates Corporation, the Hong Kong Industrial Technology Centre Corporation and the Provisional Hong Kong Science Park Company Limited. The Panel was supportive of the proposal as it would place the three related services under a single management and provide one-stop services to the industry. The Panel also rendered its support to the Government for expediting the construction of Phase 1c and Phase 2 of the Science Park at Pak Shek Kok to meet the rental demand of the Hong Kong Science Park from both local and overseas technology-based companies.

To enhance Hong Kong's position as a pre-eminent service centre in the region, the Panel urged the Government to provide additional convention and exhibition facilities in Hong Kong and promote Hong Kong as a trade fair capital vigorously, which would be conducive to the development of tourism and commerce in Hong Kong. The Panel knew that the Airport Authority was studying a proposal to develop an exhibition facility in the Airport North Commercial District. The Government undertook to keep the Panel informed of the developments.

A brief account of other major areas of work of the Panel is included in the report presented to the Council. I so submit. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung will address the Council on the Report of the Panel on Public Service 2000/2001.

### **Report of the Panel on Public Service 2000/2001**

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, as the Chairman of the Panel on Public Service, I now present to the Legislative Council the report on the work of the Panel from October 2000 to June 2001.

The report gives an account of the major work of the Panel in the past year. I would like to take this opportunity to highlight a few major issues.



The Panel noted that the civil service establishment had been reduced by 8 000 in 2000-01 and was expected to be further reduced by 9 000 in 2002-03. Members expressed grave concern about the implications of the substantial reduction of civil service establishment on the quality of public services and the remaining staff. In this regard, members noted that the number of applications for the Voluntary Retirement (VR) Scheme far exceeded the estimates of the Administration. Members called for careful planning, so that the large number of VR-takers would be released in an orderly manner, training would be provided to the remaining staff and appropriate redeployment arrangements would be put in place.

The Panel also expressed concern about the progress of the Civil Service Reform. Members noted that the Administration had taken forward the Management-initiated Retirement Scheme, and therefore urged for the early disclosure of the number of cases approved under the Scheme and the amount of *ex-gratia* payment involved. As regards the Civil Service Provident Fund Scheme for new recruits to the permanent terms of appointment, members called for a comparison of the proposed Scheme and the existing pension schemes, in terms of Government's financial commitment and employees' ultimate benefit.

As regards civil service pay, the Panel supported the upward adjustment with effect from 1 April 2001. However, some members were concerned that offering a higher pay adjustment to the directorate and upper pay band would have an adverse effect on the morale of the civil servants at the junior and middle ranks, and also widen the wealth gap in the community. As regards the government employees on contract terms, in particular the non-civil service contract staff, the Panel considered that the Government, as a good employer, should offer reasonable pay and fringe benefits to these staff. Having regard to members' concern, the Administration relaxed the employment arrangements for the non-civil service contract staff so that heads of departments would have greater flexibility to offer better terms and conditions based on market conditions.

To follow up the discussions in the last session, the Panel further deliberated on two issues. The first issue was the proposed corporatization of the Survey and Mapping Office of the Lands Department. Members were concerned about the cost-effectiveness of the proposal and the job security of the staff after corporatization. A majority of members had reservations on the need to corporatize the Office and urged the Administration to consider alternate

options. As regards the system on declaration of investments by civil servants, the Panel noted the outcome of the comprehensive review on the system conducted by the Administration. In view of the growing problem of indebtedness of civil servants, some members suggested that the Administration should require the civil servants to declare their liabilities. The Administration undertook to review its guidelines on indebtedness with a view to strengthening measures to manage indebtedness in the Civil Service.

Lastly, I would like to take this opportunity to thank members of the Panel and the Legislative Council Secretariat for their contribution to the Panel in its work.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Miss Margaret NG will address the Council on the Report of the Panel on Administration of Justice and Legal Services 2000/2001.

### **Report of the Panel on Administration of Justice and Legal Services 2000/2001**

**MISS MARGARET NG:** Madam President, I speak in my capacity as Chairman of the Panel on Administration of Justice and Legal Services. The Panel had discussed many important issues in this session. I would like to highlight a few major ones.

The applicability of ordinances to the offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region (SAR) was a matter of great concern to the Panel. It has already been agreed by the Administration that 15 ordinances, now expressly binding on the Government, should be amended to extend their applicability to CPG offices in Hong Kong. Members were disappointed at the Administration's delay in working out an appropriate formula in order to carry out the amendment. Members were also concerned about the protracted consultation with the CPG on whether the Personal Data (Privacy) Ordinance should apply to CPG offices, and the delay in adapting the 35 relevant ordinances which were expressed to bind, or apply to, the "Crown".

On 18 May 2001, the Panel made a report to the House Committee on the unsatisfactory state of affairs. The matter was subsequently discussed by the Chairman of the House Committee with the Chief Secretary for Administration on a number of occasions. At the meeting of the Panel on 26 June 2001, representatives of the Constitutional Affairs Bureau informed members that the Chief Secretary for Administration had given clear instructions that action should be expedited. Members would follow up the matter at the Panel meeting in October 2001.

Arising from discussions of the Panel in June 2000 on how the Legislative Council should discharge its functions under Article 73(7) of the Basic Law to endorse the appointment of judges of the Court of Final Appeal, the Panel conducted a review of the process of appointment of judges with a view to enhancing its transparency and accountability. The Panel had also requested the Legislative Council Secretariat to conduct a research study on the process of appointment of judges in the United States, the United Kingdom and Canada. The Panel set up a working group to consider the way forward. The working group has already met and will prepare a consultation paper for consideration of the Panel and wider consultation with the relevant parties.

As regards legal education and training, the Panel closely monitored the progress of the comprehensive review initiated by the two legal professional bodies and supported by the Administration and the law schools of the University of Hong Kong and the City University of Hong Kong. In November 2000, the Steering Committee on Review of Legal Education and Training briefed the Panel on the Preliminary Report released by the two overseas consultants engaged to conduct the review. At its meeting in April 2001, the Panel was briefed on the updated position, including a proposed outline of the final report and some provisional recommendations made by the consultants.

The Panel was recently informed that the consultants' final report would be published by early August 2001. The Panel plans to discuss the report with the Steering Committee in October 2001.

The Panel discussed at a number of meetings the Administration's proposal to amend the Crimes Ordinance to make it clear that marital rape was an offence. Having considered the views expressed by the Panel, the legal profession and the law schools of the two universities, the Administration decided to introduce amendments to the Crimes Ordinance to clarify the law

regarding rape and related sexual offences. The proposed amendments have been included in the Statute Law (Miscellaneous Provisions) Bill 2001 which will be introduced into the Council on 4 July 2001 (that is today).

The Panel also discussed the Administration's proposal to amend the Conveyancing and Property Ordinance to provide the court in Hong Kong with a discretionary power to order a vendor to return the purchaser's deposit in a situation where the vendor was not in breach of the contract. Members of the Panel and the two legal professional bodies had divergent views on the proposal. According to the Administration, the amendment would not jeopardize the certainty and sanctity of contract and allow the court to do justice in individual cases. The Administration had advised that it would introduce the proposed legislative amendment into the Council in due course.

Madam President, may I also take this opportunity to thank all those who have assisted the Panel in its work, including members of the public, professional bodies, officials and the Legislative Council Secretariat. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mrs Miriam LAU will address the Council on the Report of the Panel on Transport 2000/2001.

### **Report of the Panel on Transport 2000/2001**

**MRS MIRIAM LAU:** Madam President, I speak in my capacity as Chairman of the Panel on Transport. As the report already gives a detailed account of the work of the Panel, I would only highlight a few points here.

The Panel continues with its vigorous efforts in overseeing the planning and development of transport infrastructure. During the session, we reviewed with the Administration the implementation programme of a number of strategic infrastructural projects, taking into account the transport needs of the community, changes to the economy, population growth, land use planning and the overall sustainability of our transport infrastructure.

Following the decision made by the Director of Environmental Protection to reject the Environmental Impact Assessment report of the proposed Lantau

North-South Road Link between Tai Ho Wan and Mui Wo in November 2000, we also reviewed with the Administration the mechanism to consult relevant bureaux and departments in the planning and implementation of infrastructural projects so as to ensure the timely delivery of public infrastructure. Mindful of the serious safety risks caused by the substandard conditions of Tung Chung Road, we reluctantly accepted the proposed solution to widen the existing Tung Chung Road as an alternative to address the dire transport needs of the Lantau residents. We have reminded the Administration to speed up the delivery of the project within the environmental constraints and to implement improvement measures to alleviate the traffic problems faced by local residents in the interim.

The Panel has closely monitored the planning and implementation programme of the railway development projects in Hong Kong. A Subcommittee was formed under the Panel to monitor the related issues.

We have also called on the Administration to strengthen the capacity of the East Rail and fast-track the implementation programme of the Sha Tin to Central Link to meet the transport needs of the community.

On public transport, the Panel continues to monitor the regulatory regime governing bus fare revisions proposed by franchised bus operators. We have also urged the Administration to provide a more conducive environment for franchised bus operators to expand their network so as to relieve the pressure for fare increase and to enhance competition.

When consulted on the Mass Transit Railway, as well as the Kowloon-Canton Railway East Rail and Light Rail fare review for 2001, we have expressed grave concern about the justifications for the proposed fare increases, taking into account the profit and financial position of the two railway companies. In light of the prevailing economic climate and the impact of the proposals on the livelihood of the general public, members consider it not appropriate for the companies to adjust their fares at this time. We are also worried that these might prompt other public transport operators to follow. We have, therefore, urged the two railway companies to consider deferring any fare increases at this time. We have also urged the two railway companies to explore other cost-cutting initiatives to cut costs and introduce new sources of income to relieve the pressure for fare increases.

The Panel supports the initiative to develop an intelligent transport system to achieve better use of existing transport infrastructure, greater efficiency in traffic management, and to enable road users to have access to real-time traffic information. However, we are concerned about the cost effectiveness of the proposed system, the private sector initiative in developing value-added application systems, and how the general public could benefit from the various systems and at what cost. We will continue to monitor the implementation programme of the system.

Investigations into a preferred toll pricing strategy for competing tolled facilities remains a concern of the Panel. In order to promote a more equitable use of precious social resources and to spread out the traffic among various tunnels to ease congestion, we have urged the Administration to examine and formulate a long-term policy on tunnel utilization, and to propose new measures for resolving the congestion problem of tunnels as well as promoting the optimum use of tunnel resources.

Madam President, I believe that the Panel will continue to monitor the progress of all major events. I would like to take this opportunity to thank my colleagues on the Panel and the Administration for their support which has enabled the smooth functioning of the Panel.

Thank you very much, Madam President.

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah will address the Council on the Report of the Panel on Security 2000/2001.

### **Report of the Panel on Security 2000/2001**

**MR LAU KONG-WAH** (in Cantonese): Madam President, I speak in my capacity as Chairman of the Panel on Security and I would like to table the report of the work of the Panel in this current session to this Council. I would like to highlight a few major points in the work of the Panel.

The Panel noted that under the reciprocal notification mechanism between the Mainland Public Security Authorities and the Hong Kong police, the matters which the Mainland Notification Unit should notify the Hong Kong Police Force

covered cases where criminal compulsory measures were taken by the Mainland Public Securities authorities and the mainland customs authorities, and the unnatural deaths of Hong Kong residents in the Mainland. While members considered the reciprocal notification system was useful, some members expressed concern about the inadequate coverage of the notification mechanism as revealed by some recent detention cases. These members were of the view that the notification system should be extended to cover matters under the jurisdiction of other authorities. The Administration informed the members that the reciprocal notification mechanism was an administrative arrangement implemented on the basis of mutual respect for the relevant law of both sides. Whether the mechanism should be extended to cover other authorities would have to be considered having regard to whether there was such a need and the operational characteristics of the relevant authorities in the Mainland.

Some members expressed reservations about the need for the introduction of a smart ID card with multiple applications capacity in early 2003 as proposed by the Administration. They were concerned that the right of individuals to preserve the privacy of their personal data would be infringed if a lot of personal data not related to immigration purposes were stored in the new ID card. They were particularly concerned about whether effective measures would be taken to prevent possible abuses of personal data by the Administration and the card holders' data privacy. Some other members, while expressing support for the proposed smart ID card, stressed that sufficient security measures should be put in place to protect the card holders' data privacy. In this regard, the Administration assured members that a package of measures would be adopted to protect data privacy and that the Personal Data (Privacy) Ordinance would also apply to the Government. The Administration informed members that with the exception of a driving licence, a card holder would have the choice of whether non-immigration related applications should be included in the new ID card.

The Panel held four special meetings to gauge public views on the regulation of public meetings and public processions under the Public Order Ordinance (POO). A total of 242 submissions were received. In these four special meetings, a total of 84 deputations and individuals presented their views to the Panel. Some members and some deputations criticized that the requirement of giving seven days' notice was unnecessary and out of step with other modern societies. They were of the view that the system of notice of no objection of the police denied the rights of the public to hold public processions or public meetings and contravened the Basic Law and the International

Covenant on Civil and Political Rights. They also criticized the heavy penalty imposed on both the organizer and participants of an unauthorized assembly. They urged that the notification period should be shortened, the system of notice of no objection should be abolished, and the penalty provisions should be amended so that failure to comply with the notification requirement would not be a criminal offence.

Some members and some deputations, on the other hand, considered that no amendment should be made to the POO. They were of the view that the seven days' notice was reasonable and necessary to allow the police to make the necessary preparation for such activities. They also considered there was a need to strike a balance between safeguarding the right of an individual to demonstrate and protecting the interests of the community at large.

The Administration explained that the seven-day advance notice was necessary because the police needed time to make preparation so as to ensure that the events were carried out in a peaceful and orderly manner. The Administration also considered that the system of notice of no objection did not deny the rights of the public to hold public meetings and processions. Criminal sanction was necessary and reasonable to uphold the effective operation of the notification system.

The Panel held two special meetings on the security arrangements for the *Fortune* Global Forum and police's strategy in maintaining public order in demonstrations. Discussions were held with the Administration and public views were gauged. The Panel received a total of 65 submissions and 35 deputations and individuals presented their views before the Panel. Some members and deputations criticized the police for using excessive force in the handling and arrest of protesters during the incidents of confrontation between protesters and police officers when the *Fortune* Global Forum was held in Hong Kong. They also criticized the police for using stringent measures against protesters when there was no indication that the protesters would use violence. They considered that with the remote "demonstration areas", the rights of protesters to express their views freely were hampered. Some other members shared the view of the Administration that tight security measures were necessary in order to ensure that the Forum could proceed smoothly, to protect the personal safety of the participants and to facilitate protesters conduct demonstrations peacefully and lawfully.



One of the major concerns of the Panel was the provision of adequate paramedic ambulance service. Members noted that an independent consultant would be engaged to examine the implications and resource requirements for providing paramedic care on all ambulances and to develop a detailed implementation plan. Members pointed out that there had been an upsurge in demand for paramedic ambulance service and a pressing need for providing adequate paramedic service, the Panel therefore urged the Administration to expedite the proposed plan to extend the paramedic ambulance service to all ambulances.

Most members expressed reservations about the Administration's proposal to build a large prison complex which was capable of housing 15 000 inmates. They were very concerned about the security and management issues of large prison complexes and the possible adverse psychological impact on the detainees, particularly those adolescent offenders and those convicted of minor offences. Some members queried whether the government forecast of the need to provide an additional 3 800 places in correctional institutions by 2024 was accurate. Most of the members thought that a more flexible approach was to build four or five medium-sized prison complexes. The Panel urged the Administration to consider members' views when formulating a long-term prison development plan.

I would like to take this opportunity to thank Panel members for their contribution to the work of the Panel and the staff of the Secretariat in making arrangements for the meetings and visits, in particular the efficiency they showed when receiving more than 100 deputations to attend the special meetings.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr Andrew WONG will address the Council on the Report of the Panel on Constitutional Affairs 2000/2001.

### **Report of the Panel on Constitutional Affairs 2000/2001**

**MR ANDREW WONG:** Madam President, I speak in my capacity as Chairman of the Panel on Constitutional Affairs. The Panel had discussed many issues in this current session. I would like to highlight a few major ones.

The Panel examined whether the existing "extended by one Legislative Council Meeting" provision under the negative vetting procedure should be modified to allow more time for scrutiny of complicated subsidiary legislation. Having considered a number of options, the Panel recommended that the extension period should be modified from "one Legislative Council Meeting" to "21 days and, if there is no meeting on the day of the expiry of the 21-day period, the vetting period is deemed to be extended to the Council Meeting next following the 21-day period". The Administration had agreed to introduce a bill to amend section 34 of the Interpretation and General Clauses Ordinance to give effect to this change.

In the previous (1999-2000) legislative session, the Panel presented a report on the development of the political system of the Hong Kong Special Administrative Region to the Council. The Panel recommended that the Administration should explore the feasibility of adopting a more flexible contract system appointing principal officials and of developing constitutional conventions under which principal officials should voluntarily resign as a result of having committed serious mistakes in the formulation and implementation of government policies. In this connection, the Panel sought public views on the executive accountability system in March 2001. A delegation of the Panel, comprising myself, the Honourable HUI Cheung-ching and the Honourable YEUNG Yiu-chung, undertook a duty visit to the United Kingdom, France and Germany to study their systems of executive accountability during the period from 13 to 24 June 2001. The Panel will make recommendations on the executive accountability system for the consideration of the Administration.

The Panel also urged the Administration to expedite its own study on the accountability system, and to ensure that there would be sufficient time for consultation with this Council before reaching any decision.

The Panel requested the Administration to review whether certain provisions of the Prevention of Bribery Ordinance (POBO) should be applicable to the Chief Executive. The Administration had originally agreed to introduce legislative amendments to extend the applicability of section 10 of the POBO concerning the possession of unexplained wealth and property to the Chief Executive. Members had also asked the Administration to consider codifying the common law offence relating to bribery offence committed by "public officer" to remove any uncertainty in the enforcement of law in connection with the Chief Executive.

The Administration subsequently informed members that it was considered more appropriate to, outside the common law, set out in separate legislative provisions the bribery offences for exclusive application to the Chief Executive. The Panel was of the view that the legislative proposal should be introduced early so that the new legal framework could be put in place before the election of the second term Chief Executive in March 2002.

Under Article 50 of the Basic Law, if the Legislative Council refuses to pass a budget or any other important bill introduced by the Government, the Chief Executive may dissolve the Legislative Council. Members considered that whether a bill was important should be determined and declared prior to its introduction into the Legislative Council so as to prevent disputes or abuse of power by the Chief Executive. On this issue, the Panel had requested the Legislative Council Secretariat to undertake a study on overseas experience in handling important bills. The Administration agreed to study the research report and to take into account members' views in considering the matter.

In the current session, the Panel continued to monitor the development of putting in place an appropriate mechanism for amending the Basic Law. According to the Administration, the concerns of the Panel about the limited progress made so far had been conveyed to the Hong Kong and Macao Affairs Office of the State Council. The same Office explained that it was necessary to study the matter carefully with the National People's Congress in view of the complexity of the issues involved.

Regarding the issue of the order of the Legislative Council Members on the Hong Kong Special Administrative Region Precedence Table, some members were of the view that by according principal officials and directors of bureaux higher precedence than the Legislative Council Members, the Government had introduced a fundamental change which was unjustified. On 25 May 2001, the Panel reported its deliberations to the House Committee. On behalf of Members, the Chairman of the House Committee raised the matter with the Chief Executive at the Chief Executive's Question and Answer Session on 14 June 2001. The Chief Executive has undertaken to follow up the matter.

Madam President, these are my short remarks on the Panel report.

**PRESIDENT** (in Cantonese): Mr Fred LI will address this Council on the Report of the Panel on Food Safety and Environmental Hygiene 2000/2001.

### **Report of the Panel on Food Safety and Environmental Hygiene 2000/2001**

**MR FRED LI** (in Cantonese): Madam President, I speak in my capacity as Chairman of the Panel on Food Safety and Environmental Hygiene, and I am going to report on several major areas in the work of the Panel.

The Panel was formally established on 20 December 2000 for the purpose of monitoring the Government's work in relation to food safety, environmental hygiene and agriculture and fisheries after the dissolution of the two Provisional Municipal Councils (PMCs).

On the area of food safety, the Panel held two meetings with the Administration in relation to the recent avian flu incident to discuss measures to control the spread of avian flu among poultry and to protect public health. The Panel urged that the Administration should strictly enforce the hygiene requirements for the transportation and storage of live chickens, and improve the congested state of public markets and their hygiene standards and ventilation systems. Panel members also urged the Administration to cautiously consider whether a central slaughtering system for chickens should be introduced for it would affect Hong Kong's reputation as a place for fine cuisine and dishes, as well as the livelihood of many people employed in the poultry trade.

As regards financial assistance for those in the poultry industry affected by the slaughtering of chickens, Panel members requested the Administration to offer compensations for the workers concerned as well. In this connection, the Administration has already revised its compensation package, and in order to encourage employers to fulfil their obligations to their employees, the Administration would make available further financial assistance in the form of two-month rental waiver for the stall operators concerned. The funding arrangement was approved by the Finance Committee on 1 June 2001.

As regards the control of local and imported food and live food animals, the Panel is particularly concerned about the smuggling of meat and poultry into Hong Kong. As the illegally imported meat and poultry were not subject to health control and inspection, they might not meet with the hygiene requirements

and would pose health risks and create unfair competition for the trade. The Panel, therefore, urged the Administration to step up efforts to combat the illegal import of chilled or frozen meat and poultry.

As regards the proposal on the implementation of a labelling system for genetically modified (GM) food, the Panel supported the introduction of a labelling system in order to provide consumers with a choice. While Panel members did not object to a voluntary labelling system during the initial stage of implementation, most of them consider that a mandatory system should be introduced after a grace period of 18 months. Some members also suggested that a more stringent threshold of GM content, say 3% or 1%, should be adopted.

The Panel noted that after the reorganization for the provision of municipal services, the Administration had conducted a review to align the different market rental adjustment mechanisms and other practices of the two former PMCs. The Administration proposed to adopt a gradual approach to bring the current rental up to the market level in order to minimize the impact of the rental adjustments on the tenants.

Most members did not support the increase in market rental. They think this would add to the financial burden of stall operators, given the present economic situation and the fact that public markets faced very keen competition from private superstores. Panel members urged that the Administration should consult the stall tenants, relevant trade associations and the District Councils on the proposed rental adjustment mechanism. The Administration agreed to report its consultation findings to the Panel in October 2001, and "freeze" the rental adjustment plan until the end of 2001.

On whether there should be a compulsory deletion policy for itinerant hawker licences (IHL), the Panel did not consider it necessary to set a timetable to phase out all existing IHLs as most licensees were near retirement age. However, members agreed that there should be a consistent policy for IHLs in the urban area and the New Territories, and that holders of IHLs in the New Territories should also be given the option to surrender their licences in return for *ex-gratia* payments. Some members also suggested that the amount of *ex-gratia* payments should be increased in order to encourage more IHL holders to give up their licences.

The Panel will hold a meeting in July 2001 to discuss with the Administration the control of hawking activities and the review of the management of Hawker Control Teams.

As a detailed account on the other work of the Panel has already been set out in the report, I am not going to repeat them in detail.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum would address the Council on the Report of the Panel on Education 2000/2001.

### **Report of the Panel on Education 2000/2001**

**DR YEUNG SUM** (in Cantonese): Madam President, in my capacity as Chairman of the Panel, I would like to report on the work carried out by the Panel on Education during the 2000-01 legislative session.

In the past year, the Administration has put forward and implemented a number of education reform proposals and new measures, raising concerns from both the general public and the education sector. Discussion has been held between the Panel and the Administration. Now I would like to give a summary report on some major issues.

The Panel discussed with the Education Commission (EC) and the Administration the EC's proposed reform with respect to the local education system as well as the detailed arrangement made by the Administration for launching the reform.

The Panel supported the Administration's decision to introduce a new recurrent grant for all public sector schools to enable them to hire additional staff or procure various services to relieve teachers' workload. However, some members were of the view that the new grant was insufficient to strengthen remedial and enhancement measures in school education. They suggested that schools with a large intake of students with lower academic ability should be provided with additional support.

Members also held the view that the most fundamental way to improve school education was to reduce the class size so that teachers would be able to devote more time to individual students.

The Chief Executive put forward the objective of providing tertiary education to 60% of secondary school leavers within 10 years in his policy address 2000. In this connection, a Subcommittee was formed by the Panel to discuss various proposals to support the increase in post-secondary education opportunities with the EC, the Hong Kong Council for Academic Accreditation, continuing education providers, concern groups and the Administration. While members of the Subcommittee were supportive of the direction of expanding the provision of post-secondary education, they were of the view that the quality of students and post-secondary programmes should be ensured while increasing quantity.

The Curriculum Development Council had been conducting a holistic review of the school curriculum in parallel with the EC's review of the education system. The Administration had also briefed the Panel on the proposed reform. Members of the Panel expressed their worry that curriculum reform would impose additional burden on the teachers. Moreover, they were of the view that the senior secondary curriculum and university admission system should be carefully designed to align with the new curriculum for basic education.

Detailed discussion has been held between the Panel and school sponsoring bodies, parent-teacher associations, concern groups and the Administration on the recommendations of the Advisory Committee on School-based Management. Some members welcomed the recommendation of establishing a one-tier governance structure comprising teacher managers and parent managers. However, other held the view that while participation of parents and teachers in school management should be allowed, the Administration should not impose a one-tier governance structure on a mandatory basis.

It was also noted that although over 200 sites had been reserved for school development, most sites were not readily available in the coming few years. As education was paramount to the future development of Hong Kong, members of the Panel had urged the Administration to give priority to allocation of sites for school development. The Administration was also requested to try as far as possible to advance the availability of the reserved sites to tie in with the implementation of various new education measures. The Panel will closely monitor the relevant situation.

Lastly, I would like to take this opportunity to thank the Secretariat for serving the Panel and all members of the Panel for their efforts have made it possible for the work of the Panel to be carried out smoothly.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Dr TANG Siu-tong will address the Council on the report of the Panel on Planning, Lands and Works 2000/2001.

### **Report of the Panel on Planning, Lands and Works 2000/2001**

**DR TANG SIU-TONG** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Planning, Lands and Works I present the report on the work of the Panel for the period from October 2000 to June 2001.

The report gives an account of the major work done by the Panel in the past year. I would only highlight a few important issues.

On the overall planning for Hong Kong, the Panel supports the Administration conducting the study on "Hong Kong 2030: Planning Vision and Strategy" to provide a long-term planning framework to guide the development of Hong Kong over the next 30 years. The Panel holds that the Study should be people-oriented, with a view to improving the quality of living of the people of Hong Kong. The Panel also supports the Administration conducting the Planning Study on the Harbour and its Waterfront Areas and the Metroplan Study. As regards regional development planning, the Panel considers that the development proposals for individual regions should be compatible with the overall development strategy for Hong Kong.

With regard to urban renewal, the Panel has carried out extensive discussions with the Administration and concerned parties on the compensation package for owners and tenants of properties affected by land resumption. After the discussions, the Administration still insisted on its proposal of using a seven years old replacement flat as the basis for calculating the Home Purchase Allowance. Nevertheless, in view of the concern expressed by the Panel, it has undertaken to put forward a number of suggestions to the Urban Renewal Authority, including providing acquisition offers that are more favourable than



the land resumption offers of the Government. The Panel stresses that the acquisition offers should be fair and reasonable.

The Panel welcomes the comprehensive strategy and implementation plan formulated by the Administration to promote timely maintenance of buildings, to tackle unauthorized building works including illegal rooftop structures, and to control advertisement signboards. The Panel also urges the Administration to advance the commencement date of the implementation plan.

The Panel expresses grave concern over the Administration's flood control and prevention strategy. In view of the extensive flooding in the low-lying areas of Northern and North-western New Territories in June 2001, which resulted in the evacuation of some residents concerned, the Panel urges the Administration to investigate the causes of the flooding incidents, with a view to improving on and speeding up the implementation of the flood prevention works; to compensate the residents concerned for losses arising from the flooding incidents; and to monitor closely the work procedure and performance of the contractors responsible for the flood prevention works. Besides, the Panel also requests the Task Force on Improvement of Drainage Systems set up by the Administration to provide the Panel with a copy of the report of its work in due course.

Regarding the Administration's financial proposals for the development of the Hong Kong Disney theme park, the Panel has examined critically the proposed construction of infrastructure and associated works for Penny's Bay Development, Package 2. Members have expressed concern over the implications of the proposed dredging and reclamation works at Yam O on the marine environment, having regard to the fish loss at Ma Wan and Cheung Sha Wan Fish Culture Zones allegedly caused by dredging works. To address this concern, the Administration has undertaken to appoint an independent expert to investigate into the causes of the said incidents, and to implement all necessary preventive measures to minimize the impact of the proposed dredging and reclamation works on the Ma Wan Fish Culture Zone. At the request of the Panel, the Administration has agreed to take into account the views of mariculturists in the appointment of expert, and to request the expert to submit an interim report in due course. In view of the enormity of the scale of the project, members on the Panel urged the Administration to divide the works into projects smaller in scale and award the contracts to different companies so as to reduce the risks involved.

Finally, I should like to take this opportunity to thank members on the Panel for their contributions to the work of the Panel. My heartfelt gratitude also goes to the staff of the Secretariat for their support.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG will address the Council on the Report of the Panel on Health Services 2000/2001.

### **Report of the Panel on Health Services 2000/2001**

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, as Chairman of the Panel on Health Services, I would like to table the report of the Panel on Health Services 2000-01 to this Council and give a brief account of a few major tasks carried out by the Panel.

Following the release of the Consultation Document on Health Care Reform by the Administration on 12 December 2000, the Panel discussed in detail the reforms to the service delivery system, the system of quality assurance and the options for financing health care service at three subsequent meetings.

Members were particularly concerned about the wide gulf between the fees of the public and private sectors which had resulted in the public sector taking up 93% of the workload. In response, the Administration said that it would explore with the private sector how both sides could collaborate and develop health care products with a view to providing patients with more choices in medical treatment. The insurance industry would also be encouraged to develop new health care insurance policies to support these new products.

On the financing of the public health care system in future, the Administration assured members that it would continue to invest in public health care service based on the new population-based funding arrangement agreed with the Hospital Authority (HA). At the same time, it would adopt a number of cost-control measures and development of clinical protocols to guide appropriate application of services and investigations. The Administration also proposed to establish a Health Protection Account (HPA) scheme to strengthen the long term sustainability of the public health care system. Most members objected to the

proposed HPA scheme or had reservations about the scheme. The Administration has planned to commission a feasibility study on the scheme in 2001-02 and the public would be consulted on its findings and recommendations in due course.

In the Consultation Document on Health Care Reform, the Administration proposed to set up a Complaint Office in the Department of Health (DH) to assist patients in lodging complaints. However, a majority of members did not support the proposal and held their view that an independent mechanism should be established to handle medical complaints to ensure credibility and impartiality. The Panel eventually agreed that a subcommittee should be set up to discuss with the Administration how to improve the mechanism for handling medical complaints. The Subcommittee met with the professional, patient and other organizations concerned to listen to their views in June 2001. It would continue discussion with the Administration on the subject.

In May 2001, the Administration briefed the Panel on its proposals to extend the ban on smoking in public places to protect members of the public from passive smoking and close loopholes identified in the existing legislation to bring about more effective enforcement of the Ordinance. The proposals included prohibition of smoking in all restaurants, bars, karaokes and other public indoor premises, both indoor and outdoor areas of all kindergartens, primary and secondary schools, and indoor premises of universities and tertiary institutions as well as indoor workplaces.

Members generally supported the Administration's proposals but had grave doubts about the enforcement arrangement for public indoor places such as restaurants and shopping malls. Similar to the existing arrangement, the management of the premises concerned would be the primary enforcement agency for the smoking ban, with the police providing assistance when offenders refused to comply with the requirement. Members doubted whether the management of the premises concerned would be willing or able to fulfil their expected role, even though some assistance and training would be given to them by the new Tobacco Control Office set up under the DH.

To help overcome the problem, some members suggested that in addition to the staff of the Tobacco Control Office, the health inspectors of the Food and Environmental Hygiene Department should also be empowered to take action against people who violated the ban on smoking in restaurants. Members also

urged the Administration to step up anti-smoking education to prevent young people from becoming smokers and to provide additional resources for setting up more smoking cessation health centres to help smokers quit smoking.

As for the remaining items, I would not repeat them, for they have been covered in detail in the report.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr Ambrose LAU will address the Council on the Report on the Financial Systems in the United Kingdom and the United States of America based on the findings of the overseas duty visit paid by the delegation of the Financial Affairs Panel and the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 in April 2001.

**Report on the Financial Systems in the United Kingdom and the United States of America based on the findings of the overseas duty visit paid by the delegation of the Financial Affairs Panel and the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 in April 2001**

**MR AMBROSE LAU** (in Cantonese): Madam President, in April this year, a delegation comprising members of the Financial Affairs Panel and the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 visited London, Washington, DC and New York to study the financial systems of the United Kingdom and the United States. I will now table the findings of the study to this Council on behalf of the Panel and the Bills Committee.

The major objectives of this overseas duty visit are to study the working and regulatory framework of the financial markets in the United Kingdom and the United States and make reference to their experiences in introducing changes to meet new market demands, particularly their ways to tackle similar problems noticed by us when scrutinizing the Securities and Futures Bill.

We have found the visit extremely useful and timely. Hong Kong is in the middle of a major revamping in its financial infrastructure. Since 1998, some 70 legislative proposals related to our financial system and regulatory

framework have been introduced and passed in this Council. A number of these legislative proposals would have far-reaching impact on the financial infrastructure and practices of the banking, securities and futures industries in Hong Kong. Let me quote the Securities and Futures Bill currently under scrutiny in this Council as an example. The Bill will usher in a new era for the securities and futures market by putting in place a new regulatory regime. We must bear in mind that the financial services industry, including insurance and related business services, accounts for over 20% of the Gross Domestic Product of Hong Kong. With the progressive globalization and convergence of international financial markets, it is most important that Hong Kong should ensure that a financial system is put in place to continue to provide us with excellent services. As regards whether or not the future regulatory framework can cope with these challenges, maintain market confidence and strengthen market competitiveness, as members of the legislature, we must carefully study and consider these issues with utmost caution.

In examining the systems of the United Kingdom and the United States, we have taken note of the different characteristics of these economies from those of Hong Kong — including the political and constitutional setting, market size, historical development of the financial services industry, degree of consumer awareness, and so on. The observations contained in the report mainly seek to provide reference information to help the Bills Committee to examine various issues from a macroscopic angle. As for which option is more suitable for Hong Kong, we will have to wait until the Bills Committee has made its analysis and recommendations after listening to views from all sides. Nevertheless, in the nine-day visit, we have noted a number of issues which the Financial Services Panel may wish to pursue in future.

During the visit, we had the opportunity to meet with different people from different sectors of the financial industry, including the government, the legislature, the regulators, traders, major market players and consumer representatives. Despite their different roles and interests, they have the same understanding of the general direction of development in their systems. With such understanding, they find it easier to identify their common problems and it has made compromises and co-operation much easier. Let me quote an example. The United Kingdom Government launched a reform package for the financial services and market in 1997. As the government understood that it needed to solicit full support from various sectors of the financial services industry for the new regulatory framework, ample time was provided for public

consultation and for the assessment of risks. It had eventually taken three years for the completion of the whole process from the launching of the package to the completion of legislative procedures. Considerable time was devoted to public discussion and consultation. As a result, the entire financial sector was perfectly clear about the objectives of the reform and the compromises made by various parties. Although the relevant bill was passed in June 2000, the effective date was postponed until the end of this year so that thorough preparations can be made for the implementation of the new system.

We consider that there is a general lack of discussion in the community, especially among the trades and institutions concerned, about the strategic direction which Hong Kong should take to maintain or elevate its status in the international financial arena. Since the attack on Hong Kong dollar in 1997 and the Asian financial turmoil that followed, the general public and the financial services sector have been receptive to proposals from the Government to restore confidence in the Hong Kong currency and the stock markets. There is, however, little discussion on what strategic direction Hong Kong should attach importance behind all these proposals.

In Hong Kong, regulatory objectives are for the first time included in the Securities and Futures Bill. As regards whether the objectives will dictate the way forward for the entire industry, the Administration has yet to make any disclosure. It is therefore difficult to ensure different trades, different regulatory bodies and different bureaux will move forward in the same direction. Without a clear target, it will easily lead to inconsistencies in the standard of regulation for different trades, lack of long-term plans to cope with global changes and mismatch of human resources for the sustainable growth of the financial services industry. For these reasons, we would like to recommend various sectors of the community, particularly people working in the financial services industry, to engage in more discussion to see what strategies Hong Kong should adopt in order to retain its key position as an international financial centre.

During the overseas duty visit, we specially observed how the United Kingdom and the United States, following globalization and convergence of businesses in the financial market, enable financial institutions, big and small, to remain competitive and have the maximum opportunity for growth and development and, at the same time, maintain the stability of the entire financial market. In this respect, different approaches have been taken by the United

Kingdom and the United States — a single regulator for the former and a multiple regulator for the latter. Nevertheless, both countries share the same understanding of the idea of "regulation".

"Regulation" covers "prudent supervision" and "conduct regulation". There are different requirements between the two. Although there are differences between the regulatory frameworks of the United Kingdom and the United States, both countries have adopted the same approach of functional regulation. In other words, the regulator of market behaviours must be familiar with the practices of the industry. In the long run, Hong Kong may need to examine whether functional regulation or other approaches which are more in line with the actual situation of Hong Kong should be adopted for the regulation of the financial services industry in order to provide room for development for the market and sustain a level-playing field.

In the United Kingdom and the United States, great emphasis has been placed in consultation, which is often done in an open and systematic manner. The Financial Services Authority (FSA) in the United Kingdom has the statutory duty to consult practitioners and consumers and to consider their representations. When it disagrees with the views made in such representations, the FSA also has the duty to give its reasons in writing.

In carrying out consultation, some agencies in the United States will provide relevant information in light of the needs of the people from different walks of life so that the exchange of views can be analytical, thorough and comprehensive, instead of just trying to convince the public of the merits of the proposal.

The Government in Hong Kong has started to place much emphasis on public consultation in recent years. Through effective consultation, the Administration will be able to debate all supporting and dissenting views publicly. This will help the Administration to effectively arouse public concern about the relevant impact produced when the proposal is brewing so that it will be easier to gain recognition and co-ordination from all parties when the proposal is formally implemented in future.

The success of an industry relies heavily on the extent of public confidence in the industry. Protection of the rights of consumers is one of the prerequisites in building up confidence in the market and fostering the continued growth of the

market. The biggest benefit we have gained from this visit is that we can now understand more thoroughly ways adopted in the United Kingdom and the United States to enhance consumers' awareness of their interests in financial business, ways to ensure protection of investors, and ways to include consumer protection as one of the key objectives of market regulation. There is a lack of awareness of rights and obligations among investors or clients of the financial services industry in Hong Kong. It is therefore necessary for the Government to enhance discussion in this area, and formulate a more specific mechanism for the protection of consumer interests and to boost consumer protection. This will greatly elevate the status of Hong Kong's financial market internationally and boost confidence of investors elsewhere in Hong Kong's market.

We notice that some of the trade associations in the United Kingdom and the United States do place their concern for the community as an objective for their work. For instance, upon the outbreak of the foot-and-mouth disease, the British Bankers' Association requested its members to proactively lend a helping hand to clients who might be affected and offer special terms to help them tide over their financial hardships. Another example is related to the New York Board of Trade. In order to maintain competitiveness, huge investment is needed to provide clients with an electronic settlement and information system. But for the sake of avoiding massive unemployment resulted from the switch to electronic transaction, both the open-cry and the electronic systems are preserved.

Although these examples are very simple, they suffice to illustrate that the industry is part of the community. In times of economic uncertainty and difficulties, Hong Kong will be better able to rid itself of hardships swiftly and face challenges if people from various spectrums can have regard to the interest of the community and make concerted efforts.

During the visit, we had the opportunity to meet with some Hong Kong students studying finance and other related subjects in New York at a seminar. During the short discussion that lasted only a few hours, we observed a general concern and a sense of helplessness among these university students. Despite the fact that their families were still based in Hong Kong and they strongly wished to work in Hong Kong, they had lost their link with the job market in Hong Kong. Moreover, they were not familiar with the market operation in Hong Kong and were afraid they could not be immediately functional when they returned to Hong Kong.



We strongly feel that the Administration has failed to give sufficient attention to the needs of Hong Kong's young people studying overseas. While the Advisory Committee on Human Resource Development in the financial services sector is reviewing the manpower shortfall in the industry, there is no mention in its First Report about the prospect of luring Hong Kong students educated overseas back to serve our needs. Faced with the projected accumulative shortfall of 18 000 at professional and managerial level in 2005, we hope more proactive actions can be taken to facilitate Hong Kong students educated overseas with the requisite knowledge and skills to return to Hong Kong to take up employment. At the same time, we would like to urge financial institutions to provide training and development opportunities for more job seekers in Hong Kong.

Madam President, I would like to highlight that we have found fact-finding visits of this nature extremely useful to committees of this Council. The visit fully illustrates the need for more in-depth study of the subject matters of legislative proposals and relevant government policies. We hope that a review could take place in the near future on how far the effectiveness of committees can be enhanced through visits of this nature and the strengthening of the professional support to the committees.

Lastly, on behalf of the Panel and the Bills Committee, I wish to thank the organizations which have kindly assisted us in planning the visit. They include the British and American Consulate General in Hong Kong, and the Economic and Trade Offices of the Hong Kong Government in London, Washington DC and New York. I would also like to thank the staff of the Legislative Council Secretariat for their research, logistic and translation services, particularly three staff members from the Council Business Division and the Legal Service Division. My thanks must also go to the remaining three members of the delegation. We will not be able to have such a comprehensive report if not for their meticulous and inquiring spirit. Thank you, Madam President.

## **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. When asking supplementary questions, Member should be as concise as possible. They should not make any comments and should not ask more than one question.

**Health Hazards Posed by LPG Taxis on Drivers**

1. **MR LAU CHIN-SHEK** (in Cantonese): *Madam President, it was reported that a recent study had found high levels of carcinogenic gas build-up in liquefied petroleum gas (LPG) taxis while in operation, and the cumulative amount of carcinogenic gases inhaled over 10 years by drivers of LPG taxis might exceed the standards set by the Environmental Protection Agency of the United States and result in their developing cancers. In this connection, will the Government inform this Council:*

- (a) whether it has received the report of the above-mentioned study; if so, when it received the report and whether and when it will make the report public; if it will not, of the reasons for that;*
- (b) whether it will defer implementing the scheme for replacing diesel taxis with LPG taxis; if so, of the details; if not, the reasons for that; and*
- (c) of the specific measures to reduce the cancer risks to which drivers of LPG taxis are exposed?*

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

- (a) The Hong Kong Polytechnic University (PolyU) was granted funding by the Environment and Conservation Fund (ECF) for conducting a study on air quality inside taxi cabins. During the period between September 1999 and January 2001, the PolyU measured and analysed the air quality inside the cabins of 25 diesel taxis and 25 LPG taxis.

The PolyU submitted a report on the study to the ECF Secretariat at the end of March 2001. According to the funding conditions of the ECF, upon completion of the study, the PolyU should submit, in addition to the study report, an evaluation report on the study prepared by an independent assessor. The Secretariat is now awaiting the evaluation report. Upon receipt of the evaluation report and after confirming that all objectives set by the PolyU in its

application for funding have been met, the ECF Secretariat will put a summary of the study report on its website for public information. The public may also read the full text of the completion report at, or obtain a copy of the study report from, the ECF Secretariat.

- (b) The Government will not postpone the implementation of the LPG taxi scheme because of the findings in the study report, for the following reasons:

First, of all the hydrocarbons inside taxi cabins measured by the PolyU, only benzene has been confirmed to be carcinogenic. According to the report, the concentration of benzene measured in LPG taxis was lower than that measured in diesel taxis. In addition, the concentrations of hydrocarbons, including benzene, measured inside both types of taxis were far below the "Occupational Exposure Limits" set by the Labour Department (LD) and will not be hazardous to the health of taxi drivers.

Second, the PolyU collected and analysed only 12 samples of benzene from LPG and diesel taxis. It did not find out whether such level of benzene would be maintained for a prolonged period. Therefore, the assessment made by extrapolating the cancer risk of taxi drivers in 10 years based on the data collected over the very short period of time will not be reliable.

Third, LPG vehicles have been used overseas, including Japan, Italy and the Netherlands, for more than 40 years. Their safety and environmental benefits are widely accepted.

- (c) As I pointed out in my reply to part (b) of the question above, the concentrations of the air pollutants measured in the PolyU's study were far below the "Occupational Exposure Limits". Therefore, they will not be hazardous to the health of taxi drivers. Nevertheless, as press reports on the study have aroused the taxi trade's concern, the Transport Department has written to the taxi trade to clarify the matter and alleviate the trade's concerns.

In Hong Kong, petrol is the major source of benzene, which is carcinogenic, in the air. To reduce the concentrations of benzene

in the air, the Administration cut the level of benzene content in petrol from 5% to 1% last year. In addition, petrol storage tanks in all petrol filling stations are now fitted with vapour recovery system so as to reduce benzene emissions. The Administration is also studying with oil companies other devices that could further reduce benzene emissions.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, in her main reply, the Secretary repeatedly stressed that LPG taxis complied with all occupational safety standards. The study of the PolyU, however, adopted standards of the Environmental Protection Agency of the United States (EPA). Did the amount of carcinogenous gases found inside LPG taxi cabins exceed these standards? Before implementing the LPG taxi scheme, did the Government considered the standards? Will the Secretary inform this Council whether the probability of drivers getting cancer will increase if the amount of carcinogenous gases inside LPG taxi cabins exceed these standards?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, in fact, the standards referred to in the study of the PolyU are not those of the EPA. Nor are they safety standards for LPG taxis or any vehicles. The so-called "parts per million" is a benchmark used by the EPA in its study of the effect of pollutants on the environment or on the causing of cancer. When the concentration of pollutants rises above the benchmark, the authorities would have to pay attention and carry out a study, but the benchmark is not a safety standard. As I have explained in the main reply a while ago, the study on benzene concentrations in taxi cabins did not point to the source of benzene with certainty. It was speculated that the source could be from the external environment. It was also possible that the taxis examined were new cars and the materials used for the seats were quite new and so this had affected the results. However, I still want to emphasize the two points I made in my main reply. First, the PolyU collected samples over a period of only 12 hours from only 25 taxis, against a total number of about 10 000 LPG taxis on our roads. Second, the study did not show that the benzene concentration would maintain at that level for a prolonged period. I think to extrapolate the situation 10 years from now basing data collected over 12 hours is not a reliable calculation method. Therefore, LPG taxi drivers do not have to worry.

**MRS MIRIAM LAU** (in Cantonese): *Madam President, according to the study report of the PolyU, concentration of benzene found in LPG taxis was lower than that found in diesel taxis. When the study report made an extrapolation for the cancer risk for LPG taxi drivers who have worked for 10 years in their taxis with a lower benzene concentration, did it do the same for drivers working in diesel taxis with a higher benzene concentration and which considering the fact that diesel taxis have been in service for over 25 years? Did the report refer to any real cases?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, the study did not refer to any real cases, but I still wish to provide some data for Members' reference. The benzene concentration in the cabins of LPG taxis is lower than that in diesel taxis by 5%. According to the Occupational Exposure Limits set by the LD, the standard for benzene is 640 nanograms per cubic metre. At present, the average benzene concentration found in LPG taxis is 7.1 nanograms per cubic metre and that found in diesel taxis is 7.5 nanograms per cubic metre. So, both are well below the 640 nanograms per cubic metre under the Occupational Exposure Limits set by the LD.

**MR MICHAEL MAK** (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary pointed out that LPG taxis had been in use overseas for more than 40 years. Is the Secretary aware of any study or assessment that has been carried out on the health of LPG taxi drivers overseas? If there has been such study or assessment, have the drivers been found to be healthy? If not, will Hong Kong conduct a relevant study or assessment?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, the LPG taxis on the roads in Hong Kong have been serving with safety in Japan for more than 30 years. Their fuel system has never been found to have any problems. We understand that in Japan it has never been found that air quality in the cabins of LPG taxis has adversely affected the health of drivers. As I have explained repeatedly, since there are no problems, the Government will not conduct any further studies to tackle what we believe is a non-existent problem.

**MR ANDREW CHENG** (in Cantonese): *Madam President, in her main reply and supplementary replies, the Secretary has maintained that LPG taxis do not have any conceivable problems. However, I still wish to follow up on the matter. The PolyU study was done against Occupational Exposure Limits and it was on the Limits that an extrapolation was carried out, predicting a higher probability of LPG taxi drivers developing cancer in 10 years. In these circumstances, has the Government considered making reference to international health standards to see whether the present Limits set by the LD are too low so that they need to be revised? Moreover, since the Government thinks that the PolyU did not find out whether the level of benzene inside taxi cabins would be maintained for a prolonged period, why does it not conduct a relevant study by itself to determine whether findings of the PolyU study are reliable or not?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I believe the Honourable Member was a little bit confused with the Limits. The conclusion of the study was not made on the basis of the Limits. A moment ago, I was quoting the Occupational Exposure Limits set by the LD to make a comparison with the extrapolation of the PolyU study. The figures I quoted prove that the benzene concentrations in both types of taxis are well below the existing Limits, which were set by reference to the standards and guidelines on Occupational Exposure Limits in the United States and the United Kingdom. There are no plans for the LD to change the standards.

I have explained in my main reply the cancer risk mentioned by the Honourable Member. Why is the risk of over one in a million, as mentioned in the study report, not reliable? Because the report was prepared purely on data collected over 12 hours. It cannot prove that the existing benzene concentration will remain unchanged for the next 10 years. So, the calculation of the risk is open to question. Furthermore, supposing in studying the issue, we accept the risk of over one in a million. Now, in Hong Kong there were about 20 000 new cases of cancer in 1997. Based on a population of 6 million to 7 million in Hong Kong, we have 20 000 new cases of cancer in 1997 alone. This shows that the general public have a cancer risk of no less than that reported theoretically in the report. That is to say, the general public are facing a risk no smaller than that mentioned in the report. Therefore, the Government will not be carrying out further research in this regard. As benzene comes mainly from petrol, a more practical course of action is, I believe, and as we have done in the past year, to cut the level of benzene content in petrol. The present benzene

content in petrol is limited to 1%, which is comparable to that in European and American countries.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary's answer may not be able to stop LPG taxi drivers from worrying. However, from the last part of her main reply, we can tell the Government is working very hard. I can see that the Government has succeeded in reducing the benzene content in petrol from 5% to 1%, which is a rather remarkable decrease. But can it be further reduced? The Secretary also mentioned ways to further reduce benzene emissions. Will the Secretary inform this Council what these ways are?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I believe whether LPG taxi drivers will be relieved of worries depends to a large extent on the availability of objective data and whether the relevant conclusions are well-supported. In addition to working on the benzene content in petrol, we are conducting a study with petrol stations on the possibility of adding some devices to petrol pumps to reduce the evaporation of volatile chemicals, including benzene, into the air. The Honourable Member asked whether the benzene content in petrol could be further reduced from 1%. I trust we need to make reference to the lowest benzene content generally attained internationally. As I pointed out, the present standard in Hong Kong is on a par with countries in Europe and America. We will, however, not be complacent with our present achievements. If it is technically viable for these countries to further reduce the maximum benzene content in petrol, Hong Kong will certainly follow suit.

**PRESIDENT** (in Cantonese): We have spent 18 minutes on this question. This is the last supplementary question.

**DR RAYMOND HO** (in Cantonese): *Madam President, while in our cars we often close the windows because the air-conditioner is turned on. Radioactive radon will accumulate. Hong Kong has an abundant supply of rocks such as granite which release a lot of background radiation. Will the Secretary inform this Council whether there is any mention in the Occupational Exposure Limits the risk of cancer which may be caused by benzene, radon and background radiation added together? Has the Government issued any relevant guidelines so that we can compare the information to the findings of the present study?*

**PRESIDENT** (in Cantonese): Dr HO, can you tell me how your question relates to the LPG taxis? *(Laughter)*

**DR RAYMOND HO** (in Cantonese): *Madam President, this is related to the risk of cancer caused by benzene.*

**PRESIDENT** (in Cantonese): Thank you for your explanation, Dr HO, but your supplementary question is not allowed. *(Laughter)*

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

### **Service Quality of Private Care-and-attention Homes for the Elderly**

2. **MR LEE CHEUK-YAN** (in Cantonese): *Madam President, last year, an old man suffering from senile dementia was accidentally strangled by the straps of a strait jacket (commonly known as "safety jacket") in a private care-and-attention home for the elderly (PCHE). In connection with the service quality of PCHEs, will the Government inform this Council:*

- (a) *of the measures to ensure that strait jackets used in PCHEs comply with safety standards, and that decisions on whether individual elderly inmates need to wear strait jackets are made by properly-trained care workers and that these jackets are put on for them by such workers; and the measures in place to enhance training for care workers;*
- (b) *whether it has assessed if the working hours of care workers in PCHEs are too long and their workload too heavy, and whether these conditions have an impact on the service quality; if there is such an impact, of the measures to reduce the working hours and workload of care workers; and*
- (c) *whether, to avoid PCHE operators choosing to provide inferior services for lower fees and ensure that the elderly in need can receive better care and attention, it will consider increasing the rate*



*of the Comprehensive Social Security Assistance (CSSA) for old people living in PCHEs?*

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

- (a) Strait jacket is a type of physical restraint. The Social Welfare Department (SWD) has issued a Code of Practice for Residential Care Homes (Elderly Persons) (the Code) under section 22(1) of the Residential Care Homes (Elderly Persons) Ordinance. The Code provides guidelines on application of physical restraint by Residential Care Homes for the Elderly (RCHEs). These include paragraph 5.5.2(d) on "Record on Application of Physical Restraint", paragraph 12.5 on "General Principles in Application of Physical Restraint" and paragraph 12.6 on "Principles to be Observed in Applying Physical Restraint".

According to the guidelines, physical restraint should only be considered as a last resort on an exceptional basis, and be applied only when the well being of the resident and/or other residents is in jeopardy. And, it should not be regarded as a normal practice.

Furthermore, in using physical restraint, written medical opinion in addition to consent of the resident and his/her relatives should be obtained and be reviewed on an annual basis. During the period of application, the resident must be under close observation. His/Her condition(s) should be reviewed once every two hours while under restraint and be documented.

During inspections, the inspectors of the Licensing Office of Residential Care Homes for the Elderly (LORCHE) of the SWD provide advice on the spot to the staff of RCHEs on proper usage of physical restraint if irregularities are detected. In addition, they would check the relevant documents, including medical assessments, consent records of residents and/or their relatives, and observation records on the conditions of residents after application of physical restraint.

Under the Residential Care Homes (Elderly Persons) Regulation, care and attention homes and aged homes are required to employ either nurses or health workers. In the course of their training, both nurses and health workers have received training on the usage of physical restraint. In addition, the SWD has provided regular training courses on basic care knowledge and skills for in-service care workers of RCHEs. In 2000-01, a total of 21 training courses were organized for 755 care workers. To further enhance care workers' knowledge and skills in care for frail elders, the SWD has developed and would introduce a multi-skilled training course to provide enhanced training to them. The target is to provide a total of 2 160 training places between 2001 and 2005.

- (b) The minimum staffing requirements (including care workers) of each type of RCHEs for different time spans of a day, to cater for the needs of daily operation and emergency, are set out in Schedule 1 of the Residential Care Homes (Elderly Persons) Regulation.

In accordance with paragraph 5.4 of the Code, RCHEs have to draw up comprehensive duty lists for different posts and a duty roster for staff. It is also stipulated in paragraph 9.4.3 of the Code that for all types of RCHEs, there should be a minimum of two shifts of workers. The number of working hours is normally stated in the contract of employment between the employer and employee. As required under paragraph 9.7 of the Code and in accordance with section 15(2) of the Residential Care Homes (Elderly Persons) Regulation, a home manager shall at least once every three months inform the SWD in writing of any change in the list of staff employed, including information on working hours and working time and so on.

If a RCHE fails to comply with the above requirements, the SWD would issue a verbal or written warning. Inspectors of LORCHE of the SWD would also examine the regular returns from RCHEs on staff employment records. The SWD would give advice on improvement measures if it considers the reported working hours of staff not reasonable (for example, over 12 hours a day).

The SWD has taken various steps to ensure that services of private RCHEs are of acceptable standards. Apart from regulating their operation through a licensing system, measures including regular inspections conducted by inspectors of the department, setting up of a hotline for inquiries or complaints on the service of RCHEs, and so on are also in place to help monitor the service quality of private RCHEs.

- (c) The Government has implemented a number of measures to assist private RCHEs to upgrade their service standards. These include the Bought Place Scheme (BPS) and Enhanced Bought Place Scheme (EBPS). To further enhance the service quality of private RCHEs, the Administration would undertake the following initiatives:
- (i) To progressively raise the licensing standards in terms of management and provision of health and care to align with the "Service Quality Standards" which currently apply to the subvented RCHEs and those private RCHEs taking part in the EBPS.
  - (ii) To provide the service users (that is, elders and their relatives) with more information on RCHEs for their reference in selection of homes. In the longer term, consideration would be given to the introduction of an accreditation system.
  - (iii) To enhance training of staff who worked in RCHEs to improve their skills in taking care of frail elders.
  - (iv) To step up prosecution actions against RCHEs that breach licensing conditions in order to deter any malpractices.

The CSSA Scheme aims to provide a safety net to the financially vulnerable to meet their basic and essential needs. For elderly residents in private RCHEs, financial assistance (equivalent to standard rate and highest rental allowance) is available to them to pay care home fees if they meet the eligibility criteria of the CSSA Scheme.

As mentioned above, the Administration has been vigorously pursuing a number of initiatives to encourage private RCHEs to improve their service quality. We will not consider increasing the amount of allowance under the CSSA Scheme for elderly residents of private RCHEs to improve the quality of private RCHEs as we regard this as not an effective means.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, part (b) of my main question is actually concerned with the working hours of care workers and the Secretary replied only working hours of more than 12 hours a day will be regarded as unreasonable. I think this is already an unreasonable level and if care workers have to work 12 hours a day, the service quality will definitely be jeopardized.*

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

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, will the Government plan to progressively introduce an eight-hour work schedule and three shifts system under the BPS and EBPS?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, under the BPS and EBPS, our requirements on floor area, standards and staffing will be more stringent than those for PCHE operated under general licensing conditions. However, as regards working hours, we have no intention to ask the PCHEs to follow certain specified standards. We believe that the working hours should be decided by employers and employees under the employment contract.

**MR SZETO WAH** (in Cantonese): *Madam President, part (c)(i) of the main reply mentioned the phrase "to progressively raise the licensing standards". How will the licensing standards be progressively raised? What will be involved in each step? Will the Secretary inform us of the relevant timetable?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, our standards for RCHEs under the BPS are higher, and we are now planning to progressively raise the licensing standards for private RCHEs in general. Though we have not yet laid down a definite timetable, we hope to enhance our standards in relation to the minimum requirement on the floor area per person and the number of health and care workers. We are now looking into these issues but have not yet got a definite timetable as to when other private RCHEs would be required to meet standards under the BPS.

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

**MR SZETO WAH** (in Cantonese): *Madam President, if the licensing standards were to be progressively raised, a first, second and third step will certainly be taken, so the Secretary should, at least, tell us what will be done in the first step. If the Government has not yet even planned the first step, then how can it be said that the standards will be progressively raised?*

**PRESIDENT** (in Cantonese): Mr SZETO Wah, please sit down first. Secretary, do you have anything to add?

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I do not have anything to add in this respect at the moment.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, it was mentioned in part (b) of the main reply that regular inspections will be conducted by inspectors of the department and a hotline for inquiries or complaints about the service of RCHEs will be set up. May I know the number of inspections carried out on RCHEs and how frequent will the inspections be conducted? Will those RCHEs with more problems be subject to more frequent inspections? And, will the Secretary inform us of the number of complaints received through the telephone hotline?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the LORCHE has an existing establishment of 34 staff, including social workers, nursing and staff responsible for building and fire safety inspections. They are responsible for inspecting the operations and monitoring various aspects of the RCHEs. During the 12 months in the year 2000, the LORCHE of the SWD conducted a total of 5 200-odd visits to private RCHEs. With about 520 private RCHEs at present, each RCHE will be subject to an average of about 10 inspections on an annual basis. Furthermore, in order to monitor the service quality of RCHEs, a telephone hotline was set up by the SWD to receive inquiries and complaints about the service of RCHEs. The public can also make use of various channels such as the media, the Legislative Council, the Office of The Ombudsman, and so on to make suggestions on improving the services of RCHEs.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, has your supplementary question not been answered?

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, perhaps my question was not clear enough. I would like to know how many complaints have been received by the SWD through the telephone hotline?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I am sorry I do not have such information on hand. Please allow me to give Mr TAM a written reply. (Annex I)

**MS AUDREY EU** (in Cantonese): *Madam President, that a Member has raised this question is because an old man suffering from senile dementia was accidentally strangled by a strait jacket. Has the Secretary conducted a review in relation to this case to find out the cause of the accident and to see what improvements can be made to prevent the reoccurrence of similar incidents? For example, it was mentioned in part (a) of the main reply that the use of strait jackets should be reviewed by RCHEs on an annual basis, and that the conditions of residents should be reviewed once every two hours. Will this be too infrequent? Should more frequent inspections be made? And, can other preventive measures be adopted to avoid the occurrence of similar accidents?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, in fact, we have followed up on this accident. The Coroner's Court decided that it was a case of death by accident, but we very much hope that similar accidents can be prevented through enhancing control and laying down the Code in greater detail.

Subsequent to that accident, the SWD has worked with the Hospital Authority and the Department of Health to conduct a study on the design and style of strait jackets. It is hoped that a more detailed guideline on the use of strait jackets, such as the definition of suitable sizes and good strait jackets, should be laid down, for the compliance of the RCHEs.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, it was mentioned in part (c)(iv) that prosecution actions will be stepped up against RCHEs that have breached the licensing conditions. Will the Secretary inform us of the number of RCHEs warned last year and that of prosecutions made? If prosecution actions are to be stepped up, is it necessary for the authorities concerned to set a target to increase the proportion of prosecution actions as opposed to the mere issue of warnings?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as of now, the total number of prosecution actions taken against RCHEs operating without licences or without certificates of exemption is 18. However, for RCHEs operating with licences but failed to comply with all the licensing conditions, the SWD will first issue a verbal or written warning when after these RCHEs are inspected by the inspections of the SWD. These RCHEs are required to comply with all the licensing conditions and rectify the irregularities within a certain period of time. As regards such cases, after warnings were issued by the SWD, all RCHEs managed to rectify the irregularities and comply with the licensing conditions within the specified period of time. Therefore, in the past, we have never taken any prosecution actions against RCHEs for breaching licensing conditions.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, in his main reply, the Secretary said prosecution actions will be stepped up, but from the reply he has just given me, it seems that he does not think it is necessary to do so. How will the Secretary step up the prosecution actions?*

**PRESIDENT** (in Cantonese): Mr LAW, do you think that the Secretary has not answered the part of your supplementary question on how to step up prosecution actions?

Secretary, do you have anything to add?

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I think if prosecution actions have to be stepped up, inspection actions and requirements under the Code should also be enhanced.

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

**DR YEUNG SUM** (in Cantonese): *Madam President, the Government will consider introducing an accreditation system on service quality. When will this system be introduced and will there be extensive publicity so that users can learn about the ratings?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, we are now considering how this job can be done. As regards service accreditation, we plan that it should be done by a non-government organization. Of course, if such a system is to be introduced, we will certainly step up the publicity, so that private RCHes will be aware of our accreditation standards.

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

### **Encouraging Qualified Planners or Architects to Enter West Kowloon Reclamation Concept Plan Competition**

3. **MR AMBROSE LAU** (in Cantonese): *Madam President, the Competition Features of the West Kowloon Reclamation Concept Plan Competition (the Competition) stipulate that the heads of the Planning Department, the*



*Architectural Services Department and the Leisure and Cultural Services Department will be the Chairman and members of the Technical Panel respectively and, for this reason, employees of these Departments may not enter the Competition. With regard to encouraging qualified planners or architects to enter the planning competition, will the Government inform this Council:*

- (a) given that the main role of the Technical Panel is only to provide advice to the Jury on the technical assessments of individual submissions and it will not take part in deciding on the winners of the Competition, and that all submissions must be made anonymously, of the justifications for excluding the planners and architects of these government departments from the Competition, and the number of competitions organized in the past three years by government departments in which employees of the relevant departments were also precluded from entry, together with details of these competitions; and*
- (b) of the measures to encourage qualified local planners or architects to actively enter the Competition; and the effectiveness of these measures?*

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

- (a) The decision to exclude civil servants in the Architectural Services Department, the Planning Department and the Leisure and Cultural Services Department from participation in the Competition is a deliberated one. Similar restrictions are generally in place for international competitions. This Competition organized by the Government of the Hong Kong Special Administrative Region (SAR) is an international open competition. It is most important that apart from the arrangement for anonymous submission to ensure fairness in adjudication, measures should also be taken to avoid any suspicion of unfair treatment. The Director of Planning, the Director of Architectural Services and the Director of Leisure and Cultural Services will respectively be the Chairman and members of the Technical Panel, which will conduct technical assessment on all the entries and provide advice to the Jury as reference in selecting

the winners. Their staff will have to assist in the process of technical assessment. To allow civil servants of these departments to participate in the Competition will, by virtue of their working in the same departments, inevitably arouse suspicion of unfair treatment even though administrative measures could be introduced to forestall any conflict of interest. On balance, we consider it appropriate not to allow civil servants working in the relevant departments to enter the Competition.

According to the information provided by various government departments, there were four design competitions organized or co-organized by the Government in the past three years in which restrictions on entry were imposed on civil servants working in the relevant departments.

These four competitions were the Design Competition for the Improvement to Office Accommodation for Wing Shun Street Vehicle Pound, Tsuen Wan, the Centre for Youth Development Architectural Design Competition, the Public Housing in the New Era: Shui Chuen O Architectural Design Competition and the Roof Shelter for Kadoorie Pier Architectural Design Competition. Competition rule specified that, anyone, including civil servants, who was directly involved in the organization, technical assessment and adjudication process of these competitions was ineligible for entry. In the Shui Chuen O and Kadoorie Pier Competitions, those providing administrative support, amongst whom included civil servants, were also ineligible for entry.

- (b) For the Competition, in order to attract more entries from local professionals, the Government has conducted extensive promotion and publicity mainly via the Internet, television and radio stations as well as advertisements in local professional publications. Besides, all relevant local professional institutes and other interested organizations have been informed of the Competition by letters, e-mail and promotional leaflets. In terms of the effectiveness of such efforts, 502 registrations have been received, of which 169 are from Hong Kong, representing more than one third of the total number of registrations.

**MR AMBROSE LAU** (in Cantonese): *Madam President, it was stated in part (a) of the main reply that there were four design competitions organized or co-organized by the Government in the past three years in which restrictions on entry were imposed on civil servants working in the relevant departments. Anyone, including civil servants, who was directly involved in the organization, technical assessment and adjudication process of these competitions was ineligible for entry. Those providing administrative support were also ineligible for entry in two of these competitions. I agree that it is a reasonable arrangement. However, the Government has adopted different measures for the forthcoming major competition. All civil servants working in the relevant departments, such as the Architectural Services Department, may not enter the Competition. As such, whether or not the staff is directly involved in the organization of the Competition, he is ineligible for entry. Why did the Government change the reasonable arrangement into an unreasonable one? Why did the Government give up the relatively more open approach it used to adopt and replace it with a restrictive approach? Moreover, would the constant changes in government policy give rise to confusions and make it hard for the public to follow?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): *Madam President, every competition has its own set of rules and regulations formulated in accordance with its requirements. I have already explained in my main reply that the Competition is an international open competition which the SAR Government has devoted much attention to. Therefore, we have made reference to the arrangements set out in other international competitions and have come up with such a decision. I have also explained in my main reply about the problems that may arise when civil servants of the relevant departments are involved in the process of technical assessment. I would like to emphasize the point that I hope everyone will find this international open competition totally fair and impartial.*

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that the authorities consider it appropriate not to allow civil servants working in the relevant departments to enter the Competition. In this regard, I would like to ask the Secretary whether the Government would encourage government planners and architects to take part in competitions not organized by the Government? If yes, what are the specific details?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the Government has not laid down any measures or principles to encourage government planners and architects to take part in competitions not organized by the Government. Whether or not civil servants will take part in outside competitions mainly depends on their interest and availability of time, and whether it will give rise to a conflict of interest at work.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, after I have read the Secretary's main reply, I understand that it may give rise to a conflict of interest, therefore, the Government does not want to arouse the suspicion of having "insiders" in the competition by allowing civil servants to enter. Notwithstanding this, the Secretary also mentioned in his main reply that all submissions will be made anonymously, as such, the Directors who will respectively be the chairman and members of the Technical Panel would not know the identity of the contestants. It has thus already upheld the principle of fairness. By excluding civil servants from participation, their talents are not given full play which may be a loss to our society. Apart from the Technical Panel, the jury is also responsible for assessing the entries. Would the Secretary inform the Council of the composition of the Jury? Would the Jury serve as a checkpoint with an aim to show the international community that our competition is fair and impartial?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, with regard to the assessment of the entries, it mainly comprises two levels. The jury is made up of 10 celebrities from all over the world, they are authoritative professional representatives of the town planning and architectural sectors. However, it is impossible for us to make arrangements for them to assess 502 submissions together within a short period of time, we have therefore arranged for a Technical Panel to conduct a preliminary technical assessment. The technical assessment is very important to the overall competition. We will submit views from the Technical Panel to the jury for reference, thus, there is a close relationship between the two. In view of this, though the staff of the government departments are only involved in the work of the Technical Panel, we still do not want to arouse the suspicion that the Government is showing favouritism, or giving priority to the submissions from civil servants. I would like to emphasize that as this is an international open competition, we have to be more punctilious in this respect.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, can I seek elucidation and raise a question at the same time?*

**PRESIDENT** (in Cantonese): Mr LAU, you may ask for a clarification, and each supplementary question can only raise one question.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, I would like to ask for a clarification first. The Secretary mentioned in his main reply that civil servants were ineligible for entry to the Shui Chuen O competition, this the information is wrong. Would the Secretary clarify on this, as architects from the Housing Department took part in the competition and one of them came third in the competition?*

**PRESIDENT** (in Cantonese): Mr LAU, please ask your supplementary question.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, I now raise my supplementary question.*

*The Government states that the entry requirement is based on recognized local qualifications, however, it has not been specified that internationally accredited qualifications are required, thus "local" could refer to any unknown place. As such, how would the Government safeguard the standard of the Competition? Moreover, the Government does not required overseas contestants to work with local professionals, then how would the Government ensure that the design would incorporate elements of local tradition and culture?*

**PRESIDENT** (in Cantonese): Mr LAU, please sit down first. Secretary for Planning and Lands, please answer the question raised by Mr LAU. With regard to the elucidation sought by Mr LAU, you may comment on that but you are not obliged to do so.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, firstly, I would like to offer some clarification. Mr LAU may have misunderstood my main reply. With reference to the Shui Chuen O competition, not all civil servants were restricted, but only those involved in the process of organization, technical assessment and adjudication were restricted. I would like to clarify this point which has been clearly stated in the main reply.

With respect to the two supplementary questions raised by Mr LAU, firstly, any professional planners and architects who have been accredited by professional institutes in any countries and regions are welcome to enter the Competition. Why would we put in place this regulation? As this is an international competition, we hope that people in the international arena will be able to join. If we wish to assess their professional qualifications, we have to rely on the qualifications recognized locally. Theoretically, every region would have a sound system to evaluate the standard of local professionals. As such, we have to respect the professional standard appraised by local professional institutes.

As for the second point, would Mr LAU please repeat his supplementary question?

**PRESIDENT** (in Cantonese): Secretary, please sit down first. Mr LAU, please repeat your supplementary question.

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, the second question is .....

**PRESIDENT** (in Cantonese): Mr LAU, you may not ask a second question, please only repeat the part of your supplementary question which has not been answered.

**MR LAU PING-CHEUNG** (in Cantonese): *Yes, Madam President. The Government accepts locally recognized qualifications as the entry requirement of the Competition, but it has not required overseas contestants to work with local professionals, then how could the Government ensure that the design would incorporate elements of local culture and Chinese tradition?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the answer is very simple. At the time when we released information about the Competition, we have also emphasized that the design of the submission must be in line with the culture of Hong Kong and the neighbouring areas. If the contestants are not familiar with the culture of Hong Kong, they will certainly acquire relevant information from their fellows in the same profession in Hong Kong. As far as I know, many overseas contestants have already liaised and teamed up with local professional organizations for the Competition.

**PRESIDENT** (in Cantonese): Mr LAU, I will not allow you to ask further questions, otherwise, other Members may not be able to raise their questions.

**MR HENRY WU** (in Cantonese): *Madam President, may I ask the Secretary how many people took part in the last four competitions, and the number of civil servants among them? Did it give rise to criticisms after civil servants won prizes in the past and that made the Government tighten the rules for the forthcoming Competition and restrict civil servants from entering the Competition?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I do not have the detailed information at hand. However, I would like to emphasize one point, the rules and regulations of each design competition are made according to the different requirements of the competition. I restate that since this is an international open competition, we have to be more punctilious in our requirements.

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

**MR HENRY WU** (in Cantonese): *Madam President, would the Secretary provide the answer in a written reply later on?*

**PRESIDENT** (in Cantonese): Secretary, can you provide the answer in a written reply?

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Yes, Madam President. (Annex II)

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

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary mentioned in his main reply that overseas competitions of similar nature often require the contestants to hire local professionals as major consultants, that is, lead consultants. May I ask the Secretary if similar arrangement has been made in the Competition? If not, would contestants with local lead consultants gain more marks?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, we do not have any arrangement which requires the contestants to hire local professionals as consultants. We do not require the contestants to do so since we aim at ensuring that the competition will be conducted in a free and open manner. We would leave the decision to the contestants to decide whether it is necessary to make such arrangement. We will not give more marks to those contestants who team up with local professionals, as it does not go in line with the principles of impartiality and fairness.

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

### **Combating Shop Thefts**

4. **MRS SELINA CHOW** (in Cantonese): *Madam President, people in the retail industry have reflected to me that shop thefts are common not only in shops with fewer assistants, but also in those with more assistants and a large customer flow, and as a result shop operators and assistants are subject to unnecessary pressure when economic conditions are unfavourable. In this connection, will the Government inform this Council:*



- (a) *of the total value of the goods stolen from shops in the past three years;*
- (b) *whether it has identified the locations and categories of shops which have a higher incidence of shop thefts, and whether it has discussed with retail trade associations ways to strengthen anti-theft devices and measures in shops; and*
- (c) *whether it has stepped up actions to combat shop thefts, and whether it has assessed if the existing penalties have adequate deterrent effects?*

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

- (a) According to police record, the total value of goods stolen in the past three years were as follows:

<i>Year</i>	<i>Total Value of Goods Stolen (\$)</i>
1998	3.38 million
1999	3.17 million
2000	3.03 million

However, among the cases reported in the past three years, 83% of them involved goods valued under \$500 being stolen.

- (b) There are shop theft cases in every police district, with Sha Tin, Tai Po and Yau Tsim districts having a higher number of such cases than other police districts. Police statistics also reveal that shop theft cases take place most frequently at supermarkets, followed by retail outlets, department stores and convenience shops.

Over the years, the Crime Prevention Bureau of the police has maintained effective communication with the Hong Kong Retail Management Association. The Association is briefed on the emerging crime trends and the effective crime prevention measures that can be taken to reduce shop theft. The police will make an effort in maintaining the contacts with each other.

The Crime Prevention Bureau also offers crime prevention seminars to the Vocational Training Council Wholesale/Retail and Import/Export Trades Training Centre and retail companies on request. To enhance the capability of retail shops in preventing shop theft, Crime Prevention Officers of the police districts visit and survey the retail outlets in their respective districts and offer expert advice on how anti-theft devices and measures could be effectively put in place. Such advice include where to install anti-theft devices, how the goods should be arranged and placed to allow better monitoring by staff, the design and layout of the shop, and so on. More than 2 000 surveys were conducted by the police in each of the past three years.

- (c) Prevention is the most effective method in reducing shop theft. The police will continue to tackle the problem through crime prevention education. The police will strengthen its communication with the Hong Kong Retail Management Association, retail shops and supermarkets, and so on to remind the management of the importance of putting in place effective anti-theft measures as well as the need for having adequate, well-trained and alert staff to prevent shop theft.

The Police Force will also make effective use of the district based anti-crime publicity campaigns, including schools talks, seminars, mobile display, distribution of leaflets, and so on to educate youngsters on the serious consequence of committing shop thefts. To effectively reach children for the purpose of inculcating correct attitude among them, Robotcop shows, which features a robot installed with interactive programmes, are incorporated in the anti-crime campaigns whenever possible, and fight crime messages can be conveyed to children through those interactive games.

Under the Theft Ordinance, the maximum penalty for shop theft is imprisonment for 10 years. We consider that the existing maximum penalty already provides sufficient deterring effect.

**MRS SELINA CHOW** (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary mentioned that 83% of the cases reported involved the*

*theft of goods valued under \$500. Could the Secretary tell us whether the importance attached to this category of theft by the police will be affected given that the value of goods stolen appeared to be on the low side; and will the Government inform this Council the crime detection rate of such cases?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the police absolutely will not pay less attention to this category of crime because the value of goods involved is low. In fact, the crime detection rate for this category of crime has all along been considerably high. For example, the crime detection rate reached 92.8% in 1998; 91.6% in 1999 and 91.7% in last year. Most of the offenders were caught at the scenes. I have also said just now such cases took place most frequently at supermarkets. Looking back at the past 10 years, the police have tried to find out the reasons why the number of such cases was especially high. It was found that owing to the establishment of some large-scale commercial centres in the course of new town developments, youngsters or even children were tempted to commit thefts. When we go shopping in commercial centres, we may find that the security work there is mainly carried out by the staff managing the commercial centres, while security within the shop is carried out by shop assistants. Of course, when it comes to the question of deploying manpower, the police must first combat more serious and violent crimes, such as robbery, and so on. The police also think that the best way to tackle these crimes is to inculcate anti-crime messages among youngsters and children, and enhance the contacts with professional organizations in the retail trade for the purpose of teaching shopkeepers how to install anti-theft devices, and how shop assistants can prevent such crimes. According to the experience of the police, the crime detection rate of such crimes is quite high. We believe the reason is that some shops will offer bonus to shop assistants if they can catch the offenders red-handed, and this helps them to be more alert.

**MR KENNETH TING** (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary has pointed out that from 1998 to 2000, the total value of goods stolen has been dropping from year to year. Is it because of the decline in the frequency of crimes that we can say the efficiency of the police has increased, or the value of goods dropped as a result of the financial turmoil?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I think it is not of any significance purely by looking at the total value of goods stolen in these three years. I have some other figures at hand showing that such cases have been increasing instead of decreasing over the past 10 years, with the figures particularly high in one or two years. The police trust that this was due to the completion of large-scale commercial centres. As for the number of arrests, there were also ups and downs. For example, in 1990-2000, the number of arrests ranged from the lowest 5 000-odd to the highest 7 000-odd. Despite the ups and downs, there was no specific pattern found.

**MISS LI FUNG-YING** (in Cantonese): *Madam President, in part (c) of the main reply, it appears that many of the preventive measures adopted by the police have been targeted at youngsters, may I ask the Secretary if this means shoplifting is mostly committed by youngsters? Are there any specific figures indicating the percentage of youngsters committing such crimes?*

**SECRETARY FOR SECURITY** (in Cantonese): Thank you, Miss LI. Madam President, our figures indicate that for the period during the past 10 years, 40% of the people arrested were actually under the age of 20. According to our analysis on the people arrested in the past 10 years, males and females accounted for half of the total number respectively. As for their age, 27% were between the age of seven and 15 in 1999; in last year, that is 2000, 26.3% were between the age of seven and 15. We trust that the decoration of shops with open-plan designs and the display of their goods are aimed at attracting customers as much as possible for purchase. Very often, youngsters or even children will shoplift as they fail to resist the temptations. Therefore, the value of goods stolen is usually quite low.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, the Secretary has just said that people involved in such offences were mainly youngsters. May I ask if any in-depth analysis has been made to identify if there is any seasonal pattern for this category of theft, or whether such cases take place more often at weekends or on weekdays? If such information is available, it may help shops to adopt special preventive measures during that period.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not have such detailed figures at hand indicating whether the occurrence of crimes was more frequent at weekends or during vacations. Certainly, the Honourable Mrs Selina CHOW has also mentioned earlier such crimes would surely take place in shops with a high customer flow. Therefore, the major anti-theft messages we provide to shops is to teach them how to install anti-theft devices, such as wide-angle mirrors in hidden locations; attach magnetic labels onto goods, or install an electronic surveillance system or close-circuit television at the entrance and exit of the shop and so on in order to detect such crimes.

**MRS SOPHIE LEUNG** (in Cantonese): *Madam President, according to the reply given by the Secretary earlier, in particular her reply to the Honourable Miss LI Fung-ying's supplementary question, it can be seen that people who have committed such minor thefts are mostly youngsters. May I ask if the Secretary has the opportunity to compare the situation in which the crimes have been committed with other big cities? Insofar our next generation and current social climate are concerned, will such minor theft cases continue to exist day after day and year after year? As the Secretary has pointed out in part (c) of her main reply, I know the police have done a lot of preventive work. However, the preventive work which has been done over the years does not seem to alleviate the crime trend because of such reasons including the completion of a large number of new towns and the way goods are displayed. The point is, has the Government considered making a comparison with other cities? Or has the enhancement in parental education in this respect been considered?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not have any information at hand concerning the comparison between Hong Kong and other cities. However, I can inquire if information showing offenders of such crimes are largely youngsters is available or not, and the relevant information will then be submitted in writing. (Annex III)

In fact, when we talk about juvenile crimes over the years, it can be seen that shoplifting accounts for the largest proportion. The rest are assaults, or even serious assaults, together with the abuse of psychiatric drugs in recent years, and so on. In view of this, the police have strengthened the part targeting at juvenile crimes in its promotion on fighting crimes. For example, in the second

quarter of the fight-crime campaign last year, the target was to fight juvenile crimes. Sixteen thousand posters and more than 600 000 leaflets were distributed at that time reminding youngsters not to break the law because of the failure to resist a momentary temptation. Besides, we can usually watch this type of promotion on television. Youngsters are urged not to steal a lipstick in supermarket out of a momentary greed or they will carry a criminal record. The police have also held shows on "Robotcop", which features a policeman-controlled robot with interactive games. Youngsters are attracted to play with it and anti-theft messages are sent home to youngsters in the course of the games. However, we will continue to pay attention to such figures in other cities and study if better methods are available to remind youngsters not to commit such crimes simply because of materialistic temptations.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the police will brief the Retail Management Association on the latest crime trends. Can the Secretary brief us here on the latest crime trends? And does this trend constitute the reason for the 10% of undetected cases?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, in fact, the seminars provided to the Hong Kong Retail Management Association or the training centres under Vocational Training Council mainly train shop assistants how to watch out for customers, identify suspects, handle shop displays, install the right types of anti-theft measures and so on, and they are not on the general crime trends.

**MR HENRY WU** (in Cantonese): *Madam President, I also agree that the Government should try to make such efforts in reducing shoplifting. However, the Secretary has expressed in the main reply that the maximum penalty for shoplifting is 10 years imprisonment. May I ask the Secretary what are the maximum penalties actually meted out for the persons arrested in the last three years in accordance with the data analysis provided by the Government? The sentences imposed on youngsters by judges are usually more lenient. Has the Government compiled any statistics on the number of repeated offenders among the youngsters arrested? If they have committed the crimes again, then the deterrent effect is proved to be insufficient.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have at hand some figures about sentencing. As Mr WU thinks, the penalties imposed on youngsters are not heavy. As revealed by the figures, from 1997 to June last year, half of the shoplifters were imposed with a fine and only 18% were imposed with an immediate custodial sentence. Over 95% of the offenders were fined less than \$4,000. If Members have paid attention to the figures, they will find the value of goods stolen was less than \$500 for 83% of the cases. Therefore, a fine of \$4,000 was of an appropriate proportion. Ninety percent of the imprisoned were sentenced to jail for less than six months. It is believed that when imposing sentences, the judge has taken into consideration the gravity of the facts of the case, the articles stolen, whether the offender was a first offender, the age and family background of the offender, and so on. I do not have the figures for repeated offenders at hand but I can submit the information in writing after checking. (Annex IV)

**MS AUDREY EU** (in Cantonese): *Madam President, may I ask the Secretary about ways to deal with offenders as mentioned in part (c) of the main reply concerning penalties. If the offender is a pathological offender and seeks to find excitement through shoplifting, how would such situation actually be handled? Also, the Secretary has just mentioned young shoplifters whose age ranged from seven to 14, how would they actually be handled after arrest?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, in connection with ways of handling juvenile delinquents, Members may roughly know that the police have put in place a Superintendent Discretion Scheme. If the juvenile is under 18 years old, has a clear record and admits the facts of the case, the Superintendent sometimes can decide not to prosecute but caution him/her with the consent of his/her parents or guardian. I believe many cases involving youngsters or even children will also be handled in this way. As for repeated offenders or pathological offenders, I believe the police will decide whether the offenders will be prosecuted or not pursuant to the Department of Justice's advice. Sometimes we can also read reports of such cases on newspapers. According to my understanding, the Court will pass a sentence depending on individual case, personal background, and whether the defendant is actually ill, and so on.

**PRESIDENT** (in Cantonese): We have already spent more than 17 minutes on this question. Now the last supplementary question.

**MRS SELINA CHOW** (in Cantonese): *Madam President, I would also like to ask the Secretary concerning penalties. The Government has done so many preventive and promotional work targetting at youngsters but they apparently are useless. Will the Government review the Superintendent Discretion Scheme or existing penalties, that is in most cases, the offenders are imposed with a fine only and imprisonment is rare. Can the Secretary provide us later with some figures indicating the number of cases where prosecutions are made or custodial sentences imposed by the Courts? In addition, is it necessary for the Government to review the penalties so that they have a deterrent effect on young offenders, deterring them from committing such crimes for fear that a heavier sentence would be imposed?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, in fact, the Panel on Security has discussed issues concerning penalties on another occasion. Some Members thought that a maximum penalty of 10 years' imprisonment is already quite heavy for crimes involving theft alone. I remember the Honourable James TO has also queried whether 10 years' imprisonment would be imposed if one candy is stolen? Of course, a judge will try a case depending upon individual circumstances. I personally consider this penalty as quite heavy. As for the figures I have mentioned earlier, as we know, from 1997 to the first half of 2000, only 18% of offenders were imposed with an immediate custodial sentence and the longest terms were less than six months. Therefore, the maximum penalty has nothing to do with the high shoplifting rate. I think we need to pay attention to the trend of such crimes to see whether more and more youngsters commit such crimes and whether the facts of the case have become more serious. We need the assistance from the Department of Justice in this respect by briefing the Courts of the situation when reviews are made on the sentences, so that the Courts can be allowed to consider imposing a heavier sentence on certain cases in order to enhance deterrent effects.

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



**Protecting Rights and Interests of Local Consignors**

5. **MR KENNETH TING** (in Cantonese): *Madam President, it has been reported that as a Korean shipping company encountered debt problems, some container terminal operators in the territory and the Mainland demanded that local consignors pay the relevant fees on behalf of the shipping company before allowing them to collect the cargoes shipped to the terminals concerned by that company, but those fees were much higher than the normal terminal handling charges on shipping companies. In this connection, will the Government inform this Council whether it has assessed how it can assist local consignors in such incidents and prevent the recurrence of similar incidents, with a view to protecting the rights and interests of local consignors?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the question raised by the Honourable Kenneth TING involves commercial transactions amongst three parties, namely, a Korean shipping line, the related terminal operators and consignors and concerns commercial arrangements relating to cargo delivery and fee collection. We understand that the issue originated from a Korean shipping line which has applied to the Korean Court to go into receivership. The said shipping company has asked the Court to freeze its assets and debts while it goes through restructuring. As the case takes place outside Hong Kong, only very limited information is available to us.

What we gather is that the said shipping company failed to pay the terminal handling charge. The three affected terminal operators initially refused to release the container to the consignors. One of these three operators is a container terminal operator whilst the remaining two are mid-stream operators. Subsequently, these operators released the cargo upon receiving terminal handling charges from the consignors. Terminal handling charges (THC) are fees collected by shipping lines from shippers and consignors. The fees cover the cost of paying the terminals or mid-stream operators for the loading and unloading of containers and other costs related to cargo handling.

Subsequently some consignors alleged that the charges imposed by one of the terminal operators before the release of the containers were substantially higher than the normal THC charged by other terminal operators. But the terminal operators informed us that the amounts which they charged varied among operators and consignors.

The matter at issue mainly involves the commercial arrangements for cargo collection and fees collection among the consignors, shipping company and terminal operators, the Government can only obtain information which those concerned are prepared to release to us. We have discussed the case with the Hong Kong Shippers Council (HKSC) on what could be done to help the consignors concerned in this matter. Both the Government and HKSC are of the view that the current issue is principally a commercial matter, the Government cannot offer much assistance. The HKSC has suggested to the consignors to seek legal advice and to consider appropriate action.

**MR KENNETH TING** (in Cantonese): *Madam President, local consignors were demanded by those container terminal operators to pay the relevant fees on behalf of the Korean shipping company, but those fees were several times higher than the normal THC, some were even 10 times higher. However, as those consignors were eager to collect the cargoes, therefore, they had no alternative but to pay the relevant fees before they could collect the cargoes. May I ask whether such fees are unreasonable, and does it mean that there are loopholes in the current arrangement? Can the Government make any remedy in order to play down the impact of such unreasonable charging practice of local terminal operators on the reputation of Hong Kong as a shipping and logistic centre?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the question raised by Mr Kenneth TING involves a triangular relationship. First of all, there was a commercial arrangement between the consignors and the shipping company; and it was unnecessary for the consignors to pay the container terminal operators or mid-stream operators in the first place. However, as the Korean shipping company went bankrupt, the cargoes were kept in the terminal. On the other hand, the consignors were very eager to collect them, as a result, the consignors had to negotiate with the container terminal operators although they need not to negotiate with them in the first place.

Although I am not a legal expert, I know that is the cause of the problem. The first question is whether the consignors have the chance to recover the cost from the shipping company? Secondly, we do not know what the consignors and the container terminal operators had discussed in the course of the negotiation; neither can we gain access to such information. Since not all of the three container terminal operators and mid-stream operators are willing to

provide us the relevant information. Under such circumstance, I am sorry that I am unable to provide any answer. We have just heard about the case but we are unable to confirm how many times the handling charges were increased on that day concerned. All we can do is to advise the consignors that under such circumstances, they should seek legal advice, so as to find out what the original arrangement between them and the shipping company was as well as when a shipping company was under receivership due to debts in a foreign place, whether or not the consignors may recover some compensation. Besides, we also have no idea that in the course of discussion between the mid-stream operators and the consignors, the actual amount of fees the consignors had to pay before they were allowed to collect the cargoes. Under such circumstances, it is actually impossible for us to provide any assistance.

With regard to the question Mr TING raised earlier that whether the Government would draw up legislation to regulate the situation, as this is an isolated case and is also a special one involving a foreign shipping line, I therefore do not think it is necessary to regulate the relevant charge level due to an isolated case. I have explained the issue concerning mid-stream operation clearly more than once on other occasions, such as the meeting of the Panel on Economic Services, that the Government has no plans to draw up legislation to regulate the charging arrangements of mid-stream operations.

**MRS SOPHIE LEUNG** (in Cantonese): *Madam President, in her reply to the second part of Mr TING's supplementary question, the Secretary stated clearly that the question was actually twofold. Firstly, the consignors should think over what corresponding legal action should be taken in order to recover the relevant compensation from the shipping company; secondly, it is also the question I wish to raise, that is, in this isolated case, it is so clear that the case is so extraordinary that nobody really wishes to see. A local businessman is expecting some cargoes to be shipped by a shipping company to Hong Kong. However, some extraordinary "accidents" have happened to this shipping company, consequently .....*

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG, please raise your supplementary question directly.

**MRS SOPHIE LEUNG** (in Cantonese): ..... *consequently, he was waylaid by terminal operators who charged him almost 10 times that of normal handling charges* .....

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG, what do you wish to ask? Please raise your supplementary question directly.

**MRS SOPHIE LEUNG** (in Cantonese): *Madam President, I would like to ask the Government, under such circumstances, does it really mean that the Government can do nothing at all? Will the Government take a thorough look into the matter, so as to avoid local terminal operators adopt the aforementioned "waylaying" approach to hurt consignors in Hong Kong?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, we have spent a lot of time in seeking more information about the process, commercial arrangement or transaction of this case. Regretfully, we are unable to obtain solid information which indicate the exact amount of fee being charged on that day and how many times they are higher than the normal THC. Under such circumstances, it is hard to give the final conclusion and hard to tell who is right and who is wrong. I do not know whether there was any bargain in the course of discussion, besides, the relevant companies are unwilling to disclose further information to us.

With regard to the second part of the supplementary question that whether or not the reputation of Hong Kong would be affected under such circumstances, I feel that under any circumstance, if the consignors have to pay up to several times of the fee before they can collect the cargoes because one of the parties has some difficulties, it seems that such arrangement is not so reasonable. But we should not consider regulating the fees because of an isolated case.

Madam President, I have to reiterate that my colleagues and I have spent a lot of time in order to obtain more information of this case, but we did not get the co-operation, besides, as the shipping company is registered in a foreign country, and the relevant procedure is carried out in a court of law in a foreign country, we therefore are unable to obtain information in this respect.

**MR ALBERT HO** (in Cantonese): *Madam President, I believe the Secretary also agrees that the THC in Hong Kong are among the highest in the world. Recently, there are a lot of complaints and controversies concerning THC, particularly about the charges collected by mid-stream operators. The Secretary also mentioned earlier that a great number of meetings were held to deal with such problem, which brought her numerous headaches.*

*The Secretary said that at the present stage, the Government did not intend to intervene in the issue or in the so-called commercial dispute as the Secretary has put it. May I ask the Secretary, if the problem goes on and on, under what circumstances which the Government consider intervention necessary? For example, will the Government intervene until a lot of disputes concerning THC emerge or until a riot breaks out; or until the number of complaints has reached a certain level; or until the reputation of Hong Kong as a shipping centre has become so notorious that its competitiveness drops significantly? Has the Government actually decided that under what circumstances will it intervene, or if it intends not to intervene at all?*

**PRESIDENT** (in Cantonese): Mr HO, is your supplementary question related to the main question?

**MR ALBERT HO** (in Cantonese): *Madam President, yes, it is.*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, I can only see that this supplementary question is related to THC. I do not know whether or not I should respond to the question of how the Government should enhance the competitiveness of local terminals and the forwarding industry, however, I do not mind to go on with my reply.

**PRESIDENT** (in Cantonese): Secretary, actually I have asked Mr HO very clearly whether his supplementary question is related to the problem of that Korean shipping company. If the supplementary question of Mr HO is diverged from the main question, I will not ask you to reply.

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, I have replied to issues concerning THC more than once. In the meeting of the Panel on Economic Services of this Council on 26 March 2001, the Government has provided an information paper which is divided into eight categories. It has clearly explained THC and the overall operation condition. In respect of THC, different types of terminals collect different charges, the handling charges of terminals of a larger scale cannot be decided unilaterally. It is because according to international practice, trade unions have their stabilization agreement. For trans-Pacific operation, a Trans-Pacific Stabilization Agreement is in place to determine the level of the relevant handling charges. As a result, the charging level of large-scale terminals is not determined by Hong Kong terminal operators alone, it is determined by the relevant organization abroad. As to mid-stream operations, no such mechanism is in place, whilst the level of relevant handling charges is determined solely by terminal operators.

With regard to the issue of competitiveness, it does not only rely on the charging level, though pricing is a very important factor. The Government understands that to business operators, the lower the cost the more advantage they will have. However, in recent years, the level of THC between container terminals in the Pearl River Delta Region and Hong Kong is already quite close to each other. It does not mean that we should be complacent, as we should understand that besides the pricing level, our competitiveness also depends on other important factors. For example, Hong Kong has over 300 vessels travelling to and from 500 destinations around the world every week, but the vessels in the Pearl River Delta Region can only reach out to 50 or 60 destinations in a week. We have our own advantages in other aspects, they are also included in the scope of our policies, such as the formalities in customs clearance and the loading and unloading of cargoes, plus the fact that our resources in terms of manpower and technology are more adequate and comprehensive. As a result, I hope Mr HO should not be that pessimistic, as we should consider our strengths and exert more efforts in these respects, rather than suggesting that the Government will only intervene when riots break out.

With regard to policy matters, the Government supports the shipping industry and hopefully we can improve the productivity of our terminals, this is indeed a positive approach to take. We do not encourage any sabotaging action from anybody who thinks that such action will put pressure on the Government and eventually will lead to government intervention under such special

circumstances. All along, we have been upholding a free economy and hoping that businesses will develop under their own advantageous circumstances. Additionally, with regard to options, besides large-scale terminals, we also have the so-called public cargo handling areas, which provide the public with an alternative for the loading and unloading of cargoes.

**MRS SELINA CHOW** (in Cantonese): *Madam President, our time is very precious, nevertheless, is the reply of the Secretary directly related to the supplementary question?*

**PRESIDENT** (in Cantonese): Mrs Selina CHOW, the Secretary is replying to the supplementary question raised by Mr Albert HO. I believe Mrs Selina CHOW also knows that I am unable to control how government officials will make their replies. If officials elucidate their replies in a more detailed way, I would usually allow Members to raise one or two more supplementaries.

Secretary, please go on with your reply.

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, I am willing to discontinue my reply. However, as Mr HO just mentioned the competitiveness of Hong Kong, I therefore feel that I am obliged to explain how the Government will maintain or improve the competitiveness of container terminals and the shipping industry.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, in fact, if Hong Kong is to become a logistic centre, I believe government intervention is very unlikely for the time being. May I ask the Secretary whether the Government will consider carrying out another review in the near future concerning the following areas, namely, the overall operation and charges of these terminals, as well as ways to ensure users and consumers are protected?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, we have no such plans at present.

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

**MRS SELINA CHOW** (in Cantonese): *Madam President, although the Secretary said earlier that as the incident involved a Korean shipping company, thus she did not have much information. However, paragraph two of the main reply clearly suggested that due to financial reasons, the Korean shipping company was insolvent and unable to pay all the handling charges to the container terminals in Hong Kong, thus the three terminal operators took the cargoes as custody and did not allow the consignors to collect them. Afterwards, consignors have to pay part of the charges before they could collect those cargoes. Under such circumstances, I would like to ask the Secretary that in the face of this kind of unreasonable actions, would the Government play the role as a mediator? Of course, the consignor may take legal actions, but it will only take months before the problem is solved, basically, that approach is not beneficial to the consignors. May I ask whether the Government will play the role as a mediator in order to help those consignors, or will it advise relevant consignors to report the case to the police when they encounter similar events in future?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the duty of the Government is to serve the public, of course if anybody put forward his request, we will provide the best possible assistance we can. However, the Government does not have all the resources to deal with every case.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Regulation on Sale of Lottery Tickets by Charitable Organizations**

6. **MR LAU KONG-WAH** (in Chinese): *Madam President, in respect of regulating the sale of lottery tickets by charitable organizations, will the Government inform this Council:*

- (a) *of the existing mechanism for regulating the sale of lottery tickets by charitable organizations and ensuring the proceeds so generated will be used for charitable purposes only;*



- (b) *whether it has received complaints in the past three years about charitable organizations recruiting members of the public to tout lottery tickets for them in public places by offering commissions on the basis of the number of lottery tickets sold; if so, of the details, the follow-up actions taken and the results in respect of each complaint; and*
- (c) *whether charitable organizations are required to take out employees' compensation insurance for the persons who tout lottery tickets for them in public places; if so, how the Administration ensures their compliance with the requirement; if not, of the reasons for that?*

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

- (a) Any person who wishes to promote and conduct a lottery in Hong Kong is required to apply for a Lottery Licence from the Television and Entertainment Licensing Authority (TELA) and comply with a number of basic licensing conditions (see Annex). These conditions aim to prevent the sale of lottery tickets from turning into gambling activities, prevent individuals from making personal gains from the promotion of lotteries, as well as ensure that the proceeds so generated will be used for the specified purposes such as fund-raising and the donations to charitable organizations.

On the monitoring of the proceeds generated from the sale of lottery tickets, the licensee is required to comply with the following conditions:

- (i) Under Condition (2) of the Lottery Licence as stipulated in the Gambling Regulation (Cap. 148 sub. leg. A), no part of the proceeds of the lottery shall be appropriated for the private gain of any individual who assists in the promotion of the lottery or who is a member of the organization on whose behalf the lottery is promoted;
- (ii) Under Condition (6), the licensee shall, within 28 days from the date of the draw of the lottery, prepare a statement of all

moneys obtained from the sale of lottery tickets and every disbursement made from the moneys so collected or received and a copy of such statement shall be forwarded to the TELA for checking;

- (iii) the TELA imposes an additional licensing condition in Lottery Licences issued requiring that if the proceeds of the lottery are to be used for meeting the day-to-day expenditure of the organization, the licensee shall forward to the TELA a copy of the related annual financial statement audited by a professional accountant, showing the proceeds of the lottery and expenditure for checking purpose. If the proceeds are to be donated to another charitable organization, the recipient organization shall issue a formal receipt for verification.
- (b) In the past three years, the TELA and other relevant departments have not received any complaint on such matters.
- (c) Under the Employees' Compensation Ordinance, all employers are required to take out employees' compensation insurance policies for all employees (including full-time and part-time employees) to cover their liabilities under the Ordinance and at common law. In this regard, charitable organizations are required to comply with the Ordinance and take out compensation insurance policies for their employees irrespective of the nature of their work.

To ensure that charitable organizations comply with the requirements, the Labour Department (LD) has requested the Social Welfare Department which approves applications for flag days and general fund-raising activities, and the TELA which issues Lottery Licences, to state in the letters of approval that charitable organizations must take out employees' compensation insurance policies for their employees who assist in the sale of lottery tickets or conduct of fund-raising activities.

To remind employers that they must take out insurance policies for their employees, the LD has conducted extensive promotional and publicity activities on the compulsory insurance requirement through the placing of advertisements, distribution of pamphlets,

organization of exhibitions and seminars, and so on. It has also taken strict enforcement actions by conducting inspections to ensure that employers comply with the relevant legislation. A complaint hotline has also been set up for employees to report cases where employers have not taken out insurance policies. The LD will institute prosecutions against employers who fail to take out insurance policies for their employees in accordance with the law.

Annex

#### Conditions to which a Lottery Licence is subject when issued

1. No cash prize shall be offered or distributed.
2. No part of the proceeds of the lottery shall be appropriated for the private gain of any individual who assists in the promotion of the lottery or who is a member of the organization on whose behalf the lottery is promoted.
3. Every lottery ticket shall:
  - (a) be numbered serially and no such numbers shall be repeated in respect of the same lottery;
  - (b) state the licence number (Lottery Licence No.);
  - (c) state the price at which it is sold;
  - (d) state the number, nature and value of the main prizes available in the lottery;
  - (e) state the date and manner in which the numbers of the winning tickets shall be published after the draw of the lottery; and
  - (f) state the manner in which prizes may be claimed.
4. No lottery ticket shall be offered for sale:
  - (a) earlier than eight weeks before the draw is to take place;

- (b) by advertisement or publication in any newspaper circulating in Hong Kong.
5. Within seven days from the date of the draw of the lottery, details of the results shall be published in two English and two Chinese newspapers circulating in Hong Kong, and a copy of the relevant newspaper cuttings shall be forwarded to the Commissioner.
6. Within 28 days from the date of the draw of the lottery, the licensee shall cause to be prepared a statement of all moneys collected or received from the sale of lottery tickets and every disbursement made from the moneys so collected or received and a copy of such statement shall be forwarded to the Commissioner.

### **First-time Visitors to Hong Kong**

7. **DR LUI MING-WAH** (in Chinese): *Madam President, will the Government inform this Council of the number of first-time visitors to Hong Kong and, among them, the respective numbers of those from the Mainland and other places, in each of the past five years?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, on the basis of the visitors' surveys conducted by the Hong Kong Tourism Board, the numbers of first-time visitors from the Mainland and other places to Hong Kong are as follows:

	<i>First-time visitors from the Mainland</i>	<i>First-time visitors from places other than the Mainland</i>	<i>Total number of first-time visitors</i>
1996	1 386 000	4 711 500	6 097 500
1997	1 418 500	3 880 000	5 298 500
1998	1 389 000	2 675 000	4 064 000
1999	1 635 000	2 896 500	4 531 500
2000	2 044 500	3 310 000	5 354 500

**Bodies of Dead Babies Used in Radioactivity Experiments Without Consent of Families**

8. **DR LO WING-LOK** (in Chinese): *Madam President, it has been reported that the bodies of about 6 000 dead babies were collected in the 1950s and 1960s from hospitals in Hong Kong, Australia, Canada, Britain and South America, and so on, for conducting radiation experiments in a project known as "Project Sunshine" of the United States Department of Energy (DOE). In this connection, will the Government inform this Council:*

- (a) *of the normal procedure adopted by public hospitals in handling the bodies of dead babies in the 1950s and 1960s;*
- (b) *whether it has investigated the details of the above incident in respect of the bodies of dead babies of Hong Kong, including the number of dead babies of Hong Kong or parts of their bodies that were shipped overseas, whether the authorities concerned had notified the families of the dead babies and obtained their consent beforehand, and whether such a practice was in violation of the legislation at that time; and*
- (c) *of the existing procedure for handling the bodies of dead babies; and the monitoring mechanism currently in place to prevent them from being used for experimental purposes without the consent of their families?*

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

- (a) The handling of bodies of dead babies (including still births) in public hospitals in the 1950s and 1960s was governed by the relevant provisions of the Births and Deaths Registration Ordinance (Cap. 174) enacted in 1934, the Public Health and Urban Services Ordinance (Cap. 132) enacted in 1960, the Magistrates (Coroners Powers) Ordinance (Cap. 14) enacted in 1888 and repealed in 1967, and the Coroners Ordinance (Cap. 14) enacted in 1967.

According to the provisions of the Births and Deaths Registration Ordinance, a dead body should not be removed or buried without a certificate of registration of death, or an order to bury or cremate from a magistrate. Removal of a dead body from Hong Kong would require a permit from a registrar. Burial of still birth would require a still birth certificate signed by a registered medical practitioner or a certified midwife, or an order of a magistrate.

The parents or relatives of the deceased may claim the body and arrange for disposal by cremation or burial. For unclaimed bodies, the Public Health and Urban Services Ordinance enacted in 1960 provided the former Urban Services Department with the power to arrange for disposal. In such cases, the Urban Services Department would arrange for cremation or burial.

As required by the Magistrates (Coroners Powers) Ordinance, when a dead body is brought to a hospital, a medical officer of the hospital should make a preliminary external examination and report to the magistrate who may order an autopsy to determine the cause of death. The Ordinance also empowered the magistrate to order the disposal of any body which is the subject of a "cause of death" inquiry. Similar provisions existed in the Coroners Ordinance enacted in 1967 to replace the Magistrates (Coroners Powers) Ordinance, except that a coroner instead of a magistrate is vested with the power to order an autopsy, and the burial or cremation of a body.

- (b) We have studied relevant parts of the 1995 United States DOE report on human radiation experiments, and a number of declassified DOE documents relating to the Project Sunshine. Based on the information we have access to, there has not been any mention of Hong Kong as one of the territories supplying dead bodies of babies for use in the Project Sunshine. On the other hand, according to the records obtained from the United Kingdom Public Records Office, 31 femurs of dead babies from Hong Kong were shipped to the United Kingdom in 1961 for use in a study on Strontium 90 in bones of infants in Hong Kong jointly carried out by the United Kingdom Medical Research Council and the United Kingdom Atomic Energy Authority to ascertain levels of human

contamination with radiation fallout. The Department of Health, Hospital Authority and the Department of Pathology of the University of Hong Kong have all searched their records and were unable to unearth any documentation or records relating to the Project Sunshine or the "Strontium 90" study. We are therefore not in a position to advise whether the consent of the families of the dead babies had been obtained prior to shipment of the femurs to the United Kingdom.

- (c) At present, the handling of the bodies of dead babies is governed by the Births and Deaths Registration Ordinance, the Public Health and Municipal Services Ordinance (Cap. 132) (formerly known as the Public Health and Urban Services Ordinance), the Coroners Ordinance (Cap. 504) and the Medical (Therapy, Education and Research) Ordinance (Cap. 278). The existing provisions governing the handling of dead bodies in the Births and Deaths Registration Ordinance and the Public Health and Municipal Services Ordinance are broadly the same as those in the 1950s and 1960s. A dead body should not be removed or buried without a certificate of registration of death, or an order to bury or cremate from a coroner. Removal of a dead body from Hong Kong requires a permit from a registrar. Burial of still birth requires a still birth certificate signed by a registered medical practitioner or an order of a coroner. The arrangements for disposal of unclaimed bodies are basically the same as in the 1950s and 1960s except that the handling agency is the Food and Environmental Hygiene Department instead of the Urban Services Department.

The Coroners Ordinance (Cap. 504) enacted in 1997, empowers a coroner to order an autopsy to be performed by a pathologist to ascertain the cause of death, as well as to order a dead body, which is the subject of an inquest, to be buried or cremated.

According to the Medical (Therapy, Education and Research) Ordinance enacted in 1968, the use of any part of the body of a deceased person for therapeutic purposes or for purposes of medical education or research requires either the consent of that person before he passes away or the written consent of the next-of-kin of the deceased.

**Levy of Estate Duty**

9. **MR HENRY WU** (in Chinese): *Madam President, regarding the levy of estate duty, will the Government inform this Council:*

- (a) *of the number of estate duty cases and the total amount collected in each of the past three years, broken down by bands of \$2.5 million each;*
- (b) *of the expenditure on levying estate duty, and its ratio to the total amount of estate duty collected, in each of the past three years; and*
- (c) *whether it will review the cost-effectiveness of levying estate duty; if it will, of the timetable for the review; if not, the reasons for that?*

**SECRETARY FOR THE TREASURY** (in Chinese): Madam President,

- (a) The Inland Revenue Department handled a total of 13 949, 14 157 and 13 880 estate duty cases in 1998-99, 1999-2000 and 2000-01 respectively.

The number of cases assessed to be liable to estate duty and the total amount collected in each of the past three years, broken down by bands of \$2.5 million each are set out below:

	1998-99	1999-2000	2000-01
<i>Duty Assessed</i>	<i>Number of Dutiable Cases</i>		
(\$)			
1 - 2,500,000	211	221	215
2,500,001 - 5,000,000	68	73	58
5,000,001 - 7,500,000	19	19	13
7,500,001 - 10,000,000	6	15	8
10,000,001 and above	22	26	24
Total Number of Dutiable Cases	326	354	318
Total Amount of Estate Duty Collected (\$million)	1,237	1,272	1,503



We have no statistics on the amount of Estate Duty collected within each band, since the estate duty due from the cases assessed in each year are not necessarily settled and collected within the same year.

- (b) The total expenditure incurred by the Inland Revenue Department in collecting and administering estate duty and its ratio to the total amount of estate duty collected in each of the past three years are as follows:

		1998-99 (\$million)	1999-00 (\$million)	2000-01 (\$million)
Estate Duty	Collection	1,236.7	1,271.6	1,502.6
	Cost of Collection	16.7	17.3	17.2
	Ratio of Cost to Collection	1.4%	1.4%	1.1%

- (c) As shown in (b) above, the cost of collecting estate duty amounts to a very small percentage (around 1%) of the total amount of duty collected each year. We do not see any imminent need to review the cost-effectiveness of levying estate duty.

### Figures Concerning Psychotropic Substance Abusers

10. **MR LAU KONG-WAH** (in Chinese): *Madam President, will the Government inform this Council whether it knows the respective percentages of psychotropic substance abusers in the populations of the United States, the United Kingdom and other advanced countries in Europe and America, and how these percentages compare to that of Hong Kong, with the comparative figures broken down by age groups?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President, according to the Central Registry of Drug Abuse, the proportion of reported psychotropic substance abusers (including abusers of amphetamine type stimulants and cannabis) in Hong Kong was 0.91 per thousand population in 2000. The proportion of psychotropic substance abusers among young people aged between 11 and 20 was 3.11 per thousand.

Statistics in the Global Illicit Drug Trends 2001 published by the United Nations show that the abuse of amphetamine type stimulants and cannabis in Hong Kong is not serious when compared to the United States, the United Kingdom and other European countries such as France and Germany. Please refer to the following table for details:

Comparison between Hong Kong and Other Territories  
in respect of Drug Abuse Rate  
(The age group is 15 or above unless specified otherwise)

<i>Type of substance</i>	<i>Hong Kong</i>		<i>United States</i>	<i>United Kingdom</i>	<i>Germany</i>	<i>France</i>
	<i>1999</i>	<i>2000</i>	<i>1999</i>	<i>1998</i>	<i>1997</i>	<i>1999</i>
Amphetamine type stimulants (including ecstasy)	0.02%	0.05%	1.0%	3.0% (aged 16 to 59)	0.5% (aged 18 to 59)	0.3% (aged 18 to 69)
Cannabis	0.02%	0.02%	8.9% (aged 12 or above)	9.0%	4.1%	4.7%*

\*1995 figure

### Language Proficiency of English Teachers

11. **MISS EMILY LAU:** *Madam President, the results of the first Language Proficiency Assessment for Teachers (English Language) announced on 8 June showed that the respective passing rates for the papers on Writing and Speaking were 33% and 50% only. In this connection, will the executive authorities inform this Council?*

- (a) *of their assessment of the results of these papers;*
- (b) *of the percentage of candidates who are unrelated to the teaching profession;*
- (c) *of the measures that will be taken to upgrade the standard of English of those teachers not meeting the language proficiency requirements;*

- (d) *of the number of teachers who have enrolled in authorized Language Proficiency Training Courses, and the number of such courses cancelled due to under-subscription; and*
- (e) *whether they will urgently explore additional ways to attract people with a good command of English to join the teaching profession?*

**SECRETARY FOR EDUCATION AND MANPOWER:** Madam President,

- (a) The English and Putonghua Language Proficiency Assessments are conducted in March every year. The Assessments are open to serving teachers as well as any person who has at least five passes in the Hong Kong Certificate of Education Examination (including English or Chinese).

The English Language Proficiency Assessment consists of a total of five papers, namely, Reading, Writing, Listening, Speaking and Classroom Language Assessment. Candidates may choose to attempt one or more of the five papers in one sitting, but only serving teachers may attempt the Classroom Language Assessment, which involves lesson observation of a teacher in a real class.

For the English Language Proficiency Assessment conducted in March 2001, there were a total of 413 candidates. However, not all of them attempted all papers. About 90% of the 93 candidates who attempted the Classroom Language Assessment have passed that Assessment. This signifies that serving English teachers are proficient in the use of classroom language in teaching English. On the whole, there is room for improvement in writing and speaking. For instance, while candidates are able to correct students' common mistakes, they are less capable of explaining the mistakes. Grammatical accuracy is also an area which requires improvement.

- (b) The Administration has no ready information on the background of the candidates as they were not required to declare whether they were serving teachers, teacher trainees or other members of the public, when applying to sit the 2001 English Language Proficiency

Assessment. The decision not to require candidates to reveal their status was to minimize the psychological burden on the candidates.

- (c) The language benchmarks provide an objective reference against which a teacher's proficiency in the various language skills can be gauged. The assessment helps candidates to identify their strengths and weaknesses. Such diagnostic information is valuable for teachers to pursue continuous improvement.

Furthermore, to assist potential candidates who would like to attempt future assessments, the Hong Kong Examinations Authority is compiling the Chief Examiners' reports on the 2001 Assessment. The reports will be issued to all the candidates of the 2001 Assessment and to all schools and will be put onto the Education Department website.

In addition, to help serving teachers to upgrade their English proficiency and to strive for excellence, the Administration will continue to organize training courses and provide training subsidy for all English teachers. We will also discuss the Chief Examiners' reports with teacher training institutes on how best to further improve their training programmes.

- (d) The English proficiency training courses came on stream from February 2001 onwards. Up to June 2001, 450 teachers have enrolled in these courses. During this period, no English proficiency training course has been cancelled due to under-subscription, but one course provider has withdrawn from offering English training courses after reconsideration of the institute's commitments and available resources. The number of places affected is insignificant in terms of total training capacity.
- (e) The Administration will continue to explore ways to attract more people with a good command of English to become English teachers. Both the Advisory Committee on Teacher Education and Qualifications and the Standing Committee on Language Education and Research will be consulted.

The Administration is also taking measures to increase the output and improve the quality of English teacher training programmes. For the 2001-02 academic year, there will be 60 additional full-time places for the Postgraduate Diploma in Education (PGDE) programme majoring in English. An overseas immersion programme will be offered to all PGDE (English major) students (about 230 in total, including the 60 additional places) to sharpen their language skills in an authentic language environment. The Administration is also exploring the feasibility of further increasing the number of PGDE (English major) places after the 2001-02 academic year.

From the 2001-02 school year, the Administration has made provision for upgrading one Certificate Master/Assistant Primary School Master post to Assistant Master/Primary School Master post in all public sector primary schools to strengthen curriculum leadership in the teaching of English. Teachers who have attained a level of English proficiency which is higher than the minimum are eligible to be considered for promotion.

### **Invest Hong Kong Services to Joint Venture Seekers**

12. **MR KENNETH TING** (in Chinese): *Madam President, it is learnt that Hong Kong manufacturers who intend to co-operate with foreign investors or mainland enterprises with a view to developing new products with the latter's funds or technologies may submit relevant proposals to Invest Hong Kong (InvestHK) to seek joint venture opportunities. In this connection, will the Government inform this Council:*

- (a) *of the average time required by InvestHK to handle each proposal submitted by manufacturers to seek joint venture partners; and*
- (b) *how it will promote the aforesaid scheme among the business community?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Chinese): Madam President, InvestHK does not operate any scheme as described in the question. The mission of InvestHK is to attract external direct investment to Hong Kong. In carrying out this mission, InvestHK provides a range of support services to potential investors. One of these services is business matching. If a potential investor wishes to seek a local joint-venture partner, InvestHK will try to identify local companies meeting the investor's requirements and introduce them to the investor. InvestHK does not proactively seek proposals from local companies for business-matching purposes. However, local companies are welcome to register with InvestHK their interest in collaboration with external investors.

The Hong Kong Trade Development Council (TDC) provides a business-matching service called "TradeMatch", which is tailored to the needs of local companies looking for overseas buyers and is not targeted at joint-venture development of new products. This service is widely known within the Hong Kong trading community and is accessible through the TDC's website.

### **Central Government's Offices and Personnel in HKSAR to Abide by Laws of HKSAR**

13. **MISS EMILY LAU** (in Chinese): *Madam President, Article 22 para 3 of the Basic Law stipulates that all offices set up in the Hong Kong Special Administrative Region (SAR) by departments of the Central Government (CG's offices) and the personnel of these offices shall abide by the laws of the SAR. In this connection, will the executive authorities inform this Council:*

- (a) of the ordinances and subsidiary legislation of the SAR that explicitly bind the CG's offices in the SAR and their personnel;*
- (b) given that the SAR has already been established for four years, of the reasons why the executive authorities have hardly made any progress in amending legislation to stipulate that the CG's offices in the SAR are bound by it; and*
- (c) of the measures in place to remove the impression generally held by the community that the CG's offices in the SAR and their personnel are not required to abide by the laws of the SAR?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Chinese): Madam President, in Hong Kong, under the rule of law, no person or organization is above the law. The offices set up by the CG in the SAR (CG offices) are no exception. Article 22 para 3 of the Basic Law provides that:

"All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region."

Article 14 para 4 of the Basic Law provides that:

"In addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region."

It is clear that the CG offices and their personnel shall abide by the laws of the SAR.

Our reply to the Member's questions is as follow:

- (a) The 700-odd ordinances in our statute books can be classified into four categories on the basis of whether they contain express references to the "Government" or "Crown":
  - (i) 17 ordinances which expressly provide that they apply to the "Government" but are silent as to their applicability to the CG offices;
  - (ii) 36 ordinances which contain references to the "Government";
  - (iii) 53 ordinances which contain references to the "Crown"; and
  - (iv) some 600 ordinances which are silent as to their applicability to the SAR Government or CG offices. The matters regulated under these ordinances are mostly not relevant to the Government and the CG offices.

Of the 53 ordinances which contain references to the "Crown", 18 have been wholly or partly adapted so far. Four of these ordinances have the references to the "Crown" adapted to references to the "State" while the other 14 ordinances have the word "Crown" substituted by the "Government". As for the remaining ordinances or provisions which have yet to be amended, they are to be construed in accordance with the Hong Kong Reunification Ordinance the relevant provisions of which have now been incorporated into the Interpretation and General Clauses Ordinance (Cap. 1). In accordance with the relevant provisions in the Hong Kong Reunification Ordinance, the word "Crown" is to be construed as the "Government" or "the CPG or other competent authorities of the People's Republic of China", depending on the circumstances. The latter includes the CG offices in Hong Kong. Although these ordinances or provisions have yet to be adapted, the legal effect of these ordinances or provisions has not been compromised.

- (b) As for the 17 ordinances which expressly apply to the Government but are silent as to their applicability to the CG offices, the Administration conducted a review in 1998 and came to the view that, as a matter of policy, 15 of these ordinances should be amended to apply to the CG offices. The Administration subsequently informed the Legislative Council that the relevant Policy Bureaux and departments would take matters forward in respect of the 15 ordinances once the necessary legislative amendments had been worked out.

The Arbitration Ordinance is one of the 15 ordinances. The Administration introduced into the Legislative Council in 1999 the proposed legislative amendments to the Arbitration Ordinance which included a provision to extend the application of the Ordinance to cover all persons and organs. However, the Bills Committee considered that the drafting of the proposed application provision might not be perfect, and that there might be better ways to reflect the policy intention. The Administration undertook to continue to work on an appropriate formula. The Administration is considering how to formulate an appropriate application provision which could also be used in other ordinances as appropriate and is consulting the CG.



As for the legislative work required for the other 14 ordinances, apart from the need to incorporate a suitable provision to extend their application to the CG offices, amendments to other relevant individual provisions will need to be worked out. The relevant Policy Bureaux and departments are now examining the relevant ordinances and will accord priority to the legislative work concerned with a view to introducing the legislative amendments into the Legislative Council once an appropriate application provision has been worked out.

- (c) As set out above, the relevant provisions in the Basic Law require that the CG offices and their personnel shall abide by the laws of the SAR. At present, a number of ordinances in our statute books already apply to the CG offices. The fact of the matter is that the community recognizes that the CG offices and their personnel have been exemplary in abiding by the laws of the SAR.

### **Appointment of Young Members of Advisory Boards and Committees**

14. **MR ERIC LI** (in Chinese): *Madam President, in his 2000 policy address, the Chief Executive indicated that he had "urged our numerous advisory boards and committees to co-opt more distinguished young members of the community so that we can get a better perspective of the views and aspirations of the younger generation". In this connection, will the Government inform this Council, among the persons appointed to various advisory boards and committees since October last year, of the respective numbers of young people who were, at the time of their appointment:*

- (a) *above 25 but below 35; and*
- (b) *25 or below?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, the Government's policy governing appointments to advisory and statutory bodies is to ensure that the best available persons capable of meeting the specific requirements of the concerned bodies are appointed. In general, members of advisory and statutory bodies are appointed on an *ad personum* basis having

regard to their abilities, expertise, experience, integrity and commitment to public service.

In response to the initiative announced in the 2000 policy address to appoint more distinguished younger members of the community to advisory and statutory bodies, the Government has, as a first step, approached a number of prominent youth organizations to enlist their support in identifying personalities who might be interested in serving on government bodies. We also encourage nominations from the community so as to widen the pool of suitable candidates. We will from time to time remind bureaux and departments of the need to appoint younger members to the bodies under their purview, whilst bearing in mind our overall appointment policy. Through our community network, we will also continue to identify outstanding young persons and nominate them for appointment to suitable government bodies.

During the past eight months, that is, from 1 October 2000 to 30 June 2001, a total of 88 younger members of our community have been appointed to advisory and statutory bodies, comprising 58 persons aged between 26 and 35 years old and 30 persons aged 25 and below.

We are committed to appointing more distinguished younger members of the community to our advisory and statutory bodies. We will therefore continue with our efforts in this regard and closely monitor the situation, bearing in mind the specific requirements of individual bodies and the suitability of the candidates to meet those requirements.

### **Soil Nails Used in Government Slope Stabilization Works**

15. **MR LAU PING-CHEUNG** (in Chinese): *Madam President, it was reported that the lengths of soil nails used in some of the completed slope stabilization works commissioned by the Government (government slope stabilization works) had been recently found to be not meeting the specifications. In this connection, will the Government inform this Council:*

- (a) *of the number of government slope stabilization projects in the past three years in which soil nails were used;*

- (b) *whether, in inspecting and accepting government slope stabilization works, over the last three years, the authorities have detected any cases involving the use of soil nails shorter than the required length; if so, of the number of slopes involved and the follow-up actions taken;*
- (c) *of the ways to ensure that government slope stabilization works comply with design requirements in the inspection and acceptance of such works, and whether the inspection and acceptance procedure will be strengthened; if so, of the details; and*
- (d) *whether it plans to check again the soil nails used in all completed government slope stabilization works throughout the territory to ensure slope safety?*

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

- (a) In the past three years, there were about 800 government slopes using soil nails as one of the means of stabilization.
- (b) In the past three years, the Government has identified substandard soil nails in three slopes. All the substandard soil nails were installed by one particular sub-contractor. After the incidents, the sub-contractor had been removed from site. All the soil nails suspected to be substandard are being replaced at the contractor's own cost. Also, all works departments involved in slope upgrading and maintenance works have reviewed their practice and level of supervision by their site supervisory staff. Site supervision has been strengthened to ensure all the critical activities for soil nail installation are supervised on a full-time basis by site supervisory staff. There are also surprise audit checks at critical construction stages by a dedicated team of government staff, independent of the project and site supervisory teams. In addition, training and briefing of the supervisory staff on their contractual responsibilities and project-specific requirements will be further enhanced. Talks on professional ethics and anti-corruption issues will continue to be organized for site supervisory staff.

- (c) The contractors are contractually responsible for ensuring that soil nails are installed with good workmanship and in accordance with the specifications of the works contracts. Works Bureau has given policy guidance for use by works departments in administering public works projects. Supervision requirements are specified in the Project Administration Handbook for Civil Engineering Works published by the Government. There are several levels of supervision and surprise audit checks on site. Routine supervision of the works is carried out by the resident site staff. Drilling of holes, insertion of steel bars into the drilled holes and subsequent grouting of the holes are regarded as critical activities of soil nail installation that must be inspected by the site supervisory staff to ensure that soil nails are constructed as specified. To further ensure good workmanship and safeguard against substandard work, the site works are constantly subject to surveillance reviews by the resident site staff, designers and Engineer's Representative. The works are also subject to surprise audit checks.
- (d) All completed government slopes are subject to annual routine maintenance inspections as well as Engineer Inspections by qualified geotechnical engineers. There are no records of signs of distress observed at slopes upgraded using soil nails. Moreover, based on evidence collected so far, the substandard works in the three incidents are confined to the works carried out by one particular subcontractor, indicating that the incidents were isolated events rather than a widespread problem.

### **Provision of Public Services to Users of Different Computer Operating Systems and Browsers**

16. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, it has been reported that a United Kingdom government website for providing various e-government services was found to allow entry of, and access to its services, only by those people who used designated computer operating systems and Internet browsers. Regarding the provision of public services to users of different computer operating systems and browsers, will the Government inform this Council whether:*

- (a) *tests have been conducted to confirm that the website of the Electronic Service Delivery (ESD) Scheme can provide services for users of any types of computer operating systems and browsers; if test results show that it cannot, of the improvement measures to be taken, and of the number and details of complaints received in this regard last year; and*
- (b) *guidelines have been issued to various government departments and relevant organizations to draw their attention to the importance of ensuring the compatibility of their websites with various types of computer operating systems or browsers, when setting up websites for providing public services?*

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

- (a) In accordance with the terms of the contract between the Government and the Contractor of the ESD Scheme, the ESD website must adopt open technology standards of the industry, and the Contractor has to support popular Internet browsers in the market (including Microsoft Internet Explorer and Netscape Communicator). However, as information technology is advancing rapidly, it is impractical for the ESD website to support all types of computer operating systems and Internet browsers (including new and old models or versions) in the market.

Before the launch of the ESD Scheme, the Government has conducted tests on the compatibility of the ESD system with different interfaces (including computer operating systems and Internet browsers). The test results demonstrated that the system is in general compatible with popular combinations of computer operating systems and Internet browsers. However, for those services which require electronic authentication, they cannot be delivered through Netscape Communicator and some computer operating systems.

To resolve the compatibility issue in respect of Netscape Communicator, the ESD Contractor has been implementing enhancement work, which is expected to be fully completed in the third quarter of this year. By that time, all services on the ESD website can be delivered through popular Internet browsers in the market. As regards the problem with some computer operating systems, the Contractor is taking follow-up action with the concerned developing companies, with a view to making ESD services available under different computer operating systems.

However, it is necessary to point out that since the ESD system can support other popular browsers and computer operating systems, 80% of the users are not affected by the aforementioned issues even if they use services that require electronic authentication.

Based on the information provided by the ESD Contractor, only 11 complaints about the unavailability of services through some computer operating systems or browsers have been received from members of the public since service launch in December last year. The Contractor has already provided clear explanations about the compatibility issues in the ESD web site, and has also set up a 24-hour hotline inquiry service to provide assistance to users.

- (b) The Government has already promulgated the "Guidelines on Dissemination of Information through Government Homepages" for departments to follow when building their websites. As specified in the guidelines, design of government websites must support popular Internet browsers in the market. Moreover, the great majority of current government websites can support popular computer operating systems in the market.

### **Invitation List for West Kowloon Reclamation Concept Plan Competition**

17. **MR LAU PING-CHEUNG** (in Chinese): *Madam President, regarding the West Kowloon Reclamation Concept Plan Competition, will the Government inform this Council:*

- (a) *whether it has taken the initiative to invite individual institutions, architects or planners to participate in the competition; if so, of the respective numbers of local and overseas institutions, architects or planners on the invitation list;*
- (b) *of a breakdown, by country or place of origin, of the overseas institutions, architects or planners invited; and*
- (c) *of the criteria adopted for determining the invitation list, and the reasons for not including such criteria in the entry requirements so as to raise the standards of entries for the competition?*

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

(a), (b) and (c)

The "West Kowloon Reclamation Concept Plan Competition" is an open competition, not an invited competition in which participants submit their entries at the invitation of the organizer. Hence, for the "West Kowloon Reclamation Concept Plan Competition", the Government has no predetermined list of institutions or individuals to be invited. The Government's role is to promote and publicize this Competition, mainly through the Internet, television and radio stations, as well as advertisements in local and overseas professional publications. In order to effect extensive publicity, various media such as letters, e-mail and promotional leaflets have also been used to inform interested parties in Hong Kong and overseas of the Competition.

### **Air Services Agreements**

18. **MR FRED LI** (in Chinese): *Madam President, will the Government inform this Council of the respective countries or territories with which it has concluded Air Services Agreements involving fifth freedom traffic rights (that is, rights of the airlines of one party to carry traffic between the territory of the second party and the territory of a third party whilst operating from or to the territory of the first party) in each year since January 1999 and, for each Agreement, state whether it is about passenger or cargo services?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, from January 1999 to the end of June 2001, the Government of the Hong Kong Special Administrative Region (SAR) has renewed bilateral arrangements with 16 aviation partners to expand and provide new fifth freedom traffic rights for airlines of both sides. Of the above bilateral arrangements, five provide for passenger services, five for cargo services and six for both passenger and cargo services in respect of additional fifth freedom rights. The number of renewals per year is as follows:

<i>Year</i>	<i>No. of partners</i>
1999	3*
2000	8 + 1*
2001 (until the end of June)	5
Net Total	16

\* Fifth freedom rights in the bilateral arrangement with one of the partners were expanded in both 1999 and 2000.

If the new and expanded fifth freedom rights in the above arrangements are fully utilized, it would enable airlines of both sides to provide together on a weekly basis more than 100 passenger services, 70 cargo services, and 50 passenger/cargo services to and from a large number of destinations in the world, including points in Asia, the Middle East, Europe, North America and Australia and New Zealand.

As regards details of each of the arrangements with our aviation partners, especially in relation to destinations and capacity, they are generally set out in a confidential memorandum of understanding between Hong Kong and the aviation partner. The relevant document contains confidential government-to-government negotiation records and sensitive commercial information. The SAR Government follows international practice of not disclosing the substance of the arrangement.

In Hong Kong's overall economic interests and for the further development of Hong Kong as an international and regional aviation centre, we will continue to implement a policy of progressive liberalization of our air services. We will continue to exchange and expand traffic rights (including fifth freedom rights) with our aviation partners on a fair, equitable and mutually beneficial basis.



**Noise Levels under Flight Paths**

19. **MR ALBERT CHAN** (in Chinese): *Madam President, a number of residential estates under the flight paths have been completed successively since the opening of the Hong Kong International Airport at Chek Lap Kok. Many residents had no knowledge of the noise levels under the flight paths when they bought the units in those estates and became aware of the seriousness of aircraft noise only after moving in. In this connection, will the Government inform this Council:*

- (a) *of the areas (please provide detailed locations within the area) in which the highest aircraft noise levels recorded exceeded 70 decibels and the highest noise level of each area last year; and*
- (b) *whether it has regularly published the information on the noise levels of the areas under the flight paths so that people who are sensitive to noise can make an informed choice when choosing their places of residence?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, my reply to the two parts of the Honourable Albert CHAN's question is as follows:

- (a) As I pointed out in my reply to Mr Albert CHAN's question on 6 December 2000, noise impact caused by aircraft take-off and landing is assessed on the basis of the internationally accepted "Noise Exposure Forecast (NEF) Contour". The determination of the contour takes into account factors including the decibel levels of aircraft noise, the tonal characteristics as well as the duration and frequency of overflying flights at different times of the day. The standard currently adopted in Hong Kong is the NEF 25 Contour, which is more stringent than the standards adopted by airports in many other places. Compared with a single measure of decibel levels, the NEF model can reflect more comprehensively and appropriately the noise impact caused by aircraft take-off and landing.

Between 1 April 2000 and 31 March 2001, the highest decibel levels recorded by the 15 aircraft noise monitoring stations in Hong Kong are set out as follows:

*Highest Decibel Level Recorded*

Tai Wai	76.0
Kwai Chung	76.1
The Peak	76.4
Tsuen Wan	76.4
Tsing Yi	76.9
North Point	77.4
Shau Kei Wan	77.4
Ting Kau	77.7
Jardine Lookout	77.9
Tsing Lung Tau	78.2
Tai Nam	78.6
Tung Chung	79.6
Yam O	79.9
Ma Wan	80.7
Sha Lo Wan	81.6

However, we cannot rely simply on the decibel levels recorded to assess the impact of aircraft noise. As I have mentioned above, the impact of aircraft noise should be assessed on the basis of the internationally accepted NEF Contour. All residential areas in Hong Kong, with the exception of Sha Lo Wan, are outside the NEF 25 Contour and are thus in compliance with the relevant standard. The affected residents in Sha Lo Wan have been provided with an *ex gratia* allowance for installing noise insulation facilities.

The Civil Aviation Department (CAD) has also implemented a series of measures which have effectively reduced the impact of aircraft noise on residents, for example, using as far as possible flight routes over less populated areas during the small hours, requiring concerned aircraft to follow noise abatement take-off and landing procedures, prohibiting airlines from scheduling aircraft with high noise impact to take-off or land between 11.00 pm and 7.00 am, and so on.

- (b) Since 1999, the CAD had published its noise monitoring data, flight path maps and the NEF 25 Contour map on the Internet on a regular basis. The CAD also issues regularly to the Tsuen Wan District Council data collected by the aircraft noise monitoring stations located in the district.

## **BILLS**

### **First Reading of Bills**

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

### **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2001**

### **FIRE SERVICES (AMENDMENT) BILL 2001**

**CLERK** (in Cantonese): Statute Law (Miscellaneous Provisions) Bill 2001  
Fire Services (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.

### **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2001**

**SECRETARY FOR JUSTICE:** Madam President, I move that the Statute Law (Miscellaneous Provisions) Bill 2001 be read the Second time.

The Bill is part of the ongoing process of statute law reform directed at repealing obsolete statutory provisions, removing anomalies and inconsistencies in legislation, and making a variety of minor improvements which do not justify the introduction of separate bills. The Bill follows the pattern of previous bills to effect minor improvements to our laws.

I will deal first with marital rape. In May 2000, members of the Panel on Administration of Justice and Legal Services of the Legislative Council suggested that the Crimes Ordinance should be amended to make it clear that marital rape is an offence. Their concern arose because the expression "unlawful sexual intercourse", which appears in the offence of rape, might still mean intercourse outside the bounds of matrimony.

The Administration is of the view that, following the decision of the House of Lords in *Reg v R* in 1991, the offence of rape does apply within a marriage if, in the circumstances of the case, the wife does not consent to sexual intercourse. However, we nevertheless see an advantage in making this clear in the statutory provision itself. Clauses 11 to 17 of the Bill therefore propose amendments to relevant provisions in the Crimes Ordinance.

Two amendments have been proposed in respect of the power to award costs.

The Appeal Committee of the Hong Kong Court of Final Appeal hears and determines applications for leave to appeal to the Court. At present, it has no jurisdiction to award costs. However, when such an application is dismissed, it may be unfair for the respondent to have to bear what may be substantial legal costs. Amendments are therefore proposed to empower the Appeal Committee to award costs when applications for appeal are dismissed.

The Costs in Criminal Cases Ordinance (Cap. 492) was enacted in 1997 to provide for costs in criminal cases. However, where there is an appeal by way of case stated against a verdict or order of acquittal made by the District Court, the Ordinance does not empower the Court of Appeal to award costs. It would be an improvement if the Court could award costs to the prosecution if the case stated appeal is successful, or to the defendant if that appeal is unsuccessful. The Bill so provides.

I turn now to applications for bail by fugitive offenders. These applications may be considered by a magistrate, a District Judge or a Judge of the Court of First Instance. However, section 10(5) of the Fugitive Offenders Ordinance, which deals with such applications, does not currently apply to the Court of First Instance. It is clearly desirable that there should be a consistent approach to deciding bail applications in fugitive offender cases at all levels of the Courts. Amendments are proposed to achieve this.

As Members will be aware, it is normal for deposits to be paid under a sale and purchase agreement of property. Where a transaction breaks down due to a breach by the purchaser, the vendor is normally entitled to forfeit the deposit. Comments made by a senior judge in a 1999 case prompted the Administration to consider whether the Court should have a discretion to order a refund of the deposit to a purchaser where he is not at fault, for example where his breach is technical or trivial. Such a discretionary power is available in the United Kingdom and in New South Wales, Australia. The guidelines for the exercise of the discretion established by case law include the nature of the breach by the purchaser, the conduct of both the purchaser and the vendor, and all other circumstances of the case.

The two branches of the legal profession, the Real Estate Developers Association of Hong Kong, the Consumer Council, The Conveyancing & Property Law Association Limited of Hong Kong, the Law Faculty of the University of Hong Kong and the School of Law of the City University of Hong Kong were consulted on the proposal. The matter was also discussed in the Panel for Administration for Justice and Legal Services. Although differing views were expressed on the issue, the Administration considers that, in order that justice may be done in exceptional cases, the Court should have a discretion to order a refund of a deposit. Clause 19 therefore proposes to amend section 12 of the Conveyancing and Property Ordinance to give the Court such a discretionary power.

The Bill also proposes to amend what are known as "non-immunity" clauses in 15 ordinances. A "non-immunity" clause is normally included in ordinances establishing a corporation or other body which is empowered to perform public or semi-public functions but which is intended to operate independently of the Government. The "non-immunity" clause makes it clear that the body is independent and ensures that it is treated in law as an ordinary private body. Those clauses enacted before reunification provided that the relevant body was not an agent of the "Crown". Those clauses are to be amended so that the relevant body is not an agent of the Government. The wording of the amendment reflects discussions with Members of the Legislative Council during the last Legislative Session.

The Bill contains a number of amendments to the Legal Practitioners Ordinance proposed by the Law Society of Hong Kong (Law Society). Under the present law, there is no mechanism for dealing with minor disciplinary

offences by solicitors. Either full scale Solicitors Disciplinary Tribunal hearings must be convened and completed, which is time-consuming and costly for all parties, or the Law Society may issue a sanction-less letter of censure, which in practice has had very little deterrent effect. The Bill introduces a system under which fines may be imposed by the Law Society upon solicitors who plead guilty to certain disciplinary offences, without the need for a full hearing. The proposed system is both time and cost effective, and will help to improve standards within the profession.

At present, the Chief Justice is empowered under the Legal Practitioners Ordinance to make rules for the issue of practising certificates to solicitors. If the Law Society, instead of the Chief Justice, had that power, it would be able to react swiftly to undesirable developments in legal practice, by imposing appropriate restrictions upon the practice of particular solicitors. This would be in the public interest and in the interests of the profession. The Chief Justice has, therefore, agreed to transfer his powers in this respect to the Council of the Law Society. However, any rules made by the Council will be subject to the Chief Justice's prior approval under section 73(2) of the Ordinance.

It is also proposed that some appeals against decisions of the Law Society, which now lie to the Chief Justice, should instead go to the Chief Judge of the High Court.

Finally, it is proposed that the Chief Judge, instead of the Chief Justice, may, where a complaint against the conduct of a barrister is made to the Bar Council and the Bar Council does not submit the matter to the Tribunal Convenor of the Barristers Disciplinary Tribunal within the stipulated time for doing so, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he is of the view that the Bar Council ought to have done so. In such a case, the Chief Judge may also make an application to the Barristers Disciplinary Tribunal to inquire into other conduct of the person being complained against.

Other amendments in the Bill have the following purposes:

- (1) to repeal legislative provisions relating to the former Kai Tak Airport;

- (2) to make amendments consequential to the repeal of certain provisions in the Magistrates Ordinance and the Criminal Procedure Ordinance;
- (3) to update the Administrative Appeals Board Ordinance in respect of additional appeals that lie to it;
- (4) to widen the functions of the Hong Kong Examinations Authority to cover the administration of "assessments" as well as examinations;
- (5) to change the nomenclature of the executive heads or officers of some tertiary institutions, and to improve the procedures for appointment and terms of office of their Council members; and
- (6) to make minor amendments to numerous ordinances to ensure consistency in terminology and in the English and Chinese texts, to reflect changes in titles, and to reflect transfer of responsibilities as between bureaux.

As I indicated earlier, this Bill is part of a continuing process of tidying up Hong Kong's statute law and effecting minor reforms.

Madam President, I commend the Bill to the Legislative Council.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Statute Law (Miscellaneous Provisions) 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.

## **FIRE SERVICES (AMENDMENT) BILL 2001**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the Fire Services (Amendment) Bill 2001 be read the Second time. The Bill seeks to update some obsolete provisions in the Fire Services Ordinance (FSO) to meet the needs of present-day circumstances. It also aims at improving the regulatory framework under the FSO to cope with new types of fire hazards more effectively and to protect public safety.

Enacted in 1954, the FSO provides for the constitution, duties and powers of the Fire Services Department (FSD), the regulation of the discipline of its members, the establishment and control of its welfare fund as well as the abatement of fire hazards. Revision to the principal Ordinance and its subsidiary legislation has been made from time to time to cope with the changing needs.

In 1999, the FSD embarked on an overall review of the FSO with a view to examining the adequacy of the existing provisions and the means to enhance the effectiveness of the current regulatory framework for fire hazard prevention and abatement. The review has been completed and a package of measures are proposed.

The first proposal is to streamline the provisions in the FSO in relation to the abatement of fire hazards and prevention of their recurrence. The relevant provisions (sections 9 and 9A to 9D) have been revised and added following a series of amendments to the FSO between 1964 and 1986. We consider it appropriate to streamline these provisions in order to facilitate ease of reference in enforcement action. Given this, and the further consideration of facilitating amendments to be made from time to time to cope with changing needs, we propose to repeal these provisions in the principal Ordinance and to re-enact them in a neat and tidy manner in a new piece of subsidiary legislation dedicated to fire hazards abatement. As suggested in the following second and third proposals, the opportunity will also be taken to update a few provisions and add new ones to enhance enforcement against fire hazards.

The second proposal is to strengthen the power of law enforcement officers. Currently, for the purpose of issuing a fire hazard abatement notice, the FSD officers are empowered to serve a notice on a person requiring such person to give his or her correct personal particulars within a timeframe of not less than 24 hours. To expedite the enforcement work, we propose to empower the FSD officers to demand instant production of a person's proof of identity in taking enforcement action against fire hazards.

The third proposal is to improve the regulatory framework to cope with new types of fire hazards, including the conveyance of motor vehicles (such as motorcycles) and motor vehicles' spare parts as well as illegal operation of vehicle refuelling stations.



Between 1997 and 1999, three explosion incidents involving freight containers carrying used motorcycles and parts took place and caused casualties. To prevent the recurrence of similar incidents, we propose that improper stowage or conveyance of motor vehicles and motor vehicles' spare parts containing fuel in an enclosed freight container or goods compartment shall be an offence. We also propose that officers of the FSD, the police and Customs and Excise Department should be empowered to stop, board, search and detain the vehicles if they have reasonable ground for suspecting that such an offence has been committed.

Another fire hazard that causes serious fire safety concern in recent years is illegal vehicle refuelling stations, notably those set up in residential areas. Illegal storage or mishandling of fuel may cause fire and explosion; there were 11 reports of fire so caused in the year 2000. Such illegal activities are already treated as fire hazards but enforcement action has proved not satisfactory. This is because the frequent change of operators has made it difficult to pin down any one operator for prosecution or issue of a fire hazard order or closing order. To tackle this problem, we propose that the storage of any liquid fuel for the purpose of the business of supplying the fuel for transfer to a motor vehicle's fuel tank in any premises other than a place so licensed or approved by the FSD under the Dangerous Goods Ordinance shall be an offence.

To tackle the problem of frequent change of illicit operators and to make property owners more vigilant about the use of their premises, we propose to prohibit any person from letting or sub-letting any premises with the knowledge that such premises are to be used for illegal vehicle refuelling activities. And we propose to empower the Court to notify the owner of the premises of the conviction against anyone using the premises for illegal vehicle refuelling activities. On application by the owner, the Court may order the termination of the tenancy of such premises. If illegal refuelling activities recur on such premises within 12 months, the Court may make a closure order effective for six months to effect complete closure of such premises. To protect the interests of *bona fide* owners, purchasers and mortgagees of such premises, we also propose to provide for the registration at the Land Registry of closure orders and notices of the relevant charges and convictions concerning the premises, and to allow such parties to apply for the closure orders to be suspended or rescinded.

The fourth proposal is to revise the penalties in the FSO and its subsidiary legislation. The penalty provisions of the FSO and its subsidiary legislation

were enacted in or before 1986. The deterrent effect may not be sufficient in today's circumstances and may have been eroded by inflation over time. To preserve and enhance the deterrent effect and to facilitate future revision, we propose an increase in the levels of fines and a direct link with the generic levels of fines prescribed under Schedule 8 of the Criminal Procedure Ordinance.

The fifth proposal is to empower the Director of Fire Services to investigate into the cause of fire. Currently, there is no specific provision in the FSO for the conduct of an investigation into an incident of fire. To facilitate the discharge of his public duties, we propose to formally empower the Director of Fire Services to take necessary measures to investigate into the cause of a fire. These include entering the premises within a reasonable period after a fire to collect evidence for forensic analysis and to require the persons concerned to give information or produce any document or article.

The sixth proposal is to extend the scope of protection of a fire insurance policy under the FSO. At present, the damage done by the FSD officers on an occasion that may pose an immediate danger of fire, such as gas leakage where the FSD officers may have to break into domestic units to carry out rescue and fire fighting work, falls outside the scope of the protection of an ordinary fire insurance policy. We understand that an insurance policy is a mutual agreement between the insured and the insurer and they are always free to agree on the type and extent of protection to be provided. However, in the interest of the public, we consider a legislative amendment appropriate and propose to extend the scope of protection of the fire insurance policy under the FSO to cover any damage done by the FSD on an occasion that may pose an immediate danger of fire.

Finally, we propose to revise and update various provisions in the FSO with a view to, among other things, expanding the definition of "fire service installation or equipment" to cover new forms of installations required to be provided in buildings nowadays, refining the procedures for disciplinary proceedings and reflecting the changes in the rank structure of the FSD over time.

The proposals mentioned above are set out in the Fire Services (Amendment) Bill 2001 and the proposed new Fire Service (Fire Hazard Abatement) Regulation.

The FSD has consulted the District Councils and District Fire Safety Committees on the various legislative proposals. Other interested parties have also been consulted, including the insurance industry, the registered fire service installation contractors, the container tractor owners and the container transportation industry, and they are generally in support of the proposals. We also briefed the Legislative Council Panel on Security in April 2001. I hope Members will support the Bill and pass it at an early date.

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

THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair.

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

In accordance with Rule 54(4) of the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

### **Resumption of Second Reading Debate on Bill**

**DEPUTY PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Dutiable Commodities (Amendment) Bill 2001.

### **DUTIABLE COMMODITIES (AMENDMENT) BILL 2001**

#### **Resumption of debate on Second Reading which was moved on 28 February 2001**

**DEPUTY PRESIDENT** (in Cantonese): Mr Kenneth TING, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

**MR KENNETH TING:** Mr Deputy, as Chairman of the Bills Committee on Dutiable Commodities (Amendment) Bill 2001, I wish to report on the work of the Committee.

We recognize that with the rapid growth of the Internet and electronic commerce worldwide, Hong Kong businesses must quickly embrace the use of electronic data interchange (EDI) in order to remain competitive. We are, therefore, in support of the intent of the Bill, which seeks to introduce a legal framework for the use of EDI in processing dutiable commodities permit (DCP) applications via the service of Tradelink.

However, we are concerned about the exclusive right granted to Tradelink to provide EDI services for official trade-related documents. We agree that there is a need to open up the market to improve service quality, lower prices and increase efficiency, thereby benefiting consumer welfare. We have examined various initiatives to facilitate entry of new electronic service providers upon the expiry of Tradelink's exclusive franchise in end 2003. We have urged the Administration to work out a suitable regulatory framework for selecting and regulating new electronic service providers with reference to the voluntary system of recognition introduced under the Electronic Transactions Ordinance. As the Government currently has a 42.5% stake in Tradelink, we also see the need for the Government to withdraw gradually from Tradelink, so as to maintain a level playing field in the market. We are pleased to note that the Administration has plans to do so.

We note that the industry has expressed concerns over three major areas, first, the high fees for using EDI service for DCPs; second, the technical problems encountered by the industry and inadequate technical support by Tradelink; and third, the monitoring mechanism for ensuring the reliability of EDI service.

On the fees for using EDI service for DCP, we note that Tradelink plans to charge a fee of \$44 per DCP application, as compared to no charge in processing applications in paper form by the Government. According to the Administration, the projected return rate of Tradelink for processing DCPs is only 3%. Given the investment by the company to install front-end systems for processing DCPs by EDI, there is a need to impose a service fee as appropriate. The proposed level of fee has already excluded the monies spent on the extension of the government EDI system to receive and process DCPs. Should the user

pays principle be strictly adhere to, the unit cost for processing a DCP in paper form by the Government is \$120. From this perspective, the proposed fee for processing DCPs in EDI form would be significantly lower than that in paper form. The Administration also envisages that given the experience of Tradelink in providing EDI services for other trade-related documents, no major problems will be encountered. The Administration assures us that it will continue to monitor the implementation of the programme. Tradelink will also liaise with individual companies with a view to resolving any technical problems. A contingency plan has also been drawn up to cope with emergencies and system failures.

We agree that implementation details of EDI for DCP are not part of the Bill. Even upon the passage of the Bill, traders will not be forced to use EDI for DCP immediately, and they will have a choice to use the paper mode until a certain date to be determined by the Administration and approved by the Legislative Council by means of subsidiary legislation. We, therefore, support the Administration's proposal to resume Second Reading debate on the Bill. However, we have urged the Administration to maintain regular dialogue with the industry and take positive actions to address the concerns expressed by the industry before making the EDI service for DCP mandatory.

We are also concerned whether clause 4 of the Bill will provide a legal basis for the Government or Tradelink, a private entity, to impose a service fee for the use of EDI for giving information in respect of any movement of dutiable commodities in and out of the warehouse, bearing in mind such service is at present not subject to any charge.

The Administration assures us that clause 4 is not intended for any charging purposes. It merely seeks to empower the Commissioner of Customs and Excise to specify any form or requirement for giving information under the Dutiable Commodities Ordinance in respect of any goods to which the Ordinance applies. In practice, Tradelink will charge a single fee for processing of application for DCP, on the basis of each application. The administration costs incurred in connection with the reporting of movement of dutiable commodities in and out of the warehouse by means of EDI to the Commissioner will be included in the application fee for DCP, and hence, a separate fee will not be imposed on users.

At the request of the Bills Committee, the Administration undertakes to state clearly during the Second Reading debate on the Bill the pricing mechanism

of DCPs, including an undertaking not to impose a separate charge on the use of EDI service in respect of the reporting of any movement of dutiable commodities in and out of the warehouse.

After discussion with the Bills Committee, the Administration has accepted a number of suggestions from members and agreed to move Committee stage amendments accordingly. These Committee stage amendments cover technical amendments and improvements to various provisions in the Bill, in particular, to bring the drafting of the English and Chinese texts in line with each other so as to eliminate any ambiguity in the interpretation of the provisions in the Bill.

With these remarks, I support the Second Reading of the Bill.

THE PRESIDENT resumed the Chair.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, on behalf of the import and export sector and the Hong Kong Progressive Alliance, I support the passage of the Dutiable Commodities (Amendment) Bill 2001 in principle to provide a legal basis for the use of EDI in DCP applications via the service of Tradelink. Nevertheless, I hope the Administration can properly address the industry concerns before introducing legislation to make the use of EDI mandatory. First, why is it necessary to levy a charge on paperless EDI bearing in mind that the processing of DCPs in paper form at present is not subject to any charge? Although the Government claims that it may, in accordance with the "user pays" principle, levy charges on users applying for DCPs in paper form, why should the exemption be discontinued since it has all along been granted by the Government? Second, although Tradelink has experience in providing EDI services, the company met a lot of technical problems in testing the use of EDI for DCP applications. Furthermore, the technical support provided by Tradelink to the industry is inadequate. For these reasons, the Administration must ensure that the industry is fully prepared before implementing the relevant electronic service on a full scale. Third, in case of system failure, the operation of the industry will be greatly hampered. The Administration should therefore establish a monitoring mechanism and draw up a contingency plan to ensure the smooth operation of the relevant application service.

I implore the Government to fix the effective date of the full implementation of the EDI service by way of subsidiary legislation, only after properly addressing these three major concerns expressed by the industry. With these remarks, Madam President, I support the motion.

**MRS SELINA CHOW** (in Cantonese): Madam President, I am not a member of the Bills Committee on Dutiable Commodities (Amendment) Bill 2001. Nevertheless, when the deliberations of the Bills Committee neared conclusion, I was approached by people in the industry, who told me that they found the levying of charges unacceptable. Of course, if we examine the Bill closely, we will find that it has no direct relation with any charge. Yet people in the industry believe it is time for them to state their position clearly. Therefore, I am grateful to the Honourable Kenneth TING for he has not only expressed his concern over this matter together with other members of the Bills Committee, but also conducted substantial discussion on the matter in the relevant panel.

I believe Members understand that up to the present moment, we are still supportive of the Bill from the angle of the concept and principle of the processing of DCP applications by EDI. I also believe Members will not raise much objection in principle if the Government is to amend the existing Ordinance to allow the industry to lodge applications in either the paper form or electronic mode. Yet it is true that the industry has voiced some dissenting views during the course of this amendment exercise.

We understand that although it has taken the Government one whole year to introduce the amendment, some people in the industry still feel that there is something unbearable and unfair. In other words, the relevant parties, including Tradelink and the Administration, have obviously failed to convince some of the numbers of the industry. The reason is indeed very simple. This is because they have along been allowed to submit their applications in paper form free of charge. Once the EDI is introduced, they will be required to pay for the service. We were told by some organizations in the industry that an additional expense to the tune of over \$100,000 to \$200,000 would be incurred as a result. No wonder they have reacted so loudly.

Tradelink should be well experienced in electronic trading. But why is it still unable to convince the industry that the new practice is technically feasible after such a long period of time? Obviously, the company needs to spend more

time on the basic technical issues before the situation can be improved. Perhaps there are problems with communication or publicity too. Otherwise, the company may even make use of the past year to encourage the industry to switch from the paper mode to electronic mode on a trial basis free of charge to see for themselves the convenience and efficiency of the new system so that they will be convinced to switch to the electronic mode. Nevertheless, some people in the industry still stand to be convinced and they have asked me not to vote in favour of the Bill. Actually, I have explained to them that even if the Bill is passed, it does not mean that the charging mechanism embedded in it. In fact, the charging mechanism is not included in the Bill. Accepting our advice readily, the relevant Bureau has acknowledged the problems and indicated that continuous discussion would be held with the industry. It has even been decided that the provision relating to the effective date as contained in the relevant subsidiary legislation will not come into effect during the summer holiday recess and be postponed to a later date. This is undoubtedly a sound decision.

Nevertheless, I hope the Government and Tradelink alike can understand that the industry should not be forced into accepting the switch to the electronic mode on the grounds that this is an electronic, technological and progressive move. Insofar as the industry is concerned, costs must be taken into account in operating business. It is simply impossible to convince people in the industry to switch to the EDI if such a huge burden is imposed on them all of a sudden so that they will suffer the disadvantages before they can reap the benefits. I earnestly hope that continuous discussion can be maintained with the industry. The advantage of the Bill, if passed today, is that people will be given choices as a result. The industry will be free to switch to the electronic mode if it wishes to do so. It can also preserve the paper mode if it so wishes. Most importantly, people using the paper form must not be forced to switch to the electronic form immediately. I hope the Government can appreciate the difficulties and reaction of the industry — actually such a reaction is reasonable. Therefore, I hope the negotiation can continue to enable people in the industry to fully understand and accept that the electronic mode can bring them real benefits before it is put into implementation. But before that, the Government must not make the use of the EDI mandatory and force all people in the industry into submission. Thank you, Madam President.

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



**MISS MARGARET NG** (in Cantonese): Madam President, I had originally intended not to speak. But since other Members have not mentioned this point, I hope the Bureau can formally clarify it. I believe most Members will support this Bill in principle. I will not vote against it too. Nevertheless, in the report on the deliberations of the Bill, Mr Kenneth TING pointed out that the Government was in a hurry to bring the Ordinance into effect on 20 July following the passage of the Bill. In doing so, we will not be able to have an opportunity to scrutinize its subsidiary legislation before the Council resumes and this is not in line with our long-standing principle. We can see from some past documents of the Secretariat that the former Chief Secretary for Administration already made it clear in October 1997 that she hoped bills would take effect 35 days after their passage. This arrangement can, if such need arises, enable Members who wish to exercise their power to scrutinize the relevant subsidiary legislation to do so during the interim.

Madam President, I understand that some colleagues have discussed this matter with the Bureau, which has agreed to follow this practice. In this respect, I hope the Secretary can formally clarify this point in his response later to assure us that the tacit understanding between the executive and legislature is being respected.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Miss NG, please sit down first. I have to apologize to you for the strange noise when you were delivering your speech. This is because the spare parts of our computer system are having some problems and in need of urgent repairs. I would like to apologize in advance in case some strange noise comes out again and causes disturbance to Members.

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

(No Member responded)

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, the Dutiable Commodities (Amendment) Bill 2001 is submitted by the Government to the Legislative Council seeks to provide a legal basis for the use

of electronic means to process applications for dutiable commodities permits (DCPs).

I should like to take this opportunity to thank Mr Kenneth TING, Chairman of the Bills Committee, and other members of the Bills Committee for scrutinizing the Bill in great detail and providing us with a number of invaluable views. Having taken into account such views, we will be moving certain technical amendments to the Bill. I will expound on the amendments in detail at the Committee stage later.

There are a number of benefits in using electronic means to process DCPs. When traders submit their applications electronically, they can have their permits issued within half a working day. This is shorter than the present processing time of two working days. They can also submit electronic applications any time from 7.00 am to 11.00 pm, which will be much more flexible and convenient than the present requirement of submitting applications during office hours. Moreover, traders can save manpower and transport costs since they will no longer have to send their staff to the permit office to submit applications and collect permits. Overall, the electronic processing of DCPs will reduce paperwork, improve efficiency, and promote the wider use of e-commerce.

According to the franchise agreement executed between the Government and Tradelink Electronic Commerce Limited (Tradelink), Tradelink will be responsible for providing front-end processing service of the DCP electronic system as well as technical support for customers. The Customs and Excise Department (C&ED) will be responsible for providing back-end processing service of the electronic system.

On the issue of fees, at present, the unit cost for processing a DCP in paper form by the C&ED is \$120, albeit the Department does not charge any fees. So, the relevant traders are subsidized by taxpayers' money. Upon introducing the electronic processing of DCP, while the C&ED will continue to provide the relevant service free, a fee will be charged on the front-end processing service and technical support provided by Tradelink to enable Tradelink to recover the costs and to make a reasonable level of return.

The Government and Tradelink have consulted the industry and the Legislative Council Panel on Commerce and Industry on the proposed fees. Tradelink had originally proposed a fee of \$60 per DCP application, but the

industry considered this proposed fee too high. Providers of shipping supplies, in particular, are most significantly affected because they have to apply for a large number of Ship's Stores Permits every year and the volume of dutiable commodities involved in each Permit is comparatively small.

After careful consideration of the industry's views, Tradelink has restructured and reduced the fees. Tradelink now proposes to charge a fee of \$25 per Ship's Stores Permit application and a fee of \$44 per other DCP application. At this charge rate, while over 80% of users have to pay less than \$4,400 annually, the total amount of fees payable by each user will be around \$830 a year on average. This should not constitute too heavy a burden on the industry. On the basis of the proposed fees, it is estimated that Tradelink can make a 3% internal rate of return on its DCP processing services.

To ensure that traders have sufficient time to prepare for the switch from paper form to electronic means, we will provide a transitional period whereby DCP applications may be made either in paper or electronic mode. In future, the Commissioner of Customs and Excise may require that DCP applications be made in electronic form by way of notice in Gazette, which shall be subject to approval by the Legislative Council in accordance with the procedures prescribed in law.

Seeing that the electronic systems of the Government and Tradelink are in place and ready to enter into operation, we had originally intended to prescribe 20 July 2001 as the commencement date of the Bill and the relevant Regulations, so as to enable traders who voluntarily choose the electronic mode to enjoy the service as soon as practicable. According to the figures provided by Tradelink, some 100 traders have indicated that they would use the electronic mode of service.

As the Summer Recess of the Council is approaching, it is not possible for the proposed commencement date of the Bill and the relevant Regulation to allow the Legislative Council a 28-day scrutiny period as required under the normal procedure. We have therefore consulted the Legislative Council Panel on Commerce and Industry on the proposed commencement date. In our view, since the Regulation involves only technical matters and will not touch upon any new policy issues, it would not pose any material risk to the electronic service even if it should come into force during the Summer Recess of the Council. Besides, the proposed early commencement will not prejudice the power of the

Council to examine the Regulation after the Summer Recess. In the event that the Legislative Council considers it necessary for the Regulation to be amended on technical grounds after the Summer Recess, the Government will be most willing to oblige.

Nevertheless, having regard to the concern expressed by the Bills Committee over the commencement date, and the reservations of certain members of the trade about the proposed fees, the Government has decided to postpone the commencement date from July to November 2001 to allow the Legislative Council sufficient time to scrutinize the Regulation.

Madam President, I wish to stress that we have already made it clear to the Bills Committee that we will not arbitrarily bring the Bill into effect on 20 July without the endorsement of the Legislative Council Panel on Commerce and Industry. Therefore, the concern raised by the Honourable Miss Margaret NG really does not exist. We proposed a commencement date for consultation with the Legislative Council. In view of the objection raised by the Council, we have decided to postpone the commencement date of the Regulation to November, so that the Council can be allowed the normal scrutiny time to do its job.

In the run-up to November, the Government and Tradelink will continue to maintain close liaison with the industry to listen to the views from members of the industry and to offer them technical support, with a view to ensuring the smooth operation of the service when it is launched.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Dutiable Commodities (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

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

### **DUTIABLE COMMODITIES (AMENDMENT) BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Dutiable Commodities (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clauses 1, 5, 6, 7, 10 and 13.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2, 3, 4, 8, 9, 11 and 12.

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in

the paper circularized to Members. All of these amendments are technical in nature.

The purpose of the amendments to clauses 3, 8, 11 and 12, and part of the amendments to clauses 2 and 9(3) is to bring the drafting of the English and Chinese texts in line with each other.

The addition of clause 2(2) is to specify that the Secretary for Commerce and Industry may amend Schedules 1A and 1B by notice published in the Gazette to appoint or revoke the appointment of specified electronic service providers and specified eligible agents. This method of appointment or revocation of appointment is in line with the approach adopted under the existing Import and Export Ordinance. The amendment to clause 2(1) is introduced to cater for the addition of new Schedules 1A and 1B.

As regards the respective amendments to clause 4 which deals with section 6(1)(ea) and clause 9(3) which deals with sections 22(7)(c), 22(9) and 22(9)(b), the purpose of these proposed amendments is to improve the drafting of the relevant provisions.

The purpose of an amendment to the part of clause 9(3) relating to section 22(7) is to specify clearly that anybody who has furnished under the Import and Export (Registration) Regulation a manifest of the cargo imported or exported shall be regarded as having complied with the various requirements set out under section 22 relating to the submission of import and export statements.

The amendment to the part of clause 9(3) involving sections 22(8)(a) and 22(10)(a) is to allow the Commissioner of Customs and Excise greater flexibility regarding the time limit for furnishing import and export statements.

The aforementioned amendments have been examined and endorsed by the Bills Committee.

### *Proposed amendments*

#### **Clause 2 (see Annex V)**

#### **Clause 3 (see Annex V)**

**Clause 4 (see Annex V)**

**Clause 8 (see Annex V)**

**Clause 9 (see Annex V)**

**Clause 11 (see Annex V)**

**Clause 12 (see Annex V)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2, 3, 4, 8, 9, 11 and 12 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 12A       Schedules 1A and 1B added.

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam Chairman, I move that new clause 12A, as set out in the paper circularized to Members, be read the Second time.

New clause 12A seeks to add Schedules 1A and 1B to the Bill to set out respectively the name lists of the specified electronic service providers and the specified eligible agents. These two schedules are added to bring the approach adopted under the Dutiable Commodities Ordinance to appoint or revoke the appointment of specified electronic service providers and specified eligible agents into line with the approach adopted under the Import and Export Ordinance.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 12A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)



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

**CLERK** (in Cantonese): New clause 12A.

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam Chairman, I move that new clause 12A be added to the Bill.

*Proposed addition*

**New clause 12A (see Annex V)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 12A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of 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.

**DUTIABLE COMMODITIES (AMENDMENT) BILL 2001**

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

Dutiable Commodities (Amendment) 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 Dutiable Commodities (Amendment) Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Dutiable Commodities (Amendment) Bill 2001.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Attachment of Income Orders (Amendment) Bill 2001.

**ATTACHMENT OF INCOME ORDERS (AMENDMENT) BILL 2001****Resumption of debate on Second Reading which was moved on 4 April 2001**

**PRESIDENT** (in Cantonese): Mr Albert HO, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

**MR ALBERT HO** (in Cantonese): Madam President, first of all, as Chairman of the Bills Committee on the Attachment of Income Orders (Amendment) Bill 2001, I would report on the deliberations of the Bills Committee.

The Bill seeks to amend the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance and the Matrimonial Proceedings and Property Ordinance to relax the conditions under which attachment of income orders (AIOs) can be made under the Ordinances. An AIO can in future be made in the same hearing in which a maintenance order is made or varied and it can be made by the Court on its own motion or on application by the maintenance payer, payee or both. The Bill also provides for the Court to be empowered to dispense with or relax any procedures or abridge any time limits currently specified in the Attachment of Income Order Rules. In individual cases, certain steps can be omitted or the time limit relaxed by the Court in the light of the circumstances of the cases in order to reduce the time in processing AIO applications. The Bills Committee supports the proposals of the Bill.

At present, the existing law already requires a maintenance payer to notify the maintenance payee of any change in address within 14 days of such change. The Bills Committee requested the Administration to consider requiring a maintenance payer to notify a maintenance payee of any change in employment where an AIO is in force in respect of him in order that a new AIO could be made by the Court as soon as possible. In view of members' concern, the Administration has proposed that the new arrangements as follows be introduced by amending the Attachment of Income Order Rules amended by the Chief Justice of the Court of Final Appeal:

- (a) a maintenance payer, when he ceases to receive any income from an income source against which an AIO has been issued, shall apply to the Court for a new AIO to be issued against the new income source. The application has to be accompanied by his statement of means and a statement of verification on the new income source. If he does not wish to apply for a new AIO in respect of the new income source, he should make a statement to the Court, with a copy to the maintenance payee, on the reasons;
- (b) if the maintenance payer, following the cesser, does not have any income capable of being attached, he shall file with the Court a statement of means together with a statement that he does not have any income capable of being attached; the maintenance payer shall take action under within 14 days after he has acquired any new income capable of being attached; and
- (c) a maintenance payer who fails to comply with the above provision without reasonable excuse or knowingly make a false statement commits an offence.

The Bills Committee supports the proposed arrangements. The Administration expects to complete drafting of the amendment rules within a short time and plans to gazette them before the next Legislative Council Session. The Administration envisages that the new rules will take effect from November 2001 at which time the Attachment of Income Orders (Amendment) Ordinance 2001 will also be brought into operation by notice published in the Gazette.

Some members maintain the view that a maintenance board should be set up to collect and enforce maintenance payments on behalf of the maintenance payees. As it is outside the scope of the Bill, the Bills Committee agrees that it should be pursued separately and followed up by the Panel on Home Affairs. Moreover, the Panel would also monitor the implementation of the various improvement measures.

Madam President, members of the Bills Committee support the Bill and the technical amendments to be moved by the Secretary for Home Affairs at the Committee stage later.

Madam President, I will express my personal views on the Bill.

The Bill makes limited improvements in regard to the protection of the interests of maintenance payees. However, the Bill is not helpful or is only negligibly helpful in many cases where the attachment of income orders do not apply, for instance, where the maintenance payers are self-employed or are not regularly employed.

Moreover, the existing legal procedures for the recovery of maintenance are time-consuming and complicated. If the procedures for judgment summons are followed, it will take more than 20 weeks. If there are arguments over the testimony, the Court may take longer to handle the cases and the hearings may be postponed. Then, the applications related to maintenance may be subject to a delay of several months. As most of those who are annoyed by marital problems have to look after their minor children, outsiders can hardly understand the mental pressure they have to face as a result of unstable maintenance payment. They will very often have emotional problems which will in turn have adverse effects on the children under their care.

I reiterate on behalf of the Democratic Party that the Government must expeditiously re-consider the proposal made by many Members for the setting up of a maintenance board in the hope that more comprehensive and proper protection can be provided to a lot of people who rely on maintenance payments. They will then live under more stable financial circumstances and the minor children under their care will not have to put up with unnecessary pressure or insult or violence when they help their parent recover maintenance payments.

Madam President, many advanced countries have actually implemented maintenance board systems for many years. The Government should consider the experience of these countries in an open manner. In the interest of the welfare of the unfortunate divorcees and the children they look after, we strongly request the Government to take positive measures as soon as possible in response to the request of many Members for the setting up of a maintenance board.

I so submit. Thank you, Madam President.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, the failure some divorcees fail to enforce maintenance payments falls into one of the three following circumstances: firstly, they do not intend to enforce maintenance payments but they intend to apply for Comprehensive Social Security Assistance

(CSSA) instead; secondly, although they have enforced maintenance payments, they fail to get the full amounts and they have troubles or are even threatened when they enforce the payments; thirdly, they are unsuccessful in enforcing maintenance payments through legal aid or Court judgments. These three types of divorcees who fail to enforce maintenance payments share one thing in common, that is, they have lost their self-respect and have to put up with the pressure of discrimination and rely on CSSA at the end, and their children have a feeling of desertion. They have another thing in common, that is, the payment of maintenance is originally a family responsibility but the responsibility is ultimately shifted on to taxpayers.

The figures given by the Government show clearly that the attachment of income orders (AIOs) have not effectively helped the maintenance payees since the implementation three years ago. One of the crucial factors is that the requirements in respect of the circumstances under which the Court can issue an AIO are very stringent and the procedures take a long time, thus, the AIOs have very limited effects.

To address the difficulties met by divorcees in the collection and enforcement of maintenance payments, the Democratic Alliance for Betterment of Hong Kong (DAB) has always urged the Government to set up a maintenance board to directly collect and enforce maintenance payments on behalf of the maintenance payees, and the community has reached a consensus on this long ago. It is a pity that the Government insists that setting up a maintenance board will not be more advantageous than improving the existing system and it has turned down the proposal. However, it introduces this Bill in the hope of solving the existing problem of maintenance arrears through relaxing the provisions for the issue of AIOs. For instance, the Bills allows the Court to issue AIOs when it has reasonable grounds to believe that the maintenance payer will not make full and punctual maintenance payment, or when both the maintenance payer and the payee agree to make an AIO.

As to Members' concern that the change in employment of the maintenance payer may affect his maintenance payment, the Government promises to amend the Attachment of Income Order Rules to require a payer to submit an explanation statement to the Court under the above circumstances. Furthermore, a person who refuses to submit a statement without reasonable reasons, or knowingly makes a false statement commits an offence.

Madam President, the scope of the Bill is rather limited, and even if it is brought into operation, it will not largely improve the existing situation of maintenance arrears. But since the Government insists on not setting up a maintenance board, the DAB is compelled to support this Bill which is better than nothing. Yet, the DAB requests the Government to immediately consider setting up a maintenance board again so as to effectively address the difficulties and trouble faced by those who enforce maintenance payments.

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

**MISS CYD HO** (in Cantonese): Madam President, in fact women groups have continuously urged the Government to set up a maintenance board, but unfortunately the Government has only implemented the attachment of income orders (AIOs) in 1998. However, a total of only 35 AIOs have been issued since 1998. The fact that we still find that women are abused by their former spouses every now and then illustrates that the 1998 measure is actually not very helpful. Women groups have also continuously indicated that the application procedures for AIOs are very complicated and there is not any intermediary organization to assist the parties whose relationship has broken down so that they do not need to meet in the course of enforcing maintenance payments. These procedures may therefore only make them more painful and are not helpful at all.

Finally, the Government has set up a working group to conduct a review. It has actually been late in coming for it was originally planned that a review would be conducted one year after the implementation. The completion of the report is also late. Last year, the Government published the relevant report and the Secretary introduced the Bill, the improvements to the administrative measures and the legislative amendments after scrutinizing the Bill. All these were introduced during the scrutiny period.

Madam President, we will vote for the amendments but we must point out that the Honourable Albert HO has just mentioned that some Members — it seems to me not only some but a majority of and even an absolute majority of Members — want the setting up of a maintenance board, not only these improvement measures. The most basic difference is that, with any improvement, it does not mean that the Government will advance the payments when the payees fail to receive maintenance payments. Regardless of how the procedures for the application for legal aid or legal proceedings are expedited,

when the payers fail to make maintenance payments, the payees will face a financial crisis. Although the Government has said that they can apply for emergency CSSA but the maintenance payments and CSSA payments are different in nature. CSSA applicants have to undergo an asset and means test. As some maintenance payees have certain assets, especially single-parent families that depend on maintenance payments to make mortgage payments for their homes, they do not meet the requirements for CSSA applications. Since they have to make mortgage payments, once they encounter financial difficulties, they have to put up with greater pressure. Compared to the advance payment function of a maintenance board, such administrative measures and improvements in legislation would not help matters. However, Madam President, we will support the motion today because we would like to fight regardless of how little we can get. Nevertheless, our direction in fighting for the setting up of a maintenance board is unchanged. I believe the position of other parties will be more or less the same, and I would like to put this record. We urge the Government to conduct another review some time, such as one year or one and a half year after putting the administrative measures and legislative amendments proposed in the report into effect, and find out how effective they are before carefully considering the need to set up a maintenance board. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the purpose of the Attachment of Income Order (Amendment) Bill 2001 is to relax the circumstances in which attachment of income orders can be made so as to enhance the effectiveness of the Attachment of Income Order (AIO) Scheme in addressing the difficulties encountered by some divorced or separated persons in collecting or enforcing maintenance payments.

The Bill seeks to amend three Ordinances that provide for maintenance payments, namely, the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance, and the Matrimonial Proceedings and Property Ordinance.



The Bill proposes that, subject to the conditions that there is income capable of being attached and that a maintenance order is in place, an AIO can be made where:

- (a) the Court is satisfied that the maintenance payer has without reasonable excuse failed to make any payment pursuant to a maintenance order; or
- (b) the Court has reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with a maintenance order; or
- (c) the maintenance payer and payee agree to make an AIO.

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

In addition, the Bill provides that the Court may dispense with or relax any procedures or abridge any time limits specified in the Attachment of Income Order Rules.

I would like to thank the Honourable Albert HO and members of the Bills Committee for their invaluable and constructive views during the scrutiny of the Bill. We shall move amendments to the Bill at the Committee stage in the light of their views. Now, let me respond to the views expressed by some of Honourable Members just now.

We share the views of Mr Albert HO and Miss CHOY So-yuk that this Bill or the AIO Scheme cannot resolve all problems encountered by the maintenance payee. In fact, actions have to be taken on various fronts to solve the maintenance problem, including improving the existing legislative and administrative measures. Government representatives have reported to the Bills Committee the progress of the various improvements that have been implemented or in the pipeline. I understand that Members, like us, are sympathetic towards the maintenance payees and hope to do their best to improve the situation. We would be most willing to work with Members to explore more practicable improvement measures in the coming meetings of the Panel on

Home Affairs. But in any case, the Bill, when enacted, will enable more maintenance payees to receive punctual payments through the AIO. It will remove or alleviate the problems they encounter while collecting or enforcing maintenance payments.

Mr Albert HO, Miss CHOY So-yuk and Miss Cyd HO consider that the problem of maintenance arrears can only be resolved by the establishment of a maintenance board. We have carefully considered the proposal of setting up a maintenance board. An Inter-departmental Working Group was set up to look into this proposal, and the Working Group published a report in May 2000, which was then distributed to Members. The Report sets out in detail the reasons why we consider that the proposed board would not bring, either to the maintenance payees or taxpayers, any significant benefits over and above those that can be achieved by improving the existing system.

Since May 2000, we have explained to individual organizations, at their request, our views on this issue. If necessary, we are most willing to continue discussing the issue and sharing our views with interested organizations and Members of the Legislative Council.

As the Bill seeks to amend the existing AIO Scheme, we shall recommend to the Chief Justice of the Court of Final Appeal that the Attachment of Income Order Rules be amended to provide for the revised application procedures and other details. We shall incorporate into the Amendment Rules a recommendation made by the Bills Committee, that is, if an AIO is discharged because the maintenance payer has changed his employment, he has to either apply for a new AIO or explain to the Court or the maintenance payee why such an application should not be made. Mr Albert HO has already presented the details just now.

We have been drafting the necessary Amendment Rules. The improvements brought about by the present Bill and the Amendment Rules are expected to be implemented before the end of 2001. Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

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

Council went into Committee.

### **Committee Stage**

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

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

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Attachment of Income Orders (Amendment) Bill 2001.

**CLERK** (in Cantonese): Headings before clauses 1, 2, 3, 4 and 5, clauses 1 and 5.

**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 2, 3 and 4.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 3 and 4, as set out in paper circularized to Members.

The amendments are technical in nature. Apart from correcting a textual error in the Bill, the amendments seek to empower the Court to take into account, when deciding whether to issue an AIO, the maintenance payer's "past record and conduct", instead of merely his "past record" or merely his "past conduct" in discharging his reasonable financial obligations or in paying maintenance.

The amendment is made in response to the Bills Committee's proposal and has its support. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 2 (see Annex VI)**

**Clause 3 (see Annex VI)**

**Clause 4 (see Annex VI)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2, 3 and 4 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.

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

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

Attachment of Income Orders (Amendment) 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 Attachment of Income Orders (Amendment) Bill 2001 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

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

**MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Disability Discrimination Ordinance.

**PROPOSED RESOLUTION UNDER THE DISABILITY DISCRIMINATION ORDINANCE**

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese) Madam President, I move that the Code of Practice on Education under the Disability Discrimination Ordinance (G.N. 3310/2001), which was laid on the table of this Council on 6 June 2001, be amended as set out in the proposed resolution circulated to Members.

The proposed amendments are textual ones for the sake of better compatibility between the Chinese and English texts of the Code and with a view to improving the interpretation of it.

Madam President, I beg to move.

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

"That the Code of Practice on Education issued by the Equal Opportunities Commission under section 65(1) of the Disability Discrimination Ordinance, published as Government Notice No. 3310 of 2001 and laid on the table of the Legislative Council on 6 June 2001 be amended as follows:

1. In the Chinese text:

A. Paragraph 1.1 is amended by-

- a. deleting "教育" where it last appears; and
- b. adding "，以獲得及有意義地參與本地教育" after "機會" where it last appears.

B. Paragraph 1.2 is amended by deleting "平等機會委員會(下稱委員會)相信，"

C. Paragraph 1.3 is amended by-

- a. deleting "委員會" and substituting "平等機會委員會(下稱委員會)"; and
- b. deleting "定期" and substituting "不時".

- D. Paragraph 2.1.2 is amended by adding "及" at the end.
- E. Paragraph 2.1.3 is amended by-
  - a. adding "他們在" before "《條例》"; and
  - b. deleting "賦予他們" and substituting "下".
- F. Paragraph 3.5 is amended by-
  - a. adding "在任何情形下" before "應參閱"; and
  - b. deleting "有關條文".
- G. Paragraph 4.9.1 is amended by deleting "因殘疾而起的使人受害" and substituting "「使人受害」的殘疾歧視".
- H. Paragraph 6.1.3.3.1 is amended by deleting "動作" and substituting "行動".
- I. Paragraph 7.2 is amended by deleting "太多" and substituting "額外".
- J. Paragraph 9.2 is amended by deleting "保障" and substituting "保護".
- K. Paragraph 10.1.2 is amended by deleting "滿足" and substituting "迎合".
- L. Paragraph 10.1.3 is amended by deleting "滿足" and substituting "迎合".
- M. Paragraph 11.1 is amended by-
  - a. deleting "應" where it first appears and substituting "宜";
  - b. adding "達致" after "有關";



- c. deleting "的" after "殘疾人士" where it last appears;
  - d. deleting "教育" where it last appears; and
  - e. adding "目標的" before "具體部分".
- N. Paragraph 11.1.3 is amended by deleting "投訴" where it first appears and substituting "申訴".
- O. Paragraph 11.2 is amended by-
- a. adding "與其" before "有關" where it first appears;
  - b. adding "的" after "有關" where it first appears;
  - c. deleting "機構成員的" and substituting "等"; and
  - d. adding "的人" after "人士" where it last appears.
- P. Paragraph 11.3 is amended by adding "在檢討過程中" after "並".
- Q. Paragraph 11.4 is amended by adding "大型" before "大專院校".
- R. The table in "附錄甲" is amended by-
- a. in second column of item 1, deleting "評" and substituting "畢業生";
  - b. in second column of item 4, deleting "信人委員" and substituting "信託人委員會";
  - c. in second column of item 11, adding "能" after "職";
  - d. in first column of item 12, deleting "成" and substituting "設", and deleting "為法團"; and
  - e. in first column of item 13, adding "立" after "設"

S. "附錄乙" is amended by-

- a. in the section under the heading "評估及跟進行動"-
  - (i) adding "暫時" before "停學" where it twice appears;
  - (ii) adding "覆檢" before "官員";
  - (iii) deleting "覆檢後";
- b. in the section under the heading "審裁處的判決"-
  - (i) deleting "現行" where it first appears; and
  - (ii) adding "現行" after "另一[法例]的".

2. In the English text:-

- A. Paragraph 3.1 is amended by deleting "of" after "Schedule 1" and substituting "to".
- B. Paragraph 4.1.1 is amended by deleting "motions" and substituting "emotions".
- C. Paragraph 4.2.1 is amended by deleting "of" after "Schedule 1" and substituting "to".
- D. Paragraph 4.7.1 is amended by-
  - a. adding "towards" after "hatred"; and
  - b. deleting "serious" where it last appears and substituting "severe".
- E. Appendix A is amended by deleting "Schedule 1 of" where it twice appears and substituting "Schedule 1 to".

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

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

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

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, I move that the amendments to the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation be passed to adopt the so-called "fifth leaver" rule to conduct the spectrum auction for the third generation (3G) mobile services. The content of the motion is provided in the paper forwarded to Members.

In order to complete the scrutiny of both the principal and subsidiary legislation within this Legislative Session, the draft Regulation was submitted to the Bills Committee early when the principal legislation was under examination.

With the support of the Bills Committee and the House Committee, a Subcommittee was set up very soon for the prompt scrutiny of the Regulation to tie in with the 3G mobile services licensing exercise. I would like to take this opportunity to express my heartfelt thanks to Members for their support and co-operation.

During the examination of the Regulation by the Subcommittee, the most controversial issue which Members had discussed in great detail was the "fourth leaver" rule originally proposed by the Government. Under such proposal, the price willing to be paid by the lowest successful winner will become the ultimate price of the spectrum auction for 3G mobile services. However, the Subcommittee considered it more appropriate and hence proposed to adopt the "fifth leaver" rule whereby the price to be paid by all winners is determined by the price bid by the fifth highest bidder.

Having considered very carefully the implications of the "fifth leaver" methodology, we decided to accede to the Subcommittee's request and make the necessary amendments. We are of the view that our original proposal, that is, the adoption of the "fourth leaver" rule in an auction based on bidding on royalty percentages and minimum guarantee payments, is a balanced arrangement. Not only does it meet the policy to allocate the licences in a fair and efficient manner, but also achieve the aim of encouraging entry into the 3G market under the current conditions of the telecommunications market. Nevertheless, we do not have any objection in principle to the adoption of the "fifth leaver" rule proposed by the Subcommittee since the primary objectives of the licensing exercise have been achieved.

As regards the possible implications of the amendments on public revenue, we note the Subcommittee's wish to provide an attractive environment for the operation of 3G mobile services through the amendments. However, we cannot quantify the potential effects of such amendments on public revenue, as interest in the auction will depend on market conditions at that time. We hope that through competition, any benefits arising from a lower price payable by the operators will be passed on to consumers.

#### *Details of the Amendments*

Having accepted the proposal of the Subcommittee, we propose to amend the regulation by stipulating the royalty percentage payable as the lowest

common royalty percentage offered by all successful bidders. This percentage should not be lower than the royalty percentage offered by the fifth highest bidder. As the price is determined by the price bid by the fifth highest bidder under the revised methodology, the royalty payable will be the reserve price if there is no fifth highest bidder (for example, because one of the successful bidders is disqualified).

We will ensure that the revised auction design with the "fifth leaver" rule will continue to meet our policy objectives of encouraging entry to the 3G market, enhancing competition in the market, minimizing market distortion and allocating the spectrum bands in a fair and efficient manner. As a measure to minimize collusion and preserve the integrity of the auction, we must maintain the confidentiality feature of the auction.

### *Timetable*

The preparation of the information memorandum for the 3G auction is now in full swing so that applications for licence can be invited as soon as possible after the passage of the amendments today. We estimate that we would be in a position to release the information memorandum in July in order to conduct the 3G spectrum auction as scheduled.

For this purpose, I hope to have the support of the Legislative Council to pass the amendments at the earliest possible time. Thank you.

### **The Secretary for Information Technology and Broadcasting moved the following motion:**

"That the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation, published in the Gazette as Legal Notice No. 115 of 2001 and laid on the table of the Legislative Council on 6 June 2001, be amended:

(a) in section 2 -

(i) in subsection (1) -

(A) by repealing the definition of "highest common royalty percentage";

(B) by adding -

"applicable royalty percentage" (適用專營權費百分率), in relation to an auction, means the lowest common royalty percentage bid -

(a) offered by all the remaining successful bidders; and

(b) which is not less than the royalty percentage bid offered by the fifth highest bidder;"

(ii) in subsection (2), by repealing "highest common" and substituting "applicable";

(b) in section 4 -

(i) by repealing "在該拍賣中";

(ii) in paragraph (a) -

(A) by adding "subject to paragraph (c)," before "the bidders";

(B) by repealing "highest common" and substituting "applicable";

(iii) in paragraph (b) -

(A) by adding "該" before "拍賣所關乎";

(B) by repealing "highest common" wherever it appears and substituting "applicable";

(C) by repealing "concerned." and substituting "concerned;"

(iv) by adding -

"(c) if there is no fifth highest bidder, as mentioned in the definition of "applicable royalty percentage" and as determined in accordance with the relevant terms, then the spectrum utilization fee shall be the relevant minimum fee, and paragraph (b) and the other provisions of this Regulation shall be construed accordingly."."

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

**MR JAMES TIEN:** Madam President, as Chairman of the Subcommittee which has studied the third generation (3G)-specific subsidiary legislation, I wish to say a few words on the amendments proposed by the Administration.

On the "fourth leaver rule" originally proposed under the Regulation, the Subcommittee has exchanged views extensively with the Administration and the industry. There is unanimous opposition from the existing mobile phone operators to the "fourth leaver rule". They see no reason why the auction should continue beyond the point when the bidders in excess of the intended number have been eliminated, unless the policy intention is to maximize revenue by extracting a higher auction price. They have cautioned that the high cost of obtaining a 3G licence will add to the financial burden of the operators and eventually be passed on to future consumers. Instead, the operators have urged for a "fifth leaver rule" to determine the level of royalty payable.

The Subcommittee has also noted the view of the Government. It has reiterated that revenue is not its major concern. Instead, the "fourth leaver rule" can best meet its policy objectives.

While the Subcommittee concurs with the policy objectives of the Administration, some members have cast doubt on the "fourth leaver rule" in arriving at a fair market price. They are concerned that the higher auction price resulting from this method will become a heavy financial burden on future 3G

licensees and may affect their investment and service roll-out. This in turn will affect the growth of the telecommunications industry and Hong Kong's competitiveness. Consumers will also suffer as a result.

While the majority of the members of the Subcommittee support the "fifth leaver rule", in the course of deliberation, one member has considered the "fourth leaver rule" an acceptable method for allocating a scarce public resource at a good price. It will not necessarily bring about unreasonably high auction price because bidders will be bidding what they are prepared to offer.

It is against this background that the Administration has been asked to consider the majority view of the Subcommittee. Indeed, I am pleased that the Administration has agreed to move amendments to the relevant sections of the Regulation to give effect to the "fifth leaver rule". The Subcommittee has also been assured by the Administration and the Subcommittee's legal adviser that the sections as amended will provide a clear legal basis to facilitate the adoption of the "fifth leaver rule".

Lastly, as a related issue, I would like to take this opportunity to reiterate the Subcommittee's concern about early publication of the relevant auction rules and the Information Memorandum for the guidance of interested bidders.

Thank you, Madam President.

**MR DAVID CHU** (in Cantonese): Madam President, I speak on behalf of the Hong Kong Progressive Alliance (HKPA). We welcome the Government's adoption of the industry proposed to abandon the "fourth leaver rule" in favour of the "fifth leaver rule" as the method for determining spectrum utilization fees of 3G mobile services.

The greatest problem with the "fourth leaver rule" is that the price offered by bidders may be pushed up to an unreasonable level and in the end operators may be forced to reduce their investment and pass the high cost on to consumers. All these are unfavourable to the development of 3G mobile services.

On the other hand, the "fifth leaver rule" is consistent with international practice, reflects in a more reasonable way the market price and will meet the Government's aim of encouraging entry into the 3G market.



The HKPA hopes that the auction procedures and regulatory framework of 3G mobile services can be finalized and licences issued as soon as possible. That will consolidate our competitiveness and leading position in the international telecommunications market and make mobile telephone services available to consumers at a most favourable price.

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

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, the Democratic alliance for Betterment of Hong Kong (DAB) welcomes the change in the Government's position to which it has adhered over the past months and the adoption of the "fifth leaver" rule as a method to determine an "appropriate" royalty for 3G mobile telephone services. If the original proposal of the Government is adopted, auction will have to go on until all the successful bidders, that is, the fourth bidder, has offered the highest royalty percentage. This percentage will make consumers pay more, slow down the service popularization rate and eventually defeat the policy objective of developing the telecommunications industry in Hong Kong.

#### *The DAB's Position*

When discussing the 3G licensing scheme as put forward by the Government, the DAB takes the following three major factors into consideration: first, whether it will facilitate the early development of 3G; second, the bidding should be conducted in a fair manner; and third, the consumers will be assured enjoyment of a new generation of multi-purpose telecommunication services.

Madam President, the DAB supports the use of auction to allocate 3G licences with the aim of finding in a proper and fair way operators who are able to take our 3G business forward. The auction price and the revenue generated are our concerns, but these are not the most important concerns. It is because our telecommunication infrastructure is designed and built by private sector enterprises and the Government should be responsible for the design of various procedures. One of such procedures is the mixed licensing scheme. The aim of this is to ensure that the bidders have the technical capability so that problems in respect of network will not arise once they have been awarded a licence. More importantly, bidders are required to show commitment to the development of the telecommunications industry in Hong Kong. So the greatest result of the

licensing and auction procedures is to identify four suitable 3G operators. It would not be necessary for the Government to find the so-called "highest price".

It is worrying that the Government has insisted on fetching the "highest price", for it shows that the Government is attaching too much importance to revenue. This kind of mentality will not do any good to maintaining our position as the telecommunications hub of Asia.

Lastly, I would like to mention that the Government should put in more thoughts into the development of 3G application in Hong Kong. 3G is the state of the art technology in wireless communication, a tremendous leap from 2G. The popularization of 3G will hinge upon the development of applications which will promote the growth of 3G. The problems faced by the telecommunication industry all over the world are the enormous costs involved in the bidding of a 3G licence and the investments to be made for the new equipment. The result is that research and development work will get the least amount of resources. Therefore, the DAB thinks that the Government should make the promotion of the development of the telecommunication industry its direction of development. Since the 3G auction has brought an extra source of income for the Government, it should consider how to make greater commitment in the development of applications.

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

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, the resolution introduced by the Government today seeks to pass provisions on matters concerning the licensing of 3G mobile services. The Government has acceded to the request of the Subcommittee to change the "fourth leaver rule" to the "fifth leaver rule". This has positive impact on the community. What we have to consider at the end of the day is how consumers can reap the greatest benefits and not to focus our concern on public revenue and the demands of operators. The Democratic Party thinks that the exorbitant auction prices will pass onto the consumers in the end. If Hong Kong is to enter the era of information technology, it should formulate policies on information technology and telecommunications which will benefit the consumers.

Another focus of the Regulation is the issue of dark room policy. The Democratic Party would support the continuous use of dark room policy by the

Government. Given the small size of the territory, there should be institutional precautions against the six operators arriving at any agreement on bidding prices.

Another very important issue is MVNO requirements. In terms of the system, as there would only be four licences in the future, so there is a possibility of integration. The Government should state in detail the part on MVNO in the licensing terms or in the Information Memorandum. For a level playing field to be possible, apart from the four licence holders, other operators should also have access to 3G infrastructure facilities. Only when there is one more MVNO operator joining in the competition that the application of 3G mobile phones can come into full play.

The last point I would like to make is that in a consultation paper published by the Government in April, it is stated that subsidiary legislation is expected to be introduced to this Council in October when the new Legislative Session starts, specifying that telecommunication operators may engage in consolidation only with the prior consent of the Government. The consultation period expired at the end of June and many information technology firms and telecommunications companies have put forward strong opinions on the issue. With respect to this, the Democratic Party is in support of a level playing field. When the Telecommunications Ordinance was passed last year, provisions on anti-competitive practice were added. But the consolidation scenario was overlooked. To put it simply, the Government is now powerless in stopping any attempt by a parent or holding company to incorporate a number of licensed institutions as its subsidiaries. I think this is one of the great difficulties which the telecommunications industry will have to face. The Democratic Party thinks the Government should deal with this issue as a matter of urgency to plug the loopholes in law. For example, it can require that any large-scale consolidation moves should be carried out only with its prior approval. For if not, there may be a scenario of a number of companies operating under the control of a same holding company. That will reduce competition in the market.

Madam President, the Government must draft consultation papers on consolidation and acquisition matters expeditiously, for these have an important bearing on the development of 3G mobile services. Should a situation happen when two out of the six bidders for mobile phone licences fail to be awarded a licence, then there may be speculations in the market that consolidations may have taken place. Such problems may happen in the absence of a sound legal

framework dealing with consolidation matters. If the Regulation can be passed today, there will be ample time to proceed with the auction in this September, but there is still a need for the Government to set up the legal framework with regard to consolidation and acquisition matters as soon as possible.

I so submit to support the resolution.

**MR HOWARD YOUNG** (in Cantonese): Madam President, when scrutinizing the principal legislation and taking part in the work of the Subcommittee, both the Liberal Party and I expressed the hope that the Government would formulate a set of workable rules in respect of the auction of 3G licences. I raised the point that when 3G licences were first auctioned in Europe, many people regarded that as a golden opportunity to make money and they offered very high prices. But things are different now, as the matter is dragged on, investors are finding it less attractive. Many investors would think that the Hong Kong market is too small, especially when compared to the huge market in China which will soon open up. That is why I think that we should enact the legislation as soon as possible and auction the 3G licences. These will promote the development of 3G mobile services in Hong Kong.

As we deliberated on the principal legislation and the regulation on auction matters, we heard different opinions from all related parties. Some of those who are interested in bidding for the licences have also tried to persuade us for their own interests. They are not satisfied with the "fourth leaver rule" and the "fifth leaver rule", as well as the dark room auction mentioned by Mr SIN Chung-kai earlier. The Liberal Party is of the view that if any of the proposals is reasonable, if it can promote competition and if it can attract a sufficient number of interested bidders, then in the interest of consumers, we should make an objective study of each of the proposals. As for the Government's decision to adopt the "fifth leaver rule", we are supportive of the idea, but we cannot accept the requests made by those prospective bidders such as abolishing the dark room auction, and so on. It is because we think that the auction approach can really balance the interests of both sides. We hope that once the resolution is passed today, the Government can make the details public to all interested parties. This is important because the idea is novel and there are differences between the way auction is conducted in different countries. If the matter is allowed to drag on, then there will be more uncertainties.

With these remarks, I support the passage of the resolution.

**MISS EMILY LAU** (in Cantonese): Madam President, I speak in support of the resolution moved by the Secretary. In the meetings of the Subcommittee, I supported the proposal on the "fourth leaver rule" as originally made by the Government. But since Honourable Members now have a decision and I am the only one who supports the government position, so it would be useless if I do so. I would therefore take the majority view. In this case many people do not show their support for the Government, but I am in support of it. It can therefore be seen that my position in that matter is formed as a result of the facts and it has nothing to do with people. I do not oppose to everything which the Government proposes. I hope Honourable Members can take note of that.

Madam President, when the principal legislation was passed, I had made my stand clear. From the beginning I feel that these valuable spectrums should be auctioned. At first, the executive authorities wanted to adopt the approach of handing out these spectrums after vetting the applications. We saw what happened in Europe and we were shocked because auctioning the spectrums could reap such a handsome profit. I think not just I myself, but public opinion also has given the executive authorities great pressure on that because we point out that these spectrums should not just be given to the operators. At that time, I put forward another reason, and that is, we could hand out these spectrums after making some sort of selection. It is because there are some very big players in the field, Madam President, you and I know who they are, who will surely take part in this game. If these big players get the spectrums, then the executive authorities will inevitably be criticized of favouritism. We always have this feeling whenever we think of the Cyberport. Shall we also offer these precious resources to these big players this time? Besides, we also want to devise some objective standards for the executive authorities to issue these four licences. So I have all along been in favour of using the auction approach.

The Secretary has thought of a new approach and I am in support of that, for I understand that times have changed. Some people spent a lot of money on that in the past, now they may have regrets. Of course, we do not want to see network operators unable to expand their business in Hong Kong because they do not have the money. When the Secretary proposes the "fourth leaver rule", I think why should we not go for that since we will get more profits and these bidders are willing to pay for the money and nobody is pointing a gun at them? When these businessmen came to attend the meeting of the Subcommittee, I asked them what problems they had. Would these people really be acting irrationally? Some Honourable Members said that these people did not act

rationally, then shall we legislate to make them act rationally? Madam President, I do not think that can be done. Some of these industry representatives said that the Council should not legislate to make them act rationally, and they did not think they would act irrationally. But I also asked them, if the fourth and the fifth bidder would leave, then what would the difference be in terms of price? Only one of them was willing to say that the difference would be two times more than the previous price offered. But other people did not agree to that and no one would say that it was that expensive. I think Honourable Members are logical, for all along they did not agree to the idea of auctioning. They gave their support to the Government because the Government put forward the idea of auctioning. In fact, Honourable Members are very supportive of the Government, but for the business sector, their position is that the less they pay the better. My opinion is that since the spectrums are so valuable, the business sector can be asked to pay more. In any case, I go for the approach taken by the Government and I think we will certainly pass the resolution moved by the Secretary today.

Like the industry, I also wish to see that information memorandum for the 3G auction published as soon as possible. The Secretary has said earlier that she hoped the auction could take place in September. If the information memorandum is published this month and auction will take place two months later, the industry is worried that the information memorandum has been prepared in too much of a rush and there is no time for detailed scrutiny of the information memorandum. Moreover, the information memorandum cannot be revised. We have proposed to the Secretary that the information memorandum be submitted to the Legislative Council once it is published. I hope the Panel concerned has a sufficient number of members to read and comment on the information memorandum. Should people in the industry have a lot of comments after they have read the information memorandum, then the Council should invite them to present their views before us. I think the Secretary shares our wish that the auction would be a success, especially when we see that the present situation is so difficult. I hope that the Secretary can offer as much assistance to the industry as possible so that they can understand the rules of the game and so make the auction a success.

As for the dark room issue, I agree with the Secretary's view, but I would like to say it once again, as the dark room approach is used, people will not know what is happening and so some people may become worried. The Secretary said that she would tell us what has happened when the matter is over and the

Independent Commission Against Corruption would send some of its staff there. Despite all these, I hope that the Secretary can adopt the best approach so that the people concerned can get hold of the information as soon as possible and will not have to rely on the description of the Secretary. I am concerned that should anything go wrong, those who join in the bidding may challenge the decision and a lot of problems may be caused. If possible, I would think that the greater the transparency the better.

Lastly, I would like to say that I am very much in support of fair competition in Hong Kong. I have said before that in other respects, competition may not necessarily be a good thing, but in the telecommunication industry, we would think that competition is a good thing. However, Madam President, recently some members of the public said to me that they were worried that our telecommunications industry might lag behind other competitor countries. They were also concerned that some large enterprises might monopolize the market. I hope I can follow this matter up in the relevant panel. What we have seen has been the good side of Hong Kong and how it is superior to other places, but I think as we reach a certain stage, we need to see how our competitors are faring, especially in terms of laying telecommunications networks. We need to see how much effort they have put into this and whether or not we have become complacent as we are lagging behind. I believe the Secretary is aware of this problem and I hope we can have a chance to talk about it. As for today, I support the resolution moved by the Secretary. I really hope that there can really be competition in Hong Kong as we develop in telecommunications and that we can compare favourably with other countries instead of lagging behind them all the time. With these remarks, I support the resolution moved by the Secretary.

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

(No Member responded)

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, let me first thank Members for their support. I also wish to take this opportunity to respond briefly to the comments made by Members just now. Several Members are concerned about the timetable. I can advise Members that the compilation of a

detailed memorandum for 3G auction is now in full swing, and it is expected that the memorandum can be released this month. Prospective bidders will have sufficient time, eight to nine weeks, to prepare for the auction in September. We will brief the Panel on Information Technology and Broadcasting on the contents of the memorandum as early as possible.

In regard to promoting the application of 3G technology and the introduction of MVNO operators, I must point out that one of the very important 3G licensing measures is in fact to draw up arrangements for an open MVNO network to ensure that content providers can transmit their innovative applications to 3G consumers. That way, there can be sound competition in terms of the supply of contents.

For the confidentiality of auction and the release of information, I wish to point out that in order to ensure the auction is conducted in a fair manner, we must keep the process of auction confidential. I must thank the Subcommittee for supporting this arrangement.

Without prejudicing the impartiality and propriety of the auction, we will definitely release as much information about the auction as possible, so as to increase its transparency. For instance, during the auction period, the different levels of price quotations will be released in the website of the Telecommunications Authority. There will only be a small real time lag, and the whole process is identical to the release of auction information in websites in Britain.

After the auction is completed, the Government will announce the royalty percentages and also the identity of the tentative successful bidders. We will also release the detailed information of the whole auction as soon as possible, including price quotations and the identity of bidders. Thank you, Madam President.

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

(Members raised their hands)



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

(No hands raised)

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

## **MEMBERS' MOTIONS**

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

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

**MRS SELINA CHOW**: Madam President, on behalf of the House Committee, I move the motion standing in my name on the Agenda. At the House Committee meeting on 29 June 2001, Members noted a further report from the legal adviser on the 11 items of subsidiary legislation, and the time for Members to consider whether amendments should be moved to any of these items of subsidiary legislation listed in the motion. Members have proposed that the scrutiny period of these items of subsidiary legislation should be extended to the Council meeting of 11 July 2001.

Madam President, I urge Members to support the motion.

**Mrs Selina CHOW moved the following motion:**

"That in relation to the

- (a) Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships — Training) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 104 of 2001;
- (b) Merchant Shipping (Seafarers) (Passenger Ships Other Than Ro-Ro Passenger Ships — Training) Regulation, published in the Gazette as Legal Notice No. 105 of 2001;

- (c) Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 106 of 2001;
- (d) Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 107 of 2001;
- (e) Merchant Shipping (Safety) (Passenger Ship Construction) (Ships Built Before 1 September 1984) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 108 of 2001;
- (f) Merchant Shipping (Safety) (Passenger Ship Construction and Survey) (Ships Built On or After 1 September 1984) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 109 of 2001;
- (g) Merchant Shipping (Safety) (Musters and Training) (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 110 of 2001;
- (h) Freight Containers (Safety) (Applications for Approval of Containers) Regulation, published in the Gazette as Legal Notice No. 111 of 2001;
- (i) Freight Containers (Safety) (Fees) Regulation, published in the Gazette as Legal Notice No. 112 of 2001;
- (j) Freight Containers (Safety) (Arrangements for Authorized Persons) Order, published in the Gazette as Legal Notice No. 113 of 2001; and
- (k) Freight Containers (Safety) (Examination Procedure) Order, published in the Gazette as Legal Notice No. 114 of 2001,

and laid on the table of the Legislative Council on 6 June 2001, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 11 July 2001."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Proposed resolution under Article 159 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

**PROPOSED RESOLUTION UNDER ARTICLE 159 OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA**

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed, which seeks the consent of this

Council to forward the proposed amendments to Article 45 and proposed deletion of Annex I of the Basic Law of the Hong Kong Special Administrative Region (SAR) to the delegation of Hong Kong deputies to the National People's Congress (NPC), for submission to the NPC, so as to allow Hong Kong to elect the Chief Executive of the SAR by universal suffrage of "one-person, one-vote".

Madam President, by the time I made up my mind to move this motion, the press asked me whether I had confidence in winning the support of a two-third majority of this Council. At that moment, I told them that the chances of my motion being carried were very slim. I believe my statement at that time is also my view today, for this is the political reality at the present time, and there is nothing to hide at all!

Perhaps some people may ask, "LEUNG Yiu-chung, you are fully aware of the fact that a resolution seeking to amend the Basic Law simply stands no chance at all, why do you move that? Are you going to fool around again this time around?" I have to emphasize that I am not the one who is messing around, it is the undemocratic political system set down in the Basic Law, which includes the Chief Executive, who was selected by coterie election, and therefore needless to be answerable to the public, and the Legislative Council, where only 40% of the seats are returned by direct elections. In the past, as far as Members of this Council were concerned, the majority was elected by functional constituencies or the election committee, so it can be seen that their standpoints and political positions ran against democracy. As a result, it can be said that to pass a motion seeking the election of the Chief Executive through universal suffrage is just like a story in the Arabian Nights. Actually, not only the ridiculous and undemocratic political system is messing around, but also the numerous barricades imposed by the Basic Law are messing around with the people of Hong Kong all along.

The political reality is extremely ridiculous and cruel, but I am just striving to do something, knowing only too well that it is impossible. My proposed resolution to amend the Basic Law serves two purposes: Firstly, to cause an impact on the unreasonable arrangement for the right of amending the Basic Law; and secondly, to strive for the due right of the people of Hong Kong to elect the Chief Executive through universal suffrage.

The constitution of a country is the highest level of legislation in standardizing the conduct of its government and its people; it should therefore

reflect the collective wishes of the people. Therefore, normally speaking, I agree that any constitutional instrument drawn up in a democratic manner should not be amended arbitrarily, nor should it be amended frequently. However, if any person should oppose this resolution on account that the Basic Law has only been in operation for just four years, that it should then be given more time for implementation, and that no immature amendment proposals are should be forward, I cannot help but say that he is indeed trying to deceive himself as well as others. In fact, the Basic Law which defines the rights and interests of the people of Hong Kong was not formulated or affirmed by way of any democratic procedures right from the outset. Rather, it is imposed on the people of Hong Kong by Beijing.

The drafting of the Basic Law took a total time of five years, during which the drafts were twice presented to the Central Authorities and the local community for the so-called consultation. But that still could not alter the fact that the drafting of the Basic Law was by no means democratic. Rather than being any constitutional instrument drawn up by the people of Hong Kong mastering their own fate, the Basic Law is a naked tool of autocracy made by the Beijing authorities. I can advance numerous reasons in support of my argument that the Basic Law is not any product of democracy. Yet I could sum them up into three main points as follows. Firstly, the Drafting Committee of the Basic Law was not formed through a democratic process. Secondly, the consultation process was not any genuine solicitation of opinions; it served no practical purpose other than a gesture. Thirdly, the power to draw up the Basic Law was not vested in the people of Hong Kong.

It is precisely because the drafting of the Basic Law was not conducted in a democratic manner that we need to put forward this motion to amend its provisions. As a matter of fact, today is not the first time we propose to amend the Basic Law, nor has it just taken place in the recent two or three years; it has been the quest of the democratic camp for many years.

According to Article 159 of the Basic Law, any amendments to the Basic Law must be approved of by the NPC. However, given that not all of the over 3 000 deputies to the NPC are elected by the people of Hong Kong, and even that the 36 Hong Kong deputies are just elected by a coterie of some 400 people, we simply do not have any say in issues like our political structure and our rights as residents of Hong Kong. The Basic Law is the constitutional instrument of the SAR, yet the people of Hong Kong do not even have the right to propose

amendments to it, and even amendments to provisions involving only the internal affairs of the SAR have to be proposed by the NPC. So, I just feel that rather than putting any "Hong Kong people ruling Hong Kong" and "high degree of autonomy" into practice, all we have is "Beijing people ruling Hong Kong" and "birdcage autonomy"!

A more overboard situation is that we do not even have the mechanism to amend the Basic Law. The SAR Government has also admitted that it has the responsibility to formulate the relevant mechanism and procedure, however, the issue has been postponed again and again for over two years, may I ask what kind of attitude is this? Should this be the attitude of a government which respects its constitution and the rule of law?

I believe the Secretary will explain that due to the formulation of the mechanism involves the Central Government, therefore it should be discussed thoroughly, pending the instruction of Beijing, before any policy can be formulated; but I feel that the entire process of consulting Beijing precisely shows the problem with the existing system. The Secretary once said that in the past year or so, he had been discussing the issue with the Hong Kong and Macao Affairs Office for many times (around seven times). Unfortunately, regardless of the number of meetings, to date, what have they come up with? Madam President, the answer is nothing; there was no reply at all. I have to ask, what does that mean? Have all the 6 million people in Hong Kong been respected and taken seriously? Or the SAR Government just wishes to fabricate a reason to delay the formulation of the mechanism for amending the Basic Law?

I hope the Secretary will explain them one by one later.

Madam President, the purpose of my resolution today is to amend the undemocratic system in selecting the Chief Executive by coterie election, and I hope that the Chief Executive can be elected by universal suffrage of "one-person, one-vote". This is not a request made only today; this is a basic political right that the people of Hong Kong have long been fighting for.

Three days ago, over 700 people defied the elements to join the procession held for the purpose of "fighting for the election of the Chief Executive by universal suffrage and opposing coterie election". In the past few weeks, I have jointly hosted the rally for direct election of the Chief Executive with some other friends from the democratic camp and people's organizations. In just a few

weeks, we have collected over 30 000 signatures from the public. This is enough to show the unequivocal desire of the people in this respect, and everybody can see that clearly.

The Government frequently releases misleading messages wittingly or accidentally by emphasizing that the Basic Law has already stipulated the agenda of democraticization in Hong Kong, and the political system would develop in a gradual and orderly manner towards universal suffrage eventually, thus amending the Basic Law was unnecessary. However, Madam President, I must point out that this kind of statement is simply deceiving the public, a gimmick to delay the progress of democraticization.

At present, Article 45 of the Basic Law explicitly stipulates the method of selecting the Chief Executive, and the ultimate goal is to select the Chief Executive by universal suffrage. According to the specific method for the selection of the Chief Executive as set down in Annex I, it only provides for the selection of the first and second term of Chief Executive by the Election Committee composed of a few hundred people. As to the timetable for the ultimate selection of the Chief Executive by universal suffrage, there is no guarantee at all. As a result, the supposedly timetable for realization of the selection of the Chief Executive by universal suffrage in the existing Basic Law simply out of the question.

Some people get the wrong impression that the Basic Law only prescribes the stabilization period of the first decade after the establishment of the SAR, therefore, logically, the selection of the third term of Chief Executive by 2007 should be carried out by universal suffrage. However, year 2007 will only be the earliest time prescribed by the Basic Law for the selection of the Chief Executive by universal suffrage, it is not necessary the deadline for the implementation of universal suffrage. If the Basic Law is not amended and we have to put the selection of the Chief Executive by universal suffrage into practice, we have to not only wait after 2007, but also get the endorsement of a two-thirds majority of all the Members of the Legislative Council, the consent of the Chief Executive, and the approval of the Standing Committee of the NPC; it is virtually impossible to overcome these three hurdles, because negotiating them is almost as difficult as reaching the sky.

In the past few years, we can see clearly the attitude of the Government towards democratization from the deferral of the review on political reform by

the Chief Executive and various SAR officials. Recently, Mr Donald TSANG, who has just assumed the office of the Chief Secretary for Administration recently, said that no consultation on the political system review would take place before the 2004 Legislative Council Election. Meanwhile, we only have less than three years between end 2004 and 2007, but we have to review the political system, to determine the direction of development of the future political system and all the relevant details, as well as the issue of whether the Chief Executive can be elected by universal suffrage. I feel that numerous processes will come up in the course of the review, and there are a lot of issues to be reviewed and things for us to look after, can we really finish all of these things within three years? In fact, not only we are unable to complete the task as far as time is concerned, what is more, with the continued existence of the coterie election, it is virtually impossible to achieve universal suffrage and democratization. It is because the consent of the Legislative Council has to be sought in the first place, but as functional constituency election still exists in the Legislative Council, how can we achieve this?

Some people said that as the Election Committee comprises elites from all walks of life, there is nothing wrong for them to select the Chief Executive on behalf of the people of Hong Kong. Some people even compared the selection of the Chief Executive with the selection of "durian" and said that if the people of Hong Kong do not know how to choose, then they have to seek the assistance of the elites. Some people also said that the 800-people Election Committee is also returned by indirect election, which has no problem at all by itself, it is also quite democratic and has representativeness, thus they questioned why it is not acceptable to us.

Madam President, in fact, people with some knowledge in politics know that all autocratic and dictatorial regimes will stress that they represent the general interest of their people, and people who support coterie election will also emphasize frequently that the existing Chief Executive election has enough representativeness already. A few days ago, in the banquet celebrating the 80th anniversary of the Chinese Communist Party, President JIANG Zemin elaborated key issues on his "Three Represent's" theory. He said that the Communist Party "always represents the development trend of China's advanced productive forces, the orientation of China's advanced culture, and the fundamental interests of the overwhelming majority of the people in China". I feel that to apply the "Three Represent's" theory to the Chief Executive, Mr TUNG Chee-hwa, is also apt and appropriate.



The Chief Executive, Mr TUNG Chee-hwa, always emphasizes that we should improve the economy of Hong Kong, and he also says that we have to develop Hong Kong into a metropolis like New York and London in Asia. Of course, Mr TUNG Chee-hwa considers himself representing the development trend of advanced productive forces, yet, the outcome shows that the economy is not doing well, the unemployment rate is still very high, and it seems that the Government is unable to solve the problem as the wealth gap is widening. I feel that the Government is just looking on unconcerned, whilst Mr TUNG Chee-hwa is only enchanted by the illusory panorama of becoming a metropolis. May I ask, do the people of Hong Kong really need a representative who takes no heed of the people's livelihood?

Mr TUNG Chee-hwa also attaches importance to culture, especially the promotion of the traditional Chinese Confucian culture. I believe he is completely convinced that he is representing the orientation of advanced culture. However, the Confucian culture emphasized by him is selective. On the service for elderly, apart from the welfare of the elderly, which was one of the three major policy objectives in his first policy address, he has mentioned not even a single word after that. Later, he even cut the old age allowance. Filial piety has become empty talk; may I ask next to "senile politics" and "autocratic politics", what orientation of culture does the Chief Executive lead us towards?

With regard to representing the fundamental interests of the overwhelming majority of the people in Hong Kong, I believe the Chief Executive also considers that it is the faith he is practising. As a result, Mr TUNG Chee-hwa can say that in order to protect the peace of Hong Kong, he may arbitrarily label a legally recognized organization an evil cult; he can say that in order to protect the autonomy of Hong Kong, he has to be the parrot of Beijing; and he can say that in order to commend those who participated in or instigated riots in the past and made contribution to Hong Kong, he may confer the Grand Bauhinia Medal (GBM) on these people. May I ask whether all of these practices are things that the people of Hong Kong wish to see?

Madam President, the resolution moved by me today, in a word, is a question of "whether we need democracy or neo-authoritarianism"?

Madam President, I so submit.

**Mr LEUNG Yiu-chung moved the following motion:**

"That this Council consents to forwarding the following amendments to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China to the delegation of the Hong Kong Special Administrative Region to the National People's Congress, for submission to the National People's Congress —

**"Article 1**

Article 45 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China which provides that "The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government." "The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." "The specific method for selecting the Chief Executive is prescribed in Annex I 'Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region'," shall be amended as: "The Chief Executive of the Hong Kong Special Administrative Region shall be selected by universal suffrage held locally and be appointed by the Central People's Government." "The specific voting method for selecting the Chief Executive shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness." "The first Chief Executive shall be selected in accordance with the Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region."

**Article 2**

Annex I of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China shall be deleted."."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Yiu-chung be passed

**MR FREDERICK FUNG** (in Cantonese): Madam President, the motion moved by the Honourable LEUNG Yiu-chung today in fact involves two issues. One aspect of the motion is certainly about the election of the Chief Executive, conducted either as prescribed in Annex I to the Basic Law or by universal suffrage. The other aspect is about triggering off the mechanism of amending the Basic Law. I wish to discuss both questions and present my opinions.

Firstly, I would like to talk about the Basic Law. I agree with and support revising the method of selection of the Chief Executive of the Hong Kong Special Administrative Region (SAR) through election by an 800-member Election Committee, as stipulated in the Basic Law, to election by universal suffrage of "one-person, one-vote". I will now expound on that.

To begin with, Annex I to the Basic Law as it stands stipulates that the Chief Executive of the SAR shall be elected by an 800-member Election Committee comprising four sectors of 200 persons each. The 200 persons in each sector will be elected from persons or representatives of organizations or companies. It can be seen from this mode of election that there is a very strong favour of representation for specified interests. For example, the 200 persons elected from the industrial, commercial and financial sectors will obviously choose a Chief Executive by solely considering the interests of these sectors. Indeed, in other professions, a certain number of persons who are classified as professionals will elect another group of 200 persons. I believe representatives from the professions will also choose a candidate by considering the interests of these professions. From this angle, one can see that a candidate obviously needs to orientate his election platform, opinions or behaviour in such a way as to gain the support of a majority of the 800 persons. Therefore, the 800 persons are in fact representing the interests of specified sectors, organizations or companies. If it is said that these 800 persons have representativeness, it is these interests that they are representing.

However, in administering Hong Kong, is the Chief Executive really acting in the interest of the 800 persons or the four sectors? If the answer is "yes", I would not accept it as desirable. If the answer is "no", then what should the Chief Executive do to enable himself to be representative of Hong

Kong people? Why did I say a "yes" answer is undesirable? According to the Basic Law, the Chief Executive shall represent the SAR, where there are 7 million people, not just 800 people, or the 800 who represent the industrial and commercial sectors, the professions, the labour sector, Members of the Legislative Council, and so on. So, if the Chief Executive represents the SAR, he should represent 7 million people. According to the present arrangement, I can only say he represents the interests of the sectors as represented by the 800 persons.

To sum up the present election arrangement, one can only say some specified representatives representing the interests of some specified sectors choose someone they like as the Chief Executive. I think this is in contravention of the relevant provisions in the Basic Law in which it is stated that the Chief Executive shall represent the SAR, and shall ultimately be elected by universal suffrage. I think the direction of the election should be consistent with the idea of living up to the expectations of the 7 million people who are qualified to vote.

Next, comes the question of universal suffrage. I need to emphasize two points. The first point is the relationship established, as a result of universal suffrage, between the people and the elected representative (that is, the Chief Executive). At the moment, though the Chief Executive is elected by the 800-member Election Committee, many people will, I believe, not regard the Chief Executive elected as the man of their choice. They do not think they have participated in the election at all. Hence, even if what the Chief Executive does is right, they would not regard him as acting on their behalf. It may take just a few seconds to vote, but the act of voting reflects a decision made after careful deliberation beforehand, which may last a second, many days or even a month. The decision sets the scene for the relationship between voters and the candidate for the post of Chief Executive, who may or may not be elected eventually. The decision is a very important one. The importance, as such, is not just felt in the experience of Hong Kong in past elections in the District Councils (formerly district boards), the Urban Council or the Legislative Council. The importance has been felt in the elections of presidents or prime ministers in Western countries, and has been proven to exist. The relationship so established is that the people will think that the Chief Executive, after being elected to the post by a simple majority vote, is their representative.

On the other hand, as I said a while ago, when the Chief Executive lobbies the voters for votes, he must draft a master plan for the development of the

territory that meets the expectations of the 7 million citizens. The relationship will not exist until a vote is cast. Even if Mr TUNG Chee-hwa is elected and even if whatever he says or does is for the good of the 7 million people, I can tell Members that the majority among the 7 million people will not see that. Most of the people will only regard Mr TUNG Chee-hwa as a representative of the industrial and commercial sectors. What Mr TUNG lacks is a one-person-one-vote mandate. Therefore, the one-person-one-vote relationship not only establishes the representativeness, but also the credibility.

Can Hong Kong, as it is, elect its own Chief Executive by universal suffrage? I would like to make my second point about this. A research subject I studied in a Master of Arts course in the Chinese University of Hong Kong was the relationship between an economy and election. Running the risk of being academic, I would like to tell Members that during my three months of study, I looked into the relationship between an economically well-developed country or region and a person in power, such as a president or a prime minister returned by election. Madam President, 100-odd academics had very similar findings. A community with a stable economic development, coupled with an appropriate political system, such as democratic elections, would maintain more stable development. Several key factors were cited. The research project was conducted by 100-odd academics from the '50s through to the '80s consistently and continuously. Now, it was found that in places with a high literacy rate (that is, many people can read and write), a high rate of property ownership by the people and of households owning communication tools such as television, fax machines, computers, and cars and refrigerators, the more smoothly progress of a democratic system with elections will facilitate more stable developments that support the economy. The academics ranked the heads of these 120 places returned by election and found that a higher literacy rate and material ownership rate pointed to a higher degree of democracy.

Now, I try to assess the status of Hong Kong using these factors. Hong Kong has a literacy rate of over 90%, a property ownership rate of over 50% and a high rate (almost highest in the world) of ownership of telephone, television and mobile phones in the households. The rates were comparable to those in the United States and the United Kingdom in the '50s and or '60s. Some countries which do not have even flush toilets are conducting direct elections and I see no reason why Hong Kong cannot do the same now. Therefore, Madam President, an objective comment would be that we can conduct direct elections as far as material conditions are concerned. More importantly, of course, a

middle class has emerged in Hong Kong after a lapse of 10 to 20 years, and it has become an important class that can stabilize the Hong Kong community. This is a fact everyone admits. In a democratic system, the most important class is the middle class, which exists in Hong Kong. Thus I do not see why there should be worries about problems with the implementation of direct elections or universal suffrage.

Secondly, Madam President, I would like to talk about amendments to the Basic Law, as mentioned by Mr LEUNG Yiu-chung. I trust the President may recall that before 1997, members of the Association for Democracy and People's Livelihood and I insisted that the Basic Law should not and could not be amended before 1997 because Article 159 thereof stipulates that the power of making amendments to the Basic Law is vested in the NPC; the power to propose bills for amendments to the Basic Law shall be vested in three entities, including the Standing Committee of the NPC, the State Council and the SAR. At the drafting stage, the Basic Law obviously included the SAR as one of the entities with the power to propose bills for amendments. If my memory has not failed me, other provinces and cities in China do not have this power. This constitutional power to propose amendments can be regarded as a very special power conferred by the NPC on Hong Kong.

Before 1997, I opposed making any amendments to the Basic Law, including amendments to enable Hong Kong to hold direct elections because if the relevant amendments were proposed, we had to rely on the Standing Committee of the NPC and the State Council to make the proposal. Why is the SAR allowed to propose bills for amendments to the Basic Law? I think there is only one obvious reason, which is to truly enable Hong Kong people to rule Hong Kong. Since Hong Kong people are to rule Hong Kong, Hong Kong must be given the power to propose bills for amendments to the Basic Law. In this way, such proposals may be submitted to the NPC for discussion, giving us a chance to amend the Basic Law. If Hong Kong is not given this power to propose amendment and must rely on the Central Government, the Standing Committee of the NPC or the State Council to make the proposal, then the Standing Committee of the NPC or the State Council may propose one amendment after another.

I trust the President may recall that during the drafting of the Basic Law, the Central Government had undertaken that the State Council and the Standing Committee of the NPC would not propose amendments — this of course was not

recorded in black and white but was just a verbal undertaking, meaning that it wanted to give the SAR power to propose bills for amendments to the Basic Law. For this reason, I agreed that before 1997, that is before the SAR was established in accordance with the Basic Law, before the political entity of the SAR came into existence, no amendments should be proposed in respect of the Basic Law. Now, after 1997, the SAR has been established in accordance with the Basic Law, the mechanism for amending the Basic Law is operative under Article 160 and certainly Article 159 of the Basic Law. Thus, I think Hong Kong people can naturally invoke Article 159 to propose amendments to the Basic Law. I do not think this is a taboo. When the right of abode issue was last mentioned (I was not in this Council then), I heard people mentioning worries about bad impressions made on the Basic Law as a result of amending it, because with the Basic Law written, any proposal to amend it would imply a mistake or loophole made in the course of drafting. Indeed, all constitutions may be found to contain loopholes as time goes by and circumstances develop, and members of the parliament may propose amendments to rectify it. Even the NPC may propose amendments to the Chinese Constitution from time to time. So, amendments to a constitution are not a big deal, but just a routine.

Madam President, one last point I wish to make is that I heard that Mr LEUNG Yiu-chung was dissatisfied with some people in power or some other persons not having taken any action. Mr LEUNG, however, should have anticipated that. I think there are usually several ways to achieve such things as amending the Basic Law or changing some systems, namely, through a revolution, parliamentary politics or even through mobilizing the people to influence decision-makers to effect a change in policies. Insofar as I can concerned, I would go to great lengths to explain my ideas and then work harder. I do not think we would start a revolution. So, only two possibilities are left: parliamentary politics and educating the people so that they rise to make an unanimous demand for amendments to the Basic Law. When we see that happens, we can expect that the Basic Law will be amended. Since the situation is not like that, I think we had better return to our respective districts and work hard.

Thank you, Madam President.

**MR MARTIN LEE** (in Cantonese): Madam President, Mr LEUNG Yiu-chung has moved a motion on amending the Basic Law, with the aim to return the Chief

Executive of the SAR by universal suffrage and to enable the people of Hong Kong to elect the Chief Executive as a manifestation of their civil and political rights. The Democratic Party has all along advocated the election of the Chief Executive and the representative assemblies at various levels by universal suffrage through equitable, open and democratic procedures. Such is the aspiration of the people of Hong Kong and also the Democratic Party. Members belonging to the Democratic Party will therefore fully support this motion.

Actually, well before the reunification, the people of Hong Kong already expressed their demand for amendment to the Basic Law and returning the Chief Executive by universal suffrage. Unfortunately, Mr LU Ping, the then Director of the Hong Kong and Macao Affairs Office, simply replied that it would not be possible to amend the Basic Law before it took came into effect. But now, after the implementation of the Basic Law, both the Central Authorities and the SAR Government are still trying to delay the whole matter, ignoring the aspiration of the people of Hong Kong. Some have even remarked, in an almost intimidating tone, that if the Basic Law is amended, is improved, as demanded by the people of Hong Kong, then, the Central Authorities may likewise amend the Basic Law as they desire, just to make it worse. The message implied is that if people do not want the Central Authorities to amend the Basic Law, they had better not ask for any amendments themselves.

I cannot help refuting all these excuses once again. First, I must say that it should be possible to amend the Basic Law before it comes into effect, and so, I cannot agree with the Honourable Frederick FUNG; in fact, it should be easier to do so, because before its implementation, amendments could be introduced very easily. Second, we do not have any reasons to believe that the Central Authorities would be so unreasonable as to act in retaliation, nor do we believe that they would be so "temperamental" as to ignore the aspiration of the people of Hong Kong and seek to amend the Basic Law to make it even less democratic just because they ask for amendments to the Basic Law to make it more democratic. We should not assume that the leaders of the Central Authorities are as childish as a three-year-old toddler.

For this reason, if we can amend the Basic Law in accordance with Article 159 to bring it more in line with the aspirations and wishes of the people of Hong Kong, we do not have to worry about any negative reaction from the community; rather, more than that, we will be able to make the people of Hong Kong more



aware of the fact that the Basic Law is meant for their well-being. That way, more Hong Kong people will support the Basic Law.

Madam President, from Mr LEUNG Yiu-chung's remarks earlier, I have the impression that he actually expected that he would lose this time around. But still I wish to say a few words of encouragement. His worry is actually unnecessary, because he will definitely lose. This Council — I mean, the former Legislative Council — already passed a motion, requesting the Central Authorities to amend the Basic Law. When was this motion passed? Well, the Basic Law was passed by the NPC in Beijing on 4 April 1990. In the afternoon on the same day, I moved a motion in "this Council", urging the Central Authorities to introduce the series of amendments recommended by the Office of Members of the Executive and Legislative (OMELCO) report on the Basic Law. The recommended amendments covered the acts of state mentioned in Article 19, the power of interpretation under Article 158 and, naturally, the "OMELCO consensus". Not many of the Members who took part in the voting at that time are still on this Council. The motion was passed by an overwhelming majority. Members who supported the motion included those from the then Co-operative Resources Centre such as Allen LEE and Mrs Selina CHOW. And, who drafted the OMELCO report? John SWAINE, Ronald ARCULLI, Andrew WONG and I were some of the drafters.

Madam President, why did I move the motion at so early a date? That was because I wished to "strike while the iron is still hot"; I feared that a motion like this would unlikely be passed after 1997. So, if Mr LEUNG Yiu-chung is really so sad, he may as well approach the Secretariat and obtain a copy of the Hansard, or Official Record of Proceedings, for 4 April 1990. I am sure he will find it very interesting reading.

Madam President, "the election of the Chief Executive by universal suffrage" is the majority aspiration and wish of the people of Hong Kong.

The Democratic Party conducted a telephone opinion survey from 9 to 11 July 1998, and managed to poll the opinions of 758 people. The findings showed that over 65% of the respondents were of the view that the Chief Executive should be returned by direct elections in the next term, that is, 2002. And, almost 64% of the respondents agreed that the Basic Law should be amended as soon as possible to speed up the progress of democratization.

From 2 to 4 May this year, the Democratic Party again conducted a telephone survey on 633 people. The findings showed that over 70% of the respondents agreed that the Chief Executive should be returned by one-person-one-vote direct elections as soon as possible.

Besides, the Democratic Party also conducted another telephone survey from 5 to 8 April 2000, and managed to gauge the opinions of 511 people. The findings showed that over 60% of the respondents found Taiwan more democratic than Hong Kong, comparing that while the President of Taiwan was elected by universal suffrage, the Chief Executive of Hong Kong was returned by an Election Committee comprising just 400 members at the time. And, almost 50% of the respondents were of the view that the sooner there was a directly elected Chief Executive, the better.

In fact, other than the surveys conducted by the Democratic Party, all the other opinion polls conducted by various academic and research institutions commissioned by newspapers in the past also showed that the people of the SAR agreed that the Chief Executive should be returned by one-person-one-vote elections as soon as possible. The opinions of the people in this regard are very clear.

Let us also look at the circumstances in the community of Hong Kong. Like Taiwan, Hong Kong is one of the Four Little Dragons of Asia, was also once a colony and is also a capitalist economy. That being the case, while the president of Taiwan can be elected by "one person, one vote", why is it impossible for we the people of Hong Kong to elect our Chief Executive by "one person, one vote"? Some argue that following the reunification, and under the principle of "One China", it is not appropriate to elect the Chief Executive by universal suffrage, but I must say that this is mere sophistry. If this argument can stand, then can one argue likewise that following its eventual reunification with China in the future, Taiwan should not be allowed to elect its leader by "one person, one vote"?

Comparing the electoral systems in other Chinese communities, the one in Hong Kong may well be less democratic, but the conduct of its elections has always been noted for being comparatively fair, open and clean. That being the case, why is it that even today, Hong Kong is still lagging behind Taiwan, is still unable to put in place a one-person-one-vote system for the election of the Chief Executive? This is simply absurd!

Precisely because our Chief Executive is not returned by universal suffrage "one person, one vote", the Chief Executive does not have to hold himself accountable to the 7 million people in Hong Kong. This explains why the Chief Executive can do whatever he likes and make decisions not supported by the community without any fear and worry. Examples of such decisions abound since the reunification, one recent case being the conferment of honours on YEUNG Kwong.

A couple of days ago, the Chief Executive decided to confer the highest of all honours — the Grand Bauhinia Medal (GBM) — on YEUNG Kwong, who masterminded all the disturbances during the 1967 Riot as the director of the "Struggle Committee", and this has led to huge repercussions in the community. Victims of the 1967 Riot have lashed out at the Chief Executive, saying that his decision is most unfair to the innocent casualties of the 1967 Riot. They argued that since so many people had been killed, the instigators of the riots should be held responsible. Mr LUO Fu, one of those involved in the 1967 Riot, also criticized that the Chief Executive should not recognize the 1967 Riot in such a way. He further pointed that the huge casualties during those times were simply not justified. In response to media questions, Prof LAU Siu-kai, Associate Director, Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong, simply commented that the underlying intention of the Chief Executive was to appease the leftists and pave the way for his re-election.

From this award of honours incident, we can see once again the defects of coterie elections. Under the existing system of coterie elections, the Chief Executive will need only to draw over and appease a handful of people, and he can already get re-elected, ignore the interests and opinions of the whole community or even disguise his recognition of the 1967 Riot. This is really deplorable.

The SAR does not belong to just one person, or a handful of persons, or a few hundred people. Rather, it belongs to all the 7 million people of Hong Kong. It is a place where we and our future generations will permanently live. Hence, we must act now and put in place a system whereby we can elect the Chief Executive by universal suffrage of "one person, one vote". And, it is only under such a democratic system that we can elect a Chief Executive, or governor of the SAR, who can represent the masses of the SAR.

Madam President, the motion today will definitely be negated. But we need not despair, because I am absolutely confident that we will win eventually. I am so confident because democracy, the rule of law and human rights are the tide of the world. I do not believe that the leaders of our country will forever act against this tide. I am very confident that in the very near future, democracy and the rule of law will certainly prevail in our country, including Hong Kong. When that day comes, Members who are still alive should all recall their remarks and voting decisions today. I am sure that while some will feel very proud, others will be ashamed of themselves.

With these remarks, Madam President, I support the motion on behalf of the Democratic Party.

**PRESIDENT** (in Cantonese): Members, it is now 7.58 pm, and I do not think that the Council can finish all the Agenda items this evening. Therefore, around 10 pm, I shall suspend the meeting until 2.30 pm tomorrow afternoon.

We shall now continue with the motion debate.

**MR AMBROSE LAU** (in Cantonese): Madam President, the Hong Kong Progressive Alliance (HKPA) thinks that the reasons advanced in support of seeking amendments to the Basic Law are not sufficient and there are three main reasons.

Firstly, the development of democracy should follow the principle of gradual and orderly progress and comply with the provisions of the Basic Law. The Basic Law has specified the method for the selection of the Chief Executive before 2007. According to the Basic Law, the second-term Chief Executive election will be held next year and the second-term Legislative Council election will be held in 2004. The present task before us is to endeavour to complete and handle well the two elections instead of introducing some unstable political factors. If there is a need to amend the method for selecting the Chief Executives for the terms after 2007, we must adhere to the relevant arrangements as set out in Annex I to the Basic Law. Policy development must follow the prescribed order in accordance with the formulated election arrangements.

Secondly, as amendment of the Basic Law has far-reaching effects on the long-term interest of Hong Kong, the community must hold comprehensive and serious discussions and look after the interests and feelings of various parties before a consensus can be reached.

The existing constitutional arrangements prescribed in the Basic Law are the result of strenuous efforts made by the Basic Law Drafting Committee in drafting and formulation over four years and eight months, after several rounds consultation in Beijing and Hong Kong. They collected the wisdom and painstaking labour of Hong Kong people and embodied that the community consensus to a very large extent. Unless Hong Kong people and the community have come up with a clear stance in respect of amending the Basic Law, it is unreasonable to propose any amendment to it.

At this stage, the public is generally most concerned about such economic and livelihood issues as unemployment, economic problems, housing and education. The people and the community have not held any substantive discussion on amending the Basic Law to effect the election of the Chief Executive by universal suffrage, and they do not have any obvious inclination. If we hastily amend the Basic Law now, we will certainly arouse social controversy and anxiety as well as disperse and exhaust the strength of the community for improvement to the economy, which is inconsistent with the overall interests of Hong Kong.

Thirdly, the constitutional laws of most countries and regions in the world are characterized by their being stability, superiority and authority, therefore, once they are promulgated, amendments are avoided as far as possible. The Basic Law is the constitutional law of Hong Kong and it protects and serves as the foundation of the legal system of Hong Kong. Given that Basic Law has only been implemented for four years, if we lightly amend the Basic Law, we will destabilize the stability and authority of the Basic Law and affect the confidence of Hong Kong people and the international community in the social and legal systems of Hong Kong.

Madam President, the Basic Law has specified express provisions on the objective of ultimately electing the Chief Executive by universal suffrage and the principle of gradual and orderly democratic progress, which are reasonable, and conducive to maintaining the social stability of Hong Kong.

Madam President, I so submit.

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, Mr LEE Cheuk-yan and I support Mr LEUNG Yiu-chung's resolution on behalf of the Hong Kong Federation of Trade Unions (FTU).

When we discussed the "1988 direct election" years ago, some said, "they preferred rice coupons to ballots". In recent years, whenever the constitutional review was discussed, the SAR Government would use giving priority to economic issues as the excuse. For more than 10 years, there has been a view that democracy was antagonistic to the livelihood of the general public and their rice bowls. If we want "meals", we are supposed not to discuss too much about democracy. People think that we should achieve "one person, one vote" slowly and some even do not want one-person-one-vote elections. Those who hold such a view have a wrong interpretation of democratic government, which is contradictory to the effective protection of the interests of the general public.

We all know that the 800-member Election Committee is definitely tendentious and these members do not genuinely represent the collective wish of Hong Kong people. The 800 members of the Election Committee who have the right to elect the Chief Executive and the 200 000 functional constituency voters who have the right to elect the 800 members of the Election Committee only account for a small portion of the 3 million voters in Hong Kong. The general public and the average wage earners cannot affect the candidates for the Chief Executive election at all.

However, the Chief Executive is the head of the SAR Government who leads the policy directions of the Government, thus, he has decisive influence on the public's livelihood. If the general public and wage earners are deprived of the right to elect the Chief Executive, it is impossible to really protect workers' interests. Trade unions representing the wage earners must absolutely support full democracy for livelihood cannot be separated from democracy.

I recall that a few months ago when the Legislative Council invited non-governmental organizations to present their views on the Chief Executive Election Bill, a representative of the organization that supported the election of the Chief Executive by the 800 members of the Election Committee drew an analogy between "choosing durians" and the Chief Executive election. He advanced the view that people generally did not know how to choose durians and they ought to rely on an expert to make a choice for them, therefore, the Chief Executive should be elected by 800 experts on behalf of 6 million Hong Kong people.

Yet, a person who has chosen a bad durian can exchange it for a good one until he gets one to his liking. Therefore, other people would not choose the durian for him and he does not have to take it, good or bad. More importantly, if he does not like durian, he can have an apple, an orange, a lychee or a longan. It is most important and crucial for everybody to have the right to choose, an equitable right to elect. This is the crux of the matter. By the same token, the Chief Executive who will affect the future of over 6 million Hong Kong people can obviously not be chosen by a few hundred people on behalf of all Hong Kong people who must accept the result of the election in at the end of the day.

With these remarks, Madam President, I support Mr LEUNG Yiu-chung's resolution.

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

**MR MICHAEL MAK** (in Cantonese): Madam Deputy, on the fourth anniversary of the establishment of the Hong Kong Special Administrative Region (SAR), Typhoon No. 3 was hoisted and there was heavy rain, yet, my family, my friends and I participated in the procession appealing for the election of the Chief Executive by universal suffrage. It was then that I personally felt the aspiration of the general public for the election of the Chief Executive by universal suffrage. A primary school pupil drew an analogy between the elections of the Chief Executive and the monitor to explain why he had participated in the procession. In his view, as all classmates had the right to elect the monitor, why could the same not apply to the election of the Chief Executive. I had deep feelings after listening to his remarks.

The primary school pupil expressed precisely the most basic expectation of the general public for the election of the Chief Executive — the public wants to have the right to decide and elect the highest leader of the SAR who will be accountable to the public and willing to commit himself. Even if the elected leader were mediocre and incompetent, the public would still be most willing. I am actually a living example. I was caught in the same situation when I contended in the election. A group of people wrote an open letter to the trade union that supported me and stated that I was incompetent, lacked credibility and a popular mandate. However, they have to accept the reality now because people voted for me in person in a fair, open and impartial manner.

For four years after the reunification, many people have been unhappy, the disparity between the rich and the poor has aggravated and the popularity of the Government has declined continually. Not long ago, Hong Kong was renowned as one of the "Four Little Dragons in Asia", opportunities for creating wealth abounded, trades and industries flourished and the public basically did not need to worry about unemployment. Today, the situation has greatly changed and we can only describe the present situation of Hong Kong and the mood of the public as "sorrowful". Hong Kong people are no longer jubilant or joyful, but they are heavyhearted. The sad news of slimming down and layoff by companies instead of the good news of strong economic growth is spread in the community.

Why is the election of the Chief Executive by universal suffrage so important? In fact, our Chief Executive is not elected by universal suffrage and lacks extensive acceptance. If we use a mainland slogan, he "has not faced the masses". Moreover, in terms of administration, the SAR Government has made unpredictable changes in policy and lacked a sense of propriety, thus, we are living in an abyss of misery. As a result of the hollow "85 000" housing policy implemented by the SAR Government, we have now numerous negative assets owners. Though it made the ambitious blueprint of a Chinese medicine harbour, it failed to provide adequate clinical facilities for students taking Chinese medicine courses. Furthermore, the community has also criticized its greatly confused education reform.

Similarly, the spirit of the rule of law in Hong Kong has been subject to serious questioning. Such cases as the "Miss Sally AW Sian case" and the seeking of interpretation of the Basic Law by the National People's Congress to overturn the judgement of the Court of Final Appeal on the right of abode in Hong Kong have shaken the foundation of the rule of law. The above problems originate from our Chief Executive who lacks a popular mandate and fails to "serve the community and think about the community".

Actually, in seeking to amend the Basic Law and expeditiously elect the Chief Executive by universal suffrage, we wish to effect genuine "one country, two systems" under which Hong Kong people can elect our Chief Executive. We do not want a small circle of 800 people. We want to obviate the need for the Chief Executive to canvass the votes of these 800 people. Instead, we need an election that everybody can take part. If we do not have a Chief Executive who makes defending the interests of Hong Kong his prime task, we would not



be able to preserve the elements that brought us success — the rule of law and freedom. Without the participation of all people, there will not be suitable checks and balances and we cannot safeguard that our lifestyle will remain unchanged for 50 years. Then, we will fail to live up to the lofty "one country, two systems" ideal of our great comrade, Mr DENG Xiaoping.

Today, it seems that the SAR Government has collapsed after one setback and it badly needs a significant political change. It needs changes in its philosophy of governance, policies and strategies as well as vigorous efforts before it can turn the tide. Though Hong Kong people are highly adaptable and will always do their utmost, their vitality has definitely been sapped by the financial turmoil, thus, we urgently need a leader who is commonly regarded as competent, who is supported and recognized by the general public, to turn the tide and rebuild the confidence of Hong Kong people.

We Legislative Council Members represent the general public and we should act in the interest of 7 million Hong Kong people. We should take the future into our hands and I hope that the next Chief Executive will be returned by universal suffrage. In other words, Legislative Council Members support the public and we certainly support amending the Basic Law so that the future will be full of promise. Just as I have explained to my son who is more than four years old why I participated in the procession to support the election of the Chief Executive by universal suffrage, I hope that the younger generation would live in a more meaningful way and be more committed and independent.

I would like to call upon the small group of people who cannot openly support the resolution for political reasons but secretly support the election of the Chief Executive by universal suffrage to declare their stance more often, and I am grateful to them for their support.

Madam Deputy, as stated in my election platform, I support universal direct elections. With these remarks, I support the resolution.

**MS AUDREY EU** (in Cantonese): Madam Deputy, I must first thank Mr LEUNG Yiu-chung for moving this motion, for the Legislative Council can thus have a chance to discuss this important issue.

To amend the Basic Law, we must overcome many obstacles, the most significant of which being the requisite two-thirds majority support of Legislative

Council Members. Given the existing composition of the Legislative Council, the chance of success is as slim as that of rolling up snow next to the crater of a volcano. Having said that, I must still admit that this topic is still worth discussing. The voting decisions recorded today may be of some historical significance in the future.

After the reunification, it is often said that the people of Hong Kong are now the masters of their own house, that they can enjoy "a high degree of autonomy" and that Hong Kong people are able to rule Hong Kong. In spite of all this, I fail to understand why various opinion polls have shown that the people of Hong Kong are not as happy as they were before the reunification. The financial turmoil and the sluggish economy are no doubt two very significant reasons for this. But another significant reason should be that the political system of Hong Kong is not democratic, with the Chief Executive being returned by a coterie election. Recently, during the scrutiny of the Chief Executive Election Bill, the Government insisted all along that the Central Authorities have an implied power to revoke the appointment of the Chief Executive under circumstances which only Heaven knows what they are. Given the existing political structure and setting, one simply cannot say that there is "a high degree of autonomy" for Hong Kong in the true sense of the term; there is still a very long way to go before the people can become the masters of their own house.

Under Article 45 of the Basic Law, the ultimate objective is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. God knows when this objective can be achieved.

Madam Deputy, conspiracy theories are rather popular these days. The democratic camp is often criticized for harbouring a distrust of Beijing, for suspecting Beijing of plotting against the interests of Hong Kong. But is it not true that Beijing is also distrustful of the people of Hong Kong, fearing that they may elect a disobedient Chief Executive who is not its choice? Although Hong Kong has had many years of election experience, the Central Government is still trying to restrict Hong Kong people's right to election, and the SAR Government is still making deliberate attempts to slow down the democratization of our political structure. Both of them are equally distrustful of the people of Hong Kong, thinking that democracy and stability and prosperity cannot coexist, and that democracy will only lead to social and economic disorder. But in reality, quite the opposite is the case. The more totalitarian a regime is, the more likely

that there may be conflicts and clashes, and, the less likely that leaders with enterprise and ability may emerge.

Hong Kong has been reunited with the Motherland; its people are in general patriotic, and they at the same time long for stability and prosperity. Madam Deputy, I do not believe that a Chief Executive elected by "one person, one vote" will ever be intent on "acting against China and stirring up troubles in Hong Kong". As it is, what Hong Kong must now do is to lean against China and reach for the world, instead of trying only to embrace China while turning its back to the world. Hong Kong is a place of miracles and a hotbed of the outstanding. I am convinced that when we can elect the Chief Executive by universal suffrage of "one person, one vote", we the people of Hong Kong will surely have enough wisdom to select a leader who can command public support and uphold "one country, two systems" and "a high degree of autonomy".

Madam Deputy, I support the motion of Mr LEUNG Yiu-chung because I really look forward to the early arrival of that day.

**MR JAMES TIEN** (in Cantonese): I am sorry, Madam Deputy. I did not know that no one was waiting in line, that I could rise to speak as soon as I raised my hand. Madam Deputy, regarding the selection of the Chief Executive by universal suffrage, I think it has been a subject of debate since the drafting and consultation stages of the Basic Law. Many Members, including myself, used to be members of the Basic Law Consultative Committee. In the 1980s, we were already debating whether it was necessary for the Chief Executive to be returned by direct elections on the basis of "one person, one vote" immediately after the reunification, bearing in mind that direct elections had never been implemented in Hong Kong under the British rule. Hong Kong people are very intelligent and we are fast learners too. But in spite of this, do we still need a short period of time to adapt to full direct elections? If so, what does it mean by a short period of time? No one in the business sector had suggested then that it meant some 100 or 200 years of development and called it a short period of time, similar to the case of the United States. What we meant was a brief period of time. But should it be 10 years or 10-odd years? Views were diverse at that time. Finally, the Basic Law provided for a fully directly elected legislature and the selection of the Chief Executive by universal suffrage in 2007. Why was it fixed at 10 years afterwards at 2007, but not 5 years, 15 years or 20 years later? The reason was that in the 1980s, no one was confident enough to assert

which option was better. At that time, apart from the industrial and commercial sector or the professional sectors, the general public also felt that while it had been a practice under the British Hong Kong Administration that Hong Kong was governed by a Governor appointed by Britain who would appoint all senior government officials, and all members of parliamentary assemblies were also appointed, the way of life and people's livelihood in Hong Kong had made good progress. So, most members of the public were not very concerned about this issue. At that time, their concern was whether governance over Hong Kong would turn into Communist-styled under the rule of China after the reunification, in which case the Communist Party would override all other things and capitalism would cease to exist. That was the major contention back then. Now, what we are reviewing is whether the Basic Law should be amended, so that we do not have to wait until 2007, and we can migrate to the election of the Chief Executive by "one person, one vote" as soon as possible.

A number of Members, including Mr Ambrose LAU, mentioned earlier that if members of the public are asked whether they support the selection of the Chief Executive by full direct elections, 60% of them may reply in the affirmative, as Mr Martin LEE has also mentioned. If they are further asked to give their views on many other issues, such as whether they are happy with the employment situation, 65% of the interviewees may reply in the negative; or if they are asked whether they wish to have a wage increase, 65% may say they do. If we go on putting questions to them, will they consider the selection of the Chief Executive by full direct elections an issue of prime concern? The view of the Liberal Party is close to that of Mr Ambrose LAU, that is, the public may not put it on the top of their list. Public concern may actually lie in many other issues. Why? In my view, the general public may think that even if the Chief Executive is returned by "one person, one vote" today, the economic problems and employment problems that they are most concerned about may not necessarily be improved. But of course, these problems may not deteriorate either. The financial turmoil has proved that in many Southeast Asian countries where leaders are returned by the "one-person, one-vote" system, their present economic conditions are very bad and the unemployment rate is also very high side. Compared with these Southeast Asian countries, Hong Kong definitely performs no worse than they do. Our stock market still stands at 13 000 points and our unemployment rate registers at 4.4% only. Let us take a look at Indonesia, the Philippines, Taiwan, or other countries where direct elections are implemented. Their economic conditions have been unsatisfactory in recent years. I think this may not have anything to do with the implementation of

direct elections or otherwise. Take Taiwan as an example. Whether it be LEE Teng-hui or CHEN Shui-bian who takes the presidential office, it still makes no difference on the economic front.

Speaking of Taiwan, I remember when MA Ying-jeou, a mayor in Taiwan, visited Hong Kong last year, he gave a speech at a chamber of commerce. It was the first time that I listened to his speech, and also the only time that I met him. During his speech, he suddenly said jokingly that broadly speaking, the public, apart from paying attention to the economy, would set eyes only on three elements politically, namely, the rule of law, democracy and liberties. He said that we could clearly see that insofar as these three elements were concerned, Taiwan, Singapore and Hong Kong all had only two out of the three elements. He started with Taiwan and pointed out that there were democracy and liberties in Taiwan, but the rule of law there left much to be desired. He went on to say that in Singapore, there were the rule of law and democracy, but liberties left a lot to be desired. That is why there is no Liberal Party in Singapore. In Hong Kong, while the rule of law and liberties were in place, democracy left something to be desired. These three Chinese communities may have to be lumped together in order to have the rule of law, democracy and liberties all in place.

Back to these three elements, are the rule of law and liberties the most important considerations to the public? Everyone may have his own view. But I think this is not the subject of our debate today, and certainly, it is best we could to have all the three elements. The Liberal Party does not oppose the selection of the Chief Executive by full direct elections. We also hope that this objective can be achieved as soon as possible. However, the business sector has always been concerned that in debates on many issues, the Democratic Party has now begun to have a place in the centre. That is, their views are particularly brilliant not only on livelihood issues, but also on the economic front, especially the Honourable SIN Chung-kai whose speeches sometimes do make sense. Recently, I have also co-operated with the Honourable LAU Chin-shek to urge the Government not to increase a diversity of fees and charges, including fares of the two railways, so long as a deflation persists. All these are part of democraticization in a gradual and orderly manner. We consider that since we have already waited so far, what harm will it do for us to wait until 2007? I can assert that Mr LEUNG Yiu-chung will propose this motion again next year. So, let us discuss this again then.

Madam Deputy, my time is up. The Liberal Party opposes the resolution of Mr LEUNG Yiu-chung.

**MR NG LEUNG-SING** (in Cantonese): Madam Deputy, the motion today seeks to revise the method for the selection of the Chief Executives for the second and subsequent terms. However, since the method for selecting the Chief Executive in 2007 and thereafter is not the only issue involved, Annex I para 7 to the Basic Law, which stipulates that "such amendments must be made with the endorsement of a two-thirds majority of all members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of National People's Congress for endorsement", cannot be applied here. Instead, the amendment procedure provided for under Article 159 of the Basic Law must be invoked. This means that the amendments now being proposed must be submitted to the NPC by the delegation of the SAR to the NPC after obtaining the consent of two thirds of all the members of the Legislative Council, and that of the Chief Executive. The amendments must ultimately be scrutinized and approved by the NPC. The Fifth Session of the Ninth National People's Congress will be convened in March next year. Hence, in accordance with the normal constitutional procedure stipulated in the relevant provision, a bill on amending the Basic Law can only be submitted to the NPC for scrutiny in March next year at the earliest. The current term of the Chief Executive will expire at the end of June next year. This means that within the short span of time remaining, we must rush to comply with the statutory procedures, including the enactment of local legislation; we must then also hasten to make preparation for the election of the second-term Chief Executive and report the result to the Central Authorities for formal appointment. One simply cannot imagine how this can ever be done with the selection of the highest leader of the SAR administration. This hasty manner of handling such a major constitutional matter also runs counter to any procedural sense, and fails to pay adequate regard for the overall wish of the people.

As a matter of principle, all the provisions of the Basic Law are equally solemn and supreme. One simply should not regard those provisions to one's liking as sacred and dismiss all others that one does not favour as draconian. Any rash attempt to amend any particular provision of the Basic Law may produce undesirable, overall implications, for then, all people, whoever they are, may start to query any provisions of the Basic Law. That way, is it not a justified worry that all those Basic Law provisions on the civil rights of SAR residents, on the rule of law and on the principle of "one country, two systems" may all be threatened rash amendments? This will only erode or even entirely remove the confidence of the Hong Kong people and the international community in the solemnity, continuity and consistency of the enforcement of the Basic Law in Hong Kong. Let us not forget that under Article 159 of the Basic Law, not

only the SAR itself, but also the NPC Standing Committee and the State Council, shall have the power to propose bills for amendments to the Basic Law. This means that the SAR, the NPC Standing Committee and the State Council shall all have the power to propose their respective bills on amendments to the Basic Law. Hence, in case any one of these three parties is allowed to propose rash amendments to the Basic Law at will, we may well ask, " Does this mean that the other two parties can follow suit? " If yes, I do not think that this is good to "one country, two systems" and "Hong Kong people ruling Hong Kong".

Madam Deputy, the method for the selection of the Chief Executive is clearly set down in Annex I to the Basic Law, and para 7 therein further provides that if there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the Members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the NPC Standing Committee for approval. This shows that the Basic Law as a whole is designed with the view that it is not appropriate to introduce any changes to the method for selecting the Chief Executive before the year 2007. This is very much in line with the principle of gradual and orderly progress stipulated in Article 45 of the Basic Law. And, even if there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, we should still adhere to the normal procedure specified in Annex I para 7. It will be most unusual to bypass this procedure and resort to other channels to amend the Basic Law, and this will certainly produce negative impacts on the harmonious operation of our constitutional framework. For this reason, there must be very strong justifications before this unusual approach can be supported. But the fact is that from the operation of the SAR since its inception, and also from the perspective of maintaining our stability and prosperity, I really cannot see any urgent reasons and strong justifications that can support the adoption of this unusual approach.

Madam Deputy, for all these reasons, I will oppose the motion. During the breakfast meeting yesterday, quite a number of independent Members also expressed support for my views in principle. These Members do not wish to waste any of our valuable time by repeating the relevant points. They will simply oppose the motion as I do.

Madam Deputy, I so submit.

**MISS MARGARET NG** (in Cantonese): Madam Deputy, it was said that the motion moved by Mr LEUNG Yiu-chung today would not be passed regardless. Therefore, what we speak today or even the votes we cast later actually will not have any legal effect, and we in fact are giving some spiritual support only. Despite that, I am still very happy to support it. In fact, we are given an opportunity today to publicize our wish for electing the Chief Executive by universal suffrage of "one person, one vote", and express that we will not give up simply because we cannot succeed now.

Madam Deputy, originally I thought there would really be nothing I could say further about this motion because it is both natural and right for the Chief Executive to be elected by universal suffrage and appointed by the Central Authorities. This theory or, as we can even say, this principle, has been cast in the Basic Law. Even the procedures have already been prescribed in the Basic Law for our anno. So, what else can we say? As indicated by many surveys, this matter has also gained the support of the people in Hong Kong. In fact, I have gone on streets many times to invite the public to participate in signature campaigns and no other issue has been easier than this one in soliciting signatures. It can be said the number of people who are willing to put down their signatures is far greater than any one of past signature campaigns. Therefore, the reasoning of the motion today should be very simple and in fact needs no elaboration. However, why are there still so many people making so much noises? In fact, they mainly wish to rebut several arguments that have been advanced by an especially large group of people.

The first most common argument is that the development towards achieving the election of the Chief Executive by universal suffrage must proceed in a gradual and orderly manner. I believe a gradual and orderly process will be accepted by all people. However, when should we count as the starting point if such a process is to be adopted? How slow should we go would it be regarded as a gradual and orderly process? For example, what kind of adaptation period must we undergo? Should we go through an indirect election or increase more indirect elections before we can have a direct election? Or should we change the 800-member Election Committee into one of 8 000 or 80 000 before we could be regarded as having adopted the so-called gradual and orderly approach? In fact, the simplest way is to hold public consultation for every step we take, so that we can be allowed to get an understanding of whether the general public is walking with us. If the general public gives us the message that we can proceed and we do so accordingly, then this is gradual and orderly.



However, to say that we are not quite there yet in the absence of any public consultation on the way forward, this is simply not what a gradual and orderly manner means, nor respect for the public.

Some people said that we could not participate in the Governor era, so should we jump to universal suffrage now in one big step? My question is: How many more steps should we walk? Should we divide it into 10 steps, 12 or however? At the same time, we should not forget that we are now in the Hong Kong Special Administrative Region (SAR) established in accordance with the Basic Law, but not a scenario in which a Chinese colony was converted from a British colony causing us to adopt the old ways. The Basic Law has brought us a new constitutional order. This new order has enabled the SAR to establish with a "high degree of autonomy". Every business shall also be done in compliance with the Basic Law, and we should refer to this. Furthermore, it could be said that Governors in the past were not restrained by any restrictions. However, they were subjected to a small number of restrictions in law. At least, politically, the Governor and his government were still accountable to a democratic assembly. However, given the current "high degree of autonomy", the power of our Chief Executive has surpassed that of former Governors, and the constitutional restraints on him are also fewer than those on former Governors. Therefore, how this Chief Executive is to be elected is of even greater significance.

Madam Deputy, another voice of objection is that the Basic Law cannot be amended lightly. However, I have never heard anyone saying that the Basic Law cannot be amended. What those people said was the Basic Law should not be amended lightly. But what justifications do they hold to assert that the amendments now put forward by us are reckless? In fact, most of the time when people say something should not be amended lightly, they actually mean no amendment should be made. However, what is meant by the so-called "necessary amendments"? Madam Deputy, we sometimes hear criticisms from extremists, accusing us of contradicting ourselves for seeking to amend the Basic Law when we have all taken the oath to support it on assumption of office. Madam Deputy, in fact, the Basic Law we are talking about is the Basic Law as a whole. Article 159 is also part of the Basic Law, and I strongly support it. I firmly uphold Article 159 because it provides us with a mechanism for making amendments. However comprehensive is a set of law, however cautions it has been enacted, a lawful procedure must be put in place to facilitate amendment, because this is an essential procedure for any representatives assembly.

Regardless of whether this assembly has to conduct consultation with various sectors, it is still necessary or even imperative to have a channel for amendment in an orderly fashion. If we say every time that the Basic Law cannot be amended because it is just like the Bible, or a statute which is even more sacrosanct than the Bible, what scenario will then occur? I think a handling method not backed up by a clear elaboration will arise. In fact, the Government has done this before. On the right of abode issue, we said that neither addition and deletion should be made to Article 24 of the Basic Law. How was this tackled in the end? The Government amended the Basic Law by requesting the NPC to make an interpretation of the Basic Law, and this has actually induced open a Pandora's box of troubles. Thus, we cannot continue to do it this way. The Basic Law has in place a mechanism for making amendments, and our proposal on amendments are not reckless as the lawful procedures are followed, appropriate consultation conducted and then amendments are proposed on important issues. This is definitely not making reckless amendments, nor have we violated the principle of making amendments.

Madam Deputy, the third argument is that the public does not attach so much importance to the issue of election by universal suffrage now. What I have just said is the people's mandate. In fact, the Honourable Martin LEE has said many times that our popular mandate is very clear. However, the opposite view holds that the public nonetheless pays more attention to the economy. Does it mean the public cannot be allowed to fulfil their strong aspirations for electing the Chief Executive by universal suffrage because they have attached more importance to the economy? Is it a case of tea or coffee, and nothing else? Does it mean if the public have attached importance to the economy, they will not attach any importance to the election of the Chief Executive by universal suffrage? If the public attach importance to the election of the Chief Executive by universal suffrage, does it mean they must do that to the neglect of all the other businesses? I consider this illogical.

The fourth argument concerns timing. Some people may say the election of the Chief Executive by universal suffrage is indeed a very good thing. However, we should wait until all people consider it a very good thing before we carry it out. By then, some people may still say it should not be carried out immediately as we should proceed slowly, and we may consider carrying it out in the next Chief Executive Election. And then, after the election is over, we need to wait for the next Legislative Council Election. When the next Legislative Council Election comes to an end, we need to wait for the District Council

Elections. By then, we may need to do this and also do that. All in all, there is simply no election by universal suffrage. Furthermore, some people have also said that we must not rush into amending the Basic Law because this is too hasty. Problems will surely arise if we handle and amend it in a hurried and reckless manner. Madam Deputy, you may have heard of a sentence of a foreign nursery rhyme, "When can we have jam?" and the reply was, "Jam tomorrow, jam yesterday, but never jam today." That is to say, yesterday is the appropriate time to have jam, tomorrow may also be appropriate, but never today. By so doing, the time factor is used to negate the significance of a matter but an important matter must be addressed.

Madam Deputy, many Members may ask why a Chief Executive elected by universal suffrage and appointed by the Central Authorities is so important? Some people have even asked: Only one person has been changed after the reunification, why did you say the changes have been so drastic? Madam Deputy, when that person is playing a leading role, this leader will change the culture of governance. In our childhood, we used to play a game called leader-guessing which required us to guess what that leader was doing and then we needed to imitate his actions. There was also an old saying: "observe the differences in your superior". That is to say, subordinates need to observe what their superiors aspire and have them carried out accordingly. If a superior appreciates the talents of a certain person, his directness, frankness as well as his ability to give independent opinions, and has him promoted because he possesses these outstanding qualities, other subordinates will follow suit. But conversely, if the superior just wants to listen to what is pleasant to the ears and to see people who are obedient, this practice will filter down level by level, and the whole culture of governance will change accordingly. Another example, if the boss likes very much to talk to the mass media and enjoys very much in the press limelight, his subordinates will certainly make every possible arrangement for his boss to meet with the mass media and treat the mass media with great courtesy. However, if the boss detests the mass media very much, then his subordinates will treat the mass media in the same manner. Given this is the culture of governance between a boss and his subordinates, not to speak of the Chief Executive of the SAR. This will be the situation certainly.

Therefore, if the culture of a coterie election becomes popular, psychologically, the elect will often inevitably try to accommodate the needs of those who have a vote. But if the elect must undergo a direct election and is elected by the people through "one person, one vote", his mentality will change.

He will also take every citizen's view seriously even though the citizen is very common or even not very learned. If the Chief Executive of the SAR shows the same respect to views expressed by every citizen, be he a high-ranking official, a small tradesman or porter because every citizen has a vote in hand, then his subordinates, level by level, will also follow his attitude and respect the view of every citizen. Therefore, this Chief Executive is very important. The safest and most proper system is to have the Chief Executive elected by universal suffrage and appointed by the Central Authorities.

Madam Deputy, we must support this kind of system. If the Basic Law is amended for such a sufficient reason, I absolutely do not think we are making amendments lightly. Besides, in terms of timing, we also need to go through many many procedures even if we start our discussions now. Just as the Honourable Ms Audrey EU has said, it may be about time now. Madam Deputy, this motion is not at all aggressive, and today, I wholeheartedly support the motion moved by Mr LEUNG Yiu-chung.

Thank you, Madam Deputy.

**MR LEUNG FU-WAH** (in Cantonese): Madam Deputy, I believe the remarks made by many Members today and those I am going to make will all be futile and yet, we must still make them anyway. In fact, with regard to those points repeatedly made by many colleagues, we have already heard them for numerous times over the past decade or so.

Madam Deputy, it was the fourth anniversary of the Hong Kong Special Administrative Region (SAR) just a few days ago. While the Government did not organize massive celebration activities, but judging from an increasing number of people joining the flag-raising ceremony on 1 July, I believe many people, like me, are happy to see the successful implementation of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" in Hong Kong over the past four years.

Today, Madam Deputy, we are here in this Chamber to discuss a resolution which seeks to amend the Basic Law. I think we have to spend some time looking back on the drafting process of the Basic Law. The Basic Law is the mini constitution of the SAR, and also a national law. It took four years and eight months for the Basic Law to be drafted, for consultations to be held on it

and for its promulgation. The Basic Law was drafted by over 50 experts and academics in the Mainland and Hong Kong. The Basic Law Consultative Committee, which comprised 180 representatives from all walks of life in Hong Kong, then listened to the views of all sectors in the community, continuously reflecting the views received and proposing amendments. It was a very open process, and deliberations were concluded after three rounds of solicitation of views in Beijing and Hong Kong. Given that the drafting of the Basic Law had spanned quite a long time, all sectors of the community could widely express their views in the hope that their views could be incorporated into the Basic Law and their wishes realized. While the Basic Law cannot answer the aspirations of each and every sector of the community, it can be said that the Basic Law has taken care of the needs of a wide spectrum of the community in Hong Kong thanks to the wide scope of consultation. Since the Basic Law is an important legal basis for effecting the unprecedented ideas of "one country, two systems" and "Hong Kong people ruling Hong Kong", members participating in the drafting of the Basic Law were all representative figures in the legal profession, politics, and in the economic, labour and religious sectors. Five Special Groups were formed under the Drafting Committee. During those four years and eight months, over 70 meetings were convened by these Special Groups, among which the Special Group concerned with the Political Structure had held the highest number of meetings. It shows that the Special Groups had thoroughly discussed and considered the drafting of the contents, and the Basic Law was definitely not drafted unilaterally or on the basis of some predetermined contents.

I spoke on the drafting of the Basic Law at great length in order to explain that the Basic Law was formulated with the wide participation of experts and scholars in the Mainland and in Hong Kong, as well as from the local community. It was not created by a few people or a certain group of people out of their own fantasy.

The method for the selection of the Chief Executive was one of the most controversial issues in the course of drafting the Basic Law. That is why Article 45 of the Basic Law outlines the method for selecting the Chief Executive, and provides that selection must take account of the actual situation in the SAR and proceed in accordance with the principle of gradual and orderly progress. The specific method for selecting the Chief Executive is prescribed by way of an Annex, with the purpose of allowing the SAR flexibility in making amendments in the light of the actual situation in future. As far as I understand it, under para 7 of Annex I to the Basic Law, the mechanism for amendment simply does not exist prior to 2007.

Madam Deputy, the term of office of the first Chief Executive will expire only in the middle of next year, and we have just completed the scrutiny of the Chief Executive Election Bill. While the din of contention had never ceased in the course of scrutiny, Members who are concerned about this issue were all willing to spend time participating in the scrutiny work. Regrettably, Mr LEUNG Yiu-chung, sponsor of this resolution today, did not take part in the work of the relevant Bills Committee. The resolution proposed by him today, which calls for amendments to Article 159 of the Basic Law and deletion of Annex I, is, in my view, groundless, so I will not support it. Having listened to the speech of Mr LEUNG Yiu-chung earlier on, I found that he apparently holds onto a very simple logic, that is, to deny "one country" and to dismiss the fact that the SAR Government was established on powers devolved by the Central Government.

Earlier in the debate, some Members cited Taiwan as an example. I wish to say a few words on the current situation in Taiwan. According to a magazine report, since CHEN Shui-bian, a President elected by "one person, one vote", took office, hatred-oriented political science and fear-driven economics have been proliferating across Taiwan. Unemployment rate presently stands high in Taiwan. Economic depression and the loss of foreign exchange are serious, and money politics is rampant. The so-called democracy means nothing more than votes bought off with money.

Earlier on, Mr LEE said he was confident about the future. I am confident about the future too, for the Chief Executive will ultimately be returned by universal suffrage under Article 45 of the Basic Law. I am absolutely confident about this, and my confidence derives from the Basic Law.

I very much appreciate the frankness of the Honourable Michael MAK. He said that if the Chief Executive was elected by ourselves, we must resign ourselves to fate and nothing could be done however badly the Chief Executive performed. I, however, do not think that the majority of the people take this attitude of resignation to fate, thinking that nothing could be done however badly the Chief Executive performed.

Many Members have always described universal suffrage by "one person, one vote" as a path or the only path leading to blissful lives in paradise. In fact, many facts and examples can prove that this is not necessarily the case.

The Honourable Miss Margaret NG said earlier that when she was appealing for public support for the signature campaign on streets, many people signed to show support. I also wish to tell Miss NG our experience. When we organized signature campaigns on streets to champion for enhanced labour protection, to call for more labour rights and interests, to support Beijing's bid for the Olympic Games, and to support Hong Kong's bid for the Asian Games, many people also signed to give their support. It is very difficult to draw a comparison and conclude what the popular mandate is.

As regards how many steps do we have to make before election by universal suffrage is in place, my view is that the Basic Law actually has detailed provisions for this. So, I think I may perhaps sum up today's discussion with this: "The SAR is doing fine originally, only that some mediocre people are courting troubles for themselves." I oppose this resolution.

THE PRESIDENT resumed the Chair.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, the Basic Law is a constitutional document which gives full play to "one country, two systems" and "Hong Kong people ruling Hong Kong". Each and every detail of its provisions was formulated after extensive consultation over a long period of time. I had the honour to take part in the drafting of the Basic Law. The drafting work, which was formally completed at the ninth plenary session of the Drafting Committee on 17 February 1990, took a total of four years and eight months since the official establishment of the Basic Law Drafting Committee (BLDC) on 1 July 1985, and the consultation period spanned as long as four and a half years. From this, we can see that this constitutional document fully reflects the aspirations of Hong Kong people and truly safeguards their rights and interests.

During the consultation on the Basic Law, the method for the selection of the Chief Executive had been a more controversial issue on which opinions were divergent. After repeated discussions and studies, the BLDC set out the method for selecting the Chief Executive under Article 45 and Annex I of the Basic Law, which provide for a long-term objective, a timetable underpinned by gradual and orderly progress and a mechanism for amendment. I support the relevant arrangements in the Basic Law, for they could properly address different views.

Today's motion seeks to amend some provisions of the Basic Law without any prior consultation to gauge the views of the community as a whole. It obviously does not respect the views of Hong Kong people, and is immature and irresponsible. As a member of the BLDC, I oppose today's resolution.

To amend the Basic Law is an issue of enormous import and must therefore undergo a stringent procedure. Article 159 of the Basic Law does not only stipulate the procedure for amending the Basic Law, but also provides in express terms that "No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong." As far as I understand it, one of such basic policies is gradual and orderly democratization of the political system. Therefore, any amendment to the Basic Law must have regard for the interests of all sectors in the community. We must also ensure that a democratic system that suits the situation of Hong Kong is developed gradually in a step-by-step manner, while preserving those proven elements of the original political system. Some people seek to amend certain provisions of the Basic Law unilaterally in accordance with their own wishes. This, I do not agree.

Some Members who spoke earlier seized the opportunity to attack a veteran of labour movement, Mr YEUNG Kwong, former Chairman of the Federation of Trade Unions whom I very much respect. It is undeniable that Mr YEUNG Kwong has made tremendous contribution to the fight for labour interests and to the education and welfare of children of workers. Some Members mentioned the historical incident of anti-Britain riots against violent repression. The incident, which started as a labour dispute, gradually developed into a patriotic national struggle. Many lessons can be drawn from this turmoil. But we cannot dismiss the fact that numerous patriots were unreasonably arrested, detained, deported, sentenced, and persecuted to death under the Hong Kong-British colonial rule back then. As far as I can recall, a young lawyer represented a warehouse worker working at a pier in a court case out of a sense of justice, saving the worker from injustice and false accusations. The lawyer eventually won the case and the worker was acquitted. Warehouse workers at the pier all gave high praise to this young lawyer. As far as I can remember, that lawyer is Mr Martin LEE, who is present here. So, I hope that we can look at history or individuals from an objective and holistic perspective.

**MR JASPER TSANG** (in Cantonese): Madam President, this Council will resume the Second Reading debate on the Chief Executive Election Bill next



week. The Bill provides for the method of electing the second-term Chief Executive of the Hong Kong Special Administrative Region in accordance with the Basic Law. Colleagues who spoke earlier in support of Mr LEUNG Yiu-chung's resolution also said that they respect the provisions of Article 159 of the Basic Law concerning the amendment of the Basic Law. Certainly, they also appreciate that under the procedure stipulated in Article 159, it is impossible for us to make amendments to the relevant provisions of the Basic Law before the election of the second-term Chief Executive. As for the election of the third-term Chief Executive, it should be held in 2007 which is still six years away from now. The proposal to amend the relevant provisions of the Basic Law governing the method for the election of the Chief Executive now does not appear to have any realistic significance. We certainly understand that the colleague who proposed this resolution and those in support of it all disagreed that the Chief Executive be elected in such manner as prescribed in the Basic Law. So, while they are aware that no changes can possibly be made to the election of the next-term Chief Executive even if this resolution is passed, they perhaps seek only to express their stance. But Madam President, as the Democratic Alliance for Betterment of Hong Kong (DAB) supports the election of the second-term Chief Executive in accordance with the relevant provisions in the Basic Law, we therefore cannot support today's resolution.

Earlier on, the Honourable LEUNG Fu-wah mentioned that the earlier speeches of many Members are just repetitions of what they have said before, which we have already listened for numerous times. But I think his remark is not entirely fair, for the speeches made by many Members who seized the opportunity to play up their views do have some originality. For instance, regarding the many problems faced by Hong Kong over the past four years since the reunification, a number of Members attributed all these problems to the fact that our Chief Executive is not returned by universal suffrage, and this very point is quite creative. Madam President, I do not think that election by universal suffrage will certainly bring about social instability or will certainly have an adverse impact on the economy, but I do not believe the various economic, social and political problems that we encounter now have emerged because we do not have a Chief Executive returned by universal suffrage.

A Member opined that Hong Kong people used to be happier, but they have been unhappy since the reunification for the Chief Executive is not returned by universal suffrage. Their memory seems to have some problems. Could it be that the head of the Government of Hong Kong was elected by universal

suffrage before the reunification? If this is said to be a "small-circle" election, I am sorry to say that there was not even a "small-circle" election in the past.

A Member also said that Hong Kong used to be one of the "Four Little Dragons in Asia" and enjoyed a prestigious status. But now, we are going downhill; the economy is in the doldrums; and there are problems with everything. All these are again due to the Chief Executive not having been returned by universal suffrage. Let us just look at how the other little dragons compare with us. Some Members have already drawn a comparison earlier and I do not wish to repeat here. For some other little dragons that had been hailed as models of democracy, do their economies fare better than ours in Hong Kong because the heads their government are returned by universal suffrage?

So, I think if we are caught in this frame of mind, it will do no good to resolving the problems. If we believe all the problems faced by Hong Kong now can be resolved by immediately amending the Basic Law to effect election of the Chief Executive by universal suffrage, I guess it would be a deliberate lie, if not naive.

In conducting the opinion polls, why were public views not surveyed on this question? It strikes me as strange that if we telephoned a few hundred people asking them whether they would like to proceed immediately to effecting election of the Chief Executive by universal suffrage, why was it not the case that 100% of the respondents replied yes? For what reasons would they say no? If the question was put in this way, and if only 60% or 70% of the respondents said yes and supported election by universal suffrage as soon as possible, I must say that I find it very strange. Earlier on, Mr James TIEN also explained the logic behind this. We might as well put these questions to the public: Do you like to amass more wealth? Do you like to enjoy more democracy? Do you like the idea that everyone owns a house? Why is it not the case that everyone says yes? Perhaps those who really use their brains or those who are willing to think it over would give a different answer. Therefore, the matter is not as simple as that. It is not the case that when one says yes to something, that something is definitely good.

Earlier in the debate, at least two Members, including Miss Margaret NG, mentioned signature campaigns. She said that it had never been so easy to appeal for signatures from the public. I may not have appealed for signatures from the public on streets less often than Miss Margaret NG does. From my

impression, having collected 30 000 signatures in two or three weeks' time, just as Mr LEUNG Yiu-chung has said, is by no means a good result. Take the campaign against fare increase by the two railway corporations as an example. We managed to collect over 50 000 signatures in one week. So, this cannot point to anything at all. I believe the public is in support of it, and I have no intention to deny it. But the public also appreciates that when there are many things that we wish to have, we need to set priorities? How should we tackle the problems one by one? I believe the people of Hong Kong are wise and sensible.

Development of the political system is indeed essential. But I believe those who have consistently taken part in discussions on the political system, those who have consistently participated in the realization of democracy, will agree that the problem we need to address and explore now does not only concern a date. Nor does it only concern which year or when the Chief Executive should be elected by universal suffrage. Instead, we must truly aim at a viable political system, a democratic and efficient political system. To this end, we have to work in concert to explore, study and recount our past experiences, particularly the experiences over the past four years since the reunification. If we, after summing up experiences, simply conclude that all the problems are caused by the fact that the Chief Executive is not elected by universal suffrage, then it would be very sad indeed.

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

**DR YEUNG SUM** (in Cantonese): Madam President, I am glad to listen to the Honourable Jasper TSANG's speech just now, learning that he has set a very high standard for opinion polls. To him, a survey must have 100% of public support; and if there is just 70% or 60% of it, he would consider it inadequate. This is plain sophistry.

Madam President, we all see that a myriad of social problems have emerged one after another since the reunification four years ago. For instance, a high unemployment rate, a wide gap between the rich and the poor, an increasing Gini Coefficient, and the fact that many areas of social services are disappointing. Examples include the wavering housing policies, and frequent education reforms which defied adaptation by teachers and parents. A

newspaper editorial once asked why the Chief Executive does not have to step down with such a performance in the past four years. The reason is simple. It is because he is not elected by the people through universal suffrage. A Chief Executive returned by a small-circle election basically is not subject to checks and balances by the community. Nor can the Legislative Council exercise checks and balances on him. It is because a Chief Executive returned by a small-circle election basically does not need to shoulder political responsibilities. Whether his performance is good or bad, he just does not need to take up political responsibilities. Back to the question asked by the editorial about why the Chief Executive does not have to step down despite the fact that he has performed so badly in the past four years. The main reason for this is that under the present political system, the Chief Executive is elected by a small-circle election, not by universal suffrage.

Madam President, while some Members mentioned the award of an honour to Mr YEUNG Kwong, I do not wish to particularly speak on that incident in 1967. All I wish to say is that the Hong Kong Government conducted a study back then to find out why so many young people had taken part in the riot. The principal reason, as pointed out in this study, was that the people felt increasingly alienated from society and lacked a sense of belonging. Although many years have lapsed, I still wish to borrow this conclusion, that is, the public now feels increasingly alienated from the Government, and the principal reason is that our Chief Executive has not made the utmost efforts to implement "one country, two systems" and "a high degree of autonomy". The main problem with him is that he attaches importance only to "one country" but slacks on the pursuit of "a high degree of autonomy". He has exerted himself to uphold "a high degree of autonomy" for one of the two systems, and examples of this abound. For instance, in the Chief Executive Election Bill scrutinized by us, it is stated that the Central Government can remove the Chief Executive from office under any circumstances. While the Government had eventually made slight concessions, there were basically no major changes. The Bill also provides that any member of a political party who is elected must resign from his political party. Obviously, the Government's intention is to make Hong Kong apolitical, and to belittle and deal a blow to political parties, completely ignoring the normal development of political parties. Other examples include requesting the NPC to interpret the Basic Law to the detriment of Hong Kong's political system; abolishing the two Municipal Councils and reviving the appointment system for District Councils, which entirely aimed to hold back democratization; showing favour to certain spheres of the business sector by, for example,

allowing some people to engage in the Cyberport without putting the project to open tender, which has virtually jeopardized fair competition in Hong Kong. Mr TUNG wants to govern Hong Kong with "TUNG Chee-hwa-styled" Confucianism, stressing the need for the people to fulfill their obligations to society but neglecting the rights to which the people are entitled. I believe such traditional and insular approach of governance is becoming more and more incompatible with society.

Madam President, from a political angle, we see that the Basic Law basically imposes limitations on the development of society, particularly the development of the political system, in a great many areas. Outdated systems should be amended, just as we can amend laws that have become outdated. For example, under the split voting system, Madam President, you can see that motions proposed by Members are very often negated, even though the total votes supporting the motions actually outnumber those against them. This is particularly the case for motions moved by directly elected Members of the democratic camp. Moreover, given the restrictions imposed on Members in proposing private bills, the executive has become further unrestrained, and the power of this Council to exercise checks and balances on the executive is further undermined. While it is said that a review of the political system will be conducted in 2007, and that in 2004, half of the Members will be returned by direct elections and the other half by functional constituency elections, this progress is too slow indeed if we take an overview of the development elsewhere. Yet, it is not totally inexcusable, for the Basic Law was promulgated in 1990 after the 1989 pro-democracy movement, and given the political situation at that time, the political atmosphere then was understandably very much flinching and conservative, and this has subjected the pace of democratization to considerable inherent constraints. Therefore, the people of Hong Kong should actually pull together to ask for amendment of the Basic Law. On the election of the Chief Executive by a group of 800 people, there is no need for us to discuss it in detail again. To sum up, since the Basic Law has become outdated, we should make an all-out effort to amend it as soon as possible. It is, therefore, appropriate and timely for Mr LEUNG Yiu-chung to propose this resolution.

From the perspective of the Bill of Rights, members of the public are deprived of the right to participate in elections in Hong Kong. We still cannot explain why we are not yet allowed to elect our Chief Executive by "one person, one vote", given the present economic development, social stability, and the foundation of our rule of law here in Hong Kong. In many places where the

rule of law, economic stability and social stability are far worse than the situation in Hong Kong, human rights and the right to elections have been implemented expeditiously. But in Hong Kong, particularly under Mr TUNG Chee-hwa's administration, the pace of democratization has nevertheless been slowed down and the people are deprived of the opportunities and the right to participate in politics.

From the perspective of administration, Madam President, the existing system of administration has constituted a great difficulty to all camps, irrespective of whichever side they support. The Government has the power, but not the people's mandate. Members of the Legislative Council, particularly those returned by direct elections, have the people's mandate, but not the power to formulate policies, which explains why our efforts have been fruitless in many areas. No wonder public expectations of the administration of the Government and Members of the Legislative Council are gradually on the decline. Even some very conservative political scholars consider it necessary to call for a halt on this quagmire. Some conservative political scholars consider it unreasonable for the Chief Executive Election Bill to provide that any person with political affiliation, if elected, must resign from his political party. In fact, the Government must encourage the free expression of views and endeavour to promote the development of political parties. I find it strange that the above comments were made by those conservative political scholars. But obviously, everyone basically considers it necessary to crack this quagmire. Therefore, the election of the Chief Executive by universal suffrage expeditiously and the election of Members of the Legislative Council by universal suffrage expeditiously will be beneficial to the representatives of whichever political party, even the Communist Party. Since the person so elected has the people's mandate to take up the office of the Chief Executive, it will be fine if the pro-Communist camp obtained a majority of the seats of the Legislative Council, for they have the power and the people's mandate. However, the executive now has the power but not the people's mandate, whereas the directly elected Members of the Legislative Council have the people's mandate but not the power. This quagmire, in fact, also imposes inherent restrictions on the entire administration of the Government, whether the legislature supports or opposes the Government's proposals. Therefore, disregarding whether one's political standpoints are unconventional or conservative, they all see the need to expeditiously remove the restrictions. If the conservative forces are in power, let them be so, for this is to the liking of the people. If the people consider that social policies should not take a course to the left, that is possible too; so the

Labour Party will not necessarily be the ruling party. But the existing quagmire has deprived the people of their right to participate and created difficulties for administration. Why do we not expeditiously make amendments to address the restrictions inherent in the Basic Law in the light of the needs of the times? Why can we not support Mr LEUNG Yiu-chung's resolution which proposes reforms targetting at the existing problems?

Madam President, the main question is that a Chief Executive elected by a small-circle election cannot take care of the interest of the general public, for he does not need to face them. Therefore, I wish to emphasize again that democracy and people's livelihood are not incompatible. Nor are they contrary to each other. A Chief Executive who is elected by universal suffrage will certainly take care of the interests of all sectors. Otherwise, he basically does not stand a chance of being re-elected. Under such circumstances, power comes from the people. Only in this way will the Chief Executive be accountable to the public; only in this way will there be the day when class conflicts and the general well-being of the people can be gradually improved. A small-circle election will only favour the interest of the small circle. The logic cannot be simpler.

Gradual and orderly progress is our pet phrase. But if we go on suggesting gradual and orderly progress, it is tantamount to turning a blind eye to the fact that the people are deprived of political rights, that the Basic Law is outdated, and that the pace of democratization is nonetheless further slowed down notwithstanding the mature social conditions of Hong Kong.

To conclude, Madam President, if we wish to eliminate the alienation between the public and the Government, we must expeditiously allow the public to fully exercise their right to participate in politics, so that they can elect the Chief Executive and even all Members of the Legislative Council by their votes. Only in this way can the Government face the people, shoulder political responsibilities, and be accountable and responsible to the people. Only in this way will there be a chance for the people's livelihood to be gradually improved, and only in this way can "a high degree of autonomy" be further realized.

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

**MISS EMILY LAU** (in Cantonese): Madam President, I speak in support of Mr LEUNG Yiu-chung's motion. Last year, I also indicated my support when Mr LEUNG Yiu-chung proposed a similar motion.

Madam President, I personally very much hope that Hong Kong would really enjoy a high degree of autonomy and Hong Kong people could really rule Hong Kong under the rule of Communist China. However, we all know that since 1 July 1997, we really have no way of realizing the promise made to us by Beijing. Then, how can this promise be realized? Madam President, I have reiterated many times in this Chamber that it is only when Hong Kong people can really be master of our own house, when our government can be returned through universal and equal suffrage, and when we have the power to dismiss and replace the Government, that we can truly enjoy a high degree of autonomy and Hong Kong people can really rule Hong Kong. Therefore, when the executive authorities resume the Second Reading of the Chief Executive Election Bill next week, I believe that I, Emily LAU and all members of the Frontier will object to the Bill. I also believe that many real supporters of democracy and freedom will also object to the Bill because it seeks to deceive the people of Hong Kong. Though it is provided in the Basic Law that the second-term Chief Executive will be elected, it is still a small circle election that involves only 800 people. Several Legislative Council Members from the Frontier did not vote last September, and we will not vote next year. We do not care for such votes, instead we feel very ashamed to have such votes. If several millions of Hong Kong people do not have the right to vote in the Chief Executive election, then why should we vote? I understand that the Democratic Party intends to move amendments to this Bill, but the President will certainly rule against the proposal on "one person, per vote" because this is not provided in the Basic Law.

**PRESIDENT** (in Cantonese): Miss Emily LAU, you can save your comments for the next meeting. Now, please speak on today's motion.

**MISS EMILY LAU** (in Cantonese): Yes, Madam President. I support Mr LEUNG Yiu-chung because his motion is related to election and direct elections. I do not accept the arrangements in the Basic Law and I also hope that Hong Kong people will really have the power to amend our own miniconstitution. A number of arrangements in the Basic Law have never been acceptable to me all these years. Since I have the opportunity to state my position today, I will



speak on this subject again. Though I know that Mr LEUNG's motion will fail and I trust we are the minority in this Council, we are the majority outside this Council. During the past few weeks, many people have told us that we are doomed to fail and they also know why we would fail. This is because they know that many Members do not represent the people of Hong Kong; in fact, those who represent the people are only very few in number. This situation is also brought about by the Basic Law and we are most agitated by it. I hope that one day or on an earliest possible day, Hong Kong can really fight for returning its government through universal suffrage and I also hope that we can amend the Basic Law.

Some Members have been right in saying earlier at today's meeting that we are not revolutionaries. We only hope that our aspirations can be made public by means of parliamentary politics. Some members of the public said though we are doomed to fail, we should still speak up because stating our views in public is after all much better than remaining silent. We should not be forced to act like a dumb person, and our voices should not be suppressed. So, no matter what happens, we should still speak up. Sometimes, when I see some children, I would ask myself whether there will be democracy when they grow up. When I am in the most pessimistic mood, I will tend to think that they will not enjoy any democracy.

Earlier on, Members have all mentioned or might even think that a promise has been made under the Basic Law, but the review that it promised for 2007 is only a review. As regards the Chief Executive election, nothing has been said about the timeframe for its review. It is only said that the situation will be reviewed after 2007, but all proposals have to be endorsed by a two-thirds majority of all the Members of the Legislative Council and approved by the Chief Executive and the Standing Committee of the National People's Congress (NPC). We do not know when this can take place because there is not even a timetable. Though it is said that the method for forming the Legislative Council will be reviewed in 2007, the review will not be conducted until after the next Legislative Council Election is held in 2004. Madam President, by that time, the Government would again be making excuses, such as, that there is no time to do so as the 2004 Legislative Council Election will be held at around the end of that year. Therefore, the review may not start until 2005 at the earliest, and by that time, the government authorities may again be making a lot of excuses to delay the review or raise arguments. So how can any amendments be introduced under such circumstances? It may be possible that the 2008 election

will still have to follow the old method. By that time, someone may even say that this method has already been used for too long and suggest that a little retrogression should be introduced, to the effect that 40 seats of the Legislative Council will be returned through functional constituencies and only 20 seats through direct elections.

Madam President, I have heard all the arguments and would like to expose all lies told to the people of Hong Kong on the occasion of this debate. What they have said about the review was in fact all empty talk. The proposal on introducing amendments to the Basic Law has already been under discussion in this Council for several years. Madam President, Mr LEUNG Yiu-chung immediately withdrew this motion after moving it in December 1998, so that it could be discussed by the relevant Panel. However, Madam President, after discussing this for one year, since the debate of last year to that of today, what have we achieved? I remember that the Secretary told us in the debate that the Government agreed that there was a need and it was also its responsibility to put in place a proper mechanism to effect the provisions of Article 159 of the Basic Law. This was what Mr Michael SUEN said in January 2001. Today, after more than one year, what has been done by the Government? Will Mr Clement MAK tell us later on what has been done by the Government? Since the whole mechanism has to be approved by the Chief Executive and the Standing Committee of the NPC, and endorsed by the Legislative Council, there has been no progress at all. I believe the public will also feel that, no matter how reluctant the Government is on introducing or supporting the introduction of amendments to the Basic Law, at least it should first set up a simple mechanism — a mechanism that can introduce amendments to the Basic Law once it is set in motion. However, at present, we do not even have such a mechanism, so even if Mr LEUNG Yiu-chung's motion is carried, how should we proceed? We are the absolute minority in this Council and certainly do not have any influence on the NPC or the Chief Executive, so what sort of arrangement is this?

Some Members said Hong Kong people should stand up and fight, and I absolutely agree with them. I have said many times that the people make the Government. I personally do not think that I deserve to be ruled by TUNG Chee-hwa's group and I suggest that the people of Hong Kong should really think hard. If they really want to be masters of their own house and have a government that is returned by democratic election, then I will say it is only their wishful thinking if they think that they can get what they want simply by sitting at

home with their arms folded or just going out in the streets to put their names on signature campaigns. Mr James TIEN has talked about democracy, freedom and rule of law in Taiwan, Singapore and Hong Kong earlier. He said one place has got one thing and the other place has got another but not any one of these places have got all the three, and he thought it would be good if all three places could be put together. Of course, this is impossible, but Madam President, Hong Kong people value freedom very much and perhaps some people may say we enjoy more freedom than the other two places mentioned earlier. But where did our freedom use to come from? Of course, it did not come from the colonial government, but rather from Britain, a democracy and this is a result of our previous constitutional system. Therefore, over the past years, it could be said that we have had freedom but no democracy, and we have had the rule of law. Though, now there is still no democracy, we do have some measure of rule of law and freedom. However, I believe that Hong Kong people should understand that if a totalitarian political power or one that tramples on the freedom of the people should appear as a result of the change in our constitutional relations, then how much longer can we still enjoy freedom and the rule of law? It is likely that the people of Hong Kong may not have felt any really strong suppression now, but the public will still take to the streets to state their positions on major issues. So when it comes to issues very close to their hearts, they will immediately take to the streets. Some people said we have failed. Failed, we have because we have not told the public why democracy and their livelihood are so very closely related. However, I believe people will stand up and fight if they are strongly suppressed, and I think this day is not very far away. In any case, apart from voicing the aspirations of the public in this Council, we will also try to unite the majority outside this Council. Therefore, even if Mr LEUNG's motion is voted down today, I still believe that we democrats will keep coming back. I believe, and I also hope, that more and more people from the democratic camp will voice for the public in this Council, and they can have the support of the public outside this Council.

We have conducted many opinion surveys and the findings indicated that many people are support a government returned by democratic election. However, is it really necessary for the findings to show that this has a 100% support before it can be considered credible? Madam President, for any pluralistic society, there are all kinds of people, maybe even Fascists, and we may also have such people in this Council. This is also a phenomena of Hong Kong. However, I believe no one would dare to come forth to challenge whether the findings of all opinion polls indicate that most respondents are in

support of a government returned by democratic election? If the Government has the courage to conduct such a survey, I believe the findings will also indicate that this is supported by the public. If people really do not believe in the present findings, the best way is to conduct a referendum. We, the Frontier, think that such a direct approach is the best way for the people to state their aspirations.

Madam President, on every occasion when this issue is discussed, we are always very angry for we think that the existing approach is too outrageous. The people of Hong Kong do have the ability and should also have the right to elect their own government. Several days ago, I talked to a NPC deputy (it is very seldom that I can have the chance to talk to a NPC deputy) and I asked him whether it is possible to conduct an election and allow people to vote? He said certainly, that is, "one person, one vote" for the 800 people. Madam President, I believe many Hong Kong people will find this unacceptable and that it is a waste of time for us to participate in the debate today because we will certainly fail. However, even if we are doomed to fail, we have to speak up. Many members of the public support this spirit. They told us that even if we are often suppressed at the meetings of this Council, we should still continue to do so, because they hope that some of our voices can be heard. Moreover, I also hope that one day, and even more earnestly hope that within my lifetime, I, Emily LAU, can see that we are really masters of our own house.

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

**MR ALBERT CHAN** (in Cantonese): Madam President, I did not intend to speak originally, but having listened to the remarks of the Honourable NG Leung-sing and the Honourable TAM Yiu-chung, I feel compelled to say a few words in response.

When he spoke a moment ago, Mr NG Leung-sing said that coterie elections and keeping the Basic Law unchanged were largely meant to maintain the stability and prosperity of Hong Kong. The word "prosperity" sounds very absurd to me, because as we all know, over the past few years, the economy of Hong Kong has plunged into a rapid downturn, and many problems have emerged. Naturally, I will definitely not attribute all these economic changes to Mr TUNG Chee-hwa alone. I do not believe he has that kind of ability anyway, nor do I think that he has the necessary wisdom to induce all these significant economic changes. The tide of the world cannot be reversed by just one or two leaders.

However, the words and deeds of Mr TUNG in the midst of the financial turmoil and our social crises have indeed been very disappointing. He simply lacks the charisma of a leader. I am sure that the ability of a leader returned by universal suffrage to handle crises and public issues will certainly not be that low. It is often said that a particular kind of system will produce products bearing the same characteristics. People coming from a coterie system marked by mutual protection and cronyism may thus have the same mindset and aims characterizing that very system, and they may think only about mutual protection and safeguarding the interests of the coterie system. As pointed out by the Chairman of our Party, Mr Martin LEE, a coterie system is precisely the cause of the political melodrama surrounding the recent award of honours.

Mr TAM Yiu-chung's glorification of the 1967 Riot as an anti-British uprising also sounds most absurd to me. I was very small at that time, and I thus did not take part in the whole thing. But I can still recall how the curfew prevented me from going to school. I lived in Sham Shui Po at that time; as Members may know, areas around Sham Shui Po and Lei Cheng Uk were then "killing fields", places "out of bounds to the living", where many home-made bombs were planted. As I listened to how the leftist leaders' commended the anti-British uprising earlier on, I failed completely to hear any one of them condemn those who planted the home-made bombs. I do not know whether they really did so; perhaps, their condemnation might have eluded me. We certainly support their commendation of those national heroes dedicated to the anti-British uprising, but we also think that they should have at the same time condemned those who upset social order. Many Members commented earlier today that there was a need to maintain the stability and prosperity of Hong Kong. However, I do not think that the 1967 Riot could have contributed to the maintenance of the stability and prosperity of Hong Kong. Well, unless Mr Jasper TSANG could rise and explain to us now how the 1967 Riot subsequently led to the stability and prosperity enjoyed by us during the transition period before 1997. If he could really prove how the political consequences of the 1967 Riot subsequently led to such huge achievements, I would certainly admire his political wisdom.

Madam President, if there was any element of public accountability in our system, I certainly do not think that anyone with the people's mandate in Hong Kong would have award an honour to such a leading figure of the "struggle committee" behind the 1967 Riot. The press reports today carried the words of conscience from LUO Fu, another leading figure in the 1967 Riot, who said that

the conferral of honours on YEUNG Kwong was an act that confounded right and wrong, very much similar to affirming the positive significance of the 4 June incident. He also pointed out that the "struggle committee" should be held responsible for the 1967 Riot, and that the FTU was a part of the "struggle committee". LUO Fu admitted that he dared not say that the FTU had anything to do with the planting of bombs. But he was certain that some workers did take part in the commission of such atrocities. The "struggle committee", as the commander of the whole movement, could not possibly absolve itself of the responsibility.

I do not know whether Mr TAM Yiu-chung will deny all these historical facts. I was not a member of the "struggle committee", for I was very young then and did not take any active part in making decisions. The FTU or leftist leaders here today may know very well what actually happened then. My point is that if there were any democratic and open elections in Hong Kong, the political absurdity surrounding the recent conferral of honours would never have occurred. Mr James TIEN commented earlier on that we have the rule of law but not democracy in Hong Kong. However, even so, such political absurdity should never have occurred.

I thus hope that the speeches delivered by Members today can be recorded in history. Have any Members said something that confounds right and wrong? That is a question to be answered by history. I am sure that the motion moved by Mr LEUNG Yiu-chung today will not be passed today. He will never get the consent of two thirds of Members; worse still, not even half, I am afraid. Besides, the situation with the Chief Executive election has become increasingly clear. Since the preordaining incident, no one has dared to challenge or query the possibility of Mr TUNG Chee-hwa's re-election. If Members still think that such an electoral system can maintain the prosperity and stability of Hong Kong, they should produce some evidence on what Mr TUNG Chee-hwa has done, what policies he has adopted and what politically wise decisions he has made since his assumption of office — just to show how he can lead Hong Kong on the way to renewed prosperity.

Thank you, Madam President.

**MISS CYD HO** (in Cantonese): Madam President, I will of course support the motion moved by Mr LEUNG Yiu-chung today. A similar motion moved by

Mr LEUNG last time was not passed; the motion today will not probably be passed as well, and I guess we do not need a division at all. We should by now know very well the statistics about the likely voting outcome. Twenty-one Members at the most will vote for this motion. Some Members have already left, and only about 10 Members are left. Another Member is leaving now. Twelve Members from the Democratic Party, five from the Frontier and several independent Members, adding up to a total of 18, may vote for the motion. Such are the statistics that we know so well already. But why has Mr LEUNG still insisted on moving the motion? The Government likes very much to quote its survey findings, such as those obtained by the monthly telephone opinion poll conducted by the Home Affairs Bureau. Government officials are always quick to refer to these findings, telling us that the people are most concerned about unemployment, the economy, housing, and so on, and that no one seems to accord any priority to political reforms. So, if even Legislative Council Members also refrain from moving motions on this topic, I am afraid government officials may later seek to justify their stand by arguing that even Legislative Council Members have not raised the topic of political reforms. In that case, what can we say in return? That is why I think it is really a very good idea for Mr LEUNG to move this motion at the end of this Legislative Session. The spirit behind this motion is quite similar to that of the Foolish Old Man who tried to remove Mountain Tai; I guess similar motions will be raised between 2001 and 2007, and probably, under the system of separate voting, all such motions will be negated. But I trust Members will not hesitate to render their support whenever a motion on this topic is raised.

Madam President, over the past years, the executive authorities have tried repeatedly to delay the discussions on the mechanism of amending the Basic Law. Since the discussions on this issue in the Legislative Council, the Government and the Hong Kong and Macao Affairs Office have held seven meetings. But after all these seven meetings, what actual progress has been made? What has been discussed between the people and the relevant members? What conclusions have been reached? We do not know anything about all this. We have instead been told that the topic is very complex and must thus be examined very carefully. Unfortunately, it seems that the authorities have been examining the topic "very carefully" for much too long. When Mr LEUNG Yiu-chung moved a similar motion last time, the Secretary replied that the Government could not accept it because its proposals were constitutionally inopportune and inappropriate. What new adjectives is the Government going to use this time around? It used adjectives like "inopportune" and

"inappropriate" last time, but after that, what efforts have the executive authorities made to make things more opportune and appropriate? We have seen none.

Democracy is no windfall, nor is it any alms or gifts. If this is not the case, it can then be given or withdrawn at others' pleasure. When this happens, I am afraid we will not even have the chance to cast any votes in this Council.

Under the Basic Law, the most we can do is to review only the electoral system for the Legislative Council in 2007. There seems to have been a change in the government position recently, however. The Government has said that there will be two milestones in the development of our political system, one being the Chief Executive Election in 2002 and the other the Legislative Council Election in 2004. It is said that the way forward will be determined only after reviewing these two elections. We cannot thus help asking, "Why choose particularly to review the two elections in 2002 and 2004?" The mass media, and journalists too, all know very well that even though there are not yet any results, we should all know who will be elected the Chief Executive on 24 March next year. I am sure that we will all be very surprised if the outcome is not the same as what we expect. Then, when we look at the Legislative Council Election in 2004, we see that there will be 30 directly elected seats, and given the system of proportional representation, there are not going to be any dramatic changes. At most, there will be a difference of several seats, but this is not going to affect the voting outcomes under the system of separate voting. For this reason, I hope that the authorities can later explain clearly what they actually expect to happen in the two elections of 2002 and 2004. And, they should also tell us how they are going to respond to the observations made them. I hope that the authorities can give us a clear picture on all this. Honestly, I am worried that the reviews are actually meant to pave the way for the authorities' refusal to conduct a serious review of our political system in 2007. That is why there is all the more reason for us to move motions on this issue, not only during this Legislative Session, but also in the few years to come.

It is inevitable to hear points being repeated by Members during the motion debate today, and their arguments may also be poles apart. That reminds me of a play belonging to the absurd theatre in French literature. The play is full of absurdities, with all the characters talking and thinking on their own, waiting for Godot. It later turns out that Godot simply does not exist, but all the characters wait for his arrival without asking themselves their knowing



why. So, they wait and wait and keep repeating what they have said. I hope that in Hong Kong, especially in this magnificent Chamber, such a play will never be staged.

Some Members asked earlier on whether direct elections could solve all problems. Certainly not, because even with direct elections, much has still to depend on the quality of candidates. But the point is that with direct elections, we can always replace the unsatisfactory with the satisfactory. People of substandard calibre will not be able to stay in office for a further five years after an initial term of five years. And, precisely because an office-bearer can be replaced, the incumbent must hold himself accountable to the people and lobby for their support. In so doing, he will be able to unite the people. That way, however many reforms he proposes, people will still support him, and we will not see so many people coming out to voice their objection. But what is the situation now? The Chief Executive hinted in public that the Mass Transit Railway Corporation Limited should not increase its fares, but even such a livelihood-related comment failed to receive any favourable response from the people, nor was it even as well-received as the 50-hour sit-in staged by Mr LAU Chin-shek at an MTR station to oppose MTR fare increases. Why has the Chief Executive failed to win the people's trust? Why do people refuse to trust the Chief Executive even after he has expressed his concern about their livelihood? All this is because the Chief Executive was not elected to office by them. That is why people do not have too much trust in him. The incumbent Chief Executive did have a period of honeymoon, but that was only very brief. This proves that without the endorsement of the ballot box, trust in the office-bearer is bound to be extremely flimsy. Some have asked, "If direct elections are really that good, then why is there no 100% support, but just 65%?"

Madam President, ours is a pluralistic society where dissenting voices are much treasured as a means to ensure checks and balances. Democracy is necessarily inefficient, but since it can ensure checks and balances and accommodate dissenting voices, the decisions made under it will always command the support of people instead of leading to any division in society. Besides, as far as I can remember, the incumbent Chief Executive also failed to get all the 400 votes in the first-term Chief Executive Election held in 1996. But I have never heard Mr Jasper TSANG say that since Mr TUNG Chee-hwa failed to get all the votes in this coterie election, he should not become the Chief Executive.

Madam President, the truth is that if one wishes to govern with authority and credibility, one must take on board the majority opinions. Unfortunately, the situation now is that the minority are imposing their views on the majority.

I must reiterate that I am very grateful to Mr LEUNG Yiu-chung for his doggedness in moving this motion, and to other Members for their continued support with their votes. A motion on this issue was moved last year, and another one has been moved again this year. I hope that it can be passed as soon as possible. Regrettably, I guess things are not going to change before the current Session of the Legislative Council comes to an end. The people should be offered some means to voice their opinions, and honestly, Members' votes in this Chamber are not the most appropriate means of reflecting the peoples' opinions on this issue. I wish to see the conduct of a referendum, a scientific and direct way of telling all in Hong Kong, of letting all in Hong Kong know, that it is the wish of all to elect the Chief Executive by universal suffrage.

A couple of days ago, we discussed the legalization of soccer betting with the Home Affairs Bureau. Miss CHOY So-yuk then said that this issue should require the holding of a referendum. I applauded and gave my strong support at that time. The reason is that a referendum can most directly reveal the people's aspirations; there can be no room for any sophistry, no room for arguing that a certain survey is not scientific enough as it covers just several hundred respondents. In a referendum, all qualified electors in Hong Kong can cast their votes. The selection of the Chief Executive, in particular, is definitely much more important to Hong Kong than the legalization of soccer betting. That is why I very much wish to see the holding of a referendum to let all people know that the election of the Chief Executive by universal suffrage should be regarded as a matter of course.

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

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, when a reporter asked me today on which day of the past year did I have the hardest time, I told him that I could not tell because I have been tempered into a pure blue flame and I am almost invincible. Actually, I have a very hard time this evening.

Although a lot of Members have thanked Mr LEUNG Yiu-chung for proposing this resolution this evening, I do not want to thank him for we are

pressurized and unhappy and we have a very hard time when we discuss this topic. I also feel sad for the younger generation. Let us sacrifice for the lack of democracy in this generation, but what about the younger generation? As Miss Emily LAU has said pessimistically, she is worried whether the younger generation will have democracy. After listening to our debate today, I am really worried whether the younger generation will have democracy. The debate subject this evening makes me feel pressurized and very unhappy, and I have a very hard time.

Several things make me feel sad this evening. Firstly, I feel sad for Hong Kong people because we have to accept that Mr TUNG Chee-hwa will continue to be the Chief Executive for five years. Some Members think that I should not put all the blame on Mr TUNG Chee-hwa because the Chief Executive was not solely responsible for the fact that the Hong Kong Special Administrative Region (SAR) encountered a financial turmoil for four years after the reunification. I understand that it is unfair to put all the responsibility on the Chief Executive, but the question is Hong Kong needs a leader after all. Yet, a small circle of people elected Mr TUNG Chee-hwa and he has failed to give Hong Kong people an impression that a political leader is leading Hong Kong. This is evidently revealed by the collections of jokes such as *Old and Muddled TUNG* on sale in Hong Kong. Though I do not wish to draw an analogy between such jokes and Mr TUNG, the public really thinks that Mr TUNG is detached from public sentiments and is old and muddled, which is really a tragedy. Therefore, I feel sad for Hong Kong people today.

We have so far failed to choose by ballot a leader whom we can trust. At a time when life is difficult and there is an economic downturn, we need a leader badly, but it does not matter when there is economic prosperity. During an economic downturn, we must be of one mind and we badly need a leader to unite Hong Kong people and make them have confidence in him and trust that he can lead Hong Kong in tiding over the difficulties. Nevertheless, Mr TUNG fails to give Hong Kong people such confidence. In fact, it is not a matter of him being a kind man or not. Sometimes it is a matter of quality. Let us think this over. Mr TUNG has always been a businessman and he lacks experience in election, communicating with the public and pleading for the people. He parachuted on to the post, he was pre-ordained by the Central Authorities and returned by a small circle election. As he lacks experience in struggling together with the public, I will not put all the blame on him. However, the system itself makes me feel very sad.

I also feel sad and sorry for Hong Kong, for the middle class. I have heard a lot of people say that the middle class would have stronger aspirations for democracy when they have grown in numbers. With a higher standard of education, everybody thinks that conditions are ripe for the success of democracy. China will soon see the implementation of democracy because the middle class in China has begun to surge, and democracy should emerge with the middle class. Let us look at the present situation of Hong Kong. Members in this Chamber belong to the middle class, but where is democracy? Hong Kong is a society that has a middle class, but the remarks made by Members today reveal that the development of democracy has to be gradual and orderly. We do not have any idea of equal rights and nobody will ask for a democratic and free society that upholds the rule of law as suggested by Mr MA Ying-jeou. Hong Kong still lacks democracy and it has nothing without democracy. Nobody will say that man is born equal and political rights mean "one person, one vote". It is or should be the idea of the middle class that everybody should have equal rights. What about the existing situation of Hong Kong?

A lot of middle-class Members in this Chamber are functional constituency representatives. Which Member would step forward and say so? Although there are such Members in this Council, we can see from the voting result that only one third of Members support the idea. Where are the majority middle-class Members? Why have the middle-class voters not clearly appealed for democracy in Hong Kong? I feel very sad about this. There is not a strong appeal for democracy despite the standard of education of Hong Kong people, the economic development of Hong Kong and an enormous middle class. So how about the situation in China? When will China have an enormous middle class like Hong Kong? I think that we Hong Kong people, especially those who have received higher education, should shoulder the responsibility of leading Hong Kong towards democracy. What we lack, we lack. But we cannot let Hong Kong lack democracy. This is the second thing that I feel sad about. The intellectuals in Hong Kong should not talk about their conscience and the strength of character of intellectuals because they have not made any civilized appeal. The civilized appeal of the middle class should be "one person, one vote" elections, but this civilized system lacks strong support in this Council.

Thirdly, I feel sad about and disappointed at the remarks made by Mr LEUNG Fu-wah and Mr TAM Yiu-chung from the FTU. They only repeated that the Basic Law could not be amended because it was drafted over four years and eight months after several rounds of solicitation of opinions. They have totally accepted the confines of a birdcage and the fake consultation at that time.

They may have accepted it because they were one of them. Mr LAU Chin-shek was driven away at that time because the Basic Law Consultative Committee could not accommodate him. But that is history and I do not wish to repeat it. Today, no trade union representatives have proposed examining the democratic system from the angle of workers' interests. Conversely, the choice of Taiwan has been trampled on innocently. For instance, some said that the CHEN Shui-bian Government brings about "hatred-oriented politics" and "fear-driven economics". On the trade unions' fight for a ceiling on working hours, after assuming office, Mr CHEN Shui-bian advocated that the weekly working hours should be changed from 48 hours to 44 hours. However, the Kuomintang opposed and proposed 84 working hours every two weeks, which was more progressive than that proposed by the Democratic Progressive Party. Why did the Kuomintang not take such progressive actions when it was in power? They have immediately become progressive after they have become the opposition party. This is the relationship between the replacement of political parties and workers' interests. Originally, the Kuomintang would not support workers but after the replacement of political parties, the Kuomintang has become more progressive than the Democratic Progressive Party. While the Democratic Progressive Party proposed 44 working hours per week, the Kuomintang proposed 84 working hours every two weeks. This shows that workers' ballots are powerful. Yet, the comments of the FTU were not made from the angle of workers' interests. They should use workers' ballots to influence the Government and fight for a minimum wage, a ceiling on working hours and the right to collective bargaining. All this should be the most basic demands of trade unions. How can democracy be alienated from the people's livelihood?

Having mentioned these things that make me feel sad, I wonder how many more years do I have to feel sad about all these things that need to be discussed. I believe the public must have very strong aspirations if we want to fight for democracy in Hong Kong. Therefore, I might as well initiate more signature campaigns and processions because they would be more effective than speaking in this Council. The more I speak, the worse I feel for I am really very disappointed about this Council. Thank you, Madam President.

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, this is the second time that Mr LEUNG Yiu-chung has claimed to

move a resolution for amending the Basic Law in accordance with Article 159 of the Basic Law since he last claimed to move a resolution in January 2000. I am duty-bound to reiterate the position of the Administration on the nature of this resolution. I will also elaborate on the views of the Administration on the substance of the resolution.

Madam President, Article 159 para 1 of the Basic Law provides that the power of amendment of the Basic Law shall be vested in the National People's Congress (NPC). Paragraph 2 provides that the power to propose bills for amendments to the Basic Law shall be vested in the Standing Committee of the NPC, the State Council and the Hong Kong Special Administrative Region (SAR). Amendment bills from the SAR shall be submitted to the NPC by the delegation of the SAR to the NPC after obtaining the consent of two thirds of the deputies of the SAR to the NPC, two thirds of all the members of the Legislative Council of the SAR, and the Chief Executive of the SAR. Article 159 of the Basic Law however does not provide for a specific mechanism.

The Basic Law is the constitutional document of the SAR. Amending the Basic Law is a matter of great importance, and so is putting in place a mechanism for amending the Basic Law. These matters need to be handled with care.

In respect of the establishment of the mechanism for amending the Basic Law, both the Administration and the Legislative Council Panel on Constitutional Affairs (the Panel) have done a lot of work in various areas. The Panel has also held two public hearings.

I believe Members would appreciate that the establishment of the mechanism for amending the Basic Law involves issues that relate to the Legislative Council, the SAR deputies to the NPC and the Chief Executive which are interrelated. These are not issues that can be unilaterally resolved on our own. We need to discuss these issues fully with the various parties concerned.

As regards the issues involving the Central Authorities, we must consult the Central Authorities beforehand. For example, how should the local NPC deputies discharge their duties under Article 159? We need to know whether the General Office of the Standing Committee of the NPC would promulgate more detailed guidelines for the local NPC deputies to discharge their duties under Article 159 of the Basic Law, or whether the local NPC deputies would make their own rules of procedures in this regard. Under our existing

procedures, the SAR Government will study and analyse the matter, and conduct extensive consultations; discuss with the Legislative Council and the Central Authorities; and then put forward proposed options. We think that this is a more appropriate way of dealing with the matter. The SAR Government has worked in conjunction with the Legislative Council and, at the same time, discussed the matter with the Central Government since early 1999.

We can understand certain Members' wish that the mechanism for amending the Basic Law be established by the SAR Government as early as possible. We are now in the process of consulting the Central Authorities. The view of the Central Government is that the issue of establishing the mechanism for amending the Basic Law is a matter of importance and requires careful consideration. The Central Government has indicated that they would study the matter and discuss it with the NPC as many issues involve arrangements relating to the NPC. The SAR Government will continue to follow up the matter.

When Mr LEUNG Yiu-chung claimed in January last year that he proposed a resolution in accordance with Article 159 of the Basic Law, we had stated clearly the position of the Administration. Madam President, I would like to reiterate the position of the Administration on the resolution, that is, in the absence of a mechanism agreed to by all parties concerned at this stage, Mr LEUNG's resolution can only be regarded as his own proposal. From the constitutional point of view, the resolution is premature. It cannot be regarded as a proper way to set in train the procedure for amending the Basic Law.

Madam President, I will now elaborate on the views of the Administration on the substance of the resolution.

There are express provisions in the Basic Law on the method as well as the relevant principles for the selection of the Chief Executive. Article 45 of the Basic Law provides that the Chief Executive of the SAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be specified in the light of the actual situation in the SAR and in accordance with the principle of gradual and orderly progress. The ultimate aim as specified in the Basic Law is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

There are specific provisions in Annex I to the Basic Law on the method for the selection of the Chief Executive. The Chief Executive shall be elected by a broadly representative Election Committee in accordance with the Basic Law and appointed by the Central People's Government. If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the Members of the Legislative Council and consent of the Chief Executive, and they shall be reported to the Standing Committee of the NPC for approval.

Madam President, political development in the SAR is an important matter that has a bearing on society. As the Chief Executive pointed out in his policy address last year, "our political structure outlined in the Basic Law is the manifestation of a spirit which encompasses respect for history and respect for reality. It establishes the principle of gradual and orderly progress and provides the SAR with 10 years during which we can strengthen the foundation of our political structure and accumulate experience through the process of implementation before taking the next steps. Over the past three years, there have been different voices in the community: some favour expediting political references, while others are concerned that Hong Kong's political environment may be changing too rapidly. Constitutional development is obviously a most important subject. It encompasses a wide spectrum of issues. It will have a fundamental bearing on society as a whole. We need to allow for a period of gestation. We also need to create the appropriate conditions and environment, and to enable views to mature through implementation."

Madam President, we are of the view that it is not an appropriate time now to discuss any change in the method for the selection of the Chief Executive. Our urgent task at hand is to secure the passage of the Chief Executive Election Bill by the Legislation Council in order to put in place local legislation as the basis for the Chief Executive election to be held next year.

The Second Chief Executive Election will be held in the end of March 2002, just nine months from now. We hope that the Chief Executive Election Bill can be passed by the Legislative Council on 11 July before the recess. In view of the urgency of the matter, once the principal legislation is passed, we will seek to complete the drafting of a number of subsidiary legislation in order to put in place detailed arrangements relating to the Chief Executive election.



In reviewing the political system of the SAR in the future, we must have regard to the actual situation of the SAR and follow the principle of gradual and orderly progress under Article 45 and Annex I of the Basic Law. We would certainly provide ample opportunities for the public to express their views. We hope that through extensive discussions, the public would express mature views on the future development of the political structure of the SAR and come to a consensus.

In the absence of an appropriate mechanism agreed to by all parties concerned, Mr LEUNG Yiu-chung claimed once again today that he put on the Agenda a resolution for amending the Basic Law in accordance with Article 159 of the Basic Law. The Legislative Council is asked to vote on the resolution, the contents of which have not been subject to extensive consultation and careful examination. This is definitely not appropriate.

Madam President, in view of the various reasons and considerations that I put forth just now, the Administration objects to the resolution moved by Mr LEUNG Yiu-chung today.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, you can now reply.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, I agree with Mr Jasper TSANG's opinion that the debate today is quite creative and does have some originalities. Why would I agree with him? I recalled when I moved a resolution to amend the Basic Law last year, Secretary Michael SUEN told me explicitly that the resolution to amend the Basic Law is only my personal wish. I was unconvinced then but there was nothing I could do at that time. Although my resolution was supported by a number of Members at that time, I could not prove whether or not it was only my personal wish. As such, I have been considering how I should move my resolution this year and show the Government that this is not my personal proposal. I have thus organized a signature campaign with a non-government organization and collected 30 000 signatures. Madam President, this revealed that the resolution is not only my personal wish, many citizens are also in support of this. Though I am still unsure whether it reflects the opinion of the majority, but we can discuss it further at a later stage.

However, Secretary Michael SUEN did not give his speech today, and Secretary Clement MAK has stood in for him. So what is new this time around? He stated that I "claimed" to move a resolution for amending the Basic Law in accordance with Article 159 of the Basic Law. I do not know how the President made the ruling on the resolution, however, I have moved the resolution in accordance with Article 159 of the Basic Law which stated that Members of the Legislative Council have the right to amend the Basic Law. So what did the Secretary mean by "claimed"? Did he mean I am making a false request? Have I distorted the facts to deceive the President, so that the President would allow me to move the resolution for debate in this Chamber? No, the President is already shaking her head. It is fortunate that the President is making such a response. I have to thank you, Madam President.

I do not know what is meant by "claimed". Generally speaking, the word "claimed" connotes some untruthful implications. If my resolution is "untruthful", it means that I do not possess such power to do so. In the case that I do not have such power, would the Secretary clarify to the Council whether or not the Basic Law has not empowered Members of the Legislative Council to move any amendments? It would be most desirable if you can give me with an answer. Over the past year, we have been trying to communicate with you through the Panel on Constitutional Affairs and discuss with you what mechanism is in place for amending the Basic Law. The Secretary has just mentioned that they would study and discuss the issue with the Central Government. Unfortunately, the Government has not yet told me what has been studied, discussed and considered to date. The Government has not told me anything, and has only done something abstract to mislead, delay and deceive us. The Government has achieved nothing. What does that mean? Now that the Government said that I "claimed" to do so, Madam President, I have the feeling that it is an insult to the Council, an insult to the Basic Law, a negation of the letter of the Basic Law. I found it utterly unfair, and also unfair to the President, I do not know if I should say this, but I found the Government's remark an insult to the President's decision of allowing me to move the resolution for debate today.

However, I do not think I should dwell on a discussion of the wordings, as this is the approach frequently adopted by the Government. When the Government dislikes someone, it will suppress him, distort his words or ignore him by all possible means. Since the Government said that it was only my

personal wish to move the resolution, it will also be in vain though I have brought along the 30 000 signatures today. Why? It is because they have all shut their eyes and turn a deaf ear to the fact, believing I was only trying to stir up troubles.

Mr Jasper TSANG said that 30 000 signatures do not mean anything at all. What would it mean? There are almost 7 million people in Hong Kong, would 30 000 people be representative? If even the support by 60% of the respondents is not significant, the opinion of 30 000 people can also be ignored. Madam President, I agree with this view. Compared to nearly 7 million people, 30 000 people is only a very small proportion and a comparison can hardly be drawn. Why do we still do so? We are only trying to make the best of the very limited abilities and resources. In fact, what we have achieved this time was, in principle and in the truth of fact, outside our scope of work. In respect of amendment of the Basic Law, just as another Member has mentioned, we should conduct a comprehensive consultation, and it should be done by the Government. As the Government has failed to do so, we have thus acted beyond our means. What Mr Jasper TSANG said was definitely correct.

However, Madam President, is it true that a survey, which is not conducted territory-wide, would have limited representation? I totally disagree with this. In the past, a lot of citizens told me that they did not live a happy life, particularly after the reunification. As the Chief Executive was not returned by one-person-one-vote election, many policies put forward by him run counter to public sentiments, and he did not deal with matters fairly. For example, I often criticize the Chief Executive for nepotism, that officials are not impartially chosen on their merits in an open manner. With regard to the composition of the Executive Council, I have the feeling that the majority of its members are pro-Central Government or occupy important positions. Therefore, there is no dissenting voice. It does not only happen in the Executive Council, but also in other advisory committees with no actual powers, such as the Housing Authority and the Transport Advisory Committee. What does it reveal? It reveals that if the Chief Executive of the SAR is not returned by an one-person-one-vote election, the system of accountability will not exist. The Chief Executive may do anything he wishes to do, which should really be described as the personal will of the Chief Executive. This is the reason why we oppose coterie elections.

I very much agree with Mr Albert CHAN's point that a certain kind of system will produce a certain kind of people, just as the slang expression "foul

grass out of a foul vase" which I have quoted some time before. Why is this the case? The Chief Executive elected by a coterie election will only be accountable to the same coterie group, not to other people who outnumber the coterie. Madam President, I think you are also very familiar with the situation in this Council that, when we were discussing issues related to the people's livelihood, many Members would accuse the Government of collusion with the business sector, favouritism to business groups and failure to consider the needs of the general public. The crux of the problem is that the person was elected on such a basis, and thus it will have such results.

Various Members have mentioned that our discussion today is repetitive, without any new points and new ideas. This I agree. Why? All along, we have been discussing a problem that we considered to be a major issue of right and wrong, not an academic theory that needs to be studied, thus we will not come up with new ideas and new points. We cannot deliberately make up other viewpoints. Election by universal suffrage is an inevitable trend of social development, and it is also much coveted by the public, we therefore do not need to search for references or theories to support our point. I only wish to point out that this is the basic right in human rights. In the course of social development, the respect for public opinions is the major foundation of institutions. Most important of all, the livelihood of the people could not be better protected without such a foundation.

Undoubtedly, I agree with Mr Jasper TSANG that we cannot put all the blame on the Chief Executive or any person. I agree with his view. Mr Albert CHAN has also mentioned that most issues cannot be reversed by a single person. Yet, the crux of the issue is why we would demand an election by universal suffrage? The main reason is, I hope that we will establish a system of accountability. It means that the Chief Executive is accountable to us and has to be responsible to us and explain different situations to us. If he could not provide us with satisfactory answers, he would have to face the problem of being put off the stage. This is the major issue. I think such a system would then be able to provide more protection. By more protection, I do not mean we are not trying to elect someone who can save us from poverty, or saying that the problem of the disparity between the rich and the poor will definitely be solved completely. This is not the case, and the elected person is not an elixir. We should not expect that our livelihood would be improved drastically with direct elections. This is not necessarily the case. Just as many other Members have mentioned, we may have to pay a higher price for democracy, it is only that while when we are paying more, we may also get better protection.

I have also stated that, democratic election would not guarantee the election of a good candidate. We are all aware of this point and it is utterly true. Some people may say that HITLER was also elected, and it is not surprising that many bad leaders were also elected by a democratic process. However, if we have established a democratic mechanism, we will have a chance to extricate the incapable person in power out of office. This is the principle we wish to be implemented. In this Chamber today, I hope Members should understand that I am not saying that an election by universal suffrage will provide us with an elixir for absolute protection. This is not the case. It will only provide us with a mechanism that enables us to have more choices, more accountability and more protection.

On the other hand, Members have been challenging us that our remarks lack popular support. Although the 30 000 signatures do not mean any significance, but I would also like to challenge those Members to take up the work if they say I do not have popular support! Why do they not conduct a survey with popular support on our behalf! Why do we not conduct a more comprehensive consultation to find out what exactly are the views of the public, and to establish a broader base of popular support? Miss Cyd HO said the best approach is a referendum, to allow the public to make the choice. It will be a good thing to do, so, nobody would suspect that some people have shown favouritism towards us or regard us as "trouble makers". I do not wish to keep on repeating that we have gained the full support of the public, I hope that we can work in an open, impartial and comprehensive manner. As such, the public can make their choice and this is the most desirable approach, many controversies could be obviated.

The Secretary said that the resolution to amend the Basic Law today is "premature" and "improper" and it is "not at an appropriate time". On one hand, I would suggest the Secretary to ask the public whether time is ripe now, and on the other, it is perfectly fine for the Secretary to say that it is not the appropriate time now, but would he tell us when will the appropriate time be? When will time be ripe? The Government should not think that by saying it is "premature" and "not an appropriate time" the problem would be solved. If the Government is serious in addressing the issue, it should not be repeating the same comment that it is not an appropriate time after I have moved the same resolution. It will be repeated again when I move the same resolution again. If the Government is serious in addressing the problem, would it tell us when time will be ripe, whether the community is mature enough by that time and also the timeframe for implementation.

Madam President, many people said that election by universal suffrage may jeopardize social stability, or that if we amend the Basic Law now, we would threaten the authority of the Basic Law. Notwithstanding this, I believe that, whether or not something is authoritative is not a matter of how you describe it, whether or not something is stable is also not a matter of how you describe it. Many things are determined by objective factors. I think the Basic Law is not authoritative because it was not formulated by the people through a democratic procedure. It is not correct to say that the amendments would threaten the authority of the Basic Law. On the contrary, there may be a complete turn for the better after amendment through a democratic procedure and it will then become more authoritative. Not that we do not want the Basic Law to be more authoritative, but we cannot expect to make it more authoritative merely by lip service. Shall we consolidate its authority by means of a democratic procedure, and make the Basic Law answer the people's aspirations, to make it more authoritative?

Madam President, this is the second time I move a resolution to amend the Basic Law. I would not dismiss the possibility of moving it a third or fourth time. I hope that everyone would be mentally prepared that I will definitely do so. What is the main reason for this? I believe, to our society, many provisions of the Basic Law are outdated, and there is a need for amendment so that the provisions will be in line with the development needs of our society. As such, I will persistently move this motion to amend the Basic Law. Madam President, I so submit.

**PRESIDENT** (in Cantonese): Before I put the question to you, I wish to remind Members that Article 159 of the Basic Law of Hong Kong Special Administrative Region of the People's Republic of China stipulates that the passage of this motion by the Council requires the consent of two thirds of all the Members of the Council.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Yiu-chung, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for three minutes.

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

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

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

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

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

THE PRESIDENT announced that there were 59 Members present, 21 were in favour of the motion and 37 against it. Since the question was not agreed by a two-thirds majority of all the Members of the Council, she therefore declared that the motion was negatived.

### **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now suspend the Council until 2.30 pm tomorrow.

*Suspended accordingly at eighteen minutes past Ten o'clock.*



**Annex I****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Mr TAM Yiu-chung's supplementary question to Question 2**

According to the records of the Social Welfare Department (SWD), a total of 146 complaints were received between April 2000 and March 2001. Upon investigation, 59 cases were found to be substantiated or partially substantiated, and advisory or warning letters were issued as appropriate. All the concerned residential care homes for elders (RCHEs) made rectifications pursuant to the issue of advice/warnings to the satisfaction of the SWD.

The Administration will continue to vigorously pursue initiatives to improve the service quality of RCHEs.

## Annex II

## WRITTEN ANSWER

**Written answer by the Secretary for Planning and Lands to Mr Henry WU's supplementary question to Question 3**Civil Servant's Participation in Competition  
1998-99 to 2000-01

Information on civil servants participating and winning in the four competitions organized or co-organized by the Government, in which entry restrictions were imposed on civil servants working in the relevant departments, is as follows:

<i>Competition</i>	<i>No. of Participants*</i>	<i>Civil Servants*</i>	
		<i>Participating</i>	<i>Winning</i>
1. Design Competition for the Improvement to Office Accommodation for the Wing Shun Street Vehicle Pound, Tsuen Wan	31	3	Nil
2. Centre for Youth Development Architectural Design Competition	68	6	Nil
3. Public Housing in the New Era: Shui Chuen O Architectural Design Competition	62	7	The third prize is won by civil servants
4. Roof Shelter for Kadoorie Pier Architectural Design Competition	37	2	Nil

\* Individual or group

## Annex III

## WRITTEN ANSWER

**Written answer by the Secretary for Security to Mrs Sophie LEUNG's supplementary question to Question 4**

We do not have statistics on shop theft cases nor the number of persons arrested for the crime in overseas countries and cities. Statistics on the number of all kinds of theft cases in overseas countries and cities are at Appendix for Members' reference.

## Appendix

## Reported Cases and Crime Rate of Theft (All Kinds) for Various Countries/Cities (1998-2000)

<i>Countries/Cities</i>	<i>1998</i>		<i>1999</i>		<i>2000</i>	
	<i>Reported Cases</i>	<i>Crime Rate*</i>	<i>Reported Cases</i>	<i>Crime Rate*</i>	<i>Reported Cases</i>	<i>Crime Rate*</i>
Hong Kong	39 976	601.5	42 395	630.8	43 522	640.3
Japan	1 792 475	1 417.1	1 914 630	1 507.8	2 136 337	1 683.5
Tokyo	208 875	1 770.1	224 696	1 896.4	242 567	2 021.4
United Kingdom (England and Wales)	3 211 479	6 174.7	NA	NA	NA	NA
Singapore	30 522	789.6	22 571	579.7	19 974	497.2
Republic of Korea	96 954	206.3	94 367	199.4	NA	NA
Indonesia	91 606	44.8	116 038	55.1	NA	NA
Jakarta	14 686	92.0	12 646	130.1	NA	NA
Malaysia	114 128	515.0	161 708	711.8	NA	NA
Kuala Lumpur	17 495	1 257.9	22 090	1 569.8	NA	NA
Australia	1 156 234	6 205.9	1 178 587	6 189.9	NA	NA
Canada	1 281 525	4 229.4	1 210 171	3 968.9	NA	NA
Toronto	93 993	3 725.0	88 506	3 499.6	NA	NA
Ottawa	32 343	4 868.7	30 118	3 973.4	NA	NA

Note: The definitions, counting rules and coverage of crime across countries/cities may be different.

\* Number of theft cases per 100 000 population.

NA — not available

**Annex IV****WRITTEN ANSWER****Written answer by the Secretary for Security to Mr Henry WU's supplementary question to Question 4**

According to the relevant statistics, amongst the juveniles aged between seven and 15 years who have committed shop theft in the past three years, about 6% have been previously convicted for the same offence. For those young persons aged between 16 to 20, about 13% were previously convicted for shop theft in the preceding three years. Detailed statistics are at Appendix for Members' reference.

Percentage of defendants convicted of shop theft for years 1996 to 2000 (January to June)  
and having convicted of shop theft in the preceding three years

Age Group	1997			1998			1999			2000 (January to June)		
	Persons			Persons			Persons			Persons		
	Defendants	previously		Defendants	previously		Defendants	previously		Defendants	previously	
	convicted of	convicted of		convicted of	convicted of		convicted of	convicted of		convicted of	convicted of	
	shop theft	shop theft	Percentage	shop theft	shop theft	Percentage	shop theft	shop theft	Percentage	shop theft	shop theft	Percentage
	(a)	(b)	(b)/(a)x100	(a)	(b)	(b)/(a)x100	(a)	(b)	(b)/(a)x100	(a)	(b)	(b)/(a)x100
7-15	118	8	6.8	94	4	4.3	79	7	8.9	24	0	0
16-20	514	75	14.6	362	56	15.5	339	34	10.0	176	22	12.5
21-30	899	222	24.7	811	197	24.3	848	204	24.1	529	141	26.7
31-40	888	260	29.3	865	207	23.9	919	228	24.8	491	134	27.3
41-50	528	122	23.1	488	103	21.1	607	125	20.6	367	68	18.5
50-60	179	24	13.4	183	25	13.7	231	18	7.8	147	17	11.6
61 and above	101	10	9.9	151	22	14.6	125	12	9.6	101	7	6.9
Total	3 227	721	22.3	2 954	614	20.8	3 148	628	19.9	1 835	389	21.2

## Annex V

## DUTIABLE COMMODITIES (AMENDMENT) 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) By renumbering the clause as clause 2(1).</p> <p>(b) In subclause (1), in the proposed definition of "recognized electronic service" -</p> <p style="padding-left: 40px;">(i) by adding "電子" after "認可";</p> <p style="padding-left: 40px;">(ii) in the Chinese text, by adding "電子" after "指明".</p> <p>(c) In subclause (1), in the proposed definition of "specified electronic service provider" -</p> <p style="padding-left: 40px;">(i) by deleting "section 3A(1)" and substituting "Schedule 1A";</p> <p style="padding-left: 40px;">(ii) by adding "電子" before "服務".</p> <p>(d) In subclause (1), in the proposed definition of "specified eligible agent", by deleting "section 3A(2)" and substituting "Schedule 1B".</p> <p>(e) In subclause (1), in the proposed definition of "保安裝置", by deleting "核證某人是利用某認可" and substituting "認證某人是利用某認可電子".</p> <p>(f) By adding -</p> <p style="padding-left: 40px;">"(2) Section 2 is amended by adding -</p> <p style="padding-left: 80px;">"(5) The Secretary for Commerce and Industry may, by notice published in the Gazette, amend Schedule 1A or 1B; and a notice under this subsection is subsidiary legislation."."</p>

ClauseAmendment Proposed

3

- (a) By deleting the proposed section 3A.
- (b) In the Chinese text, by deleting the proposed section 3B and substituting -

"3B. 關於利用認可電子服務  
發送資料的推定

(1) 凡由關長接收到的資料是利用某認可電子服務發送的，如有證據顯示該資料的發送人的身分已藉某保安裝置經認證的，則在沒有相反證據的情況下，該證據即可作為證據證明獲發給該保安裝置的人 —

(a) 提交該資料；或

(b) 作出該資料中載有的陳述、申報或聲明。

(2) 凡由關長接收到的資料是由按照第 3D 條獲授權的指明合資格代理人利用某認可電子服務發送的，在該資料中點名為提交該資料或作出該資料中載有的陳述、申報或聲明的人的人，在沒有相反證據的情況下，須就本條例的目的視為 —

(a) 提交該資料的人；或

(b) 作出該資料中載有的陳述、申報或聲明的人。".

- (c) In the proposed sections 3C(1) and (2) and 3D(1), by adding "電子" after "認可".

4

In the proposed section 6(1)(ea), by deleting "required to be given" and substituting "under this Ordinance".

ClauseAmendment Proposed

- 8
- (a) In subclause (1)(a), by deleting "("有關項目")".
  - (b) In subclause (1)(b), by deleting "有關項目" and substituting "牌照、許可證、簿冊或其他文件".
  - (c) In subclause (2), in the proposed section 11A(3)(a) -
    - (i) by deleting "("有關項目")";
    - (ii) by deleting "有關項目" and substituting "牌照、許可證、簿冊或其他文件".
  - (d) In subclause (2), in the proposed section 11A(3)(b), by deleting "有關項目" wherever it appears and substituting "牌照、許可證、簿冊或其他文件".
- 9(3)
- (a) In the proposed section 22(7), by adding ", in accordance with this section," after "furnish".
  - (b) In the proposed section 22(7), by adding "進口或出口" before "的本條例".
  - (c) In the proposed section 22(7)(b), by adding "予關長" before "的陳述書".
  - (d) In the proposed section 22(7)(c), by deleting everything after "specified" and substituting "for the furnishing of a statement under subsection (1).".
  - (e) In the proposed section 22(8)(a), by deleting everything after "Commissioner" and substituting "in accordance with that subsection, except that the statement shall be furnished within 14 days after service of the notice or such longer period as the Commissioner may specify in the notice;".



ClauseAmendment Proposed

- (f) In the proposed section 22(9), by deleting "a statement in relation to goods to which this Ordinance applies in the case of a ship or aircraft that arrives in or departs" and substituting ", in accordance with this section, a statement that no goods to which this Ordinance applies were carried in a ship or aircraft that arrived in or departed".
- (g) In the proposed section 22(9)(b), by deleting everything after "specified" and substituting "for the furnishing of a statement under subsection (2).".
- (h) In the proposed section 22(10)(a), by deleting everything after "Commissioner" and substituting "in accordance with that subsection, except that the statement shall be furnished within 14 days after service of the notice or such longer period as the Commissioner may specify in the notice;".

11

By deleting the clause and substituting -

**"11. Misrepresentation, concealment,  
removal of goods, and defacement  
of licence or permit**

Section 36(1) is amended -

- (a) by repealing "whether or not such statement, declaration or information is made verbally or in writing" and substituting "however made or furnished";
- (b) by repealing "或申報" and substituting "、申報或聲明".

12

- (a) In the proposed section 42A(2)(a)(i), by deleting "under subsection (1)(b)" and substituting "by the Commissioner".

ClauseAmendment Proposed

- (b) In the proposed section 42A(2)(b), by deleting "利用認可服務".

## New

By adding -

**"12A. Schedules 1A and 1B added**

The following are added before Schedule 1 -

"SCHEDULE 1A [s. 2]

SPECIFIED ELECTRONIC SERVICE  
PROVIDERS

1. Tradelink Electronic Commerce Limited

SCHEDULE 1B [s. 2]

SPECIFIED ELIGIBLE AGENTS

1. Tradelink Electronic Commerce Limited".

**Annex VI****ATTACHMENT OF INCOME ORDERS (AMENDMENT) BILL 2001****COMMITTEE STAGE**Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In paragraph (a) -</p> <p>(i) in the proposed section 20(1A)(a), by adding "and conduct" after "record";</p> <p>(ii) in the proposed section 20(1A)(b), by adding "record and" after "past".</p> <p>(c) In paragraph (b), in the proposed section 20(2A), by deleting "an" after "after" and substituting "a".</p>
3	<p>(a) In paragraph (a) -</p> <p>(i) in the proposed section 9A(1A)(a), by adding "and conduct" after "record";</p> <p>(ii) in the proposed section 9A(1A)(b), by adding "record and" after "past".</p> <p>(d) In paragraph (b), in the proposed section 9A(2A), by deleting "an" after "after" and substituting "a".</p>
4	<p>(a) In paragraph (a) -</p> <p>(i) in the proposed section 28(1A)(a), by adding "and conduct" after "record";</p>

ClauseAmendment Proposed

- (ii) in the proposed section 28(1A)(b), by adding "record and" after "past".
- (b) In paragraph (b), in the proposed section 28(2A), by deleting "an" after "after" and substituting "a".