

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 30 January 2002

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.

DR 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.

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 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

DR THE HONOURABLE LO WING-LOK

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.

THE HONOURABLE MA FUNG-KWOK

**MEMBERS ABSENT:**

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

THE HONOURABLE WONG SING-CHI

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

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

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

MR JOHN TSANG CHUN-WAH, J.P.  
SECRETARY FOR PLANNING AND LANDS

**CLERKS IN ATTENDANCE:**

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

## TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Commodities Trading (Contract Levy) (Amendment) Rules 2002 .....	9/2002
Mutual Legal Assistance in Criminal Matters (United Kingdom) Order (Cap. 525 sub. leg.) (Commencement) Notice 2002 .....	10/2002
Attachment of Income Orders (Amendment) Ordinance 2001 (20 of 2001) (Commencement) Notice 2002 .....	11/2002
Attachment of Income Order (Amendment) Rules 2001 (L.N. 260 of 2001) (Commencement) Notice 2002 .....	12/2002
Matrimonial Causes (Amendment) Rules 2001 (L.N. 270 of 2001) (Commencement) Notice 2002 .....	13/2002

## ORAL ANSWERS TO QUESTIONS

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

### **Improving Living Environment of the People**

1. **MR ALBERT CHAN** (in Cantonese): *Madam President, in his 1999 policy address, the Chief Executive states, "a world-class city must have a pleasant and safe living environment". However, the living environment of people in old urban areas has seen little improvement. Moreover, rural development in the New Territories lacks planning, the New Territories Small House Policy has given rise to many environmental problems, and the living environment of many villages is still deplorable. In this connection, will the Government inform this Council:*

- (a) *of the relevant measures it had drawn up when it stated the objective to improve people's living environment;*
- (b) *of the measures that have already been implemented, are still being implemented, or are awaiting implementation for achieving the above objective; the specific target completion time of the measures to improve the living environment in old urban areas and address environmental problems arising from the New Territories Small House Policy; and*
- (c) *whether it has drawn up further specific measures to thoroughly solve the problems concerning people's living environment; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, to improve the living environment of our citizens, the Chief Executive announced a number of measures in his 1999 policy address. I will answer Mr CHAN's question by going through those measures which come under the purview of the Planning and Lands Bureau. These measures include urban renewal, beautification of the Victoria Harbour and enhancing the quality of buildings. Mr CHAN also asked about the planning for rural development in the New Territories, on which I would also respond. Will Members please understand that as the coverage of Mr CHAN's questions is wide and the number of subjects large, my reply will have of necessity to be relatively long.

On urban renewal, the Government put forward four major measures at the time:

- (i) to publish a White Bill on the establishment of the Urban Renewal Authority (URA) for public consultation before introducing the Bill into the Legislative Council;
- (ii) to formulate the Urban Renewal Strategy (URS) as the blueprint for urban redevelopment for the next 20 years;
- (iii) to incorporate the concept of heritage preservation into urban renewal projects; and

- (iv) to put in place financial arrangements for the implementation of the urban renewal programme.

To protect the Victoria Harbour and make it more beautiful, the Government put forward three major planning related measures:

- (i) to scale back the reclamation planned for the Harbour;
- (ii) to initiate studies and reviews on the use of the land along the waterfront on both sides of the Harbour, to provide additional pedestrian facilities along the waterfront and to allocate venues for arts, cultural and recreational activities; and
- (iii) to hold an open competition to create a new look for the Harbour.

In order to promote building maintenance and environmentally friendly buildings, the Government put forward three major measures:

- (i) to propose a scheme on preventive maintenance of buildings for public consultation;
- (ii) to step up clearance of high risk unauthorized rooftop structures; and
- (iii) to promote energy efficiency in building design.

I will now brief Members on the implementation of these measures.

As regards urban renewal, the Urban Renewal Authority Bill was published in the Gazette in the form of a White Bill in October 1999. After consulting the public, we introduced the Bill into this Council in February 2000. The Bill was passed in June 2000. Under the Urban Renewal Authority Ordinance, one of the purposes of the URA is to preserve buildings and sites of historical, cultural or architectural interest.

The URA was established in May 2001. Following a public consultation exercise on the draft URS, the URS was finalized in November 2001. The Strategy was issued to the URA to provide policy guidelines in the implementation of a massive 20-year urban renewal programme.



The URA announced the implementation of three "early-launch" projects in Sham Shui Po, Tai Kok Tsui and Wan Chai respectively three weeks ago. These projects will contribute towards the improvement of the environment and the quality of life of the residents in these old urban districts.

The URA is preparing its draft five-year corporate plan and draft annual business plan for submission to the Financial Secretary for approval. The Government will consider the necessary financial support to the URA to facilitate the implementation of the urban renewal programme in the context of scrutinizing the draft plans. We will provide all necessary assistance to the URA to expedite its work in rejuvenating old urban areas.

As regards planning for the Victoria Harbour, the Government has significantly reduced the scale of reclamation in the Harbour. The total area of reclamation in South East Kowloon, Central Reclamation Phase III and Wan Chai Development Phase II has been reduced from 376 hectares to 180 hectares. This reflects the Government's sincerity and determination to protect the Harbour.

Moreover, taking into account public views, the Government has revised and improved several development plans on both sides of the Harbour. Extensive public consultation was carried out on the development plans in 2000. These development plans include the overall planning and feasibility study of the South East Kowloon Development completed in mid-2001; the planning and feasibility study of the Wan Chai Development Phase II completed in late 2001; and the detailed design of the Central Reclamation Phase III to be completed early this year.

We have reserved land for the building of world-class waterfront promenades and pedestrian linkages within the above development projects. Upon completion of these projects, we will build a continuous promenade along the waterfront on each side of the Harbour. Part of the waterfront promenades will be reserved for entertainment facilities, retail shops and sidewalk cafes for the enjoyment of tourists and the public.

Apart from the above development projects, a "Planning Study on the Harbour and its Waterfront Areas" was launched by the Planning Department in December 1999 with a view to exploring ways to further enhance the attractiveness of the waterfront areas of the Harbour. The possibilities

considered include the provision of comprehensive pedestrian links between the waterfront areas and the hinterland, the development of more tourist spots and the improvement of the design of waterfront areas and related facilities. The Planning Department completed the first stage of the Study and carried out a public consultation exercise on the initial findings in 2001. The Study was widely supported by the public and we now plan to formulate a harbour planning framework as the next step.

Besides, we launched a major open competition in April 2001 to invite conceptual proposals for the development of a 40-hectare waterfront site at the south western tip of Kowloon into an integrated arts, cultural and entertainment district. We received 161 entries and the response to the competition has been most encouraging. When the area is fully developed, world-class facilities will be provided, offering more opportunities for our citizens to enjoy arts and cultural activities and improving their quality of life.

With regard to our long-term planning, the Planning Department is now conducting the "Hong Kong 2030: Planning Vision and Strategy" Study. The main objective of the Study is to provide a quality living and working environment through land use planning. The Planning Department is now conducting the Stage Two Public Consultation of the Study concerning various key issues on long-term planning. We shall consult the Panel on Planning, Lands and Works on the Study shortly.

In November 2000 to March 2001, the Task Force on Building Safety and Preventive Maintenance under this Bureau widely consulted the public on its proposed strategy to promote building safety and timely maintenance. We subsequently announced the implementation plan for the comprehensive strategy. The main features of the strategy include enhanced support for building owners and strengthening co-ordination in enforcement against unauthorized building works.

The various proposals in the comprehensive strategy are being implemented progressively. As regards enhancing support for building owners, we merged the Building Safety Improvement Loan Scheme and the Fire Safety Improvement Loan Scheme in July 2001 into a Comprehensive Building Safety Improvement Loan Scheme with a loan fund of \$700 million. Under the new scheme, application procedures are simplified and streamlined. Security requirements are also made less stringent than the old schemes.

As regards strengthening enforcement against unauthorized building works, the Buildings Department has been conducting "blitz" operations in which unauthorized building works on hundreds of buildings are cleared. Our original plan was to clear unauthorized building works in 1 500 buildings this year. To expedite the clearance programme, we awarded 60 contracts to building professionals at the end of 2001 to cover the inspection of 3 200 buildings for necessary enforcement action.

At the same time, the Buildings Department, in collaboration with other enforcement departments, has been surveying target buildings since late 2000 to advise owners and owners' corporations of the repairs and demolition works required under a pilot Co-ordinated Maintenance of Buildings Scheme. Where necessary, joint enforcement action would be taken. In 2001, we identified 150 buildings, mainly located in old urban districts, as our target buildings. Building repairs and improvement works have already been launched in 124 out of the 150 target buildings.

As many of the problems we face in our living environment relate to building design, we announced in October 2000 our plan to promote the construction of environmentally friendly buildings and promulgated in February 2001 the first Joint Practice Notes to promote the construction of green features by exempting such features from the calculation of gross floor area and site coverage. So far, 78 building plans with environmentally friendly features have been approved. By encouraging the construction of more environmentally friendly buildings, we seek to further improve the living environment in Hong Kong.

As regards developments in the New Territories villages, eligible indigenous villagers in the New Territories can apply for the construction of small houses for their own use under the Small House Policy. Over the years, many small houses have been built in "Village" zones in a sporadic manner. This has posed site constraints to the provision of facilities in improving the living environment in the villages.

To help improve the situation, the Lands Department has proposed a Village Layout Plan Scheme for implementation in the indigenous villages. The Administration is consulting the Heung Yee Kuk and the Rural Committees on this proposal. Should the Scheme be accepted by the parties concerned, the Lands Department will work with the villagers in drawing up village layout plans.

These plans will enable small house developments to proceed in a co-ordinated manner for proper planning of village facilities.

In addition, the Government has improved the planning and land use in the rural New Territories through a range of measures, including the formulation of Outline Zoning Plans, taking enforcement action against unauthorized developments, clearance of illegal occupation on government land and the implementation of environmental improvement works. The Task Force (Black Spots) under the Lands Department has improved and cleaned up over 1 700 environmental black spots since its establishment in 1994. The Central Enforcement and Prosecution Section of the Planning Department has stopped over 1 500 unauthorized developments since its establishment in 1994. The Home Affairs Department also implements a Rural Public Works Programme of small to medium scale projects to upgrade the infrastructure in the rural districts. All these measures are aimed at improving the living environment in the rural areas.

In the long run, we hope to achieve optimum utilization of our valuable land resources and to meet the needs of the community through our current review of the Small House Policy. The review involves a number of complex and inter-related issues which we are now handling carefully. Upon the completion of the review, we will announce the proposals and consult the public. We are also planning to embark on a comprehensive review on land use in the New Territories with a view to identifying long-term solutions to problems associated with land use planning and management in the New Territories. In this connection, the Planning Department will shortly commission a consultant to conduct a study on the subject.

Since the 1999 policy address, the Government has made good progress in implementing various measures on urban renewal, beautification of the Victoria Harbour, promotion of building maintenance and environmentally friendly buildings, and improving the living environment in the rural New Territories. Besides continuing our current effort, we will draw up new initiatives as appropriate to meet changing circumstances for continuous improvement of our living environment.

**MR ALBERT CHAN** (in Cantonese): *Madam President, though the Secretary spent 13 minutes to read out a lengthy main reply, I can see no real improvement*

*in any of the districts. The fact remains that the environment in old areas and many villages are neither pleasant nor safe, let alone being beautiful. Will the Secretary inform this Council when residents living in appalling conditions in these old areas and rural areas can see some specific work done by the Government to improve their living environment so that the undertaking made by the Chief Executive can materialize and a pleasant living environment created for the villagers? Will the Secretary give us a timetable?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I do not agree with the Honourable Albert CHAN's point about the appalling living environment of many people. A moment ago, I went to great lengths describing to Members the progresses made by the Government in all areas. So, Members can see that the Government has done a lot of work in various aspects. I think the relevant developments or projects have made improvements in different areas in Hong Kong.

**PRESIDENT** (in Cantonese): Honourable Members, we have nine Members wishing to raise supplementaries and we have spent 14 minutes on the questions raised by Mr Albert CHAN and the answers given by the Secretary. To allow other Members to raise supplementaries, I will give several minutes more for supplementaries.

**MR LAU WONG-FAT** (in Cantonese): *Madam President, will the Government inform this Council of the number of workers sent by the authorities to clean the streets in the vast rural areas to improve the living environment there and the frequency of the street cleansing work done?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I do not have the information on hand but I will refer the question to the Environment and Food Bureau, which may perhaps provide a written reply. (Annex I)

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, in the 21st paragraph of the main reply, it was mentioned that eligible indigenous villagers*

*in the New Territories could apply for the construction of small houses for their own use and a Village Layout Plan Scheme was in the pipeline. Will the Secretary inform this Council of the number of such applications received by the authorities so far; the speed with which the applications are being processed; and whether the authorities have started to consult the public in respect of the Scheme?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the first part of the Honourable CHAN Kam-lam's supplementary question is about the number of small houses. Since the Government implemented the Small House Policy in 1972, we have received 83 300 applications as at end September last year. We have processed 68 500 applications and we are actively processing 14 800 outstanding applications. Around 1 000 applications are submitted each year. Since each application requires the staff responsible for its approval to ensure the applicant is a *bona fide* indigenous villager and the lot is suitable for the construction of small houses, cases will inevitably accumulate. We have made arrangements to centralize the processing of non-complicated cases to expedite the examination and approval procedure. We will continue to find feasible alternatives to quicken the processing of the relevant applications.

The Village Layout Plan Scheme is just a proposal. We have started consultation with the Heung Yee Kuk and the relevant villagers. With the endorsement of the villagers, we may carry out a trial run of the Scheme on one or two villages to find out how well the Scheme fares.

**MR ALBERT HO** (in Cantonese): *Madam President, though the Secretary did not agree with Mr Albert CHAN's opinion about a lack of noticeable improvement in the living environment of old areas and about poor planning, I do not think the Secretary can easily deny that planning for the New Territories is rather chaotic and that adequate improvement has long been absent. I have to point out that at the moment buildings in such areas still lack sewers and roads, many land boundaries are still unclear and in some cases even the power base to acquire land and the relevant provisions in the law are unclear.*

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

**MR ALBERT HO** (in Cantonese): *Madam President, the Secretary said a consultant would shortly be commissioned to conduct a study on land use planning and suggest ways to improve the environment. But this is in fact an important issue of governance. Who else knows better than the Government to manage such a vast stretch of land, including conducting planning and devising development strategies for the villages, all of which may involve law reforms before the goals can be reached? Such work cannot possibly be conducted by a consultant. Will the Secretary inform this Council which consultants are qualified to do the job? Moreover, will the Secretary inform this Council whether he will consult the public, including this Council, to reveal the terms of reference of the study to be carried out by the government consultant and what information the consultant will be requested to provide?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, in the 24th paragraph of the main reply, I mentioned that the consultant would chiefly be carrying a review on land use planning. The issues mentioned by Mr Albert HO will certainly be dealt with by the Government direct.

**MR ALBERT HO** (in Cantonese): *Madam President, my supplementary question is: Before the Government appoints a consultant, will it consult this Council, stating what topics the consultant will be studying so that we may give our comments?*

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

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, no, I have nothing to add.

**MR JASPER TSANG** (in Cantonese): *Madam President, in the eighth paragraph of the main reply, the Secretary said that three weeks ago the URA had announced the implementation of the so-called three "early-launch" projects. To residents living in old areas awaiting renewal, the announcement came too*

*late and the number of projects was too few. Will the Secretary inform this Council when the URA will announce its draft five-year plan and draft annual business plan and for how long the residents concerned will have to wait before they can see the renewal projects launched?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, these issues certainly fall within the purview of the URA. Since it is a statutory body, I cannot decide on its behalf when the first draft five-year plan can be submitted but we will certainly act in accordance with the law. The Urban Renewal Ordinance does not set a fixed timetable for the submission of the first draft five-year plan but we know the URA is working on it and is going to submit it soon. On receipt of the plan, we will deal with it expeditiously. As regards the business plan after the first year, Members may be aware that it must be submitted within three months of the beginning of each fiscal year, but the Ordinance does not specify a timetable for the first corporate plan.

**DR YEUNG SUM** (in Cantonese): *Madam President, I regret that the URA has repeatedly procrastinated on the matter. Will the Government inform this Council whether the failure of the URA to submit its draft five-year plan and draft annual business plan to the Government is related to financial arrangements or issues about compensation for a certain district? About financial arrangements, will the Government inform this Council whether it will provide assistance to the URA so that the Legislative Council can scrutinize the proposals as soon as possible?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, as I said a moment ago, preparation of the draft five-year plan and the annual business plan falls within the purview of the URA. We have tried our best to provide working level support to expedite the process. During the vetting and approval process, the Government will take into account the necessary financial arrangement of the URA in implementing urban renewal projects. In making decisions on the financial support to be given to the URA, the Government will certainly not lose sight of the prevalent economic conditions but will undertake to prioritize urban renewal projects. After receiving the relevant plans from the URA, we will deal with them expeditiously and forward



the same to the Financial Secretary for examination and approval. After that, a funding application will be made to the Financial Committee for approval so that financial support is given to the URA. The Government may decide to give financial support through injection of funds or advance of loans, the combination of which will be dependent on the actual needs.

**PRESIDENT** (in Cantonese): This Council has spent over 22 minutes on this question. We shall now proceed to the second question.

### **Improving Services of Labour Department**

2. **MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I have received complaints about the long time taken by the Labour Department (LD) in arranging conciliation meetings on labour claims and processing applications for ex-gratia payment from the Protection of Wages on Insolvency Fund (PWIF). Furthermore, it has been reported that staff of the LD have complained about substantial increase in their work pressure due to shortage of manpower. In this connection, will the Government inform this Council:*

- (a) *of the following figures for each branch office of the LD in each of the past three years: the number of claims received, the number of conciliation meetings arranged for claims, the average time taken for convening the first conciliation meeting since a claim has been lodged, the average numbers of conciliation meetings handled and consultative interviews attended by each Labour Officer (LO) and Assistant Labour Officer (ALO) on each working day respectively;*
- (b) *of the respective numbers, broken down by processing time, of applications for ex-gratia payment the LD handled in each of the past three years, as well as the average numbers of cases handled by each LO and ALO on each working day respectively; and*
- (c) *whether it will increase the manpower of the LD to shorten the time taken for arranging conciliation meetings and processing applications for ex-gratia payment, so as to improve the services of the LD and reduce the work pressure of its staff?*

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

- (a) In the past three years, the Labour Relations Division (LRD) of the LD received a total of 94 378 claims, that is, 31 462 claims in 1999, 29 956 claims in 2000 and 32 960 claims in 2001. A breakdown of the number of claims received by each branch office in the past three years is at Annex 1.

Upon receipt of the claims, the LRD offices will arrange conciliation meetings for employers and employees concerned. Figures showing the average waiting time for conciliation meetings to be arranged in respect of each branch office in the past three years are at Annex 2. In 2001, the average waiting time was between 4.4 and 5.6 weeks.

Conciliation meetings on claims are conducted by Assistant Labour Officers I (ALO Is), with each officer handling an average of six conciliation meetings a day. The LD does not maintain statistics on the number of conciliation meetings held in the past three years by branch office or officer. Figures on consultative interviews conducted by each officer are also unavailable as counter consultation service is normally provided by clerical staff rather than conciliation officers.

- (b) Applications submitted by employees to the PWIF for *ex-gratia* payment are processed by the Wage Security Unit (WSU) of the LD. The table at Annex 3 shows figures in the past three years on the time required for the WSU to effect payment to eligible employees after winding-up/bankruptcy petitions against insolvent employers were filed or recommendations by the Legal Aid Department (LAD) for payment to non-petition cases were made. In 2001, the average time required for effecting payment was about 5.1 weeks.

Claims from individual applicants are assessed by the WSU on their own merits, hence the time required for effecting payment may vary among applicants of the same insolvency case. We do not keep statistics on the payment lead time of individual cases.

A breakdown showing the average daily caseload of a LO and an ALO in the past three years is at Annex 4. In 2001, an LO on average processed six applications on a working day whereas an ALO processed 2.9 applications.

Insolvency cases of large and medium-sized companies, which involve a larger number of applicants, are taken up by LOs while those of small-sized companies are mostly handled by ALOs. As small-sized companies seldom deploy manpower on maintaining payroll and employment records and there has been an increasing number of the persons-in-charge going into hiding in the face of insolvency, ALOs have to spend more time on collecting and verifying case information. For this reason, the average number of applications processed by an ALO per working day dropped slightly during the three years from 1999 to 2001.

- (c) In the wake of the financial turmoil in 1997, the number of claims received by the LRD has risen, thereby lengthening the waiting time for conciliation meetings. The LD has taken a number of measures to reduce the waiting time. These include streamlining work procedures, re-demarcating the district boundaries of some branch offices to even out the distribution of claims, and redeploying manpower within the LRD to cope with the sudden upsurge of workload in individual offices.

Funding approval has been obtained for the creation of seven ALO I posts in the LRD for a period of three years starting from 2002-03. As for the WSU, additional staff have already been provided through internal redeployment, and funds will be made available for recruiting five case processing officers on contract terms to cope with the increased workload.

These measures to provide additional resources will help enhance the LD's delivery of service and alleviate the work pressure on its staff.

## Annex 1

Number of claims received by each branch office of the LRD of the LD in the past three years

<i>Office</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Hong Kong East	5 536	4 830	5 200
Hong Kong West	3 469	3 256	3 494
Kowloon East	2 246	2 885	3 137
Kowloon West	2 799	2 441	2 639
Kowloon South	3 514	3 535	3 820
Kwun Tong	4 148	3 321	3 531
Kwai Chung	2 427	2 078	2 402
Tsuen Wan	1 947	1 966	2 124
Tuen Mun	2 297	2 401	2 672
Sha Tin	1 699	1 782	2 187
Tai Po	1 380	1 461	1 754
Total	31 462	29 956	32 960

## Annex 2

Average waiting time (in terms of weeks) for conciliation meetings to be arranged for claims in each branch office of the LRD of the LD in the past three years

<i>Office</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Hong Kong East	4.8	4.4	5.3
Hong Kong West	4.9	4.5	5.4
Kowloon East	3.9	3.6	4.5
Kowloon West	3.7	4.0	4.6
Kowloon South	4.7	4.8	5.6
Kwun Tong	4.4	3.8	4.7
Kwai Chung	4.4	4.1	4.8
Tsuen Wan	3.5	3.7	4.4
Tuen Mun	3.6	4.0	4.7
Sha Tin	4.1	3.9	4.7
Tai Po	4.7	3.7	4.8

## Annex 3

Time required for the WSU to effect *ex-gratia* payments to eligible employees in the past three years (calculated as from winding-up/bankruptcy petitions against insolvent employers were filed or recommendations by the LAD for payment to non-petition cases were made)

<i>Time required to effect payment</i>	<i>Number of affected employees</i>		
	<i>1999</i>	<i>2000</i>	<i>2001</i>
four weeks or less	5 300 (37%)	4 318 (38%)	5 050 (43%)
between four to six weeks	2 635 (18%)	2 015 (18%)	1 686 (15%)
between six to eight weeks	3 317 (23%)	1 921 (17%)	1 374 (12%)
between eight to 10 weeks	3 219 (22%)	3 012 (27%)	3 519 (30%)
	14 471 (100%)	11 266 (100%)	11 629 (100%)
Average time required to effect payment	5.3 weeks	5.3 weeks	5.1 weeks

## Annex 4

Average daily caseload of a LO and an ALO in the past three years

<i>Year</i>	<i>Average number of applications processed per working day</i>	
	<i>LO</i>	<i>ALO</i>
1999	6.0	3.8
2000	5.4	3.4
2001	6.0	2.9

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, given the prevailing poor economy, cases of employers failing to pay their employees have increased. Today, I would like to work out with the Secretary the degree of difficulties encountered by employees whose wages are due and unpaid, and the lead time to recover them. According to the main reply, conciliation takes about five weeks. If the conciliation fails, the case will be transferred to the LAD. As the LAD is not under the Secretary's control, she did not elaborate. However, according*

*to my experience, the processing time takes about six weeks. According to Annex 3 of the main reply, to wait for the PWIF .....*

**PRESIDENT** (in Cantonese): Mr LEE, what is your supplementary question?

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the supplementary question can be put only after I have worked out the time required. It takes approximately five weeks on average before an employee can get the payment from the PWIF. The employees concerned have to wait for at least 16 weeks or four months in total before they can recover the wages in arrears. May I ask the Secretary whether she would promise to shorten the waiting time of employees whose wages are due and unpaid, such as shortening the conciliation time to two weeks and the waiting time to four weeks for the PWIF to effect payment, and so on? Can the Secretary make such an undertaking and review the relevant procedures with a view to shortening the waiting time?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we certainly wish to shorten the waiting time where possible. I also appreciate very much the anxieties of employees whose wages are due and unpaid, and the difficulties encountered in their living. However, the relevant procedures really involve many steps. I think we cannot omit any of them insofar as the steps are concerned. With regard to the deployment of manpower, the number of cases received by the LD has increased substantially owing to the poor economy in Hong Kong after the financial turmoil. In particular, the number of cases rose sharply in the second half of 2001, making it impossible for LD staff to process all cases within a short time. No doubt, this involves such problems as the overall provision and deployment of manpower by the Government because an additional allocation of manpower or resources is difficult unless new work arises in a certain department. Now, we endeavour to redeploy manpower in the LD as far as possible. If redeployment is not possible, we will consider recruiting extra contractual staff to help. The performance pledge in this respect is five weeks and we will try our best to honour it. As to whether the lead time stated in the performance pledge can further be shortened, I consider it very difficult.

**MISS CYD HO** (in Cantonese): *Madam President, each ALO I has to handle an average of six conciliation meetings daily, and each conciliation meeting will take about half an hour to an hour or so. By this calculation, they will not have time to do paperwork or other follow-up work. As Members will know, six is just an average figure, because there are peak and trough seasons with their work throughout the year. May I ask the Secretary the maximum number of conciliation meetings handled by LO every day and how many working hours they have occupied; and whether it is reasonable for LOs to work such long hours if the peak seasons last a long period of time?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I thank Members for the concern and sympathy expressed regarding the caseload of our colleagues. In fact, the working hours of LD staff have been increasing over the last couple of years, and they often have to work even on Saturdays and Sundays. They will try their best to conduct interviews with representatives from employees and employers during normal office hours; whereas the paperwork will be left until off-office hours, or even weekends before they can be dealt with. This I appreciate. The LD will try its best to relieve their work pressure such as streamlining work procedures, deploying manpower internally in a flexible manner according to the peak and off-peak seasons of their work, and so on. We will continue to seek solutions to this.

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

**MISS CYD HO** (in Cantonese): *Madam President, the Secretary has not answered the question about the maximum working hours of LO, the maximum number of conciliation cases handled by them every day, and whether the situation is reasonable.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I do not have the maximum figures for the whole year, so I can only provide an average figure. LOs sometimes have to handle more than

six cases, sometimes less than six. If the Honourable Cyd HO requests the provision of the relevant information, I can reply in writing later. (Annex II) As to whether the situation is reasonable, in fact the working hours of the staff of many government departments are also very long. I think the department concerned must strike a balance between providing services to the public and the caseload of colleagues in the department. I hope we can maintain a balance between the two.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, according to part (c) of the main reply, the number of cases has risen sharply after the financial turmoil in 1997, causing the waiting time for conciliation meetings to lengthen. The Secretary expressed earlier that the number of cases had increased substantially in the second half of 2001, and the LD had made some adjustments to the arrangements which include streamlining work procedures, and so on. However, we have still received complaints from LD staff. The method adopted by the Secretary has evidently not won their support. May I ask the Secretary whether the LD has held any meetings with its staff with a view to seeking solutions to the substantial increase of their caseload?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the answer is definitely yes. I know that the Commissioner, Deputy Commissioner, Assistant Commissioner for Labour, and so on, have all along maintained close contact with the staff, and reviewed from time to time the procedures of each division such as reducing as much unnecessary paperwork as possible. I think that given the substantial increase in work pressure, some small adjustments may not achieve immediate effects. We have to rearrange the entire workflow, and make some sort of a fundamental review. This is the direction currently adopted by the LD.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the staff of the LD has sent anonymous letters to newspapers and Members. May I ask the Secretary whether the LD can resolve other's problems but not its own? The LD has in place a Workplace Consultation Promotion Unit to promote consultation between employers and employees. However, colleagues of the LD have found*



*it necessary to seek help externally by reflecting their views to the Commissioner through public opinions. Does the Secretary feel the necessity for a review, and what methods are used to improve the LD's internal labour relations?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, in the final analysis, this is an issue of allocation of resources and manpower. I know the LD is working very hard, and its management has actively communicated with the staff. It is not a case of resolving other's problems but not its own. I believe the so doing by LD staff was to arouse more people's concern at this stage. My Bureau has discussed with the Finance Bureau on whether some short-term measures can be adopted, and we are taking an active approach to examine solutions to the problem.

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary seems to be saying that the staff of many government departments are working laboriously and long hours, and so on. I think this is not the behaviour of a good employer. Is the Secretary prepared to explain the relevant work to the Legislative Council and society? If the work procedures are necessary, the Government should increase the manpower; whereas unnecessary ones should be cancelled. This is the reasonable approach. It should not request staff to work on the nights of weekdays, as well as on Saturdays and Sundays, or the Government is a terrible employer.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I also agree with the Honourable Emily LAU's statement. However, more often than not, the workload of the Government comes from the outside, not necessarily from the inside. For example, the LD is an institution which serves the public, and it has to meet people's needs, if they have any. As for other government departments, a generalization is difficult. But the divisions of some departments may have to prioritize their work.

**MISS LI FUNG-YING** (in Cantonese): *Madam President, according to the information of Annex 3 in the main reply, I realize that the number of cases which took more than eight weeks before payments can be made has been increasing every year although the average time taken for the WSU of the LD to effect payment has been shortened. May I ask the Secretary the reason for that?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, some cases have to be transferred to the LAD for processing, and the LAD will investigate the applicant's financial situation, and so on. Therefore, it takes eight to 10 weeks before payment can be made. In addition, with the introduction of the Mandatory Provident Fund (MPF) schemes, we have found that some severance payments can be deducted from the MPF. Since the figures must be checked against with the Mandatory Provident Fund Schemes Authority (MPFA) and the relevant trustee, the processing time will also be extended.

**PRESIDENT** (in Cantonese): This Council has spent over 15 minutes on this question. This will be the last supplementary question.

**MISS CYD HO** (in Cantonese): *Madam President, in part (c) of the main reply, the Secretary talked about increasing manpower. In fact, we certainly appreciate civil servants very much for being willing to sacrifice their holidays to serve the public. However, we cannot consider it reasonable to do so. Taking the current caseload into account, can all staff be guaranteed at least one holiday weekly for rest after the Government has increased the manpower? If an increase of five or seven officers is still insufficient, can the Government increase more manpower once and for all?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I feel that Members' views of civil servants are different at different meetings. We will reflect Miss HO's views when we have discussions with the Finance Bureau, and provide specific data. I also hope that staff can enjoy reasonable rest.

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

### **Layoff by Companies Making Huge Profits**

3. **MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, some private enterprises lay off a significant number of staff despite making substantial*

*profits, while the Financial Secretary has called upon employers to refrain from laying off staff and to consider other cost-cutting options. In this connection, will the Government inform this Council:*

- (a) of the countries which have legislation that imposes restrictions on the layoff by companies which make substantial profits, and the details of such restrictions; and*
- (b) of the other measures the Administration will adopt, apart from making the above appeal, to make these companies refrain from laying off staff, and whether it will make reference to the experience of the above countries and impose restrictions on layoff by legislation; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):

Madam President, there are many reasons for the laying off of staff by private enterprises which make profits, thus we cannot make generalizations. Enterprises may be concerned about the gloomy business outlook, hence the need for taking precautionary measures to reduce cost. Many companies may have to adjust their business portfolios in the face of economic restructuring. Members of their staff who fail to adapt to such changes will naturally be displaced. There are also concrete examples showing that upon business merger there will be surplus staff, and layoff becomes necessary to simplify organizational structure and improve cost-effectiveness. For listed companies, they are accountable to shareholders for their performance, and it is inadvisable for the Government to adopt administrative measures to interfere with their operational decisions.

As to the Honourable CHAN Yuen-han's specific questions, my reply is as follows:

- (a) According to our findings, the United Kingdom, the United States, Australia, New Zealand and Singapore do not have legislation that imposes restrictions on the layoff of staff by companies making profits. Only mainland China and Taiwan have similar legislation stipulating that enterprises are not allowed to lay off their staff except under specific conditions.

Article 27 of the Labour Law of the People's Republic of China stipulates that "In case it becomes a must for the employer to cut down the number of workforce during the period of legal consolidation when it comes to the brink to bankruptcy or when it runs deep into difficulties in business, the employer shall explain the situation to its trade union or all of its employees 30 days in advance, solicit opinions from its trade union or the employees, and report to the labour administrative department before it makes such cuts."

With regard to Taiwan, Article 11 of its Labour Standards Law stipulates that a labour contract may only be terminated under certain conditions: first, the business concerned is suspended or its ownership is transferred; second, there is an operating loss or a business contraction; third, there is a change of the nature of the business; fourth, the business is suspended for more than one month; and fifth, the employee concerned is confirmed to be incompetent for his job duties.

It should be noted that these laws were enacted before 1995 with certain historical contexts and therefore may not apply to the present-day situation. Moreover, Hong Kong is different from both mainland China and Taiwan in terms of its political system and economic structure, as well as its mode of production, business environment and per capita income. As such, it would be inappropriate for Hong Kong to follow indiscriminately the labour laws of other places.

In 1997, the Organization for Economic Co-operation and Development (OECD) published a report on the study of the job strategy of its member countries. The report points out that "the policy has often degenerated into attempting to discourage dismissals in general and to relieve employed workers from pressures to adjust." The report also points out that "strict EPL (employment protection legislation) is often accompanied by high incidence of long-term unemployment." In addition, "hiring/firing practices are less regulated and/or have been significantly relaxed over the last decade in some of the countries where the structural employment rate has fallen." It reflects that excessive regulation may do harm rather than good.

- (b) Hong Kong is a highly open, free and flexible economy. Our labour market is capable of making prompt response, including adjustment in wages and manpower set-up, to re-align itself with the overall economic development and the operational needs of individual enterprises. The rights and interests of employees have largely been protected by the existing labour legislation. Introducing layoff restrictions will not only undermine the regulatory function of the labour market, but also dampen investment incentives and confidence. Employers may be rendered unduly cautious with staff intake, or they may simply hire temporary or part-time staff. This will in turn slow down the overall economic recovery and growth of Hong Kong and may aggravate the unemployment situation.

To impose restrictions on layoff by enterprises which are making substantial profits will also be difficult in practice. First of all, it is not easy to define "substantial profits". Even with an apparently huge total profit, enterprises will have to look after the rate of return and business outlook, as well as to contemplate ways to ensure their long-term competitiveness.

A free market economy is one of our key factors in attracting foreign investment. While doing our best to resolve short-term unemployment problems, we must not lose sight of our long-term competitiveness. It would be easy to scrap the existing systems and give up our competitive edge, but international confidence in Hong Kong is something extremely difficult to restore. I would like to call on the representatives of the labour sector to act with prudence because catastrophic results may be brought about by the best intentions.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I do not agree with the Secretary's logic. The Secretary considers that under the present free market economy, Hong Kong is capable of handling the issues in question. However, according to our observation, the present demand and supply situation is gravely out of balance. The supply and demand relationship we talked about in the past was that both parties could negotiate an equilibrium price while*

*holding fast to their respective positions. But now such a situation simply does not exist. Madam President, I will come to my supplementary question shortly. For the aforementioned reasons, I do not agree with the Government's logic, nor do I agree with the Secretary's view that the present unemployment situation is only short-term. Certainly, I will not debate the matter here; I will discuss it through other channels.*

**PRESIDENT** (in Cantonese): Miss CHAN, please come to your supplementary direct.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, here is my supplementary. (Laughter) While the Government believes that enacting the relevant legislation is not conducive to investment, the Mainland does have such legislation and at the same time abundant business opportunities. That being the case, may I ask the Secretary whether the Administration has conducted any assessment in this respect? Should we not ponder on the possibility that enacting the relevant legislation may also be of benefit to Hong Kong? The Government may legislate to impose restrictions on layoff by companies making profits on the one hand, and offer administrative convenience and tax concessions to such companies on the other. I believe this is the measure most commonly adopted by mainland authorities to remedy the inappropriate things done by the companies concerned without scaring investors away .....*

**PRESIDENT** (in Cantonese): Miss CHAN, please make your supplementary as concise as possible.

**MISS CHAN YUEN-HAN** (in Cantonese): *Yes, Madam President. And please accept my apology. The supplementary question I wish to ask the Secretary through the President is: Given that the Mainland has enacted the relevant legislation but still has plenty of business opportunities, should the Hong Kong Government not consider using similar tax concession as an incentive to encourage companies to refrain from laying off staff? I hope the Secretary can answer this supplementary.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, to resolve the unbalanced supply and demand situation in the labour market, we should focus on the problem *per se* to find out ways to restore the balance. I am sure the Government will make its best efforts to identify areas where more employment opportunities can be created, for this is the way to resolve problem. Nevertheless, Hong Kong is a capitalist economy rather than a socialist society. In a capitalist economy, we cannot require capitalists to retain employees who they do not need; otherwise, we will be running against the free market policy we have always upheld. Moreover, I also believe that if we should do so, we would only cause our labour market to lose its flexibility and ability to adjust to changes, as pointed out by the OECD, and would in turn stifle the development of our economy.

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

**MISS CHAN YUEN-HAN** (in Cantonese): *Yes, Madam President.*

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

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the part on whether the Government would consider using tax concession as an incentive to encourage companies making profits to refrain from laying off staff.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, basically, I do not think any measures should be adopted to forcibly require companies to retain employees who they do not need. I hold that if we are to resolve the supply and demand problem we must tackle the problem at root.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, just now the Secretary mentioned that the relevant situation would only arise in a socialist*

*society but not in any capitalist economy. I just wonder whether Taiwan is a capitalist economy or a socialist society. My supplementary question is: Even though the Government says it will not adopt administrative measures to interfere companies' business decisions, given that the unemployment rate continues to stand high, will the Government consider urging companies making profits to refrain from laying off staff, so as not to add to the present unemployment rate or the hardships facing the unemployed?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):

Madam President, the Government will certainly make its best effort to make such an appeal. Besides, both the Financial Secretary and I have openly urged employers to take a longer view when considering whether or not to retain their employees. I understand that in view of the present economic situation many employees are willing to accept wage cuts to ride out the storm together with their employers. I consider this the best method. On the one hand, employers do not have to spend time recruiting staff when the economy revives; and on the other hand, employees will develop a better sense of belonging to their companies. Nevertheless, I believe the question of whether or not to lay off staff should ultimately be decided by companies in the light of their respective business prospect.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, even though the Secretary has mentioned in the main reply and just now that she and the Financial Secretary have continuously and vigorously made appeals, all those appeals are but empty words. Has the Government taken any actions like inviting employers to discussions and making appeals to them direct? It is useless to make appeals through the media only. As the Secretary said earlier, it is not easy to define "substantial profits", and so employers just do not know whether they are the ones being considered as making substantial profits. Thus, the Secretary was in fact contradicting herself. On the one hand, she said employers might not know whether they were the ones making substantial profits; yet on the other, she only made the appeals indirectly through the press. Could the Secretary inform this Council whether she or the Financial Secretary would invite employers to discussion meetings to make appeals to them direct?*



**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, given that we have so many employers in Hong Kong, I believe the mass media should be the most effective channel for making such appeals.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, I should like to further follow up the point on making appeals. Given that both the Secretary and the Financial Secretary claim that they have been making appeals continuously, may I ask the Secretary whether she has received any positive responses from private enterprises, or at least replies telling the Secretary that they would not resort to layoffs and downsizing for the time being? If no positive response has ever been received, will any further actions be taken to make more effective appeals to companies or to persuade employers in a more effective manner?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I am sure some companies are already using wage cuts or expenditure contractions to adjust their operating costs, with a view to adapting to the present economic situation. So, not all companies are laying off staff. There will certainly be companies laying off staff, but a lot more companies are refraining from doing so.

**MR ANDREW CHENG** (in Cantonese): *Madam President, according to the main reply, both the Mainland and Taiwan, which are Chinese societies, have similarly formulated the relevant legislation. In the main reply the Secretary also reminds us that catastrophic results may be brought about by the best intentions. In this connection, could the Secretary further explain to this Council whether the situation of catastrophic results being brought about by the best intentions has arisen in the Mainland and Taiwan? Why is it that nowhere in the world except Chinese societies have formulated such legislation? Chinese people always believe that it should be better if there could be more money in their pocket; besides, making the most profit with the least resources is also a traditional culture of the Chinese. May I ask the Secretary to consider this question: Could a new way out be opened if Hong Kong should formulate legislation in the light of the mainland example or the Labour Standards Law in force in Taiwan to check and balance our free economy which has currently gone*

*out of hand? Could the Secretary explain to this Council whether the situation of catastrophic results being brought about by the best intentions would arise in Hong Kong? Given that neither the Mainland nor Taiwan has such a problem, why does she consider the problem will certainly arise in Hong Kong?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have not conducted any in-depth studies on the specific influence the relevant legislation has on the Mainland and Taiwan. Nevertheless, as I mentioned in the main reply, the report published by the OECD in 1997 pointed out that its member states had witnessed opposite results after implementing strict EPL. I believe this authoritative international body has arrived at a conclusion in this connection. I think Chinese people are not the only people who wish to maximize profits. Besides, I believe all listed companies are held accountable to their shareholders. Certainly, different companies may have their respective considerations, and that is why I believe the present arrangement is the best.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, it is mentioned in the main question that some private enterprises lay off a significant number of staff despite making substantial profits. In the main reply, however, the Secretary only says that there are many reasons for the laying off of staff by private enterprises which make profits and thus we cannot make generalizations. The Secretary has not indicated clearly whether she agreed with the main question's view that some private enterprises were mercilessly laying off staff despite making substantial profits. It is only when the problem raised is really the case that we can talk about measures to tackle it. Hence, may I ask the Secretary whether the situation mentioned does exist? If yes, could the Secretary also inform this Council whether the Government has formulated any measures to deal with those companies which mercilessly lay off staff despite making substantial profits?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I am afraid I cannot make any comments here. Actually, as I have mentioned in my main reply, it is not easy to define "substantial profits", unless we know how much capital the companies concerned have invested. Besides, even with an apparently huge profit, we also need to look at the rate of

return. So, we can hardly make any decision in this connection. Certainly, there are many reasons for the laying off of staff by private enterprises which make profits, including the company's prospects, its competitiveness in future, and so on. Thus, this is by no means a simple issue.

**DR RAYMOND HO** (in Cantonese): *Madam President, in adhering to the principle of not intervening in commercial operations, has the Government make any attempts to encourage private enterprises to inform it of their layoff decisions, with a view to finding out ways to help the employees to be laid off through arrangements like retraining, and so on?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the Labour Department issued a guideline in October 1998 on the matters companies need to pay attention to when laying off employees. The services available to the companies concerned and the employees they lay off are also listed in the guideline. As a matter of fact, the companies concerned would generally inform the Labour Department before the layoff and the Department would immediately contact the affected employees to make arrangements for them, such as re-employment, retraining, and so on.

**PRESIDENT** (in Cantonese): This Council has spent more than 15 minutes on this question. This shall be the last supplementary question.

**MISS LI FUNG-YING** (in Cantonese): *Madam President, in part (b) of the main reply the Secretary stressed very strongly that the Government should not intervene in the labour market. In this connection, may I ask the Secretary whether the Government has in effect intervened in the free adjustment of the labour market in setting no limit on the number of foreign domestic helpers being imported into Hong Kong by their employers?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I believe foreign domestic helpers are a unique category. While there are indeed demands for domestic helpers in our society, many local people are unwilling to work as live-in domestic helpers. The Government has

actually conducted a survey in this respect and found that only very few local domestic helpers are willing to live with their employers.

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

### **Safety of Cosmetics**

4. **MR MICHAEL MAK** (in Cantonese): *Madam President, on 4 January, after investigating a mercury poisoning incident, the Government confirmed that a brand of face cream contained high concentration of mercury, and called on the public to stop using that product immediately. Regarding the safety of cosmetics, will the Government inform this Council:*

- (a) *whether, before the poisoning incident, it had received reports that face cream on sale in the market might be harmful to the human body; if so, of the reasons for its failing to take appropriate follow-up actions immediately to avoid this poisoning incident;*
- (b) *of the number of reports received over the past three years on indisposition of members of the public after using cosmetics, together with a breakdown by the cause of poisoning or type of illness; and*
- (c) *how the existing legislation regulates the safety of cosmetics on sale in the market?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, we pay close attention to the safety of consumer products. The Customs and Excise Department (C&ED), which is responsible for enforcing the Consumer Goods Safety Ordinance (Cap. 456), examines reports and safety reports on consumer products. It liaises with law enforcement agencies abroad and the Consumer Council in Hong Kong to exchange updated information on the safety of consumer products. The C&ED also inspects from time to time retailing outlets, and purchase samples for safety testing.

To safeguard consumer safety, the Administration sets safety standards for different consumer goods. We also have a regulatory system, and relevant departments issue warnings and guidelines as appropriate. It is nevertheless most important that the general public should be on the alert, choose and use consumer goods with care. Take cosmetics as an example, we advise consumers to avoid purchasing these products from unknown sources. While the Government will do what it can to protect the consumers, untoward incidents could be avoided and risks reduced if consumers would also exercise care to protect themselves.

- (a) Turning now to the case raised by Mr Michael MAK, the Administration has not been informed in advance of possible mercury poisoning with the use of a particular brand of facial cream. The case in question was that, on 28 December 2001, the Department of Health (DH) received a report from the Tuen Mun Hospital that a foreign domestic helper suffered from mercury poisoning after using a facial cream. Together with the C&ED, the DH took immediate action to investigate and follow up on the incident. The day following the receipt of the report, the C&ED seized 14 boxes of facial cream of that particular brand from a shop. In the days which followed, the C&ED conducted spot checks on 109 similar shops. Though there were no further findings of the product in question, the Department nevertheless reminded the shops concerned not to sell the particular product. In the meantime, the Government Chemist had been requested to conduct detailed tests on the seized goods to ascertain their composition and level of risk, so as to assist the C&ED to decide whether to take further enforcement action.

The C&ED had liaised closely with the DH in handling the case. The two departments held a joint press conference on 4 January this year, to alert and urge the public to stop using this particular product immediately. The DH also set up a hotline and arranged for mercury intoxication screening for people who might have the need for the test, and referred them to specialist clinics for further follow-up.

- (b) During the past three years, from 1999 to 2001, the DH received two reports of indisposition after the use of cosmetics by members of the public; the details are as follows:

<i>Date</i>	<i>Case</i>
January 1999	Skin allergy as a result of using cosmetics
December 2001	Mercury poisoning as a result of using face cream* (The case referred to in the Honourable Michael MAK's main question)

\* The case was reported by the Tuen Mun Hospital.

During the same period, the Hospital Authority provided treatment to four patients involved in the following cases:

<i>Date</i>	<i>Case</i>
June 2000	Poisoning as a result of oral intake of face cream by mistake
April 2001	Poisoning as a result of oral intake of skin lotion by mistake
September 2001	Mercury poisoning as a result of using face cream
December 2001	Mercury poisoning as a result of using face cream* (The case referred to in the Honourable Michael MAK's main question)

\* The case was reported to the DH for investigation and follow-up actions.

- (c) For the purpose of enhancing the safety standards of consumer products, the Consumer Goods Safety Ordinance stipulates that a person shall not supply, manufacture or import into Hong Kong consumer goods (including cosmetics) unless they comply with the "general safety requirement" for consumer goods or such safety standards as the Secretary for Economic Services may approve by

regulation to apply to the product concerned. Importers, agents, suppliers or manufacturers who contravene the Ordinance are liable to prosecution and to a maximum fine of \$100,000 and an imprisonment for one year on first conviction; a maximum fine of \$500,000 and an imprisonment for two years on subsequent convictions.

Pursuant to this Ordinance, cosmetic products have to meet the "general safety requirement", that is to say they have to be reasonably safe. To ascertain whether the cosmetic products are reasonably safe, the Ordinance stipulates that a number of factors have to be taken into account, which include the manner in which the products are promoted, specifications as regards packaging, and whether or not the products have met recognized safety standards. With regard to safety standards, the Government Chemist will tender expert advice to the C&ED and conduct test against these standards on the products concerned.

In the case of cosmetic products, the Government Chemist conducts tests in accordance with the Chinese National Standards — Hygiene Standards for Cosmetics (GB 7916 - 87). This notwithstanding, the C&ED will also consider the product to be in compliance with the "general safety requirement", if a cosmetic product has been certified by a testing institute recognized by the Innovation and Technology Commission as having met the reasonable standards stipulated by a national or international standards institute.

The Product Standards Information Bureau of the Innovation and Technology Commission maintains a library of reasonable safety standards published by international and national standards institutes and members of the public are welcome to use this library. Moreover, members of the public could also, if so wish, submit consumer products to a testing institute accredited by the Innovation and Technology Commission for testing to ascertain if they meet the relevant approved standards.

**MR MICHAEL MAK** (in Cantonese): *Madam President, first of all, I wish to point out that the Secretary has not replied to part (b) of my main question. In*

*part (b), I asked the Secretary for a breakdown by the cause of poisoning or type of disease but she only mentioned the number of cases of poisoning without stating whether the poisoning caused kidney failure or death. I hope that the Secretary would first reply to the part of my question that she has missed before I ask a follow-up question.*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Economic Services.

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, I have said in my main reply that the cases caused poisoning but I do not have any information at hand on how the hospitals subsequently handled the cases. So may I defer to the Secretary for Health and Welfare.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, according to our information, two of the four cases involved oral intake of skin care products but we do not have further information indicating what finally happened to the two patients. I would give Mr MAK a written reply. (Annex III) In the two cases that took place most recently (the cases that took place in September and December), the two patients were discharged after treatment.

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary has not told us the diseases suffered by the patients. I have just given the example of kidney failure, which is a pretty serious disease.*

**PRESIDENT** (in Cantonese): Mr MAK, you should come to your follow-up direct. As to other information that you have requested, the Secretary for Health and Welfare would give a written reply in future.

**MR MICHAEL MAK** (in Cantonese): *Fine. Madam President, in the second paragraph of the main reply, the Secretary has said that consumers would be advised to avoid purchasing the products from unknown sources. It seems that*



*the public should fend for themselves. But we can say that beauty products are emerging in an endless stream and many people value beauty more than life. Given this, how would the Government educate the public to identify beauty products that meet the safety standards so as to safeguard the interests of consumers?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Economic Services.

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): I have stated in my main reply that, if in doubt, members of the public could make inquiries at the Product Standards Information Bureau of the Innovation and Technology Commission. Members or their personal assistants are also welcome to collect information there, for they would find certain criteria. In fact, there are many different types of cosmetic products and everybody defines cosmetic products differently. In our view, to publicize after the seizure of products that do not meet the standards and to issue warnings to importers and retailers should be the most effective method. If we wish to comprehensively regulate cosmetic products, I believe it would entail huge resources and we have to take into account that certain types of products have already been regulated under the existing legislation. It has also been specified that certain types of products must meet certain standards. Thus, when we regulate such products according to certain standards, we should consider the danger or special features of the products. For instance, apart from food and potable water, products to be regulated according to the law include vessels, motor cars, gas and electrical appliances, insecticide, tobacco and drugs. I believe Members would realize the danger of these products. Once accidents take place, it would certainly be more dangerous than using cosmetic products that do not meet the standards.

**DR LO WING-LOK** (in Cantonese): *Madam President, in part (c) of her main reply, the Secretary elaborated the standards at length. My supplementary asks when the standards will be applied. Are they applied before the sale of products? Do the importers or wholesalers have to prove before the sale of the products if the products have met the safety standards, or are tests conducted only after problems have been found and complaints lodged? If the latter is the case, has the Government considered taking measures to require importers or wholesalers*

*to prove that the products have met the safety standards before the products can be marketed?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): The authorities do not have any plans to require proof before the sale of cosmetic products. There are a wide variety of cosmetic products and we have to make a decision on the basis of the danger of cosmetic products and the resources for and effectiveness of regulation. For example, if the labels only specify the names of some chemicals, ordinary people may not be able to understand the extent to which the products are safe.

**MR SIN CHUNG-KAI** (in Cantonese): *My supplementary is similar to the supplementary of Dr the Honourable LO Wing-lok. If pre-sale inspection is compulsorily imposed on cosmetic products in a uniform way, as in the case of drugs, it would be a very stringent measure which is very difficult to achieve. Would the Government consider issuing a certificate for cosmetic products that have voluntarily undergone laboratory tests, or have been certified by testing institutes recognized by the Government as having met the standards specified under the laws of Hong Kong and then allow the public to inspect the records to examine if the products are recognized under a liberal regime? Even if the Government does not compulsorily stipulate so, cosmetic products have to comply with Cap. 456 of the Laws of Hong Kong, but if a .....*

**PRESIDENT** (in Cantonese): Mr SIN, I believe you have raised your supplementary.

**MR SIN CHUNG-KAI** (in Cantonese): *Yes.*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, as far as I know, if some products are submitted to recognized product testing institutes for testing, the testing institutes will issue certificates and keep records proving that the products meet our standards.

**MR SIN CHUNG-KAI** (in Cantonese): *As stated by the Secretary in her reply, how can the public ascertain through inspection that some cosmetic products are not from unknown sources but have undergone recognized testing? In other words, is there any way to let us know very easily that recognized testing institutes have tested some cosmetic products? Through what channels can the public get the relevant information? Otherwise, are all cosmetic products from unknown sources?*

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

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): I do not have anything to add. I believe businessmen know how to give publicity to them.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, in her main reply, the Secretary has not mentioned the experience gained by the Government from the incident or the improvements that it has made. In her main reply, she has only delivered the important message that "it is most important that the general public should be on the alert, choose and use consumer goods with care". Would the Secretary inform this Council whether the policy of the Government is asking the general public to "fend for themselves" as Mr Michael MAK has just said? Has the Government gained some experience in the incident and found more effective monitoring mechanisms? In fact, a lot of people do not know whether meeting the standards is the same as meeting the safety standards.*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): I have said in my reply to the first supplementary that if we have stipulated the regulation of certain products, we would set out the principles. The existing legislation has specified the types of products to be regulated according to the safety standards.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, excuse me. I have just asked if "fending for themselves" is the existing policy of the Government.*

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

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): I do not have anything to add.

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

### **Curbing the Spread of AIDS**

5. **DR DAVID CHU** (in Cantonese): *Madam President, it has been reported that currently an estimated 1 million or so people in the Mainland are infected with HIV, and there may likely be an upsurge in the number of local infection cases as a result of increasingly frequent cross-boundary activities. Regarding the curbing of the spread of AIDS, will the Government inform this Council:*

- (a) *of the details of its efforts to curb the spread of AIDS, and how they are prioritized in terms of resource allocation;*
- (b) *whether it has formulated any specific policies, task objectives, high risk behaviour monitoring systems and cross-boundary co-operation mechanisms to curb cross-boundary transmission of AIDS; if not, of the reasons for that; and*
- (c) *whether it has assessed if the existing health care and other service systems in Hong Kong can cope with an upsurge in the number of persons infected with HIV, and whether contingency measures have been formulated in this respect?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, HIV/AIDS is a global phenomenon. It is estimated that 40 million

people across the world are living with the virus. Hong Kong has a relatively low HIV rate, estimated at less than 0.1% of the adult population. There are about 2 000 to 3 000 HIV infected persons in Hong Kong. About 200 new cases are diagnosed each year and reported to the Department of Health (DH).

- (a) The Government adopts a three-pronged approach to curb the spread of HIV/AIDS through prevention, surveillance and clinical management. Resources have been allocated to carry out activities in all three areas.

A comprehensive preventive programme is an essential first step in the control of HIV/AIDS. The DH, together with other health care providers and non-governmental organizations (NGOs), offers a full range of preventive programmes. The DH runs a dedicated HIV Prevention and Health Promotion Team to organize activities on the following key areas:

- (i) communication and information (such as publication of regular periodicals, maintenance of web pages and media campaign);
- (ii) capacity building (such as organization of training courses for health care workers, Internet-based continuing education programme and compilation of protocols/manuals); and
- (iii) preventive intervention (such as condom promotion and distribution, outreach programme for drug users and promotional events for cross-boundary travellers).

Other health programmes have also incorporated HIV prevention to take advantage of their access to target clientele. For example, the methadone clinics provide harm reduction services in the form of methadone treatment and risk reduction counselling for drug users daily. Social Hygiene Clinics provide free treatment for sexually transmitted diseases (STD), HIV tests and risk reduction counselling to clients. Pregnant women using health care services in the public sector are offered universal antenatal HIV testing to prevent parent-to-child transmission of HIV. Private practitioners are also encouraged to offer such services. Moreover, the Hong Kong Red

Cross Blood Transfusion Service will ensure blood safety by implementing stringent screening of donors.

The Government also works closely with NGOs and the community in the prevention of HIV/AIDS. The AIDS Trust Fund, set up by the Government in 1993, provides financial support to community-based HIV prevention activities organized by NGOs. So far about \$60 million has been granted to NGOs to implement 342 publicity and public education projects targeting at different groups, including youth, commercial sex workers, cross-boundary travellers, and so on.

We have in place a well-developed surveillance system to collect, analyse and disseminate epidemiological information. The system includes HIV/AIDS reporting, seroprevalence studies, STD surveillance and behavioural surveillance.

About 900 HIV/AIDS patients are receiving treatment in the public sector which provides multi-disciplinary medical and psychological care to these patients. To enhance the standard of care, the DH will promulgate updated guidelines on HIV management to all doctors shortly.

- (b) Our main strategy is to target interventions at those with high behavioural risk for HIV/AIDS. As mentioned in (a) above, in view of the global prevalence of HIV/AIDS, we have in place a comprehensive programme to prevent the spread of HIV/AIDS, including among cross-boundary travellers given the high incidence of travelling among the local population and the large number of visitors to Hong Kong from different parts of the world.

There is continuous dialogue between Hong Kong and the Mainland on health issues. For example, meetings were held among the health authorities of Guangdong, Hong Kong, Macao and Hainan to discuss issues relating to communicable diseases. Moreover, a group of epidemiologists and HIV specialists in the Pearl River Delta Region has been meeting regularly since 1997 to track the AIDS epidemic and discuss issues of common concern.

The DH operates the Red Ribbon Centre, which is an AIDS education, resource and research centre designated as an UNAIDS (Joint United Nations Programme on HIV/AIDS) Collaborating Centre for Technical Support. The Centre organizes capacity-building programmes in support of HIV prevention, control and care activities in the Asia-Pacific Region, particularly in the Mainland, including a fellowship programme for mainland AIDS workers, distribution of AIDS education materials, and workshops to network public health professionals from the Pearl River Delta Region for improving the surveillance mechanism in the region.

- (c) In the planning of the medical services for patients with HIV/AIDS, the Government has taken into consideration the likely increase in infected persons over time. To make effective use of available resources and medical expertise, management of HIV infected persons has been integrated with existing health programmes such as STD. Furthermore, with the advent of new drug treatment regime, many patients are treated on a specialist out-patient basis. The Integrated Treatment Centre at Kowloon Bay provides treatment on an out-patient basis for both HIV infected persons and STD patients. A new centre will also be set up later this year in Fan Ling.

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, the Secretary pointed out in paragraph (b) of the main reply that the Red Ribbon Centre provided the Mainland with support in HIV prevention, control and care activities as well as organizing a fellowship programme. Will the Secretary inform this Council whether the response from participants was enthusiastic and of the number of participants?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the Red Ribbon Centre is actually responsible for supporting AIDS workers serving the Asia-Pacific Region by strengthening their capacity in tackling their local AIDS problems. The Centre is not designed for providing service for HIV infected persons. It is rather aimed at providing training for health care personnel to enable them to carry out their tasks after returning to their own countries or regions. I can provide the Honourable HUI Cheung-ching with the information he requested later. (Annex IV)

**MR NG LEUNG-SING** (in Cantonese): *Madam President, the Secretary remarked in the last sentence of the main reply that an integrated treatment centre would be set up in Fan Ling later this year. Has the Government encountered local opposition, as it did in the past, when setting up this centre? Will similar centres be set up in other districts as well?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as I mentioned in the main reply, the treatment service will be integrated with existing health programmes as far as possible. Such service units are now provided in many STD clinics and other specialist clinics, such as the Queen Elizabeth Hospital. The provision of a specially designed integrated treatment centre in Fan Ling also originated from the Kowloon Bay proposal. According to the experience gained from the setting up of the treatment centre at Kowloon Bay, people in the district may have some sort of misunderstanding about such centres. Therefore, before setting up the centre in Fan Ling, we did consult the residents living in the district. The kind of problems encountered by us previously is not expected to arise this time.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Government pointed out in paragraph (a) of the main reply that it had been estimated that there were approximately 2 000 to 3 000 HIV infected persons in Hong Kong but only 900 are now receiving treatment. In other words, we have lost track of more than 2 000 of such persons. What will the Government do to locate them and prevent them from transmitting AIDS to other people?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the Government has no intention to locate the 2 000 or so persons because this is simply impossible. I have explained in the main reply that one of the measures to deal with HIV is to set up a surveillance system to collect information from blood and other sources to follow up the morbidity of people with different behaviour and the relevant trends. Many AIDS patient may not turn to public sector health care institutions for treatment. They may seek medical treatment from the private sector instead. Although they are encouraged to continue to seek medical treatment, we have no intention to locate them. As a matter of fact, of the 2 000 or so AIDS patients, some may have left Hong Kong and returned to the Mainland, some may be receiving treatment in



private clinics, and some may have passed away. This is because there was no cure to the disease a decade or so ago and thus most of the early patients have already passed away.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, I have been given to understand that some AIDS concern groups and persons in charge of sex service establishments have worked together to publicize AIDS prevention and related issues. Is the Government aware of this? If so, has the Government done anything to help them promote their cause?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I have mentioned earlier that the Government has set up a special fund, namely the AIDS Trust Fund, to provide financial support to community-based AIDS prevention work. Over the past eight years, \$60 million has been granted to implement 342 activities. As stated by the Honourable IP Kwok-him, some of these activities were targeted at sex workers.

**DR LO WING-LOK** (in Cantonese): *Madam President, the provision of antenatal HIV testing for all pregnant women has become not only a global trend, but also an important public health measure. The Secretary pointed out in paragraph (a) of the main reply that pregnant women using health care services in the public sector can now choose to undergo antenatal HIV testing. Private practitioners are, however, only encouraged to offer such services. This will mean that more pregnant women will use such services offered in the public sector, while fewer pregnant women will use such services in the private sector. Why does the Government not simply offer voluntary antenatal HIV testing to all pregnant women in the territory free of charge?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, it is not necessarily essential for the Government to be fully responsible for preventive work. Nor is it absolutely necessary for the Government to render full financial support. AIDS-management work is now being carried out in the three areas mentioned by me earlier. The current result is pretty good. The Government does not see any need to expand its preventive work by giving support to private health care providers to carry out such tests.

**MISS EMILY LAU** (in Cantonese): *Madam President, the Secretary said that in order to enhance the standard of care, updated guidelines would be promulgated to doctors shortly. Will the Secretary inform this Council of the differences between the updated guidelines and the previous ones; of the reasons for targeting doctors only; and whether the guidelines will be promulgated to nurses as well?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I think the guidelines can be promulgated to all health care professionals. This case has to be specially dealt with because there has been a great change in the manner of treatment given to patients. Moreover, with the emergence of new medical development every day, we must make constant review of our guidelines and promulgate new ones to identify the best method for treating patients with HIV/AIDS as revealed by the latest researches. Such guidelines are specially targeted at doctors because they have to know what special new drugs are available to HIV patients and when such patients should be referred to specialists for treatment. Other information will be distributed to other health care personnel by the DH. I will follow up whether it is necessary for the distribution of information to be adjusted.

**PRESIDENT** (in Cantonese): This Council has spent more than 17 minutes on this question. Now let us come to the last oral question, which will be raised by Mr Jasper TSANG on behalf of Miss CHOY So-yuk.

### **Consultancy Study on Cultural and Performing Facilities**

6. **MR JASPER TSANG** (in Cantonese): *Madam President, the Home Affairs Bureau and the Leisure and Cultural Services Department (LCSD) recently commissioned a consultant to conduct a study on cultural and performing facilities in different regions and districts, and consultation was conducted in the course of the study. It is learnt that members of certain political parties and community organizations have made requests over the phone to meet the consultant so as to present their views directly, but were refused. In this connection, will the Government inform this Council whether:*

- (a) *it knows the ways by which the consultant has collected views from different sectors of the community, including political parties; if views are mainly collected by means of consultative forums, whether it has assessed if this is sufficient to gain an in-depth understanding of the opinions of different sectors of the community;*
- (b) *it knows the reasons for the consultant's refusal to meet individual organizations which have made such requests on their own initiative; and*
- (c) *it has assessed if it is appropriate for the consultant to refuse to meet individual organizations?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, before replying to this question, I would like to provide some background information on the study, as follows.

The Home Affairs Bureau and the LCSD have commissioned a consultancy firm in mid-November 2001 to conduct a study on the Provision of Regional/District Cultural and Performance Facilities in Hong Kong (the Study), which aims to identify the community needs and to rationalize the provision of existing cultural and performance facilities at the regional/district level to facilitate future planning.

We have agreed with the Consultants a series of consultation arrangements at the initial stage of the study, as part of the exercise to collect views from stakeholders and the community at large. During the consultation period of mid-November to mid-December last year, the Consultants have completed the following work:

- (i) a telephone-based public survey to collect information and views from the general public on usage of regional/district cultural and performance facilities and other related venues;
- (ii) a number of meetings with the arts community;
- (iii) four consultation forums with District Councils (DCs); and
- (iv) five discussion groups with arts groups and community groups.

In addition, we have encouraged the Consultants to meet, where circumstances permit, other bodies if requested. During the consultation period, apart from some general inquiries, we have received two requests and both have been met.

Against this background, my reply is as follows:

- (a) The ways by which the Consultants collect views are explained above. We consider such multivariate and multilevel approach appropriate and sufficient for the purpose. This said, should any political parties or other organizations interested in the subject wish to meet with the Consultants to convey their views directly, we would be prepared to make arrangements as far as possible.

(b) and (c)

We have checked with the Consultants and are advised that they have not refused any requests for meetings with individual organizations. Following an inquiry, the Home Affairs Bureau suspects that a Member's personal assistant might have telephoned a colleague in the Bureau responsible for this matter, and during the short conversation which followed, there might have been a misunderstanding. And, the personal assistant did not subsequently follow up this request. Madam President, let me reiterate that although the consultancy firm has completed the work of gathering information, we are still prepared to arrange meetings for any political party or groups wishing to approach it.

**MR JASPER TSANG** (in Cantonese): *Madam President, when introducing the work completed by the Consultants, the Secretary mentioned that one of the items was the conduct of five discussion groups with arts groups and community groups. Would the Secretary tell this Council which arts groups and community groups were involved in these discussion groups? Who decided that meetings with these arts groups and community groups should be held? And, what were the selection criteria?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, these arts groups included 10 large-scale professional troupes, 30 small and medium arts companies, 30 local arts organizations and 10 other arts groups which frequently hire the civic centres under the LCSD. When it comes to the selection criteria, basically, those selected are organizations active in the cultural and arts circles which frequently hire our facilities. Basically, we would listen to their views on the reorganization of our facilities and the need or otherwise to increase them in the future.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that two special requests have been met. Would the Secretary please tell us what those two requests were?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I suppose the Honourable WONG Yung-kan's question is about which two organizations' special requests for meeting with the Consultants were accepted by us. These two organizations asked for a meeting with the Consultants, so that it could listen to their views. Besides the discussion groups mentioned in the main reply, the Consultants also held meetings with two organizations at their request. These two organizations were the Hong Kong Tourism Board and the Tai Po DC.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the completed work of the Consultants mentioned by the Secretary in the main reply includes four consultation forums. Since there are so many DCs, may I ask which DCs have taken part in these four consultation forums? And, will the Consultants hold further consultation forums with other DCs?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, all of the 18 DCs were invited to join the four consultation forums in turn on the basis of geographical distribution. The first forum was held on Hong Kong Island, and the DCs of Central and Western, Wan Chai, Eastern and Southern Districts were invited. We also invited the Islands DC for reasons of more convenient transportation. The second forum was held in Kwai Tsing Theatre, and the DCs of Tsuen Wan, Kwai Tsing, Sham Shui Po and Yau Tsim Mong were invited. The third one was held in Yuen Long Theatre, and the DCs of

North, Tai Po, Yuen Long and Tuen Mun Districts were invited. The fourth forum was held in Ngau Chi Wan Civic Centre, and the DCs of Sha Tin, Sai Kung, Wong Tai Sin, Kwun Tong and Kowloon City Districts were invited.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, would the Secretary please inform us whether any assistance was given by the Government in setting the duration and scope of consultation during the process of this consultancy study?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the work of consultation commenced in the middle of November, and we expect the Consultants to submit a report to us in a few months, but I will have to confirm the exact date after the meeting. As for the scope of work, I have already given an account in the main reply. If the Honourable NG Leung-sing wishes to have a more detailed account of the scope of study, I can submit the supplementary information required in writing. (Annex V)

**MR IP KWOK-HIM** (in Cantonese): *Madam President, it is mentioned by the Secretary in the third paragraph of the main reply that they agreed with the Consultants a series of consultation arrangements at the initial stage of the study, as part of the exercise to collect views from stakeholders and the community at large. May I ask the Secretary whether the idea of directly consulting political parties was ever considered during the process? I ask this question because political parties have many opportunities to get in touch with the people. May I ask the Secretary whether this idea was ever considered in the process of identifying the targets of consultation?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, during the process of discussions, our consideration was mainly soliciting the views of cultural and arts organizations because they are the main users of the relevant facilities. We also listened to the views of community organizations, because such organizations as DCs, organize many cultural and recreational facilities and use our facilities very frequently. These two categories of organizations will be the main targets of consultation during the stage of consultancy study. But as I mentioned just now, I am prepared to arrange meetings with the Consultants for any other organizations interested in this subject.

Madam President, I wish to emphasize that this is only the stage of consultancy study. Following the release of the study report, we will definitely conduct a series of more intensive consultation activities. The targets of consultation will definitely include the Panel on Home Affairs of the Legislative Council and the relevant political parties.

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that some general inquiries were received during the consultation period. Does the Secretary know the contents and types of these inquiries? Were there any communication problems during the consultation process, problems that have led some to think that the Consultants refused to meet with any particular organizations?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, it is impossible for us to find out now how many and what inquiries were made during the consultation period. Basically, the Consultants have met with the two organizations which asked for a direct meeting with them. I have looked up the relevant records, and learnt that the personal assistant concerned did not approach the Consultants direct to request a meeting. Instead the personal assistant approached one of our colleagues. Our colleague did not say at the time that the Consultants were unwilling to meet with political parties. The personal assistant asked whether the Consultants would arrange separate meetings with political parties, and our colleague replied that there was no such plan for the time being. Our colleague also said that since there would be four consultation forums with DCs, if political parties had any views to make, they could do so via their representatives in these forums. The personal assistant did not follow up on the matter subsequently.

**MISS CYD HO** (in Cantonese): *Madam Presidents, all the misunderstanding and problems mentioned just now were caused by a lack of transparency. Had the Legislative Council been consulted at the early stage, we might have saved these 10-odd minutes.*

*Madam President, I agree with Members that political parties should be systematically consulted. The Government used to conduct its own consultation on sports and recreational facilities, which was why political parties were consulted. The consultation this time around was conducted by the Consultants; they excluded political parties and said that there was no need to consult them at this stage. Why have there been two different approaches? Is that because the consultation preceding the compilation of the consultancy report last time achieved very poor results, and so a change has been made?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, as I explained just now, we are still at the stage of consultancy study. And, following discussions with us, the Consultants believe targets of consultation should tentatively be confined to the main users of the facilities. As I stressed just now, following the release of the study report, we will definitely conduct more extensive and intensive consultations, and political parties will certainly be included.

**MISS CYD HO** (in Cantonese): *My supplementary question is about the reason why the procedures for the last and current consultation exercises on recreational and sports facilities are different. Is that because the results last time were poor, and so a change has to be made this time?*

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

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I do not think that there is any particular reason. We are conducting a study, and we think that consultation should first be conducted in this way. But this definitely has nothing to do with the reason mentioned by Miss Cyd HO.

**DR RAYMOND HO** (in Cantonese): *Madam President, this is a study on the provision of cultural and performing facilities at district and community levels. May I ask the Secretary whether, for such an important study, the LCSD has ever launched any media publicity on the Consultants' consultation work, so as to*



*enable the relevant organizations and people to approach the Consultants commissioned by the Department and express their views?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, this is a consultancy study, and we do not think that there should be any large-scale publicity at this stage, because the Consultants are now supposed to make use of their professional expertise to collect the users' views, then consider our past study reports on the subject and finally make recommendations on comprehensive and long-term planning. We will not implement the recommendations immediately after receiving the Consultants' planning recommendations. We will follow our usual and consistent practice of consulting all relevant organizations, including members of the public, political parties, the Legislative Council and the Culture and Heritage Commission, on the recommendations.

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, why does the Government not conduct the study itself? Is that because the Government does not know how to do it, and so it has to commission a consultant? In addition, how much does the consultancy study cost? And, how long will the study take?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, on the matter of costs, I will have to look up the records before I can give the Honourable Member a reply. (Annex VI)

The commissioning of a consultancy study is in fact a very common arrangement. This is not so much because we do not know how to do it, but rather because we think that under some specific circumstances, a consultancy study will provide a more objective analysis, and that more professionals can thus be employed to conduct the work. In addition, we do not have to employ more civil servants to do the work which otherwise must all be done by us. Therefore, the commissioning of a consultancy study when necessary is in principle a reasonable arrangement.

**PRESIDENT** (in Cantonese): Question time ends here.

**WRITTEN ANSWERS TO QUESTIONS****Sponsoring Visits to Hong Kong by Officials of other Jurisdictions**

7. **MR BERNARD CHAN:** *Madam President, in connection with sponsoring visits to Hong Kong by officials of governments and quasi-government bodies in other jurisdictions, will the Government inform this Council of:*

- (a) the expenditure on and the number of sponsored visitors to Hong Kong last year;*
- (b) the criteria adopted for deciding on the officials to be invited, and the annual quota for sponsored visitors from each jurisdiction; and*
- (c) the mechanism for monitoring the effectiveness of the sponsorship programmes?*

**SECRETARY FOR HOME AFFAIRS:** Madam President,

- (a) In 2001, the number of fully and partially sponsored visitors invited to visit Hong Kong under the Sponsored Visitors Programme of the Information Services Department (ISD) was 186, which included 67 government officials of other jurisdictions. The total expenditure was around \$6 million.
- (b) The ISD's Sponsored Visitors Programme targets opinion formers from jurisdictions that have strong ties with Hong Kong, who are best placed to spread the Hong Kong message. The Programme is designed to enable the visitors to get a better understanding of Hong Kong and to brief them on how the Government of the Hong Kong Special Administrative Region works. Sponsored visitors are normally recommended by relevant Policy Bureaux and government departments, overseas Economic and Trade Offices, consuls-general and foreign chambers of commerce in Hong Kong. They include senior government officials, business leaders, politicians, academics and members of think-tanks. There is no quota set for any particular jurisdiction.

- (c) In assessing the effectiveness of the Programme, once the visit is completed, the ISD will collect feedback and seek views from those officials who have met and briefed the sponsored visitors, as well as from various Policy Bureaux, departments and overseas Economic and Trade Offices. The information gathered includes the impression and assessment of Hong Kong by the sponsored visitors and their subsequent stance and views on Hong Kong issues.

### **Prosecutions Against Employers Failing to Take out Valid Insurance Policies for Employees**

8. **MISS LI FUNG-YING** (in Chinese): *Madam President, regarding prosecutions instituted by the Labour Department (LD) against employers who fail to take out valid insurance policies for their employees in accordance with the law, will the Government inform this Council:*

- (a) *of the respective numbers of employers prosecuted and convicted last year on this account, and of the penalties imposed by the Court on those convicted;*
- (b) *of the number of cases last year in which prosecutions could not be instituted due to the expiration of the statutory period for prosecution, and the reasons for not instituting prosecutions within the statutory period; and*
- (c) *whether the LD has worked out measures to improve the situation mentioned in (b) above; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, it has always been the LD's practice to strictly enforce the mandatory requirement of the Employees' Compensation Ordinance that employers must take out employees' compensation insurance. In 2001, Labour Inspectors conducted a total of 83 906 inspections to check whether employers had taken out employees' compensation insurance in accordance with the law. Under the existing legislation, the LD is required to institute prosecutions within six months of the date of offence for cases in which employers have not insured their employees against work injuries. The details are as follows:

- (a) In 2001, the LD issued 1 069 summons to prosecute employers who had not taken out employees' compensation insurance. Among them 1 040 employers were convicted in the same year and the maximum penalty imposed by the Court was \$12,000.
- (b) The LD does not have at hand statistics on cases in which prosecutions could not be instituted due to the expiration of the statutory period. As for cases in which prosecutions were not instituted within the statutory period, it was due to the fact that they were either unsubstantiated or it was considered not in the public interest to institute prosecutions.
- (c) The LD has been publicizing its 24-hour complaints hotline. Any person, including any employee suffering injuries at work, may report to the LD by telephone if he/she suspects that his/her employer has not taken out any employees' compensation insurance. In response, the LD will conduct investigation promptly.

### **Promoting Breast-feeding**

9. **DR LO WING-LOK** (in Chinese): *Madam President, regarding the efforts to encourage breast-feeding, will the Government inform this Council:*

- (a) *of the substantive follow-up actions taken by the Department of Health (DH) and the Hospital Authority (HA) since the passing of a motion in June 1999 by this Council on the promotion of breast-feeding, and the number of medical practitioners and nurses who have received subsidies for the relevant training;*
- (b) *of the specific plans to implement the International Code of Marketing of Breastmilk Substitutes;*
- (c) *of its response to the recommendations in a report of the United Nations Committee on the Rights of the Child in 1996 that the Administration should review the effectiveness of its measures to promote breast-feeding, including whether the free distribution of powdered milk in hospitals by milk powder distributors should be allowed; and*

- (d) *whether there is a central mechanism for co-ordinating the efforts in promoting and supporting breast-feeding, in particular in the liaison work among the various organizations concerned, such as the DH, the HA and the Baby-friendly Hospital Initiative Hong Kong Association and the co-ordination of their relevant activities; if not, whether it will consider establishing such a central mechanism?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Madam President, the Administration is committed to promoting breast-feeding and fostering a baby-friendly environment for breast-feeding families. It is the established policy of both the DH and the HA to promote breast-feeding through the creation of a supportive environment where pregnant women and their families are provided with sufficient information to enable them to make an informed choice and full support to breast-feed their babies. Relevant health care staff are given appropriate training to enable them to provide full and competent support to breast-feeding mothers.

- (a) Services provided by the DH's 50 Maternal and Child Health Centres (MCHCs) include antenatal and postnatal seminars, video shows, workshops, practical demonstrations, support groups and individual counseling as well as hotline service. Since the end of 1999, breast-feeding rooms have been set up in all MCHCs where mothers can breast-feed their babies in a comfortable environment where guidance from medical and nursing staff is readily available. To facilitate the creation of a supportive environment within the MCHCs and to ensure uniform practice among the staff in promoting breast-feeding, the DH has prepared a written policy on breast-feeding in August 2000. A summary of the policy in both Chinese and English is displayed in the waiting areas of all MCHCs. The full version of the policy is available to the public on request.

The DH and the HA have been organizing training programmes on the promotion and management of breastfeeding, including sponsorship for medical and nursing staff to attend courses developed by the World Health Organization/United Nations Children's Fund and in-service training. About 300 medical and nursing staff in the DH have received additional targeted training in breast-feeding management. All medical and nursing staff in the

DH's MCHCs will have received such training by the end of 2002. During the last two years, the HA has organized training programmes for 200 staff and sponsored more than 430 doctors and nurses to attend specific courses. On the job training is also provided to nurses, doctors and health care assistants. To further promote breast-feeding, the HA's Breastfeeding Promotion Committee has recently compiled a set of breast-feeding manual, which will soon be promulgated to hospitals.

The DH, in collaboration with the HA and Baby Friendly Hospital Initiative Hong Kong Association, are working on a breast-feeding educational kit for distribution in early 2002.

- (b) The International Code of Marketing Breastmilk Substitutes (the Code) seeks to contribute to the provision of safe and adequate nutrition for infants by the protection and promotion of breast-feeding and by ensuring the proper use of breast-milk substitutes, where necessary, on the basis of adequate information and through appropriate marketing and distribution. The DH and the HA have been promoting and following the provisions of the Code, where appropriate. Specifically, the HA has banned the following practices in public hospitals:
- distribution of free milk samples by milk formula companies to mothers;
  - promotion of breast-milk substitutes through booklets, pamphlets and posters;
  - advertising of milk products; and
  - handing out free breast-milk substitutes to mothers.

The DH has also issued to private hospitals guidelines which incorporate the provisions of the Code for their compliance.

- (c) The United Nations Committee on the Rights of the Child recommended in October 1996 that a review be undertaken by Hong Kong of the effectiveness of measures to encourage breast-feeding,

including the question of the free distribution of powdered baby milk in hospitals. We had already submitted a report in May 1997 in response to the request, stating that the Hong Kong Government actively promoted breast-feeding through pamphlets, television advertisements, nursing officers, antenatal programmes, and so on. Contrary to the observation made by the United Nations Committee, neither the HA nor the DH distributes free powdered milk. Babies are only fed powdered milk in hospitals when their mothers cannot or do not choose to breast-feed.

The HA will continue to review its operation to ensure compliance with the Code. Through the efforts of the Government and the NGOs more and more women in Hong Kong have opted for breast-feeding. The rate of ever breast-feeding has increased from 19% in 1992 to 55.3% in 2000.

- (d) The DH as the Government's health adviser and health advocate liaises with relevant organizations to promote breast-feeding. The DH in collaboration with the HA, the Information Services Department, the Social Welfare Department, concerned professional bodies and the NGOs will launch various projects to enhance public awareness and acceptance of breast-feeding.

### **Cable Car System Linking Tung Chung and Ngong Ping**

10. **MR LAU PING-CHEUNG** (in Chinese): *Madam President, in April 2001, the Government publicly invited interested parties to submit detailed proposals for the construction and operation of a cable car system linking Tung Chung and Ngong Ping on Lantau Island under a franchise agreement. In this connection, will the Government inform this Council:*

- (a) *of the number of proposals received;*
- (b) *of the expected timing for completion of the selection of the franchisee and announcement of the selection result;*
- (c) *whether the franchisee is required to make a commitment to complete the construction works by a specified date; and*

- (d) *whether any department has been tasked to co-ordinate the progress in developing the cable car system and other tourism projects on Lantau Island; if not, of the reasons for that?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, my reply to the four parts of the question raised by the Honourable LAU Ping-cheung is as follows:

- (a) The Government has received a total of three proposals for the franchise to finance, design, build and operate the Tung Chung Cable Car system.
- (b) We have completed the initial assessment of the proposals received and will soon begin negotiations with short-listed proponents. Upon completion of the negotiations, a decision will be made to select the successful proponent.
- (c) The project agreement will specify the target date for commissioning the Cable Car system. The franchisee will be obliged to ensure that the system comes into operation in accordance with the terms of this project agreement.
- (d) There is an established interdepartmental mechanism for dealing with planning issues and project development. In the cases of the Tung Chung Cable Car Project and Hong Kong Disneyland, which are the two major tourism projects on Lantau, the Tourism Commission oversees interdepartmental co-ordination and co-ordination with the private sector to ensure their smooth implementation. The Tourism Commission is supported by the Territory Development Department and the Civil Engineering Department respectively in these two projects.

### **Employers' Participation in MPF Investment Decisions**

11. **MR HENRY WU** (in Chinese): *Madam President, the Mandatory Provident Fund Schemes Ordinance (Cap. 485) provides that the employer may apply for the offsetting of the long service payments (LSP) payable to a certain*



*employee by the employer-funded portion of that employee's accrued benefits under a Mandatory Provident Fund (MPF) scheme. If such amount is smaller than the amount of the LSP payable, the employer concerned is still required to top up the LSP for that employee. Under this arrangement, if the employee selects a high-risk investment portfolio for his MPF scheme and the accrued benefits eventually decrease, the amount available for the employer to offset the LSP will also diminish, thus resulting in a corresponding increase in the LSP to be topped up by the employer. Regarding the need for employers to share the risks arising from the investment decisions made entirely by employees, will the Government inform this Council:*

- (a) of the number of related complaints received so far from employers since the implementation of the MPF scheme; and*
- (b) whether it will review and amend the Ordinance to enable employers to decide for themselves the investment risks of the employer-funded portion, or to allow employers to offset the amount of LSP by the actual MPF contributions they have made regardless of the profit-loss situation on the employee's accrued benefits under the MPF scheme, or to consider other effective improvement measures; if not, of the reasons for that?*

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

- (a) Under the Mandatory Provident Fund Schemes Ordinance, the employer selects the MPF scheme, while the employee chooses the investment funds provided under the scheme selected by the employer. In selecting the MPF scheme, the employer may take into consideration the investment risks of the different investment funds available under the particular scheme.

The Mandatory Provident Fund Schemes Authority (MPFA) has not received any complaint from employers that MPF investment loss caused by risky investment choices made by employees would reduce the amount available to employers for offsetting of their long service payment liabilities. However, some employers have expressed such view to the MPFA in the course of their day-to-day contact with the Authority. On the other hand, trade unions have

expressed their concern to the MPFA on the limited investment choices available under the MPF schemes selected by some employers. According to the trade unions, this has restricted the choices available to employees and undermined their investment return and retirement protection.

- (b) The present arrangements, whereby employers are responsible for selecting the trustees and the MPF schemes, while employees are entitled to choose the types of investment funds under the schemes selected by their employers, had been thoroughly discussed when enacting the MPF legislation. The arrangements represent a balance of the interests of employers and employees. There is no need to review the relevant provisions at this stage.

### **Outsourcing Work of Architectural Services Department**

12. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, it has been reported that the Government commissioned a six-month consultancy study in April last year to assist it in reviewing the organization and management of the Architectural Services Department (ArchSD), as well as its mode of operation and procedures in design, tendering and works supervision, and the Government has announced that it will contract out the design, construction and supervision duties for most government buildings. In this connection, will the Government inform this Council:*

- (a) *of the proposals made by the above consultancy study;*
- (b) *how the current percentage of ArchSD's project design work which has been contracted out compares with the target percentage under the new arrangement;*
- (c) *how the ArchSD's staffing needs for various types of works, including management, design, tendering, site supervision and clerical duties compare to those of the existing establishment with increases in contracting out works; and*
- (d) *whether the ArchSD's procedure for contracting out will be changed?*

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

- (a) The business review of the ArchSD commissioned by the Government has reaffirmed the achievements and important functions of the Department and has made a number of recommendations on its future development. Based on those recommendations, the Government has decided that the ArchSD's strategic roles will be as follows:
- (i) the ArchSD will strengthen its professional role as the Government's corporate advisor on public building development and maintenance matters;
  - (ii) the ArchSD will expand its role in working with the industry to improve the design and maintenance of public buildings and in promoting higher standards in construction, site management and safety. The Department will work towards leading the local construction industry in raising its overall quality and standards; and
  - (iii) the ArchSD will concentrate more on project management and supervisory functions in delivering and maintaining public buildings. This will enable the Department to put more focus on strategic issues and will enhance the overall professionalism in the relevant fields.

The decision is in line with the Government's objective of improving service delivery and public sector productivity through increased partnership between the public and the private sectors. It also helps the further development of the local construction industry. In order to allow the ArchSD to adopt the new strategic roles, the bulk of the building and maintenance works currently undertaken by the Department will be outsourced to the private sector which has the necessary expertise and delivery capacity.

- (b) Currently, the ArchSD has outsourced around 35% of design contracts to private consultants. Under the new mode of operation, the ArchSD will work towards outsourcing up to 90% of all new projects. The remaining 10% to be handled in-house is for

emergency projects, retaining expertise and staff training purposes. The Department will also outsource/devolve up to 80% to 100% of its maintenance activities.

- (c) The ArchSD will carefully analyse the effects of the proposed outsourcing programme and its new mode of operation on different categories of its staff and how they can be dealt with. An inter-departmental working group comprising all relevant parties, including the affected Head of Grades and Head of Departments, has been set up to discuss the issues related to the staffing arrangements, for example, staff retraining and staff redeployment. The staff will be fully consulted on these matters. The Government has undertaken that there will be no forced staff redundancy as a result of this outsourcing package.
- (d) The ArchSD will further review the current outsourcing procedures, aiming at continuous improvement in efficiency. At the same time, the ArchSD will also review the recommendations made in the Report of the Construction Industry Review Committee, and update the consultant selection criteria.

### **Feasibility of Electronic Schoolbags**

13. **MR ERIC LI** (in Chinese): *Madam President, will the Government inform this Council whether, in order to reduce the weight of schoolbags carried by pupils and promote the use of information technology, it has examined the feasibility of replacing schoolbags with "electronic schoolbags"; if it has, of the details; if not, the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President, "electronic schoolbags" are electronic devices for storing learning resources, which could be accessed by students at all times. As replacement for traditional textbooks, "electronic schoolbags" could reduce the weight of schoolbags and expand the repository of learning resources. The composite "electronic schoolbag" system consists of hardware such as Personal Digital Assistant (PDA) or notebook computer together with a wireless connection to the Local Area Network (LAN) of the school and the Internet. The effectiveness of

"electronic schoolbags" depends on a number of factors such as accessibility to hardware and network, their convenience, capability to provide an interactive or self-learning environment and, more importantly, the quality of the content.

No schools around the world have successfully replaced all traditional textbooks by "electronic schoolbags". However, small-scale pilot schemes have been launched, or will be launched shortly in places like the Mainland, Taiwan, Singapore, United States, France, Malaysia, and so on. The Education Department is currently conducting a pilot scheme in all class levels of six primary schools to test the technical viability of integrating notebook computers and PDA with wireless LAN, and their feasibility of replacing schoolbags. The scheme would also shed light on the direction for the development of relevant teaching resources. More importantly, we wish to explore ways to utilize such technology to enhance students' learning, including collaboration learning and self-learning.

In the pilot scheme, educational resources provided by the Hong Kong Education City, commercial sector (for example, education publishers) and schools' self-developed resources are used to test the various modes of "electronic schoolbags". It is expected that the findings of the pilot scheme will be ready in a year's time. The success of the pilot scheme will depend on stability of the technology, availability of educational resources, capability to enhance learning, reactions of students and teachers as well as the financial impact on households.

### **Preventing Wildlife Birds from Feeding on Fish Ponds**

14. **DR TANG SIU-TONG** (in Chinese): *Madam President, some pond fish farmers have complained that a large quantity of fish cultured in their fish ponds often fall prey to wildlife birds, thus affecting their livelihood. However, since these birds are protected under the law, they are not allowed to be trapped, killed or disturbed. In this connection, will the Government inform this Council:*

- (a) *whether it has conducted studies on the species of birds which habitually feed on fish ponds and their main sources of food;*
- (b) *whether it has assessed the financial losses suffered by fish farmers from wildlife birds feeding on fish ponds; if so, of the assessment*

*methodology, the financial losses suffered by fish farmers each year and the average percentage of such losses in their total income; if not, whether it will conduct such an assessment;*

- (c) whether it has commissioned consultants over the past five years to study the habits of birds feeding on fish ponds and the resultant problems; if so, of the expenditure incurred, the findings and recommendations of such studies, as well as the Administration's response and follow-up actions;*
- (d) of the measures in place to assist fish farmers in preventing wildlife birds from preying on the fish cultured in their fish ponds; and*
- (e) whether ex-gratia compensation or loans will be granted to fish farmers for purchasing devices to prevent birds from feeding on their fish ponds; if so, of the details; if not, the reasons for that?*

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

- (a) According to the observation of and data collected by the Agriculture, Fisheries and Conservation Department (AFCD), cormorants and egrets/herons are the wild birds most commonly found foraging in fish ponds in Hong Kong, followed by spoonbills, grebes, ospreys and kingfishers, and so on. These birds mainly forage on wetlands such as the mudflats in Inner Deep Bay, Mai Po Nature Reserve, watercourses, stream courses and fish ponds. They feed on fish, amphibians and reptiles (for example, frogs and lizards), crustaceans and other small aquatic organisms.
- (b) Except cormorants, these wild birds usually forage in shallow waters of draining fish ponds and therefore their impact on fish farmers is not great. In 2000 the AFCD commissioned a consultancy study on the "Preventive Measures to Minimize Cormorant Predation in Commercial Fish Ponds", which included an assessment of the impact of cormorant predation on fish ponds during their wintering period in Hong Kong. Through observing the foraging habit of cormorants, the study's assessment was that

between 57 and 119 tonnes of fish had fallen prey to cormorants in the winter of 1999-2000, representing 1.3% to 2.7% of the total output of fish ponds in Hong Kong in 2000.

- (c) As mentioned in (b) above, the AFCD commissioned a consultancy study on the "Preventive Measures to Minimize Cormorant Predation in Commercial Fish Ponds" in 2000. The aim of the study is to investigate the foraging behaviour of cormorants in local fish ponds in winter so that appropriate management measures could be devised to minimize the impact on fish farmers. The study was completed in mid-2001 at a total cost of \$1.14 million. The major findings are summarized as follows:
- (i) The majority of cormorants foraged in the mudflats in Inner Deep Bay. It was estimated that only about 20% to 42% of cormorants (around 1 400 to 3 000 in number for year 2000) foraged in fish ponds.
  - (ii) Over 60% of cormorants foraged in the first hour after sunrise and the number of foraging cormorants declined significantly during the rest of the day.
  - (iii) Cormorants tended to flock to larger fish ponds (with an average area of 1.48 hectares) and ponds which were far away from roads. They also preferred square-shaped fish ponds to linear ones. According to the data collected, there were some 40 ponds on which large flocks of cormorants were frequently found gathering and foraging. Most of these ponds were located in Fung Lok Wai, Lut Chau, Lok Ma Chau and Ma Tso Lung.
  - (iv) Stocking the gei wai in Mai Po with trash fish was an effective way to divert some of the cormorants previously foraging in fish ponds to the gei wai in Mai Po and Deep Bay.

Several management measures are recommended in the Consultancy Report to prevent birds from foraging in fish ponds. The major measures are outlined below:

- (i) To adopt bird management techniques, such as the use of audio and visual devices, overhead wires and submerged nets, to scare the birds away from fish ponds.
- (ii) To stock certain fish ponds with more trash fish when migratory birds start to arrive in the winter in order to attract more cormorants to forage in these ponds.
- (iii) To reshape the ponds and alter their size so as to make them less attractive to the cormorants. In addition, it is easier to install wires and coloured ribbons at smaller and linear ponds to scare the birds away from the ponds.
- (iv) To delay the restocking of fish fry after the winter harvest as far as possible until late March when the cormorants have left Hong Kong.

The AFCD generally supports the management measures recommended in the Consultancy Report. The AFCD has briefed the Hong Kong (New Territories) Fish Culture Association on the Report's findings and recommendations and has held several meetings with the Association to discuss the feasibility of the measures. In November 2001, the fish farmers agreed to the implementation of management measures by the AFCD in the winter of 2001-02 to reduce the impact of bird predation on fish ponds (see (d) below for details).

- (d) The AFCD has adopted the following measures in the winter of 2001-02 to assist fish farmers in preventing wild birds from preying on the fish cultured in their fish ponds:
  - (i) The AFCD has provided subvention to the World Wide Fund for Nature Hong Kong for purchasing 61 tonnes of trash fish for the stocking of the gei wai in Mai Po Nature Reserve from mid-November to mid-February, that is, the peak season for arrival of migratory birds in the winter. The purpose is to attract birds to forage in the Nature Reserve so as to minimize the impact on fish farmers.



- (ii) The World Wide Fund for Nature Hong Kong regularly and properly adjusts the water levels of the gei wai in Mai Po Nature Reserve during that period in order to attract more birds to forage in the Nature Reserve.
- (iii) For the 40 fish ponds more seriously affected by cormorants, the AFCD and the Hong Kong (New Territories) Fish Culture Association work together to help the fish farmers install wires to prevent birds from foraging in their fish ponds. Up to now, installation of 30 fish ponds has been completed and the remaining work is expected to be completed by late January.

The AFCD will monitor the effectiveness of the above measures with a view to formulating a long-term strategy.

- (e) The AFCD has all along been providing fish farmers with low interest loans for business development and production through the Kadoorie Agricultural Aid Loan Fund. Fish farmers can apply to the AFCD for the low interest loans to purchase relevant bird preventive devices.

### **Statistics of Legal Aid Cases**

15. **MR ABRAHAM SHEK:** *Madam President, with regard to court cases in respect of which legal aid was granted in the past three years, will the Government inform this Council of:*

- (a) *the numbers of civil and criminal cases in which judgment was passed in favour of and against the legal aid recipients respectively; and*
- (b) *the number of cases in which the legal aid recipients were non-Hong Kong residents, together with a breakdown by the outcome of the proceedings, as well as the total amount of legal aid involved in such cases?*

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam President,

- (a) The limitations of the computer system of the Legal Aid Department (LAD) do not enable us to supply statistics on the outcome of court proceedings involving legally aided persons. Some 35 000 legal aid cases were approved during the past three years. The costs of conducting a manual trawl of the case records to compile the required statistics will be prohibitive. The LAD is nevertheless in the process of implementing an integrated information system to strengthen case management and, as part of that process, it will set up an effective mechanism for recording and compiling such relevant statistics in the future. The new system will come into operation later this year.
- (b) Our legal aid policy seeks to ensure that no one with reasonable grounds for taking or defending legal action in the Courts of Hong Kong is prevented from doing so because of a lack of means. Currently, persons who have satisfied the means test and the merits test will be eligible for legal aid, regardless of their residency. In maintaining statistics on legal aid services, the LAD does not, therefore, differentiate cases on the basis of the residency of the legally aided persons.

During the past three years, total legal aid expenses incurred amounted to \$1,568 million. For the reason stated above, the LAD does not have records of the number of cases, outcome of proceedings, or legal aid expenses incurred, in cases involving legally aided persons who are non-Hong Kong residents. To conduct a manual trawl of the case records to compile the required statistics will be a very labour-intensive, time-consuming and costly task.

### **Education of Gifted Students**

16. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, the Government allocated \$10 million in the financial year 2000-01 for organizing*

*enrichment programmes to develop the potentials of gifted students. Yet it has been reported that the Fung Hon Chu Gifted Education Centre, which is established by the Education Department (ED), has ceased to enrol gifted students. In this regard, will the Government inform this Council:*

- (a) of the long-term policy for grooming gifted students;*
- (b) of the number of students who participated in the enrichment programmes last year;*
- (c) whether it has assessed the effectiveness of these programmes; if so, of the details;*
- (d) of the reasons for the Centre's ceasing to enrol students; and*
- (e) how it will cater for the further education needs of the students who have completed the enrichment programmes provided by the Centre?*

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

- (a) A three-tier gifted education programme for nurturing talented students has been implemented since early 2000. The first two tiers are school-based programmes. While elements of gifted education are immersed in regular lessons, training is also provided to gifted students outside classrooms. The third tier focuses on organizing off-school support in the form of enrichment programmes for exceptionally gifted students in collaboration with tertiary institutions and relevant non-government organizations. The third tier includes fast-tracking access to credit-bearing university courses which aim to broaden the exposure and develop the potential of gifted students.
- (b) A total of 1 300 secondary students of Secondary Three to Secondary Seven levels participated in various enrichment programmes last year.

- (c) The ED assesses the effectiveness of these programmes by post-programme surveys. Responses from participants indicate that their talents and potential have been nurtured and perspective widened through interaction with talented peers. The tertiary institutions providing credit-bearing courses also conduct their own assessment to determine whether participants have reached the standard they set to award the credits.
- (d) The Fung Hon Chu Gifted Education Centre has ceased taking in gifted students since early 2000, following the introduction of the school-based gifted education programmes. Under the new arrangement, the main tasks of the Centre are to co-ordinate various gifted education related activities and to develop resource packages on teaching and curriculum planning in support of school-based provision. In addition, it also provides training for teachers and parents to assist them in identifying the needs of gifted students and helping the students in schools.
- (e) To further support gifted students, the ED has been actively liaising with universities to encourage them to design suitable programmes for gifted students and to offer them more credit-bearing university courses.

### **Code of Practice on Prevention of Spamming of Mobile Phone Short Messages**

17. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, with effect from 3 December 2001, customers of different mobile phone network operators can receive and send mobile phone short messages among one another. In this connection, will the Government inform this Council whether it will issue to the operators a Code of Practice on the prevention of spamming of short messages so as to avoid short message spams causing nuisance to customers; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Chinese): Madam President, the Inter-Operator Short Message Service (IOSMS) was launched on 3 December 2001. With the assistance and co-ordination of the Office of the Telecommunications Authority (OFTA), the six mobile service operators published on the same day the Code of Practice of Inter-Operator Short Message Service to protect the public from the nuisance caused by unsolicited promotional short messages. According to the Code, promotional short messages shall only be sent with the recipient's prior consent. A recipient who receives unsolicited promotional short messages may file a complaint with the OFTA or his/her mobile operator. Depending on the circumstances, the sender's operator may suspend the short message service of the sender, and the recipient's operator may also block short messages sent by that sender. The Code of Practice can be found at the OFTA's website.

The IOSMS has only been introduced for a short while, and usage is expected to increase gradually in future. The OFTA will closely monitor the implementation of the IOSMS. It will review the effectiveness of the Code and amend the Code if necessary, so as to ensure the public are not disturbed by unsolicited promotional short messages.

### **Venues for Carnivals**

18. **DR RAYMOND HO** (in Chinese): *Madam President, the Hongkong Winter Carnival was held on a site adjacent to the Hung Hom Ferry Pier from 8 December 2001 to 13 January 2002. It has been reported that a number of patrons complained that as the site is a sand ground, even a light breeze would churn up a cloud of dust and some patrons felt so uncomfortable that they had to leave early. In this connection, will the Government inform this Council:*

- (a) *whether it knows the number of complaints received by the organizer about the site being dusty;*
- (b) *of the grounds on which the Lands Department granted approval to lease the sand ground for use as venue for a carnival; and*

- (c) *whether some formation work will be carried out for a site on which a carnival will be held prior to handing it over to the organizer, so as to avoid the recurrence of similar incidents?*

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

- (a) The organizer had advised us that they had not received any complaint about the site being dusty. Following the coverage of this issue in the press, the Lands Department approached the organizer to explore the possibility of installing further mitigating measures. The organizer was receptive to the idea and in consultation with the Environmental Protection Department, the organizer carpeted the entire site with artificial turf to reduce the dust nuisance.
- (b) The Lands Department is responsible, among other things, for the management of government land, and it is normal practice for us to put to beneficial short-term use vacant government lots whilst awaiting their long-term development. In the present case, the Lands Department received a proposal for use of a vacant site. As usual, the Lands Department sought the views of departments concerned on aspects relevant to their respective areas of responsibilities. The departments consulted included the Kowloon City District Office, the Environmental Protection Department, the Food and Environmental Hygiene Department, the Electrical and Mechanical Services Department, the Transport Department and the Tourism Commission. None of the departments objected to the proposal. The Lands Department then included the various departments' requirements in the tenancy conditions and granted a short-term tenancy to the organizer.

- (c) The Lands Department will, in consultation with relevant government departments, include in future relevant conditions in similar tenancies requiring carnival organizers to take appropriate measures to ensure good site management and to minimize nuisance arising from their operations.

### **Mid-stream Fee Coupon System**

19. **MISS EMILY LAU** (in Chinese): *Madam President, in June 2001, mid-stream terminal operators implemented, one after another, the mid-stream fee (MSF) coupon system under which truck drivers presenting such coupons could enjoy priority in the delivery and collection of containers. In this connection, will the executive authorities inform this Council:*

- (a) *given that the Secretary for Economic Services had advised at a meeting of the Panel on Economic Services of this Council that the Hong Kong Mid-stream Operators Association (HKMOA) had undertaken not to collect the MSF from truck drivers, whether the coupon system implemented by the operators is a breach of the HKMOA's undertaking; if so, whether the Administration has carried out investigation and taken follow-up actions;*
- (b) *of the number of complaints received by the Hong Kong Port and Maritime Board (PMB) under the Economic Services Bureau from truck drivers since 7 June 2001, alleging that the delivery and collection of their containers were delayed by the operators because they could not present the coupons, as well as the outcome of such complaints; and*
- (c) *whether they will co-ordinate a quadrilateral meeting among relevant mid-stream organizations, that is, the China-Hong Kong Transportation Joint Conference, the Hong Kong Liner Shipping Association, the Hong Kong Shippers' Council and the HKMOA, in the near future in order to resolve the disputes arising from the charging of the MSF?*

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

- (a) The representatives of the Hong Kong Shippers' Council, the Hong Kong Liner Shipping Association and the HKMOA informed the Economic Services Bureau in February 2001 that they had come to an initial understanding to develop a new framework on the payment method for the mid-stream charges, under which it would not be necessary to collect the charges in question from the truckers.

Subsequently, the mid-stream operators launched an e-ticket payment method along side with a coupon payment method. The HKMOA maintains that the aim is to collect the charges from the shippers and not the truckers.

The Administration has been closely monitoring the development of the issue. We continue to investigate complaints received from the truckers and would facilitate various parties to meet with a view to resolving the disputes through dialogue.

- (b) During the period from 9 June 2001 to 22 January 2002, the PMB received 161 complaints that could be verified with truck drivers. Statistics on the complaints are given in Annex A. The PMB will verify and record the complaints received as soon as possible. The PMB will look into the complaints with the mid-stream operators and truckers, and assist in resolving the problem, where necessary.
- (c) Regarding the China Hong Kong Transportation Joint Conference's proposal of convening a quadrilateral meeting among the relevant organizations (including the HKMOA, the Hong Kong Shippers' Council and the Hong Kong Liner Shipping Association), the Economic Services Bureau has approached these organizations with a view to arranging a meeting. Up to now, the associations have not reached any understanding on how to proceed with such a meeting.



MSF Collection System

Summary of Complaints Received by KWDO/PMB Division of ESB (2001-02)

	<i>1st week</i>	<i>2nd week</i>	<i>3rd week</i>	<i>4th week</i>	<i>5th week</i>	<i>6th week</i>							<i>2002</i>	
	<i>9-16</i>	<i>17-23</i>	<i>24-30</i>	<i>1-7</i>	<i>8-14</i>	<i>15-21</i>	<i>22-31</i>	<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>	<i>1-22</i>	<i>Total</i>
	<i>June</i>	<i>June</i>	<i>June</i>	<i>July</i>	<i>July</i>	<i>July</i>	<i>July</i>						<i>January</i>	
Total number of complaint cases received	109	11	23	18	2	2	3	1	4	2	3	10	2	190
- Cases not verifiable (not able to establish contact with complaint)	27	2												29
= Valid complaints received	82	9	23	18	2	2	3	1	4	2	3	10	2	161
1. Nature: - Long waiting/handling time for those who did not have coupon	81	9	22	18	2	2	3	1	4	2	3	10	2	159
- Others (see remarks below for details)	1 <sup>(a)</sup>		1 <sup>(b)</sup>											2
2. Operator(s) being complained: - Floats/Sakoma	82	8	11	11	2	1	3	1	2	1	1			123
- Yuen Fat			12	6		1					1	1		21
- Fat Kee		1												1
- Hoi Kong				1										1
- China Merchant									2	1		1	1	5
- River Trade Terminals											1	8 <sup>(e)</sup>	1	10
3. Duration of delay: - 30 minute and below		1	1											2
- 31 minutes to 1 hour	1								1			5	1	8
- 1.1 to 2 hours	6	5	1	5	1		1		1	1	1	2		24
- 2.1 to 3 hours	14	1	7	8	1	2		1	1	1	2	2	1	41
- 3.1 to 4 hours	23	1	12	4					1			1		42
- above 4 hours <sup>(c)</sup>	38	1	2	1										42
4. Whether the truckers were able to pick up/deliver the container eventually														
- Yes	77	9	23	18	2	2	1	1	3	2	3	8 <sup>(e)</sup>	2	151
- No	5 <sup>(d)</sup>						2		1					8

Remarks:

- (a) A trucker complained that his truck was blacklisted by Floats. He was forced to use another truck to deliver the same container to Floats again.
- (b) A trucker complained that he was pressured to buy coupon.
- (c) There were five cases complaining for overnight waiting as the operator refused to accept the containers before the closing of operation at 11.00 pm. Two cases had been reported to the police for mediation.
- (d) The truckers were unable to pick up/deliver the containers as they were unwilling to queue for long time.
- (e) The trucker was contacted through Mr CHIANG Chi-wai; figure may be subject to revise later on.

**Implementing Co-location of Boundary Crossing Facilities**

20. **MR LAU KONG-WAH** (in Chinese): *Madam President, at the meeting of the Panel on Transport of this Council on 26 October 2001, in response to an enquiry about the co-location of boundary crossing facilities (that is, officers from the Hong Kong and Shenzhen authorities conducting separate cross-boundary checks within the same premises), the Administration advised that both the Guangdong and Hong Kong sides had agreed on the principle of co-locating immigration and customs clearance on the Shenzhen side, and it was considering, among other things, the legal issues relating to the deployment of officers from the Hong Kong Special Administrative Region (SAR) to work in the Mainland. In this connection, will the Government inform this Council:*

- (a) whether it has started discussions with the relevant mainland authorities on the detailed implementation of the co-location of boundary crossing facilities; if so, of the details;*
- (b) of the latest progress of the study on the legal issues concerning the deployment of officers to work in the Mainland; and*
- (c) of the estimated time for implementing the co-location of boundary crossing facilities?*

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

- (a) At the fourth Plenary of the Hong Kong/Guangdong Co-operation Joint Conference held on 25 July 2001, the two sides agreed to study the feasibility of implementing "co-location" at the Shenzhen Western Corridor with a view to speeding up the flow of traffic and further streamlining clearance procedures at the control point.

We have started discussions with the relevant Shenzhen authorities on planning the construction of the Shenzhen Western Corridor and the relevant clearance facilities. We have also had preliminary exchanges of views on issues involved in "co-location" with the relevant Guangdong and Shenzhen authorities.

- (b) To implement "co-location", complex jurisdictional issues will have to be resolved first. As the joint inspection facilities will be located in Shenzhen, we have to make appropriate arrangements to enable the SAR law enforcement officers to perform immigration and customs examinations, as well as duties related to the operations of a control point in Shenzhen (that is, outside Hong Kong on an extra-territorial basis). In this connection, the two sides have formed an expert group to follow up all relevant issues.
- (c) We aim to implement "co-location" on the Shenzhen side of the new Shenzhen Western Corridor when it is open to traffic.

## **BILLS**

### **First Reading of Bills**

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

### **DUTIABLE COMMODITIES (AMENDMENT) BILL 2002**

### **COMPANIES (AMENDMENT) BILL 2002**

**CLERK** (in Cantonese): Dutiable Commodities (Amendment) Bill 2002  
Companies (Amendment) Bill 2002.

*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.

### **DUTIABLE COMMODITIES (AMENDMENT) BILL 2002**

**SECRETARY FOR TREASURY** (in Cantonese): Madam President, I move that the Dutiable Commodities (Amendment) Bill 2002 be read the Second time.

The objective of the Bill is to introduce the provisions necessary for implementing open supervision of bonded warehouses under the existing Dutiable Commodities Ordinance, and to delete provisions that apply only to supervision under a close bond.

In order to ensure that all dutiable commodities including tobacco, liquor, and so on, meant for local consumption can be sold in the market only after duties have been paid, the Customs and Excise Department (C&ED) will exercise control over the bonded warehouses where these goods are stored. There are currently 60 bonded warehouses which store dutiable commodities in Hong Kong. Fifty-one of them have adopted a closed bond system, that is, any entering, leaving, moving and processing of dutiable commodities including vanning and devanning have to be carried out under the surveillance of C&ED officers on the spot. The permits for the removal, domestic sale and export of goods are also endorsed by C&ED officers stationed in the warehouses. In the absence of C&ED officers, warehouses under a closed bond must be closed under revenue locks so that no one can remove the goods in the warehouses. Under this supervision system, the bonded warehouse operators and traders must pay the charges for supervision of C&ED officers in warehouses. The remaining nine warehouses are currently operated under an Open Bond System (OBS), that is, the C&ED does not have to deploy officers to supervise the movement of dutiable commodities into and out of a bonded warehouse on the spot. And through the requirements for bonded warehouse owners in respect of licensing and record-keeping, and the conduct of examinations and surprise checks on the relevant documents and goods in the bonded warehouse, it can ensure that the situation of duty evasion will not emerge, and these open bonded warehouses are operated smoothly.

In 1999, the Government commissioned a consultancy to examine the feasibility of implementing the OBS comprehensively. The conclusion of the study opined that to supervise warehouses with the full implementation of the OBS can reduce the sector's compliance costs, which is conducive to enhancing the competitive edge of the sector. According to the recommendations of the consultant, we put in place a risk-management system, and worked with warehouse operators operating under a closed bond on a pilot scheme on OBS for a period of half a year.

The pilot scheme was completed last year and feedback from participants was very positive. People in the sector considered the OBS had facilitated their operation and lowered their operating costs. The C&ED was also satisfied that there had been no loss to government revenue under the OBS. After studying the successful experience of implementing open bonded warehouses in other places and in Hong Kong, the recommendations of the consultancy report, and the positive feedback on the pilot scheme from the sector and the C&ED, the Government considered it feasible and desirable to implement on a full scale the relevant system in Hong Kong. This can lower the operating costs of the sector on the one hand, and protect government revenue on the other.

In proposing the Dutiable Commodities (Amendment) Bill 2002, we seek to amend provisions that apply only to warehouses under a closed bond, and add the provisions necessary for implementing the OBS.

The Bill proposes to delete the provisions in respect of supervision by C&ED officers on the spot, and relax the restrictions on the opening hours of bonded warehouses, and so on, because these restrictions are unnecessary under the OBS. In addition, the Bill proposes to set out clearly in the Ordinance the requirements for warehouse operators in such aspects as licensing, storage, record-keeping, auditing, and so on. For example, in vetting and approving bonded warehouse licences, the Commissioner of the C&ED has to consider the financial status of the applicant, the documents kept for inspection by the C&ED, the suitability of certain management systems and procedures, the propriety of the applicant and the responsible personnel, and also the types of documents must be kept in record by operators as required by the Ordinance. These requirements can enable the C&ED to grasp sufficient information about the licensee and the operation of the warehouse concerned, and to check the authenticity of inventory audits and records, so as to prevent and deter duty evasion effectively.

Moreover, we understand that without the assistance given by C&ED officers on duty, there could be more unintended mistakes in the stock account of warehouses. Therefore, the Bill proposes that when there is a slight deviation between the account and the actual quantity of goods stored, the Commissioner of the C&ED is allowed to compound the offence to reduce the penalties.

In respect of the transitional arrangements, the Bill proposes that existing licensees can choose to operate according to the existing law and the terms of

their existing licences, until expiry after the Amendment Ordinance has come into effect. Licensees can also choose to surrender their existing licences to the C&ED and apply for new licences according to the Amendment Ordinance.

In recent months, the C&ED has introduced the operation of open bonded warehouses to the sector extensively through the Customer Liaison Group of the Customs & Excise Dutiable Commodities, and it has received general support from the sector for the full implementation of the OBS. To further help the sector switch over to the OBS smoothly, the C&ED also plans to issue warehouse guidelines before implementing the relevant system, specifying in detail the requirements in various aspects covering storage, handling, inspection, auditing, and so on. It will also arrange for warehouse personnel courses to introduce the operation of the new system.

With these remarks, Madam President, I commend that the Bill be passed by this Council.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Dutiable Commodities (Amendment) Bill 2002 be read the Second time.

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

## **COMPANIES (AMENDMENT) BILL 2002**

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I move that the Companies (Amendment) Bill 2002 be read the Second time.

The Bill seeks to implement the amendment recommendations made by the Standing Committee on Company Law Reform (SCCLR), to simplify the filing requirements, to improve the charge registration procedures in the Ordinance, and to make technical amendments to certain winding-up provisions.

In February 2002, the SCCLR published a report containing recommendations on amending the Companies Ordinance to enhance shareholders' protection, update the requirements regarding directorships,

simplify the requirements for registration of foreign companies and make structural changes to the Ordinance. We shall implement the SCCLR's recommendations in phases. The Bill seeks to implement 17 of these recommendations, which can be divided into three categories: shareholders' rights, requirements regarding directorships and technical matters.

On shareholders' rights, the Bill proposes that the Companies Ordinance should stipulate clearly that shareholders shall have the right to enforce the terms of the memorandum and articles of association. This arrangement can ensure that where a company's affairs are not conducted constitutionally, its shareholders can take appropriate actions.

The Bill also proposes to reduce the threshold for shareholders' proposals from the existing level of not less than 5% of the holders of voting rights or not less than 100 shareholders to the level of 2.5% of the voting rights or 50 shareholders. The Bill further proposes that the law should provide for the removal of directors by ordinary instead of special resolution. The passage of an ordinary resolution requires only a simple majority.

The proposed amendments to the requirements regarding directorships are meant to foster sound corporate governance. In Hong Kong, it is common for a company's articles of association to provide for the appointment of alternate directors whose primary function is to attend meetings. The existing Ordinance does not specify whether a director has to be responsible for the acts of such alternates. The Bill proposes that a director should, unless otherwise stated in the company's articles of association, be vicariously responsible for the acts of his alternate. The Bill further proposes to extend the scope of application of the definition of "shadow directors" from Part IVA of the Ordinance to the entire Ordinance, and to include "someone who can influence a majority of the directors" in the definition.

Besides, the Bill clarifies the ambit of a company's liability to exempt or indemnify its officers or auditors. In addition, in view of the need to update the existing provisions prohibiting a company from making loans to or providing security for loans to directors, the Bill proposes to extend the definition of "loan" to cover modern forms of credit. The Bill also provides clearly that a company shall be allowed to take out insurance for directors and officers to cover their liabilities to the company and other parties except for fraud.

Recommendations relating to technical matters include: permitting the formation of a company by one person; permitting a private company to have a minimum of one director and prohibiting the incorporation of a company limited by guarantee with a share capital. Besides, the Bill also proposes to remove the right of the shareholders of a public company to apply to the Court for repealing amendments to company objects which have already been passed. This can ensure that the decisions of a public company will not be subject to unnecessary hindrances, and the Court will not have to get involved in the disputes among shareholders concerning commercial decisions. Shareholders holding dissenting views can sell their shares at any time.

The Bill also proposes to remove the directorial autonomy rule; defines the term "manager" to which the definition of "officer" refers; shortens the time limit for the completion of transfer of shares of public companies; and provides that court approval is not required where the reduction of share capital consists of a redesignation of the par-value to a lower amount, subject to certain safeguards.

Apart from the above recommendations made by the SCCLR, the Bill also proposes to simplify the filing requirements and improve the charge registration procedures. For the former, we propose to replace the existing declarations or affidavits required by the Ordinance with simple written statements. This proposal will tie in with the strategic reform programme expected to be implemented by the Companies Registry in 2004 to facilitate the electronic delivery of company documents to the Companies Registry for filing. Another proposal is about the introduction of new and simplified procedures for incorporation of company and change of company name, meant to shorten processing time and standardize the formats of various notifications.

Regarding charge registration procedures, 95% of the current charges are "all monies" charges, where the amount cannot be accurately stated. Descriptions of amounts are often verbose and legalistic. To improve the charge registration procedures, we propose to remove the requirement that the Registrar of Companies must state the amounts of charge monies in the certificates of registration he issues. Interested parties can obtain more comprehensive information about the amounts of charge monies by searching the related documents at the Companies Registry. The Bill also proposes to widen the scope of those provisions on the release of property from a charge, so as to include the arrangements for a release of the whole of a charge.



We also take this opportunity to propose amendments to the winding-up provisions in the Ordinance. These amendments will increase the amount of minimum debt for which a petition for winding-up may be presented from \$5,000 to \$10,000 and to give the Financial Secretary the power to prescribe a greater amount by regulation in the future.

Madam President, the Bill will help upgrade the standard corporate governance of local enterprises and will also make the company laws clearer and more business-friendly. I hope Members will support this Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Companies (Amendment) Bill 2002 be read the Second time.

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

## **MEMBERS' MOTION**

**PRESIDENT** (in Cantonese): Members' motion. Rest time and rest days for employees.

## **REST TIME AND REST DAYS FOR EMPLOYEES**

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, today's motion reminds me of an incident 30 years ago. As I can recall, the Chairman of the Manufacturers' Association at that time was a devout Christian who attended church services punctually every Sunday. At the same time, since the then labour legislation did not contain any provisions providing for employees' right to enjoy a rest day every week, many workers had to attend Sunday service as well — they had to work in the factory on Sundays. The then Government was considering introducing legislation to provide for employees' right to enjoy rest days, but the proposal was opposed by that Chairman on the grounds that so doing would encourage workers in Hong

Kong to become lazy and thereby undermine Hong Kong's competitiveness. So, one day a group of workers and I went to the church where that Chairman attended Sunday service to distribute propaganda leaflets. I asked him why he could go to church on Sundays to attend services as told by God but not workers. I also asked him whether attending Sunday service was the privilege of employers not to be shared by wage earners. He did not say anything, but the relevant legislation was eventually enacted.

Some Honourable Members may feel that every other year the labour sector would repeatedly put forward motions on issues like minimum wage, regulating working hours, and so on, for discussion; they may perhaps consider the motions boring and repetitious, or even a waste of the Council's time. Honestly, I do share sort of such a feeling. But then, given that the situation 30 years ago where employers could attend church services on Sundays while employees had to work in factories still exists today, despite finding the relevant motions boring and repetitious, should we not also reflect on the efforts made for workers over the past few decades? With regard to protecting the workers' right to have reasonable rest time, have we been talking too much but doing too little in the past few decades, so little that no progress has ever been achieved?

Even though the Employment Ordinance stipulates that every employee shall be granted not less than one rest day in every period of seven days, the situation of employees being deprived of their rest days is still very serious. According to a survey conducted by the Hong Kong Confederation of Trade Unions (CTU) last week, about 12% of the people interviewed have to work seven days a week. The problem of "no rest day throughout the year" is particularly grave among such trades as cleansing, security services and catering. In this connection, Ms LI, an employee working for a cleansing contractor of the Housing Department, has to work 365 days a year over the past nine years. Even on the Chinese Lunar New Year Day, she has to clear the trash, carrying her baby boy on her back and dragging her daughter along.

In addition to being deprived of their rest day, the lack of rest breaks during working hours is another grave problem among workers. As indicated in a survey conducted by the Census and Statistics Department, over 85% or 2 million of the employees working five hours or more daily for organizations in the private sector do not have any rest breaks during their working hours. More absurdly, 125 000 of these employees do not even have any meal breaks

and 30 000-odd of them have to work for 10 consecutive hours or more. People work to feed themselves and their families, but these 100 000-odd workers just do not have the time to eat even though they have a job.

Madam President, earlier on, ample medical research studies have confirmed that working over a protracted period of time without rest would injure workers' physical and psychological health, and also increase the incidence of accidents and occupational diseases. Associate Prof LEE Tak-Shing from the Department of Psychiatry of The Chinese University of Hong Kong points out that working for long hours may give rise to problems like emotional depression, bad temper and poor appetite in the short run, and that if not dealt with properly, emotional problems may eventually lead to suicidal tendencies. Working over a long term without any holidays may give rise to many diseases like stomach problems and bodily pains. For people who have to remain seated for a long time during working hours, they may accumulate fat around the organs inside their bodies and thereby incur problems like heart diseases, diabetes, and so on. As the old saying goes, "You have got to take a break even if you hang yourself", so given that many wage earners in Hong Kong have to work 365 days a year or several consecutive hours without any break, is the Government trying to make working even more fatal than hanging oneself?

The CTU believes that Hong Kong should no longer be a workplace filled with blood and tears like the ones in Karl MARX's time. And we definitely cannot accept that workers have to sacrifice their physical and psychological health for the security of a job. For these reasons, the CTU urges the Government to make legislation to provide that employers should provide their employees with reasonable rest and meal breaks during working hours, for example, less than one 30-minute break in every period of five hours. In addition to stepping up prosecution against those employers who deprive employees of their rest days, the Government should also review the existing Employment Ordinance and provide for employees' right to receive double pay for the rest days they are required to work, with a view to preventing employers from abusing the flexibility given by the Ordinance and thereby ensuring that employees enjoy the right to have rest days. We just hope the Government can set a good example by specifying in the tender requirements for outsourced services that contractors must provide their employees with reasonable rest time and genuinely meet all requirements relating to employees' rest days.

Madam President, our demands are only the internationally recognized basic rights. Article 7 of the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong specifies clearly the following: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: ..... Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays". When considering the relevant reports submitted by Hong Kong, the United Nations Committee on Economic, Social and Cultural Rights has for many times urged the Hong Kong Government to make legislation to protect workers' right to enjoy reasonable rest time. Indeed, given that our neighbours, including Japan, South Korea, Malaysia, Singapore and Taiwan, have all enacted laws to provide for workers' rest time, why should Hong Kong be an odd exception?

I reckon the Government or Members representing the industrial and commercial sectors may consider that rigidly providing for workers' rest time by legislative means will impact on the flexibility of the labour market and injure the economy of Hong Kong in the long run. I do agree to the market retaining a certain degree of flexibility, but that does not mean employers can pay no regard to the physical and psychological health of their employees. As a matter of fact, in many overseas countries the laws providing for workers' rest time allow individual trades and occupations to be exempted from the provisions in the light of their unique situation. The CTU suggests the Government consult the representatives of different trades on the matter during the legislative process. Exemption for exceptional cases could be allowed so long as there are strong reasons and reasonable substitute proposals to alleviate the damage that the lack of rest time may cause to workers, such as the case of the British circuits company which agrees to reducing workers' weekly working hours by two.

As regards rest day, the existing legislation has already allowed a certain degree of flexibility to enable employers to require their employees to work on their rest days providing that compensation leave can be arranged within 30 days. However, too many employers are now abusing this flexible arrangement and always require their employees to work seven days a week. As a result, many wage earners have in effect been deprived of their right to have rest days. I suggest the Government stipulate that employees shall receive double pay for the rest days they are required to go to work, with a view to making a balanced arrangement whereby employers may require employees to work on rest days

when the practical need arises and at the same time prevent employers from abusing the flexibility. Many countries, including China, Taiwan, Malaysia, Japan, and so on, have already made such provisions in law.

Madam President, perhaps some Honourable colleagues or workers may query the need for talking about rest at the present time when having a job is already considered as a good fortune. I agree that during a time when the unemployment rate stands high, our first and foremost task should be to create more employment opportunities. But then, this does not mean that we can ignore workers' need to take rests, which is a very basic physiological and psychological need. Moreover, it will eventually lead to a situation where some people will have to work till they drop dead while others are starved to death if those who are employed have to work seven days a week. According to a survey conducted by the CTU, more than 10% of the private sector employees, accounting for some 260 000 of the wage earners in Hong Kong, have to work seven days a week. If these 200 000-odd workers could enjoy rest days, over 40 000 employment opportunities would be released immediately, thereby causing the unemployment rate to fall by 1.2 percentage points. So, this should be enormously helpful to alleviating the rapidly deteriorating unemployment problem.

Madam President, during prolonged or boring meetings Honourable colleagues may retreat to the Ante-Chamber for a break. Looking around this Chamber we can see that many Members are doing so at the moment. I believe they do understand how important it is to take rests, and I just hope they can also understand that taking rests is equally important to workers. In order not to deprive Honourable colleagues of their rest time, I should really stop being so long-winded. Thank you, Madam President.

**Mr LAU Chin-shek moved the following motion: (Translation)**

"That, as most employees currently do not have rest breaks — some even have no meal breaks, during their working hours, and it has become increasingly prevalent for employers to require their employees to work on rest days, which harms employees' mental and physical health, increases the occurrence of accidents and the contracting of occupational diseases, and also reduces work efficiency, this Council urges the Government to stipulate by legislation that employers should provide their employees with

reasonable rest and meal breaks during working hours, as well as to review the existing labour laws with a view to ensuring that employees enjoy the right to have rest days."

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

**MISS LI FUNG-YING** (in Cantonese): Madam President, as the Chinese New Year approaches, people are finding it hard to pass this hurdle. This is especially true for the Chinese New Year this year. For the grass-roots workers, the hurdle is even harder to pass. The Chinese New Year should be a time of joy and celebration, but with the tremendous pressure on people's life, the time has become a great burden. Those who are unemployed have to look for money to meet the Chinese New Year expenses and those wage earners are now facing the threats of wage cuts, increased workloads, long working hours, the cutting of rest days and such like harsh terms. They also fear that they will lose their jobs before the Chinese New Year and face sudden changes in their income. The coming year is the Year of the Horse, and as the popular saying goes, success comes with the horse, but I am worried that those workers who have worked so hard for decades will be greeted with failure instead of success even before the Year of the Horse comes. The recent spate of family tragedies has sounded an alarm to the Government, but officials to date have indicated that what they can do is very limited and we have to wait until the global economy recovers. They offered this as an answer to the employees, especially the grass-roots workers, who are facing hard times.

The logic behind the Government's answer seems to suggest that the terms and conditions of the employees in Hong Kong are determined by the supply and demand situation in the market. When the economy is buoyant, the employers will need to hire a lot of manpower and so the demand in the labour market will be very great. Workers' wages and even their working conditions will improve. However, during the boom in our economy in the 1980s and in the early 1990s, the Government continuously increased the quota for imported labour and as a result, the supply and demand relationship in the labour market was distorted and the bargaining power of wage earners reduced. Nowadays, we can see that in the labour market even as the supply of labour is in excess of demand, there are

still more than 230 000 foreign domestic helpers. Leaving aside the issue of whether the market should be allowed to adjust the livelihood of the working class, the fact is that though the Government has never sit back and do nothing to influence the labour market, its hand will invariably helps the employers.

Our economy is going from the extreme of great prosperity in the 1980s to another extreme, that is, recession and downturn. Confronted with the hardships of the people, what the Government is trying to do is to shirk its responsibilities simply by saying, "There is not much that we can do." The motion today is a reflection of the predicament trapping the general working masses. The Federation of Hong Kong and Kowloon Labour Unions to which I belong conducted a survey on the employment situation and quality of life of workers in our member trade unions during the period from November to December last year. A total of 1 300 questionnaires were sent and 989 were collected. About half of the respondents said that their workload had increased and about 30% said that their working hours had increased. At the same time, about 50% of the respondents said that their income had reduced. Government officials and representatives of employers would say that now with the economic downturn, everyone should tide over the difficult times together and so the increase of working hours and the reduction in wages and holidays are inevitable. Just imagine how many employers are depriving employees of their statutory rights on this high-sounding pretext. The Honourable LAU Chin-shek pointed out earlier that the Government had contracted out some work to cleansing companies and the workers employed by these companies have to live in the public toilets and work round the clock. I would also like to discuss the example of some listed companies which are making big profits, and those are the bus companies. These companies require bus drivers to work overtime and in extended hours in order to cut their costs. The drivers have to work for one shift plus five hours, that is, they have to work for nine hours a day plus five more hours of overtime work. So altogether they have to work 14 hours a day. When this is added to the time spent in travelling to and from the place of work, just imagine the total number of working hours a day they will spend. Such long working hours will not only ruin the physique of the drivers, but also pose a threat to the safety of the public. Even professionals like medical doctors in the public hospitals also complained to the Panel on Health of this Council that their average working hours in a week were more than 80 hours. After some improvements, their average working hours in a week are still more than 60, which are far more than the permitted 44 hours. For housemen, only 20% of them can have one rest day weekly.

Madam President, examples of the poor treatment of wage earners abound. The motion puts emphasis on the provision of reasonable rest and meal breaks during working hours. I would like to point out that most employees have to work long hours and the situation has become very unreasonable indeed. The Employment Ordinance, which is already fraught with problems, has become all the more fragile and powerless when wage earners have become a disadvantaged group being exploited in the labour market. The Employment Ordinance provides that persons employed on a continuous contract are entitled to one rest day for every period of seven days. But the Ordinance leaves one open end, and that is, the employees may work on their rest days at the request of their employers. Employees now are the socially disadvantaged and they do not have any bargaining power. One can imagine just how many of them may refuse to comply with their employers' requests.

I hope that while the Government finds a new way out for our economy, it should not use economic recovery as an excuse disregarding the hardship of the working class. I do not wish to see that the way out for our economy is based on the employers reaping all the benefits. The way out for Hong Kong does not lie in a quest for economic prosperity alone, but more importantly, in a quest for economic justice. The Government should make an expedient review of our outdated labour legislation and take concrete steps to protect the workers' interests. This is the first step we should take in our progress towards economic justice.

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

**MISS MARGARET NG** (in Cantonese): Madam President, I rise to speak in support of the motion moved by Mr LAU Chin-shek.

First of all, on the question of rest breaks. Mr LAU Chin-shek says that some employees do not even have a reasonable break for meals. In fact, this is something which we can all see very often. For example, we often see tram drivers eat from lunchboxes while the tram is moving. They would swallow one or two mouthfuls of rice when the tram pulls up at a stop and then closes the doors and starts to go again. Many bus drivers do not have the chance to park their buses at the terminal and take a rest. Some of them even have to start the buses again soon after they arrive at the terminal. They just do not have the



time for meals. So it is a very common thing for bus drivers to work with empty stomachs. This will not only endanger their health, but also affect safety in public transport.

After working for a certain period of time, one needs to take a break and that is something we all know. This applies to work which requires a lot of concentration. Recently, this Council has deliberated on the regulations on the use of display screen equipment and the types of work which the regulations are addressing are such work which requires much mental concentration. A conclusion substantiated by medical research is that if no rest is taken after doing such work for more than four hours will injure health in the long run. In some cases, even working for two hours without a break may cause damage to health as well.

Sensible employers should make arrangements for employees to take breaks as appropriate and in the absence of any legal intervention in the matter. However, if problems are found to exist, the Government should consider the provision of protection by way of legislation. In my opinion, the resort to legal protection in this respect may not apply to all employees. But to certain trades and occupations, such as drivers of trams and buses and users of display screen equipment as mentioned by me and even other trades and professions, express protection should be given. Such protection is necessary in the context of prevention of accidents, injury at work, injury to third parties, work efficiency and the health of the staff.

There are many forms of protection in law, including explicit provisions in the principal legislation, or protection provided in the form of subsidiary legislation or statutory codes of practice. The executive authorities should consult and discuss with the stakeholders to formulate the best approach to be taken. There are different practices all over the world. For example, many states in the United States have legislation on the matter or directives issued under relevant legislation to provide for a break of 10 minutes after continuous work for four hours in certain occupations. We can also see that in Britain, the law requires that a break of 20 minutes be taken by adults having worked for six hours. If there is a collective agreement, the break can even be extended. For young workers, there should be a break of not less than 30 minutes after working for four and a half hours. The law in Ireland has similar provisions like those in Britain.

Madam President, actual conditions and the legal systems in different places do vary and we do not suggest that practices in other places be imported wholesale and indiscriminately to Hong Kong. However, we can learn from the good examples of other places. We may draw reference from them, for reasonable protection given to employees will cause no damage to the business environment, but rather improve it. Likewise, productivity can also be enhanced.

As regards rest days, the Employment Ordinance expressly provides that there should be one rest day for every seven days of work. This provision is in line with international standards. The thrust of the motion moved by Mr LAU Chin-shek is to ensure that employees enjoy the right to have rest days.

Mr LAU Chin-shek also mentioned that the findings of a recent survey conducted by the CTU show that about 10% of the workers do not enjoy such a right in reality. Only a very small minority of them is given additional allowance for this reason. Is the existence of such a phenomenon the result of loopholes in the law or inadequacies in enforcement? If the problem lies in enforcement, for example, the employees do not want to complain against their employers, then amending the law may not be the best step to take.

Mr LAU's view, as I understand it, is that if employees are required to work on rest days, they should be given twice the amount of their wages. I have reservations about this view. It is because if it is due to health or public safety considerations that employees should be assured enjoyment of this right, then depending on the seriousness of the matter, there may be a need to legislate to prohibit the cancellation of rest days by mutual agreement between employers and employees. But if the law permits the cancellation of rest days on mutual consent, then it seems that the law should stipulate that both parties should negotiate and decide on the wage to be paid for work on rest days, instead of stipulating the terms in law.

Having said that, however, I agree that employers and employees do not often bargain on an equal basis, a point which the Honourable LI Fung-ying has mentioned earlier. I therefore think that the idea of making a review of the existing legislation to plug the loopholes and enhance protection is still something that merits support.

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

**DR LUI MING-WAH** (in Cantonese): Madam President, on the question of whether legislation should be made to regulate the rest time of employees, the Labour Advisory Board actually conducted two rounds of detailed discussions in 1999 and 2000. The representatives of employers and employees failed to reach any consensus at that time. Why? From the perspective of labour representatives, it is only natural to strive for or perfect labour rights and benefits. But employers have to take the overall situation into account and must also consider the reasonableness, necessity and cost of implementation of the relevant proposal.

First, regarding reasonableness, the statistics of the Labour Department show that 5.6% of all those 2.34 million employees working for five or more hours a day, that is, about 130 000 employees, do not have a regular meal break. This figure alone seems to suggest that there is a very unreasonable phenomenon in society, but I am sure that the employers concerned will definitely take account of the work nature and working hours of their employees and make flexible lunch time arrangements for them. The absence of lunch time for employees is very rare. Therefore, the lack of a regular and definite meal break for a minority of employees is caused entirely by the need to tie in with the job nature of individual trades and posts. It is no exploitation of employees.

We must understand that the working hours of each company and each employee are all set down in accordance with the needs of both parties and the law, and all details will be set down clearly in the employment contract. The whole thing is based on mutual consent, and there is simply no need to intervene by way of legislation.

The working hours and rest time of the employees of a company are in fact part of the operational arrangements of the company. So unless the company changes its business nature, any unilateral change is bound to be impracticable and meaningless.

Finally, there is the question of cost. There is always a price to pay for everything we do. Mandatory control by way of legislation will inevitably weaken the spirit of consultation between employers and employees, reduce the flexibility of making work arrangements and increase the operating costs of enterprises.

Naturally, if employers can make proper arrangements for their employees in respect of rest time and lunch periods, they will be able to raise the efficiency and boost the morale of their employees. We should encourage this. Thank you, Madam President.

**MR ANDREW CHENG** (in Cantonese): Madam President, I rise to speak in support of Mr LAU Chin-shek's motion.

Since the 1997 policy address, the progress reports of the Education and Manpower Bureau have included the working time of local employees as one of its policy commitments. Unfortunately, after five years, the Government has still failed to finalize its policy on the working time for the entire workforce. Given the Government's lack of enthusiasm in drawing up any working time regulations that can benefit the masses of wage earners, one cannot help thinking that the Government simply does not have any real intention of addressing the problems of working hours and rest time faced by local employees.

The reason for moving the motion today, for bringing up this old subject for discussions again, is that with the realities of economic sluggishness and scarcity of jobs, all salaried classes are being exploited to different degrees by their employers, whether in term of workload, salaries and fringe benefits. Therefore, we must pay attention to the issue of rest time. According to the Report of the Commissioner for Labour, the median hours of work per week in Hong Kong have increased from 45 hours in 1997 and 1998 to 48 hours in 1999 and 2000. Although the Report of the Commissioner for Labour 2001 has not yet been published, one can assert that the figure will definitely go up. We must realize that 48 hours are only the median figure per week, and this actually means that half of the employees in Hong Kong are working more than 48 hours a week. But the Government seems to be totally numb to this high figure. How high, may we ask, does the Government want our median hours of work per week to rise before it starts to pay attention?

I am sure no one will object to the ideal pattern of dividing the 24 hours of a day into eight hours of work, eight hours of rest and eight hours of leisure activities. With the rise in the median hours of work per week, the rest time for most employees in Hong Kong should be correspondingly increased as compensation for overtime workload. What the employees in Hong Kong are

facing is a labour market with no legislative protection in respect of maximum hours of work, so with the ever-rising median hours of work, the Government should try to ease the situation by making regulations on rest time.

It has become increasingly common for Hong Kong employers to require their employees to work on rest days. This has made their employees very fatigued, mentally and physically, and also seriously upset their family life. Members of the public, who themselves have such experience, would certainly agree to the above. Recently, the most controversial, the best, example of exploitation of rest days is the case of doctors working in public hospitals. The Government must address this problem squarely, because with its lead in openly defying the provisions on rest days in the Employment Ordinance, these provisions have become largely ineffective. If the masses of salaried classes turn down their employers' unreasonable request and refuse to work on their rest days, then under the very poor economic conditions now, they may well lose their jobs. The reason is that when even professionals like doctors do not have any bargaining power, it will be even less likely for ordinary wage earners to enjoy their reasonable and legitimate entitlement to rest days. Therefore, the Government must step up enforcement and strictly enforce the rest day provisions in public organizations, so as set a good example as the largest employer in Hong Kong.

It cannot be denied that following many years of efforts to promote a culture of occupational safety and health, employers and employees in Hong Kong are now paying more attention to the occupational safety and health of the latter, evidenced especially by the reduced incidence of industrial accidents. However, the occupational safety and health protection for employees in the various trades and occupations in Hong Kong is closely related to the length of their working hours, the availability of appropriate rest time and the number of rest days. If employers can do well in these three aspects, employees will be able to enjoy the most reasonable and satisfactory occupational safety and health protection. Unfortunately, the current economic sluggishness has given business tycoons and most employers a convenient reason, and they have thus sought to ignore employees' occupational safety and health benefits on the ground of having to maintain a good business environment.

As the Chairman of the Subcommittee on Occupational Safety and Health (Display Screen Equipment) Regulation, I have, over the past year or so since the end of 2000 when the first Subcommittee meeting was held, come to deeply

realize the huge differences between employers and employees over the latter's occupational safety and health. Many employers have resorted to excuses like rising costs or the need to control costs in an attempt to evade their responsibility. But the fact is that employees in Hong Kong have never questioned the importance of a sound business environment. Quite the contrary, many of them are hardworking and prepared to join hands with their employers to overcome the current difficulties. But when employees working long hours before the computer ask for some reasonable rest time from employers, the latter start to dispute the definition of "users". That is why the Subcommittee, despite amending the subsidiary legislation several times, has still failed to arrive at a final outcome.

According to industry practitioners, if the chair and hardware are not positioned properly, then a person who works long hours before the computer will suffer strain injuries and contract diseases such as tenosynovitis and sciatic neuralgia. It takes a very long time to treat these diseases; in serious cases, permanent disability may result, and in less serious cases, there may be minor vision problems like astigma, myopia and eyesore as well as other ailments such as back pain, headache and mental stress. How can society shoulder the huge medical expenses in future?

For the three reasons mentioned above, we in the Democratic Party support the motion on urging the Government to enact legislation requiring employers to allow their employees to have reasonable rest time and meal breaks during their working hours. We also support the proposal that the existing labour legislation should be reviewed to ensure that employees can enjoy their entitlement to rest days.

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

**MR KENNETH TING** (in Cantonese): Madam President, the labour issue is one of the topics most frequently discussed in the Legislative Council. On this issue, the Liberal Party has all along stressed that we are concerned not only about employers' interest. Rather, the interest of society as a whole is our first and foremost consideration.

The first part of the motion urges the Government to make it mandatory by legislation that employers must provide their employees with reasonable rest and

meal breaks during working hours. I hope Members can understand that many issues may not necessarily be resolved by legislation. Mandatory stipulations in law will, on the contrary, jeopardize the competitiveness of Hong Kong, which will in turn have many negative effects on employers and employees.

Firstly, many industries in Hong Kong, such as the retail, catering and tourism industries, do not have fixed working hours or regular rest and meal breaks. In some retail shops, for instance, the workload of employees is not controlled by the employers. Instead, it depends on the volume of business and patronage. When there are many customers, and if the employer must close his shop and turn his customers away to meet the mandatory requirement of rest and meal breaks, it will not only affect the business turnover of the employer, but also definitely affect the income of employees.

From this we can see that different industries have different work characteristics. Legislating in a broad-brush manner to provide for rest and meal breaks will only affect the normal operation of industries.

Now, the economy of Hong Kong is experiencing severe hardships. The Liberal Party and the Federation of Hong Kong Industries take the view that this issue should be handled flexibly. Employers and employees should be encouraged to work out solutions through negotiations in the light of the uniqueness of their own companies or industries, instead of invariably resorting to legislation to settle problems. We must bear in mind that an additional piece of legislation may create more constraints, which may be counter-productive to labour protection. So, I hope Members can appreciate this.

In fact, the "unscrupulous employers" whom some Members have always mentioned are, after all, a minority. Most of the employers understand only too well that their staff is their most important asset. Unreasonable exploitation of employees or forcing employees to work long hours to the neglect of their physical and mental conditions will undermine employees' work efficiency, and employers will stand to lose ultimately.

Moreover, the motion also mentions the arrangement for rest days. In fact, the Employment Ordinance already stipulates that every employee who has been employed under a continuous contract is entitled to not less than one rest day for every seven days of work. The Ordinance is in compliance with the International Labour Convention and therefore, employees are already provided with a certain degree of protection.

However, under the existing legislation, employees are allowed to work on rest days voluntarily. As to how the employer will compensate the employee, it certainly has to be worked out by both sides through negotiation. Given the present economic downturn, it is indeed understandable for employees to choose to work on rest days on their own initiative in order to make more income or for other reasons.

Madam President, the current business environment in Hong Kong is far from satisfactory and the unemployment rate stands high. Under such circumstances, employers have their own difficulties, whereas wage earners have their own worries. Both sides are actually in the same boat. So, it is most imperative for us to support each other and to sympathize with each other's situation, so as to ride out the storm together. With these remarks, Madam President, I oppose the motion.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, the Government has always publicized the message that some domestic electrical appliances must be switched off after they have been operating for a certain time and that electrical appliances must lay idle for some time before they can be turned on again, or else dangers may arise. However, the Government has never carried out any publicity or made any legislation to put across the message that employees, having worked for a certain period of time, need to rest for the benefit of their health, or else it will adversely affect their physical health. Sometimes, I will ask this: In this capitalistic society of Hong Kong where money overrides everything, and also in the eyes of the Government and capitalists, is the value of workers not even comparable to that of electrical appliances or lifeless commodities?

I certainly hope that the answer is in the negative and that electrical appliances are not more important than human beings. But much to our regret, the reality has been telling me time and again that in the Hong Kong community, the value of a worker is even less than that of an electrical appliance. Earlier on the Honourable Kenneth TING said that there are no "unscrupulous employers" in Hong Kong. That is not true. According to the results of a survey recently published by the Census and Statistics Department, less than 9% of private companies in Hong Kong allow their employees to take breaks after they have worked for five hours, and as many as 131 000 workers are even deprived of meal breaks. Taking meals is considered a basic need of human beings. But



the reality is that so many people do not have a fixed time for meals. What is the value of human beings in the eyes of the Government? Even a machine will have to be refuelled at regular intervals. Manual workers who are tired out by work should make up for their nutrition loss. But they do not even have the time to take meals. Why? In Hong Kong, are workers even less valuable than machines?

We have always stressed that what workers need is not only an opportunity to work to make ends meet. I think it is more important for them to work with dignity. A job that does not give them dignity is not in the least a job. If the job does not even allow meal breaks, can it afford us dignity? Madam President, I think the answer is obviously no. Therefore, the Government must face this problem and stall no more. The Government has always adopted a policy of "three nots": Not to face the problem, not to make undertakings, and not to legislate. Why do I say this? We believe the Government is fully aware that the existing labour protection and welfare is inadequate, but it has never taken the initiative to face the problem. Nor has it taken steps to tackle it. If the Government is not even willing to face the problem, how can we expect it to make undertakings, formulate legislation and make improvements? If we think that the Government would be willing to do these, we are only fooling ourselves.

If Members have paid attention to our work, they will know that we had asked Mr TUNG to make public his election platform for his re-election campaign. It appears that no election platform is provided. All that has been published is Mr TUNG's "My commitments to Hong Kong". Having read this publication, I noticed that not a single word was mentioned in respect of workers' interest and protection. I am really worried, because I can foresee that in the next five years (we understand that Mr TUNG will certainly be re-elected), the policy of the Government in this area will not be improved, and perhaps nothing can be achieved in the end again.

Some may think that if the Government makes a continuous effort to improve labour welfare, the cost will then be increased considerably. But has the Government considered the fact that if workers' rights and interest are not improved, it may bring even greater disasters to society? While the existing law already provides for rest days for workers, the provisions are virtually non-existent. As Mr LAU Chin-shek said earlier, surveys conducted the Hong Kong Confederation of Trade Unions have reflected the reality that in many industries, such as the catering and cleansing industries, many workers are

required to work 365 days a year without rest days. What effects will this have on the workers?

I do not wish to repeat the plights of some workers who even had to bring their children along to work, as mentioned by Mr LAU Chin-shek. But if a person works for over 300 days without rest days, the injury to his physical health is imaginable. Consequently, the worker may fall ill, and he may even be at odds with his family, which may ultimately lead to family tragedies. In that case, will the cost incurred by society as a whole outweigh the cost of employers in providing more welfare for their workers? Why does the Government not look at it from this angle? Why is consideration made only from a cost perspective, thinking that higher costs will definitely affect our competitive edge? I think if we look at all issues from such a narrow perspective, it will not do any good to society at all.

Earlier in the debate, many colleagues mentioned that the existing legislation on labour and working hours has placed strong emphasis on workers' "consent". Indeed, the word "consent" is worthy of some discussions here. As we all know, in an unequal relationship, particularly the current employer-employee relationship in Hong Kong, is it somewhat pointless to mention whether or not one is "willing" to take up work? I would consider it better to look at whether one is "forced" to work instead. The former word cannot reflect the reality, because how could there be anyone who wishes to be deprived of rest days after working for many days continuously? Who would wish to work for so many hours without rest? It all boils down to two reasons. Workers dare not say no to their boss. They just dare not say the word "No". First, if a worker says so to his boss, he might as well quit his job. Second, the wages now are generally so low that workers may prefer to work overtime to earn more money, so that they will not have to live in straitened circumstances. Therefore, I think it is pointless to make reference to workers' "consent". Furthermore, the Government has all along refused to set a minimum wage and establish workers' right to bargaining. Under such circumstances, how can workers bargain with their boss?

So, I think we should, through this motion today, remind the Government not to use the cost, competitiveness, and so on, as pretexts anymore. It had better practically consider ways to reduce the overall social cost. The Government has been saying that the medical expenditure is massive and that it has been making the utmost effort to increase the provision for medical and

health services. But if workers are allowed more rest time, their health will improve and they will need medical consultation less often. In that case, the medical costs can be reduced (I know that Dr the Honourable LO Wing-lok does not share my view). If the social cost can be pared down, members of the public will benefit from it, for we would then be paying less tax and less medical expenses. Madam President, I support the motion.

**MS AUDREY EU** (in Cantonese): Madam President, I rise to speak in support of Mr LAU Chin-shek's motion.

One of the themes of the motion debate today is about rest days for employees. Under the Employment Ordinance, employees are entitled to one rest day for every seven days of work. But the reality is some wage earners do not enjoy all of the four rest days in a month. If employees do not have enough rest time, it may affect their work performance or even increase their chances of sustaining injuries at work. Therefore, I agree that the Government should address this problem squarely.

For employers who use threatening tactics to force their employees to work on rest days, I think the Labour Department should deal with them in the strictest possible manner. However, Madam President, I wish to point out here that not all employees who work on holidays are forced to do so. When I attended an activity last Sunday, a captain of a restaurant told me that he was thankful for our work but added that we did not have to be so eager to strive for too much welfare for them. He said that to wage earners, it was most important for them to have a job. He said that while he had accumulated many holidays, he did not want to take too many days off and preferred to earn more money, for he wanted to save for a rainy day so that he could have enough savings to live on in the event of being given the sack. His words actually reflect the voices of some members of the public in varying degrees. Therefore, Madam President, I wish to point out here that some employees do want to take up more work in order to earn more money. They are willing to take less holidays so as to earn more money. Moreover, in many cases, it is the wish of both employers and employees that changes can be made to rest days or meal breaks flexibly through negotiation. Insofar as this situation is concerned, the existing legislation indeed has grey areas and lacks flexibility.

Madam President, I have to declare an interest. Recently, I have handled a case in which a restaurant is accused of having breached the Employment Ordinance in laying off some of its employees, because its employees could only enjoy two rest days monthly. The restaurant operator explained that the employees were willing to forsake two of their rest days and in calculating their wages, the daily wages for two additional working days were also factored in and therefore, their total wages were higher than employees in similar jobs who enjoyed four rest days a month. Nevertheless, from the outset when the case was first brought to the Labour Tribunal to its appeal proceedings before the Court of First Instance, the Judges did not accept this explanation and ruled that in calculating the severance payment, the restaurant must factor in again wages for its employees' overtime work on their rest days. In other words, the restaurant is required to make compensation again for those two rest days over a period of six years, on top of the overtime pay that it had already paid to its employees.

Madam President, to reduce the occurrence of such disputes, the Government should in fact consider, first, amending the existing legislation to improve its clarity. More importantly, the Labour Department should, targeting at industries where employees are required to work on holidays, such as the catering, transport and retail industries, draw up standard contracts, set out the method for calculating wages and ensure the provision of rest days and meal breaks through tripartite negotiations between employees, employers and the Government. Stipulations should also be made to provide that rest days or meal breaks and the mechanism for the payment of overtime wages can be changed only with mutual agreement, so that in the event of disputes in future, there will be a contract to base on, thereby ensuring that both employers and employees are protected.

Madam President, given the economic downturn and the prevalent trend of layoffs and salary cuts, both employers and employees are under tremendous pressure. I hope that employers can provide their employees with a better working environment and terms of employment within their means, for this will be greatly conducive to improving the labour relationship. After all, a good employer-employee relationship requires efforts from both sides.

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

**MR FREDERICK FUNG** (in Cantonese): Madam President, at present when the economy of Hong Kong is in the doldrums, the market remains sluggish and the economic restructuring is still underway, many organizations in the private sector have to streamline their structure to reduce operating costs. Under such circumstances, many unfortunate wage earners will be laid off and become unemployed. Actually, the situation of those who manage to keep their jobs is not any better either; they have to suffer in silence because they dare not complain about the huge pressure of the exceedingly heavy workload on them.

In those organizations the staff size of which could not be reduced any further, more often than not the employees who have been fortunate enough to keep their jobs have to do the work of others and take up a lot more duties and responsibilities than before. At the requests of their employers, many employees just cannot have any time or opportunity to take a rest, and some even have to sacrifice their meal breaks or even go back to work on their rest days. In order to remain employed, these employees have to make sacrifices and give way to their employers from time to time.

As a matter of fact, many recent surveys and statistics have confirmed that such kind of work pattern, which may inflict long-term damage on human health, does exist. According to the findings of an auditing survey conducted by the Hospital Authority (HA) in August last year, for example, about 40% of HA doctors and 80% of the interns have to work seven consecutive days weekly. Besides, in a recent survey conducted by the Hong Kong Confederation of Trade Unions, 10% of the people interviewed have to go to work every day and every month of the year without any rest days.

On the other hand, many caretakers have recently told me that because of the Government's efforts to change the two-shift system to a three-shift one, which reduces their working hours from 12 to eight, their wages have dropped from \$6,000 to \$4,000. While this change appears, on the surface, to be an improvement, the caretakers are unhappy with and object to the new system. This is because they would rather work 12 hours and earn \$6,000, than earn only \$4,000 but have four more hours of rest. From this we can see that their consideration is mainly financial. For that difference of \$2,000, they would rather work than take rest days. However, does it necessarily follow that they would rather work than take rests? The answer is definitely in the negative. It is because of the pressure in life that they have to strive to earn as much as they could.

Both the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I consider that a responsible and sympathetic governor should square up to the problem. In the long run, efforts should be made to consider carefully whether there is any need to legislate or adopt other measures to ensure that employees can really have reasonable rest time, and that the relevant arrangements are feasible.

We have also considered the issue from a practical point of view and conducted a small research study. We found that the idea of providing protection for employees' right to have rest time actually exists in China, and that Hong Kong is lagging far behind mainland China and Taiwan in this respect. Article 44 para 2 of the Labour Law of the People's Republic of China stipulates that in case the employer requires the employees to work on their rest days but cannot arrange replacement leave for them, the employer shall pay the employees an amount of not less than 200% of their wages in lieu. Para 3 of the Article even specifies that employees required to work on statutory holidays shall be paid an amount of 300% of their wages as compensation. In Taiwan, Article 35 of its Labour Standards Law stipulates that with the exception of certain special trades, workers shall be entitled to 30 minutes' rest after working for four consecutive hours. Madam President, through you I wish to remind the Government and particularly the Secretary that people are not machines, and that if machines need to rest, people all the more need to have reasonable rest breaks. For this reason, the ADPL and I hold that the Government should make reference to the experience and legislation of the Mainland and Taiwan in this respect and, taking into consideration the unique situation and the needs of the special trades in Hong Kong, do something with the existing labour legislation or labour protection system to ensure that employees enjoy the right to have rest days and to make adjustment to the present unreasonable situation.

During the process, if the Government should need to solicit opinions from the relevant trades, or if the labour and the management sides should need to have discussions, we would raise no objection to such arrangements. However, the Government must never consider itself an onlooker and refuse to do anything on the excuse that the matter should be determined by commercial rules or market forces. Through consultation and discussion, we hope to set a reasonable number of working hours acceptable to not only employees and employers but also the community of Hong Kong as a whole, so that an all-win situation can be achieved by society in respect of this issue.

With these remarks, I support the motion.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, just as a few colleagues have said earlier, wage earners do not have bargaining power now and many of them may think that it is most important to keep their jobs. They are also very worried that they may lose their jobs if the Government legislates at this stage to regulate the existing unreasonable conditions. Recently, I have received some complaints lodged by estate caretakers. They thanked me for fighting for them a three-shift system but they told me that, after the implementation of the three-shift system, their salaries had decreased from \$6,000-odd to \$4,000-odd and they could hardly hold out anymore. I know that similar remarks have been made very often.

When this Council decided to conduct this debate, some people asked if time was right to seek a solution to the problem. The Hong Kong Federation of Trade Unions (FTU) held a discussion and we agreed that a solution should be found, so we are going to support this motion. Although it has been said that wage earners do not have bargaining power, employers may not necessarily be hard-hearted. As they have encountered operating difficulties, they have taken new and flexible management measures. Now that the problem has developed to the present stage, we must discuss the matter in an impartial manner. I raised a supplementary question during the Question Time today: Why are companies making considerable profits allowed to lay off employees? I have mentioned how the Government would evaluate the overall situation with a so-called "balance" when these problems emerge, and the attitude of the Government is most important.

I earnestly wish to tell the Government of the Hong Kong Special Administrative Region (SAR) that wage earners do not have bargaining power now and their situation is fairly miserable. For matters that they should reasonably fight for, they think that they can discuss the matter in future because they find their jobs most important. In that case, if the SAR Government tells us that it could remain indifferent under the present circumstances, it is really unfair.

Let us take the retail industry as an example. When we relied on the equilibrium of supply and demand in the market, workers worked for nine hours and still had a one-hour meal break. But this is no more the case nowadays. A lot of employees in the retail industry have to work more than 10 hours, and sometimes, they are very busy during the lunch break and cannot have lunch. In particular, during the peak season by the end of the year, they have no time for meal break at all. The situation does exist and it would be very difficult for

individual workers to change the situation. If Members and the friends of Members in the business sector who are present were aware of the case, they would agree that it should not have happened. Some would ask: What if workers ask employers to make improvements? Under the present circumstances when the proponent of a proposal would be dismissed the following day, who would dare make any requests? If the Government suitably raises questions, I do not think it would affect the overall business environment. I understand the difficulties involved in solving these problems under the present circumstances, but I wish to emphasize that wage earners in Hong Kong are very understanding. To strike a balance between the two, the Government has to play an intermediary role.

In fact, in places and countries that have experienced similar economic difficulties, workers are still given rest time and meal breaks. As we can see, our neighbouring regions such as Singapore and Japan have stipulated that workers should take a rest after working continuously for six hours. Japan has stipulated that rest time should last 45 minutes. Taiwan has also stipulated that workers should take a rest after working continuously for four hours. Rest time is not included in the normal working hours. In the past, all companies in Hong Kong normally allowed workers to rest once every four hours. For instance, workers started working in the morning, they had a lunch break at 12 noon despite the fact that the length of the lunch breaks varied. Yet, the problem now is that full-time workers are even deprived of meal breaks. Is that reasonable? I wish to discuss the matter with the Government.

Although government officials may reply that they would try to grab a bite when they are working and Honourable Members would also just grab a bite during lunchtime meetings, I can only say that we are "queer". We should definitely not require workers to follow the lifestyle of Members or officials for a long time. The Government should consider why other places can manage to do so. They also uphold capitalism and are facing economic difficulties similarly, why can they continue to do so?

Madam President, I cannot help laughing when I discuss these matters. When I say the Government should stipulate in legislation such matters as working hours, I find that there are also problems within the Government. Some colleagues have said that doctors in public hospitals work continuously for seven days without any rest days throughout the year. Some Members reprimand loudly whenever the issue is discussed in the relevant panel of this



Council. We received a complaint from some Customs staff last year. They complained that it was too busy at the Customs clearance points and the Customs and Excise Department could not have additional manpower, so staff were required to work from 7 am to 2 pm before they could have lunch. Members were caught in puzzlement by the complaint. Since the Government should safeguard the welfare of its employees, why had it designed such a shift system that required Customs staff to work like that? With the efforts and follow-up actions of the FTU, the situation has become more reasonable. At least, it is specified that they should have a meal break daily. Actually, the parties concerned can engage in negotiations and discussions. Certainly, as a result of the problems with manpower or ship schedules, quite a few Customs officers have to work with empty stomachs. Thus, I would laugh whenever I discuss this matter. In the absence of legislation on the regulation of rest time, even enforcement departments have neglected the welfare of their staff. If there are not any trade unions, these Customs officers may still have to work until 2 pm before they can have lunch.

Madam President, I would like to talk about the present situation in Hong Kong briefly. We have to know that a job is very important to wage earners today. We may not understand the adverse effects of the implementation of certain policies on workers at all. Yesterday, I was dining with my friends from the Heung Yee Kuk when they criticized the Mandatory Provident Fund System (MPF) once again. Most of them thought that the MPF was a burden for people and it was not the right time to implement it. I do not deny that the implementation of the MPF at this time may cause problems, but it does not mean that the views expressed by those people are correct. We have fought for such retirement protection for decades and it does not mean that we should not fight for such interests at this time. Whatever we do, we will encounter problems after all. But it does not matter. The prominent characteristic of Hong Kong is that we can solve problems through the Labour Advisory Board and negotiations between employers and employees. I believe Members and our friends from the business sector who are present will not tolerate that wage earners do not have a meal break during eight to nine hours of work, or they do not have a meal break after working a very long period of time. I believe we will not approve of it. Under the circumstances that workers lack bargaining power and individual workers cannot possibly improve the situation, I hope that the Government will consider stipulating the relevant regulation by legislation.

Madam President, the FTU supports this motion. Thank you.

**DR LO WING-LOK** (in Cantonese): Madam President, occupational medicine is a specialty and looking after the health and occupational safety of working people is one of the duties of doctors. As a doctor by profession, I can say with authority, "excessively long working hours are hazardous to health." To safeguard the health of working people, they must be given reasonable rest and meal breaks during working hours every day. Apart from statutory holidays, they should also be given rest days after they have worked for several days.

Let me first explain the effects of excessively long working hours on health. All animals have very regular physiological cycles and human beings are no exception. One of the physiological cycles is the day and night cycle. The endocrine level in the human body varies during daytime and at night. Our cortisol secretion will suddenly increase substantially at daybreak; thus, we are full of energy when we begin a day's work. Our body temperature will be lower in the morning and higher at dusk.

If human activities can tie in with the day and night cycle, we can carry out activities and work in the most comfortable and efficient way. Otherwise, our working efficiency will decrease and we will easily make mistakes and become tired. As a result of the day and night cycle, we have the habit of working after sunrise and resting after sunset.

Since working brings fatigue, we need quality sleep to restore our strength. But most people cannot fall asleep at any time (it may be an exception that Legislative Council Members can fall asleep at any time during meetings). Even though we are asleep, we may not be able to sleep soundly. To fall asleep and sleep soundly, we need rest time to slow down after work.

If working hours last for more than 10 hours, work will seize our rest time and we can hardly sleep even at the usual time for a sleep. I believe many people have experienced the difficulties in falling asleep since they are too tired. We lack sufficient rest time before sleep for our bodies to enter the state of sleep.

Given excessively long working hours, we have difficulties in falling asleep and our bodies are heavily indebted to sleeping and we have accumulated "negative equity" in terms of sleep. The indebtedness causes persistent fatigue and we seem to have insufficient sleep no matter how long we have slept.

Therefore, we are always listless and our work, family, social life and body will have problems.

The above effects are more obvious in jobs that reverse day and night, comprise irregular shifts and require employees to be on call at any time. Taking workers on night shift as an example, some think that workers can adapt if they work night shift for a long time. However, workers working night shifts can undoubtedly adapt to working at night but they will never be able to adapt to the working environment for they will return to the normal pattern of day and night activities when they are on leave. Since they are more accustomed to working at night, the return to the normal pattern of day and night activities when they are on leave conversely makes it hard for them to have sound rest and sleep. Hence, it appears as though they have not taken leave at all.

Some think that there are many ways to provide employees with reasonable rest and we do not necessarily have to legislate to make it compulsory for employers and employees to observe the relevant provision. Actually, even if there is such a law, employers very often do not observe the law; so, the rights that employees should duly enjoy are not sufficiently protected. If there is not such a law, I believe employees will be given even less protection. Though I agree that legislation may not be the best way to solve the problem, it will at least set a minimum standard for employers to observe and provide employees with some measure of more favourable protection.

The above discussions are completely applicable to the medical profession because doctors are human beings and the day and night cycle also applies to them. The Hospital Authority is an employer who is notorious for not observing the law. Unlike other professions, doctors have the closest relationship with human life and health. Therefore, the community has the highest expectations of doctors. As a professional sector, the medical sector has the social commitment to put the interests of patients in the first position. For the fulfilment of their duties and for consideration of continuity of treatment, doctors do not mind working overtime and not taking rest for a long time; besides, they just remain silent. But if the situation continues to worsen and doctors fail to meet the expectations of the community in terms of the standard and quality of medical treatment, or it would even jeopardize patients' safety, doctors could no longer remain silent and we must take actions.

I would like to warn the authority concerned that, if the situation were not improved, doctors would soon be forced to step forward bravely and take actions.

With these remarks, I support the motion.

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, under the present economic circumstances, the original intent of Mr LAU Chin-shek in proposing to ensure that employees would enjoy the right to have rest time and statutory rest days by way of legislation is worth supporting. As reported by the media, some cleaners, shopkeepers and waiters have meal breaks and holidays withheld by unscrupulous employers; we should have sympathy for them. However, I have reservations about whether legislation is the only way to protect these employees or whether it would be effective.

Although Hong Kong is undergoing another economic restructuring, most members of the workforce still work in the services industry. Flexibility is the major factor that contributed to the success of the services industry. Among other things, flexibility embodies immersion in hard work while others are taking a rest. Take a very famous tailor shop in Tsim Sha Tsui as an example. Its patrons include many world-renowned political figures and businessmen. They order a dozen or so suits from the shop whenever they visit Hong Kong and the shop can always have the suits ready and delivered to them on time the following day. Needless to say, the tailors must have worked overnight.

It is certainly an excellent motive to ensure that employees would enjoy the right to have rest time by legislation, but would the legislation smother the flexibility that the services industry depend on for its success? How should the legislation be drafted? It is really hard for me to imagine.

I have referred to the experience of foreign countries. Although there is law in Britain stipulating that employees can enjoy 20 minutes of undisturbed rest after working continuously for six hours and the Occupational Safety and Health (Display Screen Equipment) Regulation being scrutinized by this Council has also referred to this concept, it is agreed in Britain that workers in the services industry such as security guards are exempted from regulation by the legislation. But the practice of the United States is more valuable reference. The Federal

Government of the United States does not have similar legislation but the Fair Labour Standard Act of the United States stipulates that employees who work overtime should be given an allowance of not less than 1.5 times of their wages.

Madam President, the enterprising spirit on which Hong Kong relies for its success is founded on the hard work must be rewarded. The Government should step up enforcement to crack down on employers who unilaterally amend the employment contracts or increase working hours but decline to make overtime payment. It should not legislate to prohibit overtime work or rigidly stipulate rest periods because it would injure the flexibility and agility of the services industry.

I also understand that the workers in some industries where there are problems, such as tour guides and waiters, are required to work during meal breaks, or their meal breaks have been reduced to 30 minutes without reasonable compensation. The Government should refer to the Code of Practice in Times of Typhoons and Rainstorms and work out similar codes to protect the reasonable interests of employees and avoid smothering the flexibility of the services industry.

Madam President, I so submit.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, everyone knows that it is important to strike a balance between work and rest. The working masses are entitled to rest days and to reasonable rest and meal breaks during working hours. These are already provided for in the laws of many countries. In Singapore and Taiwan, for example, apart from setting an upper limit for working hours, there is also some measure of protection for employees' rest and meal breaks. In Singapore, it is provided in law that employees cannot work for more than six consecutive hours daily without rest breaks. Meanwhile, if employees are required to work for eight hours continuously, they must be given a meal break or meal breaks totalling not less than 45 minutes. Article 35 of the Labour Standards Law in Taiwan stipulates that workers who have worked for four hours continuously should take a rest for at least 30 minutes. Where a shift system is implemented or continuity of work is necessary or for work of an emergency nature, employers are required to arrange for rest breaks to be taken at other time during the working hours.

Under Article 24 of the Universal Declaration of Human Rights of the United Nations, "everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay". Leisure time enables citizens to take part in normal social activities, thereby easing their work pressure, and at the same time enables them to care more about their family members and provide guidance and care to their children, and also allows them more opportunities to interact with their children and neighbours as well. This, I believe, will help reduce unnecessary family disputes, family tragedies and even youth problems.

Madam President, proper rest breaks in the middle of work do not only allow employees to take meals after working for five or six hours continuously to satisfy their physiological needs, but also enable them to loosen up a bit, strike a right balance between work and rest, and restore energy, so as to carry on with their work efficiently. As the old saying goes, "alternating tension with relaxation is the fundamental principle of all work". I therefore consider it necessary to formulate legislation to protect the right of employees to rest time. This is a win-win measure for both employers and employees.

According to the papers provided by the Labour Department to the Committee on Occupational Safety and Health under the Labour Advisory Board last year, over 130 000, or 5.6%, of the 2.3 million-odd employees who work for five hours or more do not have meal breaks, and some 124 000 of them do not have rest and meal breaks. Last year, in its concluding observations on the first report submitted by the SAR Government under the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights pointed out that there is room for improvement in the protection of labour rights and interest in Hong Kong, including the right to rest breaks. The Democratic Alliance for Betterment of Hong Kong (DAB) considers that the Government should practically consider extending the application of certain provisions of the Employment of Young Persons (Industry) Regulations, subsidiary legislation under the Employment Ordinance, to all employees, so that all employees in Hong Kong can enjoy a meal or rest break of not less than 30 minutes after five consecutive hours of work, in order to protect the physical and mental health of the public, particularly the grass-roots workers.

Certainly, given the present economic downturn and sluggish business environment, the Government would indeed encounter a lot of resistance and

difficulties if it imposes regulation on rest and meal breaks at this point in time. This will affect employers' flexible arrangement in respect of employees' rest and meal time, and will even increase the costs of employers. So, this needs to be assessed and handled carefully. Moreover, as some special industries and production processes may require employees to work for over five or six hours without rest, effecting changes all of a sudden may lead to confusion and also opposition from employers. Therefore, the Government must carefully consider all kinds of situation so as to strike a balance between the interest of employers and that of employees, and set out matching measures to facilitate the making of legislation.

With these remarks, I support the motion on behalf of the DAB.

Thank you, Madam President.

**MR ABRAHAM SHEK:** Madam President, our workforce is one of the most important assets. The provision of reasonable working conditions for them is, therefore, of the utmost importance.

It is true that our workers are now working far longer hours than they used to. The median weekly working hours have arisen from 45 hours in 1997 to 48 hours in 2001. In 1997, 15.8% of the workforce worked 55 hours and over in a week. In 2001, the percentage unfortunately rose to 23.5%.

The workers may have to work longer hours, but the majority of them can still take their rest days to pursue other interests in life. For every week of work, workers are entitled to no less than one rest day. The rest day benefit is protected by the Employment Ordinance. No employers can deprive their employees of this statutory benefit without legal consequences.

Under the Employment Ordinance and other newly introduced labour regulations, the rights and benefits of the 3.23 million labour force in Hong Kong have improved considerably. Some 55 pieces of labour-related legislation were enacted between 1996 and 2000. Last year, Hong Kong applied 40 international labour conventions to improve workers' working conditions. Madam President, with this improvement, is it fair to claim that Hong Kong lacks labour regulations? And is it fair to suggest that local workers are exploited by employers?

Currently, there is no statutory restriction on the hours of work or the provision of rest time and meal breaks for employees. The decision on working hours and rest hours in a working day is determined by market forces. This flexibility accommodates the different nature and requirements of different types of companies. The two parties, namely employers and employees, can work out the most suitable arrangement for themselves. I believe that introduction of compulsory rest time and meal breaks will not be practical. How can vastly different industries implement the same set of rest time and meal break requirements? I do not see how the currently fixed meal breaks for office workers can apply to property agents or entertainment workers who work irregular hours.

This flexibility, which also applies to wage levels, has contributed to Hong Kong's economic success. To maintain our competitiveness as a free economy, we must not introduce unrealistic labour laws to disturb the existing framework. Instead, the Government should strengthen the spirit of co-operation between employers and employees in labour-related matters. When the two parties understand each other's problems better, conflicts between them would be reduced significantly.

Co-operation between employers and employees is especially important for small and medium-sized companies, which account for the majority of the business sector. At present, large companies usually have an established system of rest time and rest day for employees, while small and medium-sized companies rely on individual agreements between the two parties. In the past few decades, strong co-operation between employers and employees in Hong Kong enabled this practice of mutual agreements to function effectively and efficiently. I believe that employers will continue to act in the same responsible manner and comply with various labour regulations.

Madam President, laws and regulations cannot guide us to successful labour relationships. It is harmony, better communication and understanding between employees and employers that could bring about an environment for the growth of business and prosperity.

Madam President, today's motion raised by the Honourable LAU Chin-shek is benevolent and good-natured, as it strives to protect labour interests. However, under the current economic downturn, improving our business environment, providing more employment opportunities and strengthening Hong



Kong's competitive edge should be the primary concern of our Administration. No new policy or legislation should be introduced which would infringe upon the above objectives. In my view, today's motion does not help to achieve these objectives. It may even have an adverse impact on the recovery of the Hong Kong economy. On this basis, I do not support this motion. But I can assure Mr LAU Chin-shek that his voice would not be neglected. It would be heard and have heard by the majority of Hong Kong employers who have been providing adequate rest time and rest days for their workers.

Thank you, Madam President.

**MR NG LEUNG-SING** (in Cantonese): Madam President, I believe many people still remember that when the economy of Hong Kong was thriving, there used to be an oversupply of jobs, rather than job-seekers, in the labour market. Employees had many choices. They could compare the employment terms and conditions offered by different employers, and switch jobs very frequently. Employers often had to rack their brains in order to attract quality people and keep the good employees. As a result, the wages, welfare and fringe benefits offered to employees had become more and more generous. Of course, this is the result of the supply and demand relationship in the labour market. No one would regard this as a market failure and no one would consider government intervention necessary to suppress the ever increasing labour costs. The situation is different now. Now the economy is in the doldrums. There is an oversupply of job-seekers in the labour market and the employment terms and conditions are unfavourable to the working class. Many people are faced with salary cuts and layoffs. They have to make self-enhancements and take up more work and work for longer hours. This is also the result of the supply and demand relationship in the market. It does not represent a market failure. Nor does it require government intervention. In fact, under the current economic conditions, employers are in deep water too. Companies are struggling through great hardships, keeping their business afloat. I am afraid that many employers are so occupied with their difficulties that they may even forget to eat and sleep, feeling extremely worried. As the old saying goes, "With the skin gone, what can the hair adhere to?" If the companies cannot survive, the interest of employees would be all the more vulnerable. Under the present economic environment, it is all the more necessary for employees and employers to maintain a harmonious relationship and to sympathize with each other's position, so as to ride out the storm together.

By harmonious relationship, I mean employers and employees should show more care to each other in their employment relationship. If employers failed to provide reasonable rest and meal breaks for employees during working hours, it would adversely affect employees' performance and is obviously unacceptable. As far as I understand it, the existing Apprenticeship Regulations, the Employment of Young Persons (Industry) Regulations and the Employment of Children Regulations have all provided for rest and meal breaks. But these regulations mainly target at the employment of young people. Adult workers in general are not provided with the same protection in law. Theoretically, there is nothing wrong for similar provisions to be made to stipulate reasonable rest and meal breaks for adult employees during their working hours under normal circumstances, say, stipulating that employees must have a meal and rest break for half an hour to one hour for every five or six consecutive hours of work. In fact, a great majority of employers, though not all of them, will provide their employees with reasonable rest and meal breaks. However, if legislation is to be made for this purpose, the technical problems will have to be resolved first to ensure that the relevant provisions are adequately flexible and practicable and that they have taken into account some special operational needs of individual industries. For instance, it is, after all, impossible for doctors to go out for meals or take a rest for an hour in the course of a surgery, or for firemen to take meals or rest for an hour in the course of an rescue operation.

Ensuring the provision of rest and meal breaks for employees is conducive to increasing employees' work efficiency. Similarly, allowing employees to have proper rest days will also help stimulate economic activities. For example, the five-day-work system implemented for years in the Mainland, with which we are familiar, has in fact boosted consumption in the market. Moreover, arresting the upward trend of working hours can drive employers to pay attention to other aspects in enhancing the productivity of their companies. I have received views from many citizens on the five-day-work system. In the long term, I believe as long as the economy is back onto the normal track and achieve stable development, whilst the relevant legislation can at the same time ensure flexibility to cope with the special needs of individual industries, it is worthwhile to look into this issue in a more open manner in due course.

On the other side of the coin, providing employees with longer rest and meal breaks and more rest days may bring pressure for the labour costs to rise. Employers may have to make corresponding adjustments to the expenditure on staff salaries. So, employers and employees must be prepared for this

psychologically. Under the existing employment legislation, some measure of flexibility can still be maintained for the level of wages, and adjustments can still be made in the light of the demand and supply situation in the market as well as the general economic climate. I personally believe as long as flexibility is maintained for wage adjustment, steps can be taken as appropriate to provide in local labour legislation greater protection for employees in respect of the rest time and the number of rest days. This will also be conducive to local economic activities and will enhance the productivity of companies and employees. If labour representatives can accept that the wage level of the local labour market does not warrant intervention by legislation and that the wage level should be adjusted in strict compliance with the market mechanism, I believe the discussions on employees' rest time and rest days between employers and employees can proceed more smoothly.

Madam President, I so submit.

**MR TOMMY CHEUNG** (in Cantonese): Madam President, Mr LAU Chin-shek mentions in the motion that most of the employees do not have any breaks during working hours, and that some of them even do not have any meal breaks. I do not know if Mr LAU has made any calculations on the chances of his motion being passed, or if there will be any legislation enacted for this. I would like to make a few comments on the speech made by Mr LAU. For more than a century, an overwhelming majority of employers in the catering industry in Hong Kong have provided meals to their staff and give them ample time for meals, even if the staff do not have to report duty, they can still return to the restaurants to have meals. More than one meal are provided each day, and sometimes the staff can stay in the restaurants and have a night snack before they go home. Meals provided to the staff are prepared by the cooks who also serve the customers. Some of the large restaurants may even employ some cooks who prepare meals especially for their staffs. These cooks are called respectfully by people in the industry as "generals", and staff are certainly given time for meals.

As for the breaks, it appears that employees in the catering industry have long working hours, but the actual working hours are usually from 7 am to 9 am, 12 noon to about 2 pm, and 6 pm or 7 pm in the evening to about 10 pm to 11 pm. So Mr LAU can rest assured that the some 200 000 employees in the local

catering industry actually do have very ample time for rest. As a matter of fact, speaking from my decades of experience in the industry, I have never heard of employees in the catering industry who are so busy in their work that they do not have any time for meals and rest.

The motion also points out that "it has become increasingly prevalent for employers to require their employees to work on rest days". In fact, with the exception of the mid-1980s to mid-1990s when there was manpower shortage in the catering industry, the employers are able to find as many staff as they want. They are able to hire more workers with less wages and the existing staff may have more holidays and rest breaks.

The existing legislation provides that employees enjoy paid holidays and vacations and that the employers are not allowed to compel their staff to forfeit their holidays in exchange of pay from their employers. However, I can tell Honourable colleagues that often times employees in the catering industry would rather prefer to work for longer hours and many of them have even asked me whether or not I want to buy their holidays. Even if some of them have a high salary, they also ask me to buy their holidays. Now the employers cannot buy their staffs' holidays, nor will they want to do so. On the other hand, many employees in the catering industry will make use of their holidays to do part-time jobs in other restaurants. In fact, some people do not just do part-time jobs in their holidays, some would even sell dim sum in one restaurant in the morning and go to another restaurant in the evening to serve at the tables, wash dishes, or work as cashiers or cleaners. They are working so hard because they want to save more money, or as the saying goes, to prepare for the rainy days. The money they earn may help improve the quality of their life or they may be able to save some money for their retirement.

In the 1970s when I was running a restaurant business, I did not understand why the staff had to be given 30 days' wages and when the staff take their leave, they will have to find a replacement. I wished to change this situation, but my colleagues in the management reminded me that I should not do so, saying that it was the trade practice in the industry. The trade practice was that the staff would get all the 30 days' wages each month and choose their own rest days and whether they want to take their leave. They would use some of their wages to hire replacements. So with regard to the taking of leave and rest, the employees did enjoy a great degree of liberty.

Some of the Honourable colleagues from the trade unions may say that the employers exploited the employees, but the reality may be that the employers were being exploited. The employers paid the money to hire the head chef and the head frying dishes cooks, but when they looked for the replacements, the ones they got might not have the same qualification as they did. The quality and experience of their replacements were usually of the calibre of a sixth butchery cook or seventh butchery cook. Moreover, the wages given to a replacement were certainly far lower than the actual pay which the employers gave their staff. If, for example, some of my staff went to the restaurant next door for a trial and interview and did not want to inform me, they might hire a replacement to work on their behalf. When the staff had saved some money, they could take long vacation leave and return to their hometowns and retain their jobs. The wages of the replacement would be paid by the staff taking the vacation. As long as they had a replacement, the employer could not do anything and he would just have to wait for them to come back. This was the trade practice in our industry and at that time I also wanted to make some changes but I had to accept it because I had to respect the practice.

To use legislation to effect regulation and ensure that employees have enough time for rest is rigid, and it disregards the specific characteristics of a particular industry. It is also lacking in flexibility.

If apart from an increase in rest breaks and rest days, Mr LAU in his motion also proposes that the employers may lower the expenses in wages; and if the motion is not about higher wages for the staff, longer rest breaks and specifying that meal breaks and rest breaks be provided, I think employers will give their support. If employers are taken advantage of in this way, it will not be long before they are financially dried up. The costs involved can hardly be met. It will also reduce greatly the competitiveness of the industry. How then are we going to have bosses and investors in future? I think we may as well let the trade unions, the public sector organizations, or even the charitable organizations become the bosses.

I had thought of proposing an amendment to the motion, but I did not do so. If I were to propose an amendment, I would change the wording of the motion to: That legislation should be enacted to stipulate that staff must go home and sleep after work and they must have eight hours' sleep, for that is good to their health." I know that some employees in the catering industry like to have fun and entertainment after work until the next morning. Some take the night ferry

to Macao and come back for work in the morning. Of course, they will be very tired. Every employer will want their staff to be in their best form and full of energy when they come to work. They do not want them to be dog-tired and in low spirits for lack of sleep. Now some of these employees do not sleep after they are off from work. What they are doing is they are in high spirits when they are off from work and they are in the worst shape and sleeping while at work. Why on earth do we wish to see this?

I know that the employers have to bear some responsibility when the employees are injured at work. So if the staff can get enough rest, it will be good to the employers too.

In fact, the people in the catering industry who are most in lack of rest breaks and meal breaks are the bosses and the senior management staff. They have to take care of every aspect of their business. They have to work for seven days in a week and more than 10 hours a day. But we have never heard of them getting injured at work. They are actually the ones who do not have any fixed meal breaks and rest breaks.

Madam President, I so submit. The Liberal Party and the catering industry oppose the motion.

**MR HENRY WU** (in Cantonese): Madam President, today, I will speak on the motion of rest time and rest days for employees from the viewpoints of both employers and employees. This is consistent with my usual style of work, that is, I will analyse this issue from all different angles. Earlier on, Mr Tommy CHEUNG spoke of the situation where the head chef is substituted by a second-class chef and a second-class chef by a third-class chef. I think that the point he made concerning the substitution of chefs by secondary chefs has hit the nail on the head.

First, it is perfectly understandable for employees to ask for reasonable rest time. I believe many employers do understand that their employees must have enough rest before they can perform more efficiently at work. This will be beneficial to both employers and employees. But when it comes to legislating to provide for rest time for employees, I would consider it inappropriate. I also believe this would only complicate the matter, especially as it would certainly give rise to disputes as to how reasonable rest time should

be defined, on which it is difficult to make a final decision. So, I think the best possible way is to strike a right balance within the parameters of rationality, instead of going to extremes by effecting hard and fast rules.

Indeed, employers have generally exercised self-discipline by allowing employees to have proper rest time. Even though employers have not put it down in black and white, employees will look for chances to take a break. There is nothing wrong with this. Why should we make it mandatory by legislation? In fact, I know that many employers will still tolerate their employees excessively "loafing on the job" under certain circumstances.

Madam President, I would like to say that different industries have their unique *modus operandi*. For example, the service industry has apparently different operational hours from those of white-collar jobs and industries involving manual labour. If legislation is made to strictly require all industries to follow a certain practice, it will bring inconvenience to individual industries, and the operation of the industries will become rigid and inflexible. A more serious consequence is that the overall business activities in Hong Kong will lose their inherent flexibility.

Take financial services as an example. Prices in the foreign exchange, securities and futures markets are ever fluctuating. Given that every single second is important, time is beyond the control of employers or employees. While they sometimes may be less busy especially when transactions are quiet, they may not even have the time to go to the washroom when transactions are active. With regard to these service industries where one cannot possibly predict what will happen the next day, we cannot make legislation to rigidly provide for employees' working hours and rest time. This is not the best option to both employees and employers.

Madam President, earlier on Mr Tommy CHEUNG also mentioned the situation of the industry for which he represents. I believe industries other than the financial service industry also face similar problems in that the arrangements for working hours and rest time cannot be subject to rigid stipulations in law. Making legislation for this purpose will only complicate the problem and is not particularly beneficial to all sides.

Madam President, I so submit.

**DR DAVID CHU** (in Cantonese): Madam President, both the Hong Kong Progressive Alliance and I support the spirit of the motion moved by Mr LAU Chin-shek (*laughter*).

It is right in terms of morals grounds and economic benefits that employees should have sufficient rest time. However, according to figures provided by the Census and Statistics Department, 97.4% of the employees working more than five hours a day do have meal breaks and rest breaks. Of the employees working eight hours a day, the percentage of those who have meal breaks and rest breaks is even greater. As for those who do not have any regular rest breaks, it does not imply that they have to work all day long without any time for rest and meals. It would be a very complicated thing to make legislation to provide for meal breaks and rest breaks, for there are vast differences between the working conditions and hours of work in different trades and industries. So doing would affect the business environment of Hong Kong, our economy and our competitiveness, and even our unemployment rate. So we support the spirit behind the motion moved by Mr LAU Chin-shek. Thank you, Madam President.

**DR RAYMOND HO** (in Cantonese): Madam President, the people of Hong Kong are noted for their diligence and enterprising spirit. That Hong Kong has become an internationally renowned city is, to a certain extent, attributable to this factor. We must preserve this good quality if we are to maintain our competitive edge. Otherwise, Hong Kong's attractiveness to overseas investors will surely diminish. It gives no cause for criticism for employees to demand reasonable rest breaks. However, our prime task is to brush aside our personal interests and join hands to fix our economy expeditiously to enable it to climb back to its previous level. Failing to do so, Hong Kong economy will definitely crumble, with its unemployment rate continuing to rise and discussions on employees' benefits turning into empty talks.

As a matter of fact, many overseas corporations have given up local production and relocated their production lines to the Mainland since a number of years ago. In addition to cheaper land and rents, lower wages and hardworking labour in the Mainland have proved to be very attractive to them. For the same reason, many manufacturers in Hong Kong have relocated their local production lines to the Mainland. Should the people of Hong Kong refuse



to make an extra effort, what appeal will our labour force have for foreign and local businessmen? What is more, following China's accession to the World Trade Organization, foreign-funded corporations can now invest in the Mainland, and Hong Kong businessmen can also explore business opportunities there. The Mainland is much bigger than Hong Kong in terms of market size. Judging from the angle of businessmen, our compatriots in the Mainland compare much more favourably than the people of Hong Kong in terms of wages and diligence. From the economic perspective, it naturally pays more to invest in the Mainland than in Hong Kong. I believe the local labour market will only shrink if our labour force refuses to work with added vigour.

I am worried that the Government will follow the footsteps of the Mandatory Provident Fund (MPF) Scheme should it decide to legislate to provide for employees' right to enjoy rest and meal breaks during working hours. Subsequent to the implementation of the MPF Scheme, many businesses in Hong Kong, particularly restaurants, have closed down since the MPF Scheme has increased the operating costs of employers. By the same token, mandatory rest and meal breaks might also exert pressure on employers. Even judging from the angle of the labour market, this is not necessarily good.

Insofar as the engineering sector is concerned, in the face of the increasingly keen competition, we feel that the volume of government projects still falls short of our expectations though we have been making continuous efforts to strive for more projects. While private projects remain miserably scarce, consultancies and contractors can hardly find work to do. Therefore, whenever a company is required to submit a tender or rush a report, all people in the company will definitely make a concerted effort to complete the work. If necessary, the whole team will even be prepared to work all night. Both employers and employees will eventually suffer if working overtime is made unlawful by the compulsory stipulation of working hours.

With the latest unemployment rate rising to over 6%, Hong Kong economy is already bad enough. What we must do at the moment is to work hard and expeditiously improve our economy for this is a matter of great urgency. Failing to do so, the employees' benefit system, however generous, will only be meaningless.

Madam President, I so submit. Thank you.

**MR MA FUNG-KWOK** (in Cantonese): Madam President, I would like to point out that none would think that the protection currently enjoyed by workers in Hong Kong is so excellent that it leaves no room for improvement. Actually, I would think that as resources in society permit and given a consensus on that has been reached, we can certainly do better. That especially applies to meeting the needs of working parents and that is certainly something we can do better. But on the whole, our work in the protection of the interests of workers is certainly not bad at all.

As to the working conditions mentioned by Mr LAU Chin-shek, apart from some extreme cases, the problem is, in general, not that serious. The existing Employment Ordinance ensures the protection of workers' interests in many respects and that on rest days is one of the major rights protected.

As to the idea of making compulsory arrangements on rest breaks, I believe this is idealistic and merely some sort of wishful thinking. For that would involve a lot of factors which are very complicated, such as, how are we to define what is being reasonable and should a rest break of one hour be given after every four hours of continuous work. Can this uniform standard meet the practical needs of each and every trade and work type? If reasonable rest time is to be imposed in the light of the different needs of various different trades and work types, then how is it going to be provided for in law? This point alone would touch on a host of technical issues.

In addition, once the community agrees that costs should be kept at a minimum to make our economy stay competitive, then with regard to rest time, do we not also consider adjusting the total number of working hours and wages? If employees are asked if they could agree to work for one more hour while taking an hour's rest during each working day, would all of them agree to this idea? Or if the office hours remain unchanged but wages are to be adjusted as the working hours are reduced, then would the employees agree to this? But if corresponding adjustments are not made, it will mean that costs are increased indirectly, and the result may not be something we would like to see. The issue is therefore not just that employers want to control the costs, it is one which involves competitiveness and which both employers and employees should consider. Some people may think that employers are oppressing the employees when they propose changes to the total number of working hours or the wages. The fact is, however, no party is oppressing the other party. For given the mobility and competition in the market, both sides would need to make some

kind of compromise in order that an agreement which is acceptable to both parties can be found.

On making compromises, some people may think that this has negative implications. A compromise can only be reached after the parties have communicated with each other, arrived at an understanding, and made their way through insistence and concession. No agreement can ever be reached if any party thinks that the proposals have gone beyond its bottomline. The question of compromise will not exist at all. And if a consensus can be reached, there will be no question of negative implications at all.

Madam President, on the issue of rest breaks for employees, I think both employees and employers should make a detailed study of the issue. The Labour Advisory Board should be able to play its role on this issue and the relevant parties can explore a practicable solution. A simple resort to legislation cannot resolve the problem.

I so submit.

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

**MR MICHAEL MAK:** Madam President, I speak in support of the motion moved by the Honourable LAU Chin-shek. In fact, the ideology of the motion itself is indeed beneficial to the employees, but it is also advantageous to the employers.

I studied mental health as a basic subject to my professional work. I also did a minor thesis on "burnout" as the requisite research subject to my master's degree. Both subjects tell me of the utmost importance of rest, without sufficiency of which would lead to high vulnerability of a human being, in terms of fatigue, irritability, low concentration and high risks to occupational hazards. All such and such mentioned earlier definitely produce the negative vicious cycle of low productivity and disharmonious labour relations.

In my constituency where most of my electors are employed by the two major public employers, namely the Hospital Authority and the Department of

Health, there exist clear guidelines to allow one hour of meal break for eight hours of work. Most of the time, my colleagues are given the required time-off. However, the situation will be worsened at night when most of the colleagues are required to stay in the working areas throughout the whole night shift of usually more than eight hours due to very stringent staff strength and heavy workload. In health care where minute attention is required to achieve the extremely high quality of work, I am certainly worried about the increase in the number of incidents involving human errors as a result of fatigue causing low concentration as I said before. To fellow Members, as they will need our service sooner or later, I urge them to support the motion, hopefully not only the spirit of the motion as mentioned by Dr the Honourable David CHU. I shall stress again that rest will produce productivity which in turn will help to master production costs.

Thank you, Madam President.

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

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, the motion today is only an appeal made on humanitarian grounds, in the hope that our society can be more humane in the treatment of employees. What we are talking about now is only something very trivial and demands of a very basic nature. We are not talking about matters which would involve great costs. We are only talking about two issues: rest time and meal breaks, as well as working on rest days. These are the two minor issues we wish to discuss. May I ask Honourable Members to rethink this question: Can we not treat the employees in a more humane way?

Mr Tommy CHEUNG said earlier that we should amend the law to provide that employees should have the time to go home to sleep. Had I known that, I would surely have asked Mr LAU Chin-shek to move such a motion. For that would be a fabulous idea to state the other way round in the motion, that is, to impose stipulations on eight hours of work, eight hours of leisure and eight hours of sleep. Or in other words, to provide for a system of eight hours of sleep first, instead of a system of eight hours of work. The idea is not bad after all, for at least the employees can have enough time for sleep. Employees now

sometimes have to work round the clock without any sleep, so we should legislate for the provision of time for an afternoon nap instead of talking about meal and rest breaks. We may as well discuss the issue of an afternoon nap. Of course, we need to be refreshed when we wake up and start working again. Gimmicks like these may have to be used now.

Honourable Members who wish to vote against the motion are repeating the few arguments over and over again. The first argument they give is that there must be flexibility. But I must ask: Does this flexibility have to be so great as to deprive employees of their rest breaks, meal breaks and rest days? Does this flexibility have to be expanded to such an extent? The situation now is already very flexible. There are no restrictions on working hours already, and in order that employers are given flexibility, should all employees in Hong Kong have to suffer as a result? Mr CHEUNG also said that many employers were being taken advantage of and some of them were already financially dried up. But I can tell Mr CHEUNG that the employees have all been battered physically and mentally by this flexibility. Can we not care about this?

A more macro way of putting this is the argument that it would affect our economy. There has to be more flexibility for the benefit of economic development. But I just want to ask: What is growth in economy for in the first place? It is for the raising of our quality of life, is it not? But as things are going, the means will become the end and the end will become the means. People will become the victims or slaves of economic growth. So why do we have to improve the economy? Talks of growth in the economy will bring benefits to Hong Kong are nothing but lies! Hong Kong will not reap any benefits even if our economy grows, for many people in Hong Kong are still leading a miserable life. So why should we want to make our economy grow?

What I have said just now is not my idea after all. It is the idea of Joseph E. STIGLITZ, winner of the Nobel Prize for economics this year. He reminds countries of the world and their leaders that the ultimate goal of economic growth is to better the quality of life of mankind. Otherwise, growth in the economy will be devoid of any sense. At the end of the day, economic growth will drift farther and farther away from humanity. So there is no sense talking about economic growth at all. We often talk about the economy and competitiveness. But we need to pause and think. It is sensible to talk about the economy and competitiveness only when the ultimate goal is to improve people's life.

The second argument for voting against the motion is that legislation is not the best option and that the technicalities involved are great. The thing is, I would say that there are no difficulties which cannot be overcome if we are set to legislate on the issue. For example, are we going to ask the fire-fighters stop fighting a fire because it is their rest break? Or are we going to ask the surgeon performing an operation to put down his scalpel and take a break? Of course not. We are not talking about some very technical and exceptional cases. We are saying that the general rules should be laid down first and then exemptions to these general rules can be made. For example, the Labour Department proposed in 1998 that legislation should be enacted to provide for rest breaks. At that time, it was proposed that there should be a rest break of 30 minutes for every five hours of work. But some occupations were to be exempted. These included fire-fighters and surgeons mentioned by me earlier. So what is wrong with that? Please do not use technical problems as a reason to refute that legislation on this is useless. Please sit back and think whether there are other options than legislation.

I think the Secretary will certainly say later that there is no need for legislation and that consultation should be carried out with the industries instead. But what is the subject of this consultation? There can never be any consultation if there is no law as a frame of reference. Even as many loud-mouth committees have finished their empty discussions, can the conclusions so reached be able to filter down? Even if there are thousands and thousands of rules and regulations, can these be filtered down? Talking about employers' associations in Hong Kong, forgive me for saying that they are simply unable to exert any control on their members. Nor can they require their members to comply with the messages they have sent them, unless and until there is legislation. So I fail to see any options other than legislation. I would be very glad to hear from Honourable Members suggestions of any other options that can better protect the right of workers to have rest breaks.

Besides, I would like to talk about the issue which many other Honourable colleagues have mentioned and that is, that the existing labour laws have already provided for the right of employees to enjoy rest days. It is true that rest days are provided for in the existing labour laws, but there are some loopholes. The first one is that employees are permitted to work on rest days on a voluntary basis. The law provides that upon the request of the employees, the employers can arrange work for the employees. But how is consent defined? If the employee does not work, he will not get any pay and he may be dismissed. So

he is not voluntary at all. In this respect, I hope the Government can step up the prosecution efforts. The first one which should be picked out for prosecution is the Hospital Authority (HA). After the HA is prosecuted, I think everyone will understand the relevant legislation. It is because if the Government does not initiate legal proceedings to prosecute some people, it is hard for other people to realize what these provisions are for. The HA is a good example, for I think it has acted in complete breach of the law when it devises a compulsory shift system for doctors.

Another thing which the Government can do is to make it a requirement that rest days and rest breaks be provided when tender is invited. This is entirely within the ability of the Government. Moreover, Miss Margaret NG said earlier that she did not know why the system of "double pay" was proposed. This is really something we do out of sheer reluctance. The system of "double pay" is meant to discourage employers from asking their staffs to work on rest days. It is also meant to discourage both employers and employees from resorting to this option. If broad-brush regulation is demanded, we are worried that Honourable colleagues may think that the approach lacks flexibility. So I also think that the system of "double pay" can be used to induce employers to arrange rest days for their staff. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, under the existing Employment Ordinance, only the Employment of Young Persons (Industry) Regulations and the Employment of Children Regulations have provided for statutory rest periods. In addition, section 6 of the Occupational Safety and Health Ordinance has required that employees are obliged to safeguard employees' safety and health, including making proper arrangements for their employees to take rest.

Although the Employment Ordinance has not made it compulsory to provide adult employees with rest periods, the Labour Department has all along been publicizing actively that employers should provide reasonable rest periods for their employees to safeguard their health. Through the setting up of a

tripartite machinery, the Labour Department has been promoting the concept of reasonable working hours in various sectors. Employers and employees are also encouraged, in the light of the nature of business, the uniqueness of individual trades or organizations and the respective needs of employers and employees, to arrange suitable rest periods by way of consultation.

In order to gain a more comprehensive understanding of the actual rest periods taken by employees, we have specially commissioned the Census and Statistics Department to conduct a relevant survey in the first quarter of 2001. According to the findings of the survey, 2 219 800 of the employees who work more than five hours a day, or 94.7% of the labour force, already enjoy rest breaks, including meal breaks specified by employers. At the same time, it does not mean that those given no specified rest breaks are required to work non-stop all day without taking any rest.

The findings of the survey show that employees not given specified rest breaks primarily engage in the retail or estate management business, or work as tourist guides or drivers. Owing to the nature of their work or requirements of their business, these employees have been unable to take rests during specified periods. For example, watchmen guarding single buildings may need to take their meals/breaks in the light of their work schedules. Salespersons of small shops may take their meals/breaks in their shops only during non-peak hours. They have to immediately serve the customers who patronize their shops. Tour guides are also required to attend to the tourists they serve at any time and so they can hardly enjoy fixed rest breaks. Similarly, it is inappropriate for a fixed rest-period system to be implemented in a compulsory manner for employees such as those involving in rescue work, maintenance of law and order, medical care, and so on.

Earlier on in the debate, the Honourable Margaret NG mentioned that tram drivers were not given fixed lunch breaks. I believe she was referring to the situation four years ago and the situation has improved over recent years. Similarly, bus drivers may not be able to take their meals if their original bus schedule has been disrupted by a serious traffic jam. This arrangement is definitely unintended and it does happen rarely. We do not have any evidence to prove that some employers have unreasonably prohibited their employees from taking proper rest and meal breaks. If Honourable Members can cite actual examples, the Commissioner of Labour and I will be prepared to listen and strive to seek solutions to improve the situation. The issue raised by the



Honourable CHAN Yuen-han earlier concerning Customs staff precisely reflects that problems can be resolved through consultation.

If we ignore the uniqueness of various trades and industries and make it compulsory for employees to take rest, the labour market will lose its flexibility and thereby produce a negative impact on our business environment. Some small shops may suffer even more because of the rising costs. Our prime goal at the moment is to maintain the flexibility of our labour market and create more job opportunities as the most fundamental interest of workers hinges on employment.

Having said that, however, even if we decide to legislate, certain trades or professions must be exempted because of their actual operational needs. Let me cite Britain as an example. Although it is provided in regulations governing working hours that adult workers who work over six hours a day may enjoy a rest period of not less than 20 minutes, many trades and professions, including air, railway, land and sea transport, are exempted. Employees responsible for the security and surveillance of lives and properties and those engaging in the provision of continuous service or trades with unique production needs are also exempted. We will have to exempt certain trades or professions should similar legislation be introduced in Hong Kong. It is actually because of the requirements of their respective trades that employees who are at present not given specified rest breaks are not able to take rest. They will still be unable to enjoy fixed rest periods if their respective trades and professions are made exemptions in law.

I fully agree with the Honourable Audrey EU who mentioned earlier that many problems should indeed be addressed through tripartite consultation among employees, employers and the Government, with a view to resolving any labour disputes or grey areas found in ordinances. A tripartite team set up by the catering industry has actually carried out a study to formulate some standard contracts. We have also consulted the Committee on Occupational Safety and Health set up under the Labour Advisory Board (LAB) on the regulation of employees' rest time by legislation and will later conduct another round of consultation with the LAB.

Mr LAU Chin-shek has proposed to review the existing labour law and make it compulsory for employees to be given rest days. Section 17 of the Employment Ordinance has provided that employees employed on a continuous

contract may enjoy not less than one rest day every seven days. This requirement is in compliance with the International Labour Convention. The Employment Ordinance has also provided that unless in prescribed circumstances as specified in the Ordinance, employers cannot force their employees to work on rest days without the consent of the employees. Moreover, employers requesting their employees to work on rest days must arrange for the taking of compensation leave during the specified period. If both parties agree, employers and employees can negotiate arrangements and compensation for working on rest days. We consider that the existing legislation already gives employees adequate protection and, at the same time, allows sufficient flexibility for consultation between employers and employees.

Actually, I heard the Honourable Frederick FUNG mention earlier that many employees may not necessarily wish to shorten their working hours. Ms Audrey EU also mentioned that some workers had indicated that they would rather prefer not taking leave. It might not turn out to be absolutely advantageous to employees if the legislative requirement is overly strict. Nevertheless, employers refusing to give employees rest days or forcing them to work on rest days commit an offence and are liable on conviction to a maximum fine of \$50,000.

Mr LAU Chin-shek mentioned that some cleansing workers were given no rest days. We are seriously concerned about this issue. Actually, the cleansing company in question has been successfully prosecuted by the Labour Department, and a fine has been imposed on it afterwards. Apart from being issued written warnings, the contractor in question has also been prohibited by the relevant government departments from taking part in bidding for four cleansing contracts as a penalty. The Government will definitely strengthen enforcement and bring such contractors to justice if employees are willing to co-operate by giving evidence.

The Honourable LEUNG Yiu-chung remarked that the Government had refused to "face, acknowledge and legislate". I would like to correct him. The Government is willing to address problems positively. However, we must understand the problems in an in-depth manner and from various angles. We must balance the interests of various sectors and cater to the needs of different trades, including diverse voices from within the labour sector. I believe a more effective approach is to target the problems, rather than simplifying them in a broad-brush manner.

With these remarks, Madam President, I oppose Mr LAU Chin-shek's motion.

**PRESIDENT** (in Cantonese): Mr LAU Chin-shek, you may now reply and you still have six minutes three seconds.

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, I would like to thank Honourable colleagues for speaking on this motion. I guess that this motion will probably be vetoed subsequent to the voting according to the manner in which Members were returned by election. Nevertheless, I would still like to point out that those who have expressed support for this motion today include the Democratic Alliance for Betterment of Hong Kong, the Democratic Party, the Hong Kong Association for Democracy and People's Livelihood, the Frontier, the Hong Kong Federation of Trade Unions, the Federation of Hong Kong and Kowloon Labour Unions, the Neighbourhood and Workers Service Centre and Honourable Members from the legal, health services and medical sectors. I would like to express my gratitude to all of them. In particular, I would like to thank Dr the Honourable LO Wing-lok for he is an authority in the medical sector. His remark that working exceedingly long hours is hazardous to our health is very useful too.

Concerning the employment issue raised by the Secretary earlier, I would like to borrow a remark made by the Chief Executive in the consultative meeting held today regarding the necessity of various Bureau Secretaries to look at both the positive and negative impacts of policies on employment. I believe my motion has a positive impact. This is because 40 000 or so positions can be released if 200 000 or so workers are given rest breaks. I hope the Secretary can think about this again.

I do not intend to speak on the dissenting views since the Honourable LEE Cheuk-yan has already done so earlier. Over the past few days when making preparations for this motion debate, I went through a lot of survey data. I even noticed a column in which the columnist made some comments that really merit our reflection and critical thinking. It was mentioned in the column that grass-roots manual workers are required to labour tediously and repetitively for eight, 10 or 12 hours a day. Apart from selling their time and sweat for little money, they often end up gradually losing their emotion and patience with all the happenings around them. As a result, they become indifferent and apathetic.

I remember that when moving a similar motion years ago, I mentioned an old friend of mine who was a brilliant poet. In a contemporary society like Hong Kong, we often look at the economic efficiency of a person when evaluating his value and the correlation between his work and productivity. This friend of mine, once a driver and factory worker, is now working in a bus company. He has won numerous awards for the poems written by him. Regrettably, the endless working hours have made it impossible for him to continue with his creation for he is busy with making ends meet every day. Should he be a resident of a Western country, or Japan, Korea or even Taiwan, he would definitely be regarded as a national treasure by the government or community. This is because what he does can upgrade one's spiritual life. He will definitely not be wasted, like what it is now happening to him.

A number of Members concluded their speeches by remarking that they also worked round the clock. Although I do not dispute what they said, the nature of their work is somewhat different from that of those wage earners who work laboriously round the clock. Nevertheless, it will still affect the health and families of Honourable Members if they choose to work around the clock (as pointed out by Dr LO Wing-lok). After all, Honourable Members and wage earners work in different areas. Their incomes are not transferable.

Lastly, I would like to say a few words on a Christmas message delivered by the Most Revd Peter KWONG on 24 December 1999. In the message, he pointed out that a new trend had emerged in society and, as a result of which, more and more people were forced to work overtime or even till midnight. What phenomenon is it? It gives no cause for criticism if it just happens occasionally. However, if it happens on a perpetual basis, it will become part of the establishment and then that is questionable. Is it a management, economic or humanity problem? If it is a humanity problem, what will be the effects on human nature? What will be the effects on the physical and mental well-being of the employees? What will be the effects on their families and society? Will such measures turn human beings into slaves of the economy? Will it destroy human nature?

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAU Chin-shek 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.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr WONG Yung-kan, Mr LAW Chi-kwong, Mr Michael MAK, Dr LO Wing-lok and Mr IP Kwok-him voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU and Mr Tommy CHEUNG voted against the motion.

Mr LAU Ping-cheung abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG

Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the motion.

Dr David CHU, Mr NG Leung-sing, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, seven were in favour of the motion, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, 19 were in favour of the motion and four against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 6 February 2002.

*Adjourned accordingly at seventeen minutes to Seven o'clock.*

**Annex I****WRITTEN ANSWER****Written answer by the Secretary for the Environment and Food to Mr LAU Wong-fat's supplementary question to Question 1**

The Food and Environmental Hygiene Department (FEHD) deploys 2 922 workers (including 1 222 workers from the cleansing contractors) each day to carry out environmental improvement work such as street cleansing and waste collection in the New Territories. Of those 2 922 workers, 1 214 are engaged in various cleansing services in rural areas.

As regards street washing in the New Territories (including rural) areas, it is carried out by the FEHD at least once a week in the busy areas, and at least twice a week in locations with serious environmental problems; while the frequency for the remaining streets is determined by the need for such services.

**Annex II****WRITTEN ANSWER****Written answer by the Secretary for Education and Manpower to Miss Cyd HO's supplementary question to Question 2**

Conciliation meetings on claims are conducted by Assistant Labour Officers I (ALO Is) in the Labour Relations Division of the Labour Department. Each ALO I handles an average of six conciliation meetings a day, with each meeting generally lasting for one hour. The Labour Department does not maintain statistics on the highest number of conciliation meetings handled by ALO Is per day and the number of working hours so incurred.

As the number of claims has increased significantly after the financial turmoil in 1997, the Labour Relations Division has been strengthened by the addition of seven ALO Is for a period of three years starting from 2000-03 so as to cope with the increased demand for conciliation service for resolving claims. Staff deployment within the Labour Department will be further arranged to meet upsurge in the number of claims on a need basis. These measures will help alleviate the heavy workload of the staff.



## Annex III

## WRITTEN ANSWER

**Written answer by the Secretary for Health and Welfare to Mr Michael MAK's supplementary question to Question 4**

According to the records of the Hospital Authority, the two patients were discharged after receiving treatment and details of which are as follow:

<i>Patient</i>	<i>Date of admission</i>	<i>Date of discharge</i>
2-year old female	20 June 2000	21 June 2000
88-year old male	17 April 2001	19 April 2001

**Annex IV****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Mr HUI Cheung-ching's supplementary question to Question 5**

According to the records of the Department of Health, a total of 311 (of whom 287 were from the Mainland) professionals, officials and management personnel from the Asia-Pacific Region had visited the Red Ribbon Centre or participated in technical workshops or fellowship programmes organized by the Centre during 1999 to 2001. In addition, staff of the Centre had participated in five consultancy missions in the Mainland to assist in programme planning and conduct of training during the period. In 1998 and 2000, the Centre co-organized with health authorities and professional bodies in Guangdong and Macao two HIV surveillance and epidemiology workshops for the Pearl River Delta Region.

## Annex V

## WRITTEN ANSWER

**Written answer by the Secretary for Home Affairs to Mr NG Leung-sing's supplementary question to Question 6**

Supplementary information on the study period and terms of reference of the consultancy study on the provision of regional/district cultural and performance facilities in Hong Kong is attached at the Appendix for Members' reference.

## Appendix

## Consultancy Study on the Provision of Regional/District Cultural and Performance Facilities in Hong Kong

1. *How Long Will the Consultancy Study Take*

The consultancy study is expected to take five months to complete. The timetable is as follows:

*Schedule*

- |     |   |                   |
|-----|---|-------------------|
| (a) | Commencement of the consultancy study   | mid-November 2001 |
| (b) | Completion of the consultancy study   | April 2002        |
| (c) | Consultants' consultation with the community on the findings and recommendations of the consultancy study | April/May 2002    |

2. *Terms of Reference of the Consultants*

The terms of reference of the consultants are as follows:

- (a) to identify the community needs and to rationalize the provision of existing cultural and performance facilities (facilities) at the regional/district level taking into account the current provisions of

**WRITTEN ANSWER — *Continued***

similar or comparable facilities<sup>Note</sup>, major facilities under planning, cultural and related policies, development plans and programmes of main programme providers; and views of the District Council, community groups, residents, arts groups and visitors;

- (b) to review and redefine the roles, functions and services of all existing performing arts venues under the management of the Leisure and Cultural Services Department;
- (c) to conduct research into overseas experience on existing provisions of facilities at municipal level and their related long-term planning;
- (d) to examine and recommend a strategy plan for the provision of new facilities at the regional/district level; and
- (e) to make suggestions on the possible use of public areas which have the potential to be used for staging cultural activities on an ad hoc basis, such as certain major parks, some government offices buildings, heritage buildings/structures, public open areas, pedestralized areas and commercial centres.

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<sup>Note</sup> These include civic centres, community halls/centres, school halls, leisure and recreational venues and non-government run performing arts venues.

## Annex VI

## WRITTEN ANSWER

**Written answer by the Secretary for Home Affairs to Mr Abraham SHEK's supplementary question to Question 6**

Supplementary information on the cost and study period of the consultancy study on the provision of regional/district cultural and performance facilities in Hong Kong is attached at the Appendix for Members' reference.

## Appendix

## Consultancy Study on the Provision of Regional/District Cultural and Performance Facilities in Hong Kong

1. *Cost of the Consultancy Study*

The cost of the consultancy study is HK\$1,599,000

2. *How Long Will the Consultancy Study Take*

The consultancy study is expected to take five months to complete. The timetable is as follows:

*Schedule*

- |     |   |                   |
|-----|---|-------------------|
| (a) | Commencement of the consultancy study   | mid-November 2001 |
| (b) | Completion of the consultancy study   | April 2002        |
| (c) | Consultants' consultation with the community on the findings and recommendations of the consultancy study | April/May 2002    |