OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 13 March 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 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.

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 LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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 LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK

MEMBERS ABSENT:

THE HONOURABLE BERNARD CHAN

DR THE HONOURABLE PHILIP WONG YU-HONG

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

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

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

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

MS EVA CHENG, J.P.
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

CLERKS IN ATTENDANCE:

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	*L.N. No.*
Public Revenue Protection (Revenue) Order 2002.....	28/2002
Telecommunications (Amendment) Regulation 2002.....	29/2002
Telecommunications (Carrier Licences) (Amendment) Regulation 2002.....	30/2002
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 2002.....	31/2002
Public Health and Municipal Services Ordinance (Public Swimming Pools) (Amendment of Fourteenth Schedule) Order 2002.....	32/2002
Securities and Futures Commission (Levy) (Futures Contracts) (Amendment) (No. 3) Order 2001 (L.N. 296 of 2001) (Commencement) Notice 2002.....	33/2002
Revenue (Variation and Reduction of Fees and Charges) Order 2002.....	35/2002

Other Papers

No. 66 — The Lord Wilson Heritage Trust
Annual Report 2000-2001

No. 67 — Consumer Council
Annual Report 2000-2001

No. 68 — Traffic Accident Victims Assistance Fund Annual Report for the year from 1 April 2000 to 31 March 2001

No. 69 — Report by the Trustee of the Correctional Services Children's Education Trust for the period from 1st September 2000 to 31st August 2001

Report of the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000

Report of the Bills Committee on Dangerous Goods (Amendment) Bill 2000

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Review of Organization, Management and Mode of Operation of ASD

1. **MR ABRAHAM SHEK**: *Madam President, in the light of the recent review of the organization, management and mode of operation of the Architectural Services Department (ASD), will the Government inform this Council:*

(a) of the schedule and value of individual contracts of all the outsourcing projects to be awarded by the ASD to the private sector in the coming seven years;

(b) of the estimated number of jobs, broken into trades, that will be created in the private sector by the award of these contracts; and

(c) whether it will conduct similar reviews on other departments within the purview of the Works Bureau; if so, of the details; if not, the reasons for that?

SECRETARY FOR WORKS (in Cantonese): Madam President,

(a) We do not have a ready list of building contracts to be outsourced in the coming seven years. The building works programme, as Members will appreciate, is contingent upon many factors outside the control of the ASD, for example, outcome of feasibility studies and public consultation.

The ASD currently manages 250 active consultancies, covering 100 building projects and 533 projects under the School Improvement Programme, at a total cost of about $45.7 billion, as well as consultancies for maintenance works costing about $0.77 billion.

Of a total of 92 new building projects for 2002-03, the ASD is planning to implement 71 of them through outsourcing at an estimated total project value of around $23 billion. Additionally, the ASD will outsource $1.8 billion of maintenance works in the coming year.

(b) We anticipate that in 2002-03, the outsourcing of the new building projects of the ASD will create a total of about 800 consultancy-related jobs, comprising 480 professional staff (including architects, building services engineers, structural engineers and quantity surveyors) and 320 technical staff (including draftsmen and site supervisory staff). In addition, outsourcing of the maintenance works will create a total of about 300 consultancy-related jobs, comprising 180 professional staff (including building surveyors, structural engineers, building services engineers and quantity surveyors) and 120 technical staff (including draftsmen and site supervisory staff).

In the coming years, upon their construction, these outsourced building works are expected to create an accumulated total of 20 000 labour jobs. The actual timing of creation and distribution of these jobs by trade vary according to the respective programmes and needs of individual projects.

(c) Other works departments under the Works Bureau currently deliver most of their projects by outsourcing. Hence there is no similar

business review on them at the moment. However, the Government will, from time to time, review the operational efficiency and cost-effectiveness of departments in the delivery of their services with a view to achieving higher productivity and improved service quality.

MR ABRAHAM SHEK: *Madam President, with the excess staff made available after the jobs have been outsourced, what will the Government do to ensure that the staff will be properly utilized?*

SECRETARY FOR WORKS (in Cantonese): Madam President, in the coming two years, there will be a substantial increase in both major and minor building projects, therefore, in the short term, there will not be any excess of manpower in the ASD. We will fully consult our staff, and should there be an excess of manpower in future, we will make arrangements through redeployment and retraining.

MR ALBERT CHAN (in Cantonese): *Madam President, on this occasion, the action taken by the Government gives us the impression that it has jumped the gun, because the Government decided to outsource 90% of its building projects without support of the staff. The Secretary mentioned in the main reply that upon the construction of these outsourced building works, an accumulated total of 20 000 labour jobs will be created. However, as far as I know, a lot of these so-called created jobs will be done outside Hong Kong. In particular, over 80% of design-related work will be completed outside Hong Kong after building projects are outsourced. As regards the 20 000 labour jobs mentioned by the Secretary, especially the design-related ones, can the Secretary clearly tell us how to ensure that these 20 000 jobs will be done by Hong Kong people, and 80% or more of such work will not be completed outside Hong Kong?*

SECRETARY FOR WORKS (in Cantonese): Madam President, before re-engineering, the ASD did commission a consultancy that had consulted the staff about the issue. Once the future role of the ASD has been decided, we are willing to consult the staff again. As regards the 20 000 labour jobs mentioned earlier, they mainly relate to building projects in Hong Kong,

therefore, basically, people taking these jobs will have to be recruited in Hong Kong. Moreover, stringent restrictions are imposed on the importation of labour to Hong Kong. I think, personally, at this stage, there is absolutely no need to import labour to carry out these building projects. In other words, we expect all the 20 000 labour jobs to be taken by locals.

MR ALBERT CHAN (in Cantonese): *Madam President, can the Secretary give us a detailed account in writing on how to arrive at the figure of 20 000 jobs and on what the nature of these jobs is? The Secretary has not answered my supplementary question. He said the jobs will be taken by the locals. However, as I mentioned before, many of these jobs are design-related.*

PRESIDENT (in Cantonese): Mr CHAN, please take your seat first. You can only follow up what you have asked in your supplementary question. But your request now is outside the scope of your supplementary question.

MRS SELINA CHOW (in Cantonese): *Madam President, on hearing that 20 000 jobs can be created, I wish to offer my congratulations to the Government. However, I do not understand one point. The Liberal Party has all along supported the Government to outsource its building projects because savings can then be achieved. Will the Secretary inform us what can be saved through this outsourcing exercise? The Secretary said earlier that he was not sure whether the manpower of the ASD could be saved after outsourcing. If the manpower of the ASD remains unchanged, and a substantial number of projects are going to be outsourced, then what exactly has the Government saved?*

SECRETARY FOR WORKS (in Cantonese): Madam President, I think two different stages might have been confused here. First, there is the design stage. At present, a lot of projects (I think about half of them) are designed by the ASD staff, and the other half is outsourced. After the design work has been completed, the project will move on to the second stage, that is, the construction stage. It is at this stage that the 20 000 jobs I mentioned earlier will be created. These jobs will comprise those of supervisory staff and construction workers needed at that stage. In fact, after projects are

outsourced, the supervisory staff among those 20 000 jobs, together with the ASD staff, will play a supervisory role because the amount of outsourced work would be increased after all. We expect there will be an excess of manpower. We will then consult the staff and see how arrangements, for example, for redeployment and retraining that I mentioned earlier can be made.

MRS SELINA CHOW (in Cantonese): *Madam President, it seems that the Secretary has not answered my supplementary question. My supplementary question is quite simple. I just want to know what has been saved.*

SECRETARY FOR WORKS (in Cantonese): Madam President, as building projects are outsourced, the work will be taken up by the private sector. In other words, major savings will be achieved in the ASD by reducing its workload of a similar nature. However, as I mentioned earlier, the role of the ASD will be changed. There will be new jobs and an excess of manpower. Depending on the circumstances, we will solve these problems through redeployment or other arrangements.

MRS SELINA CHOW (in Cantonese): *Madam President, I do not know how will you rule ……*

PRESIDENT (in Cantonese): Mrs CHOW, would you please repeat your supplementary question in a simple and straightforward manner? I think the Secretary cannot hear you clearly.

MRS SELINA CHOW (in Cantonese): *My question is: In terms of manpower resources or other resources, what will the Government or the Bureau save?*

PRESIDENT (in Cantonese): Secretary, do you understand Mrs CHOW's question?

SECRETARY FOR WORKS (in Cantonese): Madam President, in fact, I understand the supplementary question and I think I have already given the answer. Perhaps I will elaborate. After the outsourcing of design work, the ASD staff no longer has to take up this kind of job. Thus, manpower in this respect can be saved.

PRESIDENT (in Cantonese): Secretary, if you have nothing else to add, please take your seat.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, the Secretary mentioned "retraining" and "redeployment" in his reply. May I ask the Secretary whether "retraining" and "redeployment" will be carried out across departments and policy bureaux? If staff are only redeployed within the same department or policy bureau, there may be a lot of constraints. I pointed out at a panel meeting that the work of the ASD and that of the Buildings Department are of a similar nature. While the Buildings Department has to recruit staff recently, the ASD is "slimming down" by outsourcing. Can staff be redeployed between these two departments?*

SECRETARY FOR WORKS (in Cantonese): Madam President, we would like to see staff being redeployed across departments. At present, an inter-departmental working group has been set up to discuss the details concerned. I also mentioned earlier that we will consult the staff.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, the representatives of the trade union of the ASD pointed out that their work has been regarded as cost-effective. And the recent survey conducted by the consultancy also proved their point. The Government currently decides to outsource a substantial number of building contracts, and they are worried that the quality of work will be affected. How can the Government give us a guarantee in this respect?*

SECRETARY FOR WORKS (in Cantonese): Madam President, the efficiency of the ASD is generally recognized. In future, we will deal with outsourcing projects as in the same way as general outsourcing projects. As I pointed out

earlier, about half of the projects of the ASD are currently outsourced. We will ensure the quality is up to standard through management and supervision.

MR LEUNG FU-WAH (in Cantonese): *Madam President, a few weeks ago, the Director of Architectural Services announced that in the coming seven years, 90% of the work of the ASD would be outsourced. Today, the Secretary also stated in part (a) of his main reply that in the coming seven years, the ASD would outsource its projects. However, he has not given us any specific details. May I ask the Secretary how is the decision of seven years and 90% deduced, but not eight years and 80% or six years and 100%? What is the rationale behind it?*

SECRETARY FOR WORKS (in Cantonese): Madam President, I mentioned earlier that in general, other works departments, including Civil Engineering Department, Territory Development Department, Highways Department and Water Supplies Department, deliver most of their projects, about 90%, by outsourcing. I would like to clarify one point. The major objective of the review of the ASD is to examine its role. Outsourcing constitutes only part of the review. As I mentioned on other occasions, the time span of outsourcing 90% of building projects will be adjusted in accordance with the outcome of staff consultation. The pace of outsourcing will be decided by the receptiveness of the private sector, quality of projects and staff opinion.

DR LUI MING-WAH (in Cantonese): *Madam President, as the Government decides to outsource, certainly cost-effectiveness will be achieved. Will the Secretary inform us of the saving in terms of emoluments and the number of posts each year?*

SECRETARY FOR WORKS (in Cantonese): Madam President, I have to reiterate that outsourcing only constitutes part of our review. We have set the objective and a working group has been set up. The pace will be decided by the outcome of staff consultation and so on, in other words, at this stage, a detailed plan is not yet ready. Therefore, we do not have any information on how much manpower can be saved each year.

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

MR HOWARD YOUNG (in Cantonese): *Madam President, the Secretary stated in part (a) of the main reply that of a total of 92 building projects for 2002-03, 71 of them would be implemented through outsourcing. May I ask what criteria are used to decide which project should be implemented through outsourcing? What are the major considerations? Would exhaustion of internal manpower, or technicality and efficiency of the various projects be the guiding factor?*

SECRETARY FOR WORKS (in Cantonese): Madam President, all along, whether we have sufficient staff to complete all the projects is our major consideration for outsourcing. As I mentioned earlier, in the coming years, there will be a substantial increase in both major and minor building projects, the manpower of the ASD will not be sufficient to complete all the design work of these projects.

PRESIDENT (in Cantonese): Second question.

Preventing Young People from Acquiring Smoking Habit

2. **MR WONG SING-CHI** (in Cantonese): *Madam President, according to the information provided by the Hong Kong Council on Smoking and Health (COSH), adult smokers acquired their smoking habit at as early as the age of 15 or 16. In addition, the probability of young smokers becoming alcoholics and trying drugs is higher than that of non-smokers, and over 40% of Form One to Form Three students in Hong Kong have experienced smoking. Under the legislation, it is an offence to sell tobacco products to persons aged below 18, but a survey revealed that most young people have purchased their cigarettes from supermarkets, convenience stores and tobacco retailers. In this connection, will the Government inform this Council:*

(a) of the number of complaints received last year about selling tobacco products to persons aged below 18, as well as the respective numbers of persons warned or prosecuted as a result;

(b) of the measures taken to ensure that no tobacco products will be sold to persons aged below 18 by supermarkets, convenience stores and tobacco retailers, and whether it has taken the initiative to inspect these places; and

(c) whether it has conducted any studies on the smoking habits of young smokers and their families as well as the attitude of their families towards smoking and of the measures to be adopted to enhance the co-ordination between parents and schools so as to reduce the number of young smokers?

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

(a) Under section 15A of the Smoking (Public Health) Ordinance (the Ordinance), it is an offence to sell tobacco products to persons under the age of 18. Based on the figures available, in year 2001, there was no complaint lodged, or warning issued in connection with infringement of this provision. In the same year, there was one prosecution initiated by the police for contravening this provision.

(b) In ensuring compliance with the provision, it is stipulated in section 15B of the Ordinance that any person offering for sale, or promoting the sale, of tobacco products shall display in a prominent position at the place of sale or promotion a sign to indicate that no tobacco products may be sold to any person aged below 18 or given to any person. In enforcing the law, should a violation against the law be witnessed by a police officer, or upon receipt of complaint from the public, the police will carry out investigation and they may issue warnings or summons depending on the circumstances of the case. Apart from the police, the Tobacco Control Office (TCO) under the Department of Health has also been reinforcing the compliance with this legislation. Since June 2001, officers of the TCO have visited about 200 tobacco retail outlets, such as convenience stores, hawker stalls and newspaper stands, to remind operators not to sell or give tobacco products to people under 18. In the course of their visits, officers also checked for compliance on whether a sign stating no tobacco products shall be sold to people under 18 had been properly displayed.

(c) The Census and Statistics Department conducted in 2000 a Thematic Household Survey on the Pattern of Cigarette Smoking in Hong Kong, in which the smoking prevalence of and the reasons

for young people to start smoking were studied. Besides, the COSH carried out in 1998 a study on Smoking and Passive Smoking in Children. The study examined the relationship between smoking experience of children and family smoking, and it was found that children having smoking family members were more likely to have smoked. For children living with one smoker, their risk of smoking was 79% higher than those living with non-smokers. The excess risk increased to 424% when there were three or more smokers at home.

In view of the importance of families and schools in youth smoking prevention, COSH has been organizing various activities involving the participation of the children's family members and schools. For instance, the COSH launched in 1998 the Hong Kong Children's Charter which affirms children's right to be free from the harmful effects of tobacco. In the subsequent year, the COSH co-organized with the Education Department a campaign which encouraged children to invite their family members to sign on a card to demonstrate their support to the Charter. It was intended that the message of protecting children from the harm of smoking could be conveyed to the families of the school children through their participation and support in the campaign. In addition, other non-governmental organizations such as the Action on Smoking or Health (ASH) and Life Education Activity Programme (LEAP), which maintain extensive networks with schools and parents, have also been organizing specific youth smoking prevention programmes targeting at primary and secondary school students.

MR WONG SING-CHI (in Cantonese): *Madam President, in parts (b) and (c) of his main reply, the Secretary said that the Government has already done some work on reducing the number of young smokers and enforcing the relevant legislation. However, obviously, we can still see many young people smoking on the streets or buying cigarettes very easily. I trust that students now sitting in the public gallery may have also come across similar situations. This made me think that something must have gone wrong in the area of public education and in the prohibition of the sale of cigarettes to young people under 18; and problems may have also arisen in respect of law enforcement. May I ask the Secretary how can he ensure that this legislation would be effectively enforced, so that offenders would be prosecuted?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, such law enforcement work is indeed difficult, but progress has actually been made in recent years. I believe Members will be able to see the results of the work of the TCO very shortly. Under the relevant legislation, the TCO is not empowered to institute prosecutions, so it would naturally encounter difficulties in the course of its work. As such, we plan to submit a proposal to the Legislative Council at a later stage to amend the relevant legislation, to empower the TCO to institute prosecutions. This will probably improve the existing situation.

However, according to a survey conducted by the COSH, the progress in recent years has been quite satisfactory. If we compared the results of the survey in 1999 with that of 1994, we can see that fewer young people are buying cigarettes of their own volition. In 1994, almost 50% to 60% of the young smokers bought cigarettes of their own volition, but this has recently dropped to 30%. Of course, this figure is still unsatisfactory and we also agree that control over the sale of cigarettes to young people under 18 should be stepped up by means of education and law enforcement.

MR JAMES TO (in Cantonese): *Madam President, in view of the existing conditions and assessment of the situation, will the Government consider adopting other measures? Take for instance, members of the public need doctors' prescriptions to buy certain drugs, so if the Government wishes to check whether pharmacies have made any illegal sales, it can conduct a "trial purchase programme". That is, it will get some people to try making purchases at the pharmacies, to see which of them has sold certain drugs without doctors' prescriptions and failed to comply with the legislation. Similarly, will the Government get some people to pose as people under 18 to make "trial purchases" of cigarettes, to see which retail outlets have violated the legislation? And, will the Government consider amending the legislation, so that not only the sale of cigarettes to people under 18 is illegal, but also the provision of cigarettes, that is, giving cigarettes, such as between friends, to young people is a criminal offence?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, we would consider stepping up the control and enforcement of the legislation from different aspects. We would consider the proposal just made

by Mr James TO, but I would have to first seek legal advice to see whether or not such actions are against the law. In fact, under the existing legislation, not only cigarettes are not to be sold but also they are not to be offered to young people for free.

MR MICHAEL MAK (in Cantonese): *Madam President, has the Administration at hand any statistics on the existing number of young smokers and will the Administration conduct any major publicity or educational programmes for them?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, according to our information, 4.5% of the young people between the age of 15 to 19 in Hong Kong are regular smokers. We have tried to conduct some programmes to help young smokers to kick their smoking habit, and though certain difficulties have encountered, we would continue to promote such activities.

MR FRED LI (in Cantonese): *Madam President, my question is very simple. According to a survey, the percentage of young female smokers has greatly increased among young smokers. It is found that they believe smoking can help them to lose weight. If this had been true, I would have taken up smoking too. (Laughter) Does the Government know about the findings of this survey and will special help be given to young girls who smoke under this misconception (this is a misconception, that is why I will not take up smoking)?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, we are also concerned about the phenomena of greater increase in the percentage of female young smokers. In 1998, only 1.3% of the female between the age of 15 and 19 were smokers; but in 2000, this was increased to 2.6%. We conducted a survey and the findings showed that most young people have taken up smoking mainly under the influence of their peers, which means, their peers would have the greatest influence over them. And, advertisements certainly have an impact on young people, like causing young girls to believe that smoking is acceptable to the community or that it is a sign of adulthood. Since we have to educate the young people, we would do more by way of publicity and education.

MISS CHOY SO-YUK (in Cantonese): *Madam President, nowadays more and more young people are seeking entertainment across the boundary and young people under 18 are not allowed to take cigarettes through customs under the law. May I ask the Government, how many cases did it handle in the past year in relation to young people taking cigarettes through customs?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): I do not have such data on hand, but I can check with other departments to see whether they have such data and then provide Miss CHOY So-yuk with a written reply. (Annex I)

MR LAW CHI-KWONG (in Cantonese): *Madam President, it seems that the problem lies in prosecution for the Secretary has pointed out that 30% of the young people buy cigarettes of their own volition. I understand that it is difficult to make prosecutions, but has the Administration considered adopting measures to enhance its prosecution work? For instance, issuing letters to the public, publicizing that the public can make reports, or even working with the schools and asking teachers to find out where students buy cigarettes in order to focus its prosecution on certain black spots? Has the Government considered enhancing its work in this area?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I understand that the TCO is exploring different ways on future law enforcement. We will take Mr LAW's proposals into consideration.

DR RAYMOND HO (in Cantonese): *Madam President, may I ask the Secretary whether it is true that it has not done enough in the area of public education? Has the Government considered tightening censorship on television and films, so that young people will not be lured into thinking that smoking projects a heroic image?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, we would certainly do more and do better in the areas of education and publicity. In fact, we have already tightened legislation on monitoring

cigarette advertisements and the relevant legislation would be further tightened in the future.

PRESIDENT (in Cantonese): Third question.

Setting up of CCTV Cameras at Lan Kwai Fong

3. **DR YEUNG SUM** (in Cantonese): *Madam President, it is learnt that the police are planning to set up permanent closed-circuit television (CCTV) cameras at Lan Kwai Fong, Central. In this connection, will the Government inform this Council of:*

(a) the organizations that the police have consulted before deciding to implement the pilot scheme;

(b) the details of the scheme, including the implementation date, the duration, the number of CCTV cameras to be installed, the specific locations for camera installation, whether a 24-hour surveillance will be conducted, the manpower required, the costs involved in the purchase of such cameras and the recurrent expenditure on maintenance; and

(c) the measures to be adopted by the police to safeguard people's privacy in implementing the scheme, so that the movements and behaviour of individual persons will not be subject to surveillance, as well as the penalties against those persons who abuse the CCTV system?

SECRETARY FOR SECURITY (in Cantonese): Madam President,

(a) Temporary CCTV has been successfully installed in the Lan Kwai Fong area for major events and festivals (such as Halloween, Christmas and New Year) in the past three years with the support and assistance of major business associations and interested parties in the area. The same parties have been consulted on the proposed pilot scheme of installing permanent CCTV system by the Central Police District and indicated their general support.

(b) Detailed design specifications and funding arrangements are now being worked out. Upon completion of all the necessary preparatory arrangements, including further consultation, tender arrangements, and so on, installation work is tentatively scheduled to commence around August 2003. Once the installation work has been completed, the pilot scheme will operate for a period of six months to allow sufficient time for a thorough evaluation. The intention is to install about nine outdoor cameras located around the Lan Kwai Fong area. Their locations will be similar to the temporary CCTV installation in the area for major events and festivals like Halloween, Christmas, New Year, and so on. Estimated capital costs for the system will be approximately $2.9 million with an annual recurrent cost of $590,000 for maintenance. The CCTV will have a direct feed to the Central Police Station. There will be no additional manpower or other cost implications, as officers presently on duty in the Central Police Station will man the system. Recording function will be carried out on a 24-hour basis. For the pilot scheme, officers will only be deployed to monitor the system as and when required for operational purposes (for specific events, for example). Reference will be made to the recorded tapes at other times if required.

(c) The police attach great importance to the privacy concerns expressed by the community, arising from the installation of CCTV in public places. Every step will be taken to ensure compliance with the Data Protection Principles of the Personal Data (Privacy) Ordinance (PDPO). The police will be working closely with the Office of the Privacy Commissioner for Personal Data (OPCPD) to ensure that personal data captured by the CCTV would not be misused or compromised unless a justifiable exemption under Part VIII of the PDPO is applicable. The police have also developed detailed internal procedures and guidelines with regard to security, accessibility and duration of retention of the recorded tapes. Operation guidelines will be drawn up in strict compliance with the PDPO. In addition, detailed instructions will be issued to officers using the system to ensure compliance with both the PDPO and other internal control mechanisms. Failure to comply with the internal guidelines and instructions may render officers liable to criminal or disciplinary action.

DR YEUNG SUM (in Cantonese): *Madam President, according to part (a) of the Secretary's main reply, temporary CCTV system has been installed on special occasions and seemed to have achieved quite satisfactory results. Given that the relevant area does not have heavy pedestrian flow on normal days and is not situated in the so-called dangerous zone where banks and goldsmiths are located, may I ask the Secretary whether there is any need for a 24-hour CCTV system to be in place? Does it mean that there would be no need for the CCTV system to be activated on normal days?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I have consulted the Police Force on this point. According to the explanation given by the police, temporary CCTV systems have been installed at Lan Kwai Fong and other areas during the staging of major events and festivals and achieved rather good results. Police officers in the central control room could observe the pedestrian flow and find out places where the passenger traffic has become congested, where crowd control measures would be required, where additional support should be supplied, and so on. The results attained were very satisfactory. Actually, Lan Kwai Fong has already become an internationally famous tourist attraction. I just wonder whether Dr YEUNG would pay a visit there if he had time. Even though the economy is still in the doldrums these days, every day after office hours, the area will still be crowded with people of different nationalities. As reported in the press recently, Tokyo is also planning to install such CCTV system at Kabukicho. Indeed, the entertainment areas in many big cities across the world have installed CCTV systems. After consulting the shops in the area, the police have come to the view that a pilot scheme should be introduced to install permanent CCTV system to carry our recording function on a 24-hour basis. However, that does not mean a 24-hour surveillance will be conducted on normal days (including late nights) as Dr YEUNG suggests in his main question. There is in fact no need for such kind of surveillance. All we need is to keep the recorded tapes lest any illegal activities should take place. The police firmly believe that the installation of such CCTV systems should have a deterrent effect on the crimes commonly occurring in entertainment areas, including pickpocketing, fight, bodily clash, indecent assault, and even robbery.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, the Government points out in the main reply that the temporary CCTV system installed to deal with the pedestrian flow at Lan Kwai Fong during Christmas,*

New Year and Halloween have achieved satisfactory results. Given that the risk of overcrowded pedestrian traffic in peak times has been resolved, for what reason should permanent CCTV system be installed at Lan Kwai Fong? What grounds does the Government have for such decision? In Hong Kong, there are quite a number of internationally famous streets which, like Lan Kwai Fong, will have heavier pedestrian traffic at night. As such, will CCTV systems be installed in those streets on the same grounds in future, reminiscent of the "Big Brother" in the novel 1984? Should that be the case, would Hong Kong become a world of police CCTV systems, where busy and internationally famous streets would be recording freely the pedestrian flow?

SECRETARY FOR SECURITY (in Cantonese): Actually, Madam President, I have already answered this supplementary question just now. From our experience in crowd control we have found this measure very effective and thus decided to install permanent CCTV systems. Our objective is not confined to just crowd control. For normal days, for example, we hope that this measure can help to prevent and combat crimes. As I said just now, in view of the fact that the aforesaid crimes may possibly take place in Lan Kwai Fong, as in the cases of other famous entertainment areas worldwide, the police believe that implementing the pilot CCTV system installation scheme could help to combat and prevent crimes. Perhaps the mention of CCTV system may cause people to conjure up images like the "Big Brother" created by George ORWELL; but then, in recent years, there has also been press reportage on the installation of CCTV systems in other countries. In July last year, for example, it was reported in the *Time Magazine* that 36 CCTV systems had been installed in Tampa, Florida. According to *Sunday Times*, as a measure to combat crimes, Britain will increase the number of CCTV systems installed throughout the country to two million in the coming three years. As I said before, there are also CCTV systems in Tokyo. So, as far as the use of technology in crime prevention is concerned, Hong Kong is already lagging behind others.

MR IP KWOK-HIM (in Cantonese): *Madam President, from part (c) of the Secretary's main reply we can see that privacy concerns have already been expressed. Besides, it is also mentioned the police would also develop detailed internal procedures and guidelines with regard to security, accessibility and duration of retention of the recorded tapes. I have heard that some of the information would be retained for three months, whereas the practice of other*

places was to keep the information for a week only. May I ask the Secretary whether there is any relevant data explaining why the information should be kept for such a long time? Since it is mentioned in the main reply that the CCTV systems are installed to combat crimes, could the Secretary also inform this Council whether a balance could also be achieved in this respect?

SECRETARY FOR SECURITY (in Cantonese): Madam President, I thank Mr IP for his supplementary question. The police attach great importance to privacy concerns. As I have explained before, the police are planning to consult the business operators in the Lan Kwai Fong area again and install the CCTV systems in August next year, rather than commencing the installation work in the middle of the year as certain media have said. Hence, we will have sufficient time to discuss with the OPCPD on ways to protect people' privacy. As I understand, and also reported in the press recently, more and more private organizations and even families have installed CCTV systems. As Members are aware, some employers have installed CCTV systems at home to see whether their young children would be abused by the domestic helpers. Besides, many public housing estates, shops, shopping malls and convenient stores have also installed CCTV systems to record clearly the face of the people entering and leaving their premises. The police will keep close contacts with the OPCPD, which is currently studying actively measures to protect personal data privacy, and will develop a set of internal guidelines accordingly.

Basically, the relevant directives of the police are developed on the basis of the six principles of the PDPO, one of which is related to the objective and method of data collection. Since the police can only collect adequate but not excessive data, the CCTV system definitely will not be recording the scene inside the bars but only what happens on the street. The information collected should be accurate and safely kept, and be available at any time. Except for certain exempted situations, the party related to the information may request for a copy of the recorded tape. The practice of the police for the meantime is to keep the recorded information for a period of three months. Actually, for the purpose of criminal prosecution or investigation, the police may keep the relevant information for more than three months. Why then should a limit of three months be set? This is because the other recorded tapes kept by the police, such as the tape recording of meetings with witnesses, are presently kept for a period of three months. Nevertheless, the police will continue to work with the OPCPD on issues regarding how long should that period be set and whether or not further protection measures should be implemented.

MS AUDREY EU (in Cantonese): *Madam President, could the Secretary inform this Council whether public consultation will be conducted in respect of the relevant internal guidelines and procedures, and of the party responsible for overseeing whether or not the relevant guidelines have been violated? It is pointed out at the end of the main reply that failure to comply with the internal guidelines and instructions may render officers liable to criminal or disciplinary action. However, the problem remains that in many cases the general public just will not know whether any government departments or any officers within the Government have breached any guidelines or instructions, as such breaches are internal affairs of the Government. That being the case, may I ask the Secretary whether there is any agency or person similar to the Privacy Commissioner for Personal Data responsible for monitoring the situation? If not, could the Secretary inform this Council if the Government would allocate additional funding to oversee whether there are any breaches of guidelines?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, further consultation will be conducted by the police regarding the protection of personal data privacy. The police have already consulted the Lan Kwai Fong Business Association and the Chairman of the Association, Mr Allan ZEMAN has also indicated support for the scheme in a radio programme. As regards the issue of how personal data privacy could be protected, the police would carry out further consultation in this respect. In the event that any of the police officers has violated such principles or guidelines, or any members of the public suspecting that their personal data have been unreasonably infringed upon, they may lodge complaints to the OPCPD as well as the Complaints Against Police Office (CAPO). In other words, I believe the OPCPD should be able to play a monitoring role here.

PRESIDENT (in Cantonese): Ms Audrey EU, is your supplementary question not answered yet?

MS AUDREY EU (in Cantonese): *Yes, Madam President. I raised this supplementary because the general public just could not know whether or not there have been any breaches of guidelines within the Government (between government departments), and so I asked the Secretary if there would be any mechanism or special department responsible for, inter alia, overseeing whether the relevant guidelines have been violated.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, government departments, and particularly large departments like the Police Force, will develop different internal guidelines for different tasks and duties. In this connection, senior police officers will monitor their sub-ordinates from time to time to see whether they have violated those guidelines; at the same time, members of the public are welcomed to report to the CAPO or the OPCPD if they are aware of any irregularities.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I was shocked to read the relevant reports in newspapers. The Secretary mentions in the main reply that CCTV systems have been installed in busy areas for such major events and festivals as Halloween, Christmas and New Year, I believe we will not have any special views about that. But then, I just do not understand why does the Government not consult the Council on such an enormous development project to install permanent CCTV systems at areas with heavy pedestrian traffic like Lan Kwai Fong. I do not deny ……*

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, please raise your supplementary question directly.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I wish to ask the Secretary why the Government does not consult the Council. I believe my view is shared by many people. In my opinion, if there should be prior consultation ……*

PRESIDENT (in Cantonese): I am sorry I have to interrupt you, Miss CHAN. I should like to inform you that many Members are still waiting to raise their supplementary questions.

MISS CHAN YUEN-HAN (in Cantonese): *All right, I will raise the simple supplementary as stated just now.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, we have only done the initial preparatory work because, as I said earlier, the installation will not commence until August next year. We are most willing to consult the Legislative Council, but naturally we have to consult the business operators at Lan Kwai Fong before consulting the Council, and that is why we have taken the first step. We are most willing to come to the Council to solicit opinions from Members.

MISS CYD HO (in Cantonese): *Madam President, the Government loves to copy the measures adopted by democratic countries to monitor their people, but it just makes no mention of the measures whereby the people can monitor their nations.*

PRESIDENT (in Cantonese): Miss Cyd HO, please raise your supplementary question directly.

MISS CYD HO (in Cantonese): *Madam President, according to the Secretary, Mr Allan ZEMAN has been consulted during the consultation period. But then, he is not the party relating to those personal data to be collected under the proposed scheme. May I ask the Secretary why did the Government not solicit opinions from the affected parties, including individual members of the public, the community and society? Why has this process not been carried out?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think it is a question of whether or not such consultation exercises can practically be conducted. I believe nobody would doubt the need for consulting the business operators at Lan Kwai Fong, taking into account that we have to consider whether the location of the CCTV cameras will directly record everything inside their premises or the customers visiting their bars. We have to know whether they have any concerns, and that is why we consulted them as the first step. I believe this should not be any cause for criticism. As regards consulting the public, this certainly sounds reasonable on the surface.

However, given that there are so many people frequenting Lan Kwai Fong, who should be our target interviewees? Should we arbitrarily ask any members of the public who visit the area? Moreover, so far the details of the scheme have yet to be finalized. As I said before, the scheme will not be implemented until August next year, and final decisions have yet to be made in respect of many technical issues, such as the location of the CCTV cameras, and so on. We will be most willing to consult the Legislative Council once we have worked out more details.

PRESIDENT (in Cantonese): Council has spent more than 16 minutes on this question. This shall be the last supplementary question.

MR LAU KONG-WAH (in Cantonese): *Madam President, I should like to ask about the effectiveness of the CCTV systems. As the police have installed CCTV systems during major events and festivals in the past three years, may I ask the Secretary whether the number of crimes committed in the areas concerned on the days when CCTV systems were installed has decreased, compared to the days without CCTV systems; and whether this is the way in which the effectiveness of the CCTV system is measured? Could the Secretary also inform this Council whether the crime rate at Lan Kwai Fong is comparatively higher than that in other areas?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I must clarify once again that temporary CCTV systems have been installed for almost 40 times over the past three years in areas including not only Lan Kwai Fong but also Tsim Sha Tsui East, lunar new year fairs, places for watching fireworks display, and so on. The CCTV systems were installed for crowd control purposes rather than crime prevention. Drawing on such past experiences, we have come to the view that the CCTV systems are very useful, and that is why the police has decided to consider the installation of permanent CCTV system following the practices overseas to combat crimes.

PRESIDENT (in Cantonese): Fourth question.

Changes in Use of Government Land

4. **MR IP KWOK-HIM** (in Cantonese): *Madam President, on 3 September last year, the Chief Secretary for Administration openly requested the Hong Kong Housing Authority (HA) to stop selling Home Ownership Scheme (HOS) flats for 10 months so as to review the role of public housing during the period with a view to avoiding HOS flats overlapping with private sector property market. The HA subsequently endorsed the Government's proposal. In this connection, will the Government inform this Council whether it knows:*

(a) how many pieces of land originally allocated for constructing HOS flats will be converted by the HA to sites for public rental housing (PRH) developments;

(b) how many pieces of land originally allocated for constructing public housing have to be returned to the Government by the HA; and

(c) if the HA will have to bear any additional financial costs as a result of the above changes in land use; if it will, whether the Government will share the costs?

SECRETARY FOR HOUSING (in Cantonese): Madam President, since September 2001, the HA has released 25 sites for the production of about 53 000 flats in the HOS and the Private Sector Participation Scheme (PSPS). Eight of these sites have been converted to the production of about 12 000 PRH flats. A list of these sites is shown in Annex A already circulated to Members. The other 17 sites have been returned to the Government for private sector housing or school development. A list of these sites is shown in Annex B.

The HA is responsible for implementing the bulk of the public housing programme. With regard to the financial aspect, the Government is currently reviewing the financial arrangements with the HA. The review is still continuing. As indicated by the Chief Secretary for Administration last September, the Government will ensure that the HA will not suffer a cash-flow problem as a result of meeting the Government's announcement on 3 September 2001.

Annex A

HOS/PSPS sites converted to PRH

No.	*Site*	*Original Type*	*Flat No. (estimated)*	*Completion Date (estimated)*
1.	Nga Ning Court, Cheung Chau	HOS	306	April/2002
2.	Tsz Man Phase 2	HOS	2 000	August/2001
3.	Tseung Kwan O Area 73A Phases 3 and 4	HOS	3 729	October/2003
4.	Fung Sui Court, Fung Wo Lane, Sha Tin	HOS	226	April/2002
5.	Kwai Fong Phase 7	HOS	800	May/2002
6.	Grandeur Terrance, Tin Shui Wai Reserve Zone Area 111 Phases 1 and 2	PSPS	4 100	December/2002 and March/2003
7.	Kwai Lok Temporary Housing Area	PSPS	760	February/2003
8.	Tsing On Temporary Housing Area	PSPS	510	January/2003
		Total	12 431	

Annex B

Public housing sites handed back to the Government for private sector housing development

No.	*Site*	*Original Type*	*Flat No. (estimated)*	*Completion Date (estimated)*
9.	Wong Tai Sin Police Quarters*	HOS	1 130	March/2007
10.	Southeast Kowloon Development Area Site 1C Phases 1, 2 and 3	HOS	5 138	March/2006

No.	*Site*	*Original Type*	*Flat No. (estimated)*	*Completion Date (estimated)*
11.	Shek Kip Mei Flatted Factory*	HOS	320	November/2007
12.	Tseung Kwan O Area 74 South Phases 1 and 2*	HOS	4 800	October/2007
13.	Tuen Mun Area 54 Site 1	HOS	990	May/2007
14.	Tuen Mun Area 54 Site 4	HOS	4 600	October/2008
15.	Welfare Road, Shum Wan	HOS	822	March/2005
16.	Homantin South Phase 2	HOS	600	September/2004
17.	West Kowloon Reclamation Site 1	HOS	3 700	March/2009
18.	Cha Kwo Ling Phases 1 and 2	HOS	3 710	March/2008
19.	West Kowloon Reclamation Site 3	PSPS	2 642	November/2008
20.	Tseung Kwan O Area 73B*	PSPS	2 650	February/2005
21.	Shatin Area 11 Phases 1 and 2*	PSPS	4 290	February/2005 and May/2005
22.	Shatin Area 4C*	PSPS	900	April/2006
23.	Tuen Mun Area 54 Site 3	PSPS	2 900	October/2008
24.	Kwai Shun Temporary Housing Area*	PSPS	360	December/2004
25.	Yuen Long Estate*	PSPS	1 600	September/2006
			41 152	

* Part or whole of the site being considered for school use (total 11 000 flats).

MR IP KWOK-HIM (in Cantonese): *Madam President, the Secretary's reply to part (c) of my main question is very concise, with only one sentence: the review was still continuing. In fact, by the time the 17 sites were returned to the Government by the HA, advance works for six sites were completed which included ground investigation, and a lot of money had been spent. In this connection, may I ask the Secretary whether the relevant information would be retrieved from the HA, in order to prevent a waste of resources in performing the identical work in future? Furthermore, will the authorities reimburse the HA for money that has already been spent?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, in principle, the expenditure spent on the relevant works will not be wasted, because after the government resumption of those sites, if those sites are used for private development purpose in future, we may be able to save part of the costs. As to the financial aspect, although the HA is financially independent, the Government will still take care of any financial problem that the HA may come across. Just as I have mentioned in my main reply earlier, the Government is currently reviewing the financial arrangements with the HA. We would be able to look at the content of the information when there is an outcome. However, the Government will not allow the HA to encounter any cash-flow problem.

MR IP KWOK-HIM (in Cantonese): *Madam President, the Secretary has not answered my supplementary. My supplementary is: Will the Government reimburse the HA for money that has already spent since the HA has already carried out some works?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, at present, the Government has no intention of making any additional funding to the HA for that purpose. However, just as I have mentioned earlier, if the HA should encounter any cash-flow problem a result of the decision of the Government, the Government will undertake the responsibility.

MR FREDERICK FUNG (in Cantonese): *Madam President, the Secretary listed the sites that the HA had turned over to the Government in Annexes A and*

B in his main reply. According to the existing policy, 50% to 75% of the HOS flats will be sold to PRH tenants. After retrieving the vacant PRH flats, the Government will reallocate them to people on the Waiting List or those who are in need. Yet, what is the exact problem? Those sites were originally intended for HOS development, now they have to be handed back to the Government. For example, Annex B illustrated that there were 40 000 flats under this category. In other words, 20 000 to 30 000 flats have been removed from the marketplace for purchase by PRH tenants, in order to vacate 20 000 to 30 000 PRH flats. May I ask the Secretary if he has estimated what the Government should do or how much the Government should spend in order to make up for the shortfall of 20 000 to 30 000 PRH flats?

SECRETARY FOR HOUSING (in Cantonese): Madam President, the Government has considered this issue. In fact, before making the decision on 3 September 2001, the Government had already considered the supply of PRH flats. We announced at that time that in the next few years, the HA would provide 23 000 PRH flats, which would be sufficient to meet the need for PRH flats. As a result, we are confident that people applying for PRH flats will not encounter such problem, as the Government will honour its commitment to PRH tenants.

MR FREDERICK FUNG (in Cantonese): *Madam President, I would like to seek elucidation from the Secretary on some figures.*

PRESIDENT (in Cantonese): Mr FUNG, is this related to the supplementary you have just raised earlier? It seems that it is raised specifically at this moment.

MR FREDERICK FUNG (in Cantonese): *Madam President, the Secretary mentioned earlier the completion of 23 000 PRH flats, but the previous supply was 30 000 flats. In other words, the number of flats has been reduced. How will the authorities make up for the shortfall of 20 000 to 30 000 PRH flats?*

PRESIDENT (in Cantonese): Mr FUNG, I believe the Secretary understands your request; but I consider the Secretary needs not reply, because this is not part of your earlier supplementary.

MR ALBERT HO (in Cantonese): *Madam President, in September last year, the Government announced that it would stop selling HOS flats for 10 months, and not long ago, it also announced that the annual supply of HOS flats would be reduced to 9 000. The public have criticized the move on both occasions, considering that the Government has not conducted much consultation and made it a fait accompli. Now that the review of public housing policy is under way, it appears the Government will be making a significant move, that is, the HA is turning over a large number of HOS sites to the Government. May I ask the Government whether it is making another fait accompli, and whether the remaining sites can achieve the objective set down by the Government, that is, the annual supply of 9 000 HOS flats?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, with regard to the significant move mentioned by Mr Albert HO, actually it was not anything new at all. When the Government made the announcement on 3 September last year, it stated clearly that the scale of HOS development under the HA would reduce; and after discussions with the HA, the Government decided that additional sites should be retrieved for private sector housing development. As a result, the intention was expressed clearly, and the main reply given by me today was just an enumeration of the sites for Honourable Members' reference. I have discussed with the HA, and the HA agreed that these sites could be retrieved.

MR ALBERT HO (in Cantonese): *Madam President, the Secretary has not answered part of my supplementary: Are the remaining sites retained by the HA sufficient to maintain the annual supply of 9 000 HOS flats?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, we can assure that an annual supply of 9 000 HOS flats will be maintained in the next four years. As to the situation after four years, the Chief Secretary for Administration once said that the Government was conducting a review on the

output and sale of HOS flats in future or in four years' time. The Government will make the relevant announcement when there is an outcome.

MISS EMILY LAU (in Cantonese): *Madam President, in Annex B of the main reply, the Secretary enumerated 17 sites returned to the Government, and it was indicated that part or whole of eight pieces of lands were being considered for school use. May I ask the Secretary if he can inform this Council on behalf of the executive authorities whether they are aware of the difficulty in identifying suitable sites for school use, as primary schools have to implement whole-day schooling, some schools are so dilapidated that they should be reconstructed, and given our aspiration to reducing the size of each class? The implementation of all of these measures alone requires the construction of over 300 schools, so will the Government allocate as many as such sites for school use?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, part or whole of these eight pieces of lands listed in Annex B could be considered for school use. In this respect, our intention is crystal clear; as long as the sites are suitable for school use, and provided that both the Secretary for Education and Manpower and the Education Department agree, then the sites would be allocated for school use instead of residential development.

MISS EMILY LAU (in Cantonese): *Madam President, I did not just ask about these eight pieces of lands in my supplementary, I also asked that since the demand was so strong, whether the authorities would examine if all of them were suitable for school use, and if yes, would consideration be given to earmarking them for that purpose?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, as to other sites, the Government has not made such consideration. With regard to the issue of looking for sites for school construction, it is an issue belonging to another area. To the best of my knowledge, the Secretary for Education and Manpower has studied the issue jointly with the Secretary for Planning and Lands, and they are vigorously looking for new lands suitable for school construction.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I would like to ask the Secretary about the situation after four years. After four years, all the sites in Annex B of the main reply will be used for other developments. In fact, the authorities will usually use five years for the planning of the relevant sites, if we are unable to determine whether HOS development will continue after four years and if we do not do the planning now, it will be too late even if we wish to build HOS flats by then, as there will be no sites for HOS development. May I ask whether Annex B implies that the Government intends to abolish the HOS programme after four years? If yes, the difficulties for the sandwich class to purchase their homes would be greater. I hope Secretary Dominic WONG will clarify that, because Annex B shows that no more sites would be available for HOS development after four years.*

SECRETARY FOR HOUSING (in Cantonese): Madam President, actually the HA has some land reserved for HOS development. I can inform Honourable Members that the Government has not announced that HOS development would cease after four years. We think the HA has to retain the capacity of constructing HOS flats, the reason is that in case the private property market experiences significant fluctuations in future and provided that the HA retains the capacity of constructing HOS flats, it will be able to make adjustments in the market. As a result, we will reserve some land. As to the amount of land reserve, I think the situation will become clearer after the Government has completed the review.

MR FRED LI (in Cantonese): *Madam President, from the relevant figures, most of the sites will be converted into private sector housing development. In this connection, may I ask the Government what criteria it has used in deciding the conversion of these sites for school, PRH or private sector housing development purposes? The consequence now is that most of the sites are converted to private sector housing development. May I ask the Secretary, in order to satisfy the needs of different sectors for land, what mechanism the Government adopted in making the final decision?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, the decision was very clear. In September last year, the Chief Secretary for Administration announced that in view of the HOS initiatives were overlapping

the private property market, the number of HOS flats had to be reduced and the vacated sites should be used for private sector housing development. So doing would not affect the overall housing supply, and that was the major reason. As to the conversion of land for other purposes including school use in future, it should be a broader area of consideration, and the Secretary for Planning and Lands will take care of this issue in particular concerning designation of land use.

PRESIDENT (in Cantonese): This Council has spent more than 15 minutes on this question. Last supplementary question.

DR RAYMOND HO (in Cantonese): *Madam President, several Members have written to Secretary Dominic WONG and demanded the Government to retrieve prime sites originally designated for HOS development and then sell them to private organizations for private sector housing development. It has also been suggested that in case the Housing Department runs into financial problems in future, part of the proceeds from the sale of such lands can still be used to finance PRH development. Can the Secretary inform us the number of prime sites originally intended for HOS development that the Government has considered to retrieve?*

SECRETARY FOR HOUSING (in Cantonese): Madam President, we have made thorough consideration of the use of HOS sites in the next several years. As to the situation after four years, of course we shall wait for the completion of the relevant review within the next few months before we can have any conclusion. As a result, at the present stage, it would be impossible for us to know the future number of the so-called "prime sites" as well as how the use will be designated. With regard to the long-term planning and allocation of prime sites or non-prime sites, it falls under the ambit of the Planning and Lands Bureau. The Bureau will consider the overall land supply and land use of the entire territory and deal with the issue of public and private sector housing development carefully. When the Bureau deals with PRH sites, it will certainly take the impact of the decision on the interest of the entire community into account and strike a suitable balance.

PRESIDENT (in Cantonese): Fifth question.

Speed of Broadband Conveyance/Access Services

5. **MISS EMILY LAU** (in Cantonese): *Madam President, it is learnt that some members of the public have remarked that the speed of the broadband conveyance/access services provided by certain Fixed Telecommunications Network Services (FTNS) operators in Hong Kong is too slow, and the broadband conveyance/access services used by some households in private buildings are 10 times slower in speed than those used by universities. In this connection, will the executive authorities inform this Council:*

(a) whether they know the causes of the above situation, and whether such causes include FTNS operators' under-investment, or property developers' refusal to allow FTNS operators other than their own to provide broadband services; and

(b) of the measures in place to ensure that Hong Kong will not lag behind other developed countries in terms of the speed of broadband conveyance/access services?

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING: Madam President, I will answer in English because of the terminology involved.

(a) At present, there is a variety of broadband Internet services at different speeds available for general consumers. Apart from the generally available 1.5 megabits per second (Mbps) services, there are also higher speed services at 3 Mbps, 6 Mbps, 10 Mbps or even the soon to be introduced 36 Mbps. The range of service speeds available compares favourably with those available to overseas consumers. For example, in the United Kingdom, British Telecom offers broadband Internet services at a speed of 500 kilobits per second (Kbps) to 2 Mbps. In Canada, Bell Canada offers services at 960 Kbps. In both places, some of their cable operators offer services at 5 Mbps to 10 Mbps. Moreover, the wide range of services in Hong Kong is available at very competitive prices ranging from $48 per month to over $300 per month. Hong Kong, therefore, offers comparable, if not more favourable, broadband services when compared with advanced overseas jurisdictions.

I would like to supplement that suitable conditions need to be satisfied if the desired service speeds are to be reached. For example, the hardware of the personal computer like processing speed of the central processing unit (CPU) and memory size, and the type of application software (for example, the browser) used by the customer will all affect the actual speed of accessing the Internet. Moreover, general residential customers tend to access the Internet at night after work. With many people using the Internet service at the same time during peak hours, it may lead to traffic congestion and reduction of bandwidth shared by users, hence affecting the speed of Internet access. Other factors like the location of the individual website, and capability of its server in coping with simultaneous access by multiple users, will also affect the actual speed for a user in accessing a particular website.

Madam President, it is suggested in the question that the speed of broadband Internet services used by residential customers might be 10 times lower than that used by universities. I would like to point out that the universities are not using broadband Internet service from the general Internet service providers as with residential customers. They use their own networks which are high-capacity networks comprising leased circuits dedicated for the use by universities. These networks are procured by the universities to ensure that they can handle transmission and processing of voluminous data for academic and research purposes. To meet their needs, the universities normally use high-capacity, high-speed networks that can support transmission speed of around 10 Mbps or above. On the other hand, the needs of individual customers are quite different. We have a diversified profile of individual customers ranging from occasional users to frequent users. Their needs for broadband Internet services vary. As a result, there exists a wide range of services to meet such variation in demand. Individual customers who have the need to go for higher speed services are free to choose services of 10 Mbps or above which are comparable to those used by the universities.

Hong Kong, in fact, compares favourably with other developed economies in terms of the speed of broadband Internet services

available to general consumers. With a broadband coverage of over 95% households and virtually all commercial buildings, consumers in Hong Kong are free to choose from the variety of services to better suit their own needs and requirements. Indeed, we see that improving broadband Internet services at increasingly competitive prices have boosted the number of broadband subscribers from around 51 000 in February 2000 to over 623 000 in December 2001, a 12-fold increase in less than two years. We expect that service quality and prices will further improve as more and more people use broadband Internet services, and as competition intensifies.

(b) As I explained in part (a), Hong Kong compares favourably with other developed economies in terms of the speed of broadband Internet services available to general consumers. Various measures that we have taken have facilitated the development of the broadband market in Hong Kong.

Firstly, we are committed to fully liberalizing our local fixed telecommunications market. With the issuing of six more local fixed telecommunications network services (FTNS) licences, we now have a total of 10 local FTNS providers, all of whom are capable of providing broadband services. From 1 January 2003, the local fixed telecommunications market will be fully liberalized. The level of investment in the infrastructure will be determined by the market.

Secondly, we aim to provide a pro-competition environment and a level playing field for operators. With the enactment of the Telecommunications (Amendment) Ordinance 2000, we have provided statutory pro-competition safeguards to enhance competition in the market. Under section 36A of the amended Telecommunications Ordinance, the Telecommunications Authority is clearly empowered to make determinations on interconnection, including related terms and conditions. In November 2000, the Telecommunications Authority has issued a statement laying down a transparent and pro-competition framework for broadband interconnection.

Thirdly, we seek to facilitate the roll-out of broadband network by the telecommunications operators. With the enactment of the Telecommunications (Amendment) Ordinance 2000, we have expressly provided authorized FTNS operators with the right of access to buildings to facilitate them to install their networks. It is, therefore, illegal for property developers to refuse access by an FTNS operator authorized by the Telecommunications Authority. Under section 14(4), an authorized FTNS operator may apply to a magistrate for an order that a person shall not prevent or obstruct the operator from exercising the statutory right.

For instance, last year a local wireless FTNS operator initiated legal proceedings for such an order from the magistrate, after refusal of entry into a residential building by the property owner. Subsequently, the FTNS operator did successfully gain access to the building after reaching agreement with the property owner, without the need to complete the legal proceedings.

In addition, the Office of the Telecommunications Authority (OFTA) has set up a specialized in-building access team to co-ordinate and facilitate such access. More recently, it has launched a publicity drive to educate the owners and building management of the benefits of allowing network operators to gain access to buildings to extend their network coverage.

Madam President, Hong Kong has an excellent broadband infrastructure for the development of the broadband market. Our quality of service, including speed, variety of choice and prices offered, all compare favourably with other advanced economies. We will continue to implement the above measures to ensure that Hong Kong maintains our position as a leader in the development of broadband service.

MISS EMILY LAU (in Cantonese): *Madam President, in the sixth paragraph of part (b) of the main reply, the Secretary mentioned that a specialized team had already been set up to co-ordinate and facilitate access works. The Secretary also mentioned that it was illegal for property owners to refuse access by an authorized FTNS operator. I would like to ask the Secretary: Why and*

when was the specialized team set up, and how many cases has it handled so far? Besides, the Secretary pointed out that it would bring benefits for the property owners to allow FTNS operators to gain access to buildings to extend their network coverage. May I ask what the benefits are for the property owners?

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, that specialized team was set up a little more than a year ago. During the first 12 months, if I remember it correctly, that team has already approached the property owners of almost 1 000 buildings. Of course, we hope the property owners and management companies will realize that to be able to choose telecommunications services, even including television services, is in fact the right of each and every household. If there are more services available for households, both the service quality and prices will be affected, thus benefitting each and every household. We will inform the property owners that the FTNS operators will extend their network coverage in an organized way. If it happens that several FTNS operators wish to install their networks in a specified building at the same time, we will play a co-ordinating role so as to avoid causing nuisances repeatedly to the property owners. All this falls into the scope of services of the specialized team.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, has the Government noticed that the 630 000 subscribers to broadband services in December 2001 mainly chose the services of one or two service providers? Although there are 10 providers of such services at the present moment, the situation of competition is not that satisfactory. What are the reasons for this?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, in fact, broadband services only started not long ago. In respect of networks, of course there are 10 FTNS operators available as choices. But at the service level, there are more than 10 operators, as quite a number of service operators will rent the PCCW network, for example, to provide services. Hong Kong has a regulatory environment which safeguards competition, and thus we encourage competition as a matter of course. We see that the number of broadband subscribers has increased 12 times within the past 12 months. And this can

prove that members of the public do, in fact, want to use broadband services. If the public has a demand in this regard, naturally there will be more operators providing such services.

MR HOWARD YOUNG: *Madam President, I myself have the experience of using services at 1.5 Mbps and 10 Mbps with the same computer, and I found that the higher speed one does not appear to be six times faster than the other one, or might be my computer was not in the optimum configuration. Can the Government tell us whether there have been any spot checks or random checks around the territory, using optimal configuration computers to ensure that the broadband Internet services providers are actually providing what they purport to do?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING: Madam President, there is a system in the OFTA to receive complaints from the public. In fact, in 2001, they have received 83 complaints on the quality of broadband Internet services, and most of the complaints have already been handled. In regard to the case mentioned, some broadband capacities are actually shared within the same building. When they say 10 Mbps, we also need to look at exactly what sort of services that they are providing. Of course, if it concerns only the fibre of the building type, one might actually get 10 Mbps all to oneself. Thus, it also depends on the nature of the services provided.

MISS EMILY LAU (in Cantonese): *Madam President, I would like to follow up on the supplementary question raised by me just now. The Secretary pointed out that the specialized team had dealt with more than 1 000 cases since its establishment a little more than a year ago. Can the Secretary clearly inform us that in the 1 000 cases, whether the controversy was mainly due to those property developers not allowing the operators other than their own (currently, some telecommunications services operators are also property developers) to gain access to the buildings, without knowing that this was illegal? Moreover, how long does it generally take to deal with one case? At present, is there a huge backlog of cases to be handled by the specialized team?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, maybe I shall give a rough clarification first. In fact, as regards the 1 000 cases, it was the specialized team of the OFTA which took the initiative to approach the owners' corporations or the property management companies, rather than the team taking actions in response to complaints. We can say that this is one of our large-scale educational and promotional initiatives. How did we select those 1 000 buildings? This mainly originated from some FTNS operators indicating their wish to gain access to these buildings to roll out their networks. While the work was in progress, we asked other FTNS operators if they were also interested in doing so. After gathering all the requests made by the FTNS operators, our team, together with the operators, approached and discussed with the owners' corporations or the management companies of these buildings. And we played our co-ordinating role in the process. In regard to the situation mentioned by the Honourable Emily LAU as to some property owners refusing access to buildings by the FTNS operators to roll out their networks, presently, we do not have such kind of complaints pending. The 1 000 cases mentioned by me earlier do not come under such category.

MR HOWARD YOUNG (in Cantonese): *Madam President, when the Secretary answered my supplementary question a moment ago, was she implying that the Government would only play a passive role? In other words, will the Government only check whether the speed is as fast as purported by the broadband services operators upon receipt of such complaints? Why does the Government not playing an active role in conducting tests so as to prevent the service operators from trying to pass something inferior as better products?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, the OFTA does play an active role in monitoring. In fact, the kind of services provided by a broadband services operator is one of licensing terms and conditions, and this also serves as an important indicator. In the event that the operators breach the terms and conditions of the licence, they will be sanctioned accordingly. In brief, monitoring work has been conducted by the OFTA.

PRESIDENT (in Cantonese): This Council has spent 15 minutes on this question. Last supplementary question.

MISS EMILY LAU (in Cantonese): *Madam President, my main question asked about the comparison of speed of the broadband conveyance/access services used by households in private buildings and the speed of those used by universities. The Secretary replied that since the former was different from the latter, the speed of services would be different. However, at the end of the third paragraph of part (a) of the main reply, the Secretary has pointed out that if there is a need, individual customers can also be provided with higher speed services. I believe users from residential buildings may not have a great need to go for higher speed services, but users from commercial buildings or the so-called intelligent buildings may have such a need. Does the Secretary know the number of such intelligent buildings in Hong Kong where the speed of network services is as high as those used by universities?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, almost all commercial buildings are under the broadband coverage. In fact, commercial buildings may not opt for the services used by the general public. Individual users from commercial buildings may deal with the services providers for leasing their own circuits when such needs arise in business. Therefore, the range of service speeds mentioned by me earlier, namely 1.5 Mbps, 3 Mbps, 6 Mbps or 10 Mbps, is not restricted to households only, but also open to users from commercial buildings.

PRESIDENT (in Cantonese): Sixth question.

Assault of Health Care Personnel by Psychiatric Patients

6. **MR MICHAEL MAK** (in Cantonese): *Madam President, firstly I would like to declare my interest as a paid employee of the Kwai Chung Hospital under the Hospital Authority (HA).*

Madam President, regarding cases in which government health care personnel were assaulted and injured by psychiatric patients while at work, will the Government inform this Council of:

(a) the number of health care personnel assaulted and injured by psychiatric patients while at work, and the number of such cases handled by the police over the past five years; the reasons for these health care personnel being assaulted, their ranks and the average length of sick leave granted; the number of such attackers convicted of assaults and the sentences passed on them; and

(b) the measures to protect the personal safety of health care personnel when they are in contact with psychiatric patients?

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

(a) The HA only started to collate statistics on staff injured on duty in 1999 on a hospital basis. Detailed statistical breakdown on whether a staff member was injured by patients, outside visitors, and so on, is however not collated and is not available. Information on the number of HA staff working in psychiatric hospitals who were assaulted and injured while on duty in the past three years, with breakdown by staff types, and the average length of sick leave granted are at Annex.

The majority of these injury cases occurred when the health care staff, usually working as a team, tried to control those psychiatric patients in unstable conditions. During such process, there could be physical contact between the health care staff and the patients, and in some instances, the patients could have injured the health care staff unintentionally.

In the past five years, a total of nine staff injury cases which occurred in psychiatric hospitals and psychiatric wards have been reported to the police. Information on the outcome of six of these nine cases is readily available. The police have dropped the charge against the assailants in respect of two cases. The assailant

of another case was put on bail for one year. For the remaining three cases, two of the assailants were sentenced to six-month and one-month imprisonment respectively, and one was sentenced to four months of hospital order.

(b) To ensure staff safety, the HA has been organizing regular training courses for staff, particularly nurses, on skills and techniques in handling psychiatric patients. These include skills on how to control and restrain patients, and breakaway techniques for handling patients in unstable conditions. To protect staff at work, closed-circuit television monitoring systems are installed in psychiatric wards.

The HA has published a Safety Manual on Work Place Violence which provides guidance to all health care staff on how to prevent and manage workplace violence, including how to minimize risk to themselves, adoption of preventive measures and immediate response procedures during such incidents. Hospitals are required to conduct ongoing assessments to identify control measures to reduce or eliminate the risk of workplace violence. Individual hospitals have also established mechanisms, such as hospital safety committees and risk management committees, to closely monitor security and workplace violence incidents in hospitals, conduct periodic risk assessments, and regularly review the effectiveness of security measures adopted with a view to identifying further improvement measures.

Annex

A Staff in Psychiatric Hospitals
who were Assaulted and Injured While on Duty

Year	*1999*	*2000*	*2001*
Total Number of Cases	239	216	164
of which :			
Barber	1	-	-
Clerk III	2	1	1

Year	*1999*	*2000*	*2001*
Cook	-	1	-
Enrolled Nurse (Psychiatric)	48	40	38
General Service Assistant	1	-	-
Health Care Assistant	60	64	42
Medical and Health Officer/Resident	1	2	1
Nursing Officer (Psychiatric)	8	8	4
Occupational Therapist II	1	-	-
Occupational Therapy Assistant	4	3	1
Property Attendant	1	1	-
Pupil Nurse (Psychiatric)	1	2	-
Registered Nurse (Psychiatric)	67	66	50
Student Nurse (Psychiatric)	23	14	11
Ward Attendant	15	10	11
Ward Manager	1	2	1
Ward Steward	1	-	-
Workman II	4	2	4
Average Length of Sick Leave Granted per Cases (Days)	3.3	10.9	5.1

MR MICHAEL MAK (in Cantonese): *Madam President, first of all I would like the Government to make some clarifications before I ask my supplementary.*

My main question is on the situation in all hospitals under the HA, not just that of psychiatric hospitals. Has the Government misunderstood my main question and therefore did not provide the breakdown for other hospitals to us?

PRESIDENT (in Cantonese): Mr MAK, please ask your supplementary now.

MR MICHAEL MAK (in Cantonese): *Madam President, my supplementary is: What are the details of the most serious case of injury? How many days of sick leave were granted to the staff member or staff members concerned? What kind of psychological counselling will the staff members concerned receive to help them reduce their stress?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, the figures we provided were based on reports of staff members who were injured by psychiatric patients while on duty. The total number is collated on figures provided by psychiatric hospitals. As to the other hospitals, this data is not available. Generally speaking, other hospitals do keep figures on staff members injured while on duty, but the figures are not classified according to whether the injuries were caused by psychiatric patients.

I have already pointed out in the main reply that the injury cases occurred mainly when the health care staff members working as a team tried to control those psychiatric patients in unstable conditions. In many of the cases, the patients had no intention of causing injuries to the health care staff members at all. Of course, there were cases in which patients caused injuries to health care staff members intentionally, and the more serious cases were reported to the police. However, since in most of the cases, the patients did not cause injuries to the health care staff members intentionally, therefore most of the cases were not reported to the police. If necessary, the health care staff members will receive counselling after sustaining injuries.

MR MICHAEL MAK (in Cantonese): *Madam President, I am sorry but the Secretary did not give me a reply concerning the details of the most serious case of injury, and how many days of sick leave were granted to the staff member concerned.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, regarding individual cases, I may have to give the Honourable Michael MAK a written reply later. (Annex II)

MR LAU CHIN-SHEK (in Cantonese): *Madam President, are the injuries sustained by health care staff members at work related to the patients' unstable conditions? If so, is overcrowding in the wards one of the reasons? Can the Secretary inform this Council how crowded the wards are? Is it necessary to put additional beds in many of the wards? What measures have the authorities put in place to improve this situation?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, overcrowding in the wards is certainly one of the factors, but most of these incidents occurred because the psychiatric patients were in unstable conditions. Generally speaking, the risk is particularly high when they are admitted into hospitals. Sometimes when the psychiatric patients are still in the accident and emergency department and not yet admitted into psychiatric hospitals, we also have to deal with their emotions. In fact, nurses nowadays have received fairly good training and know how to handle the patients' emotional problems. Therefore, the relevant figures have been on the decrease in psychiatric hospitals in recent years.

MR LAU CHIN-SHEK (in Cantonese): *Madam President, the Secretary did not give me a reply as to how crowded the wards are. Were additional beds put in them? What are the numbers of beds added? What improvement measures have been put in place?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, in fact significant improvements have been made to the overcrowding condition of the psychiatric wards in recent years, but some wards are still rather crowded. In the past, the occupation rate of the Castle Peak Hospital was 120%, but after adopting various measures, such as increasing the number of psychiatric wards and launching the community outreaching service, the condition of the wards has improved. Of course, I am aware that the condition of some wards, such as that of the Kwai Chung Hospital, is still not satisfactory.

DR LO WING-LOK (in Cantonese): *Madam President, if members of the public merely look at the main question and the reply, they will be misled into thinking that psychiatric patients are very dangerous and can assault health care workers. However, if we examine it further, we will see that in fact only nine such cases have occurred, and only four of the six cases were criminal cases in which criminal penalties were imposed. In fact, criminal cases happen in all sorts of circumstances, not just in the work environment of health care workers. Therefore, I hope that the Secretary can provide some background information, for example, on the number of psychiatric patients to whom the HA has provided service in the past three years, so that we can have a more comprehensive understanding of this problem.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, in 2000-01, the HA provided 5 274 psychiatric beds; 13 756 patients were hospitalized; the number of bed days was 1 595 843; the number of consultations at psychiatric specialist out-patient clinics was 471 228 cases; there were 8 630 specialist outreaching cases and psychiatric nurses made 48 356 home visits to psychiatric patients.

PRESIDENT (in Cantonese): Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Tenants Purchase Scheme

7. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, regarding the Tenants Purchase Scheme (TPS), will the Government inform this Council whether:*

(a) the inability of the Housing Authority (HA) to announce as early as possible the list of public housing estates for sale in the coming three years is attributable to the decision of the HA to stop selling Home Ownership Scheme (HOS) flats; if not, of the reasons for the delay in the announcement;

(b) it plans to amend the list of public housing estates and the number of flats to be put up for sale in the next three years, and whether it plans to adjust the timetable for the sale of these public housing flats; if so, of the details; and

(c) it will review the TPS and revise the overall target for the sale of public housing flats?

SECRETARY FOR HOUSING (in Chinese): Madam President, the moratorium on the sale of HOS flats does not affect the sale of flats to public rental housing sitting tenants under the TPS. The Government pledged in 1997 to offer no fewer than 250 000 public rental flats for sale to sitting tenants by 2007. This target remains.

The sale programme of the TPS up to Phases 6A and 6B, scheduled for sale in 2003, has already been announced. The HA has no intention of making adjustments to the list of estates, number of flats or sale timetable set out in the announced programme. Estates for inclusion in subsequent phases are being considered, taking into account factors such as building age, block type, maintenance conditions and geographical spread, and will be announced when ready.

Sentenced Persons Serving Jail Terms in a Place Outside Hong Kong

8. **MR BERNARD CHAN**: *Madam President, it has been reported that the son of the Nigerian Consul-General in Hong Kong, jailed for wounding an off-duty police officer in a Wan Chai bar, has been secretly released and transferred back to Nigeria to serve the remainder of his jail term. It has also been reported that Nigeria is not one of those places with which the Hong Kong Government has made arrangements for the transfer of sentenced persons (TSP) under the Transfer of Sentenced Persons Ordinance (Cap. 513) (the TSP Ordinance). In this connection, will the Government inform this Council of:*

(a) the number of sentenced persons who were transferred back to their countries to serve the remainder of their jail terms, with a breakdown of the countries and reasons for granting such transfer; and

(b) the number of unsuccessful applications for such transfer, with a breakdown of the countries and reasons for refusal,

in the past five years?

SECRETARY FOR SECURITY: Madam President, I would like first to explain briefly our policy on the TSP, as this is necessary to clarify and put in proper perspective some of the points covered in the preamble to the Honourable Member's question.

TSP to their places of origin would enable the sentenced persons to serve out their sentences in a familiar environment which is free of language barrier and where it would be more convenient for their friends and relatives to visit

them on a regular basis. This would be conducive to their rehabilitation. Our policy is to facilitate TSP between Hong Kong and other places as far as possible. The TSP Ordinance was enacted to provide the local legal framework to enable and govern such transfers. Any Hong Kong resident imprisoned in overseas countries or foreigner imprisoned in Hong Kong may apply for transfer. We deal with all transfer applications received in the same manner in accordance with the provisions of the TSP Ordinance.

Section 3 of the TSP Ordinance stipulates that an outward or inward warrant providing for the transfer of a sentenced person may be issued pursuant to any arrangements concluded between Hong Kong and the receiving or sending jurisdiction and subject to a number of specified restrictions.

For the purposes of section 3, the TSP arrangements between Hong Kong and another jurisdiction can be either a standing agreement covering all prospective applications in relation to that jurisdiction, or arrangements concluded on an ad hoc basis to cover a specific application as and when it arises. As the presence of a standing agreement can greatly expedite the processing of prospective applications, our policy is to negotiate and enter into such bilateral agreements with as many individual countries as possible. To date, we have signed seven bilateral agreements respectively with Italy, the Philippines, Portugal, Sri Lanka, Thailand, the United Kingdom and the United States, and a negotiation programme covering many other countries is underway. In the absence of a standing agreement between Hong Kong and a given jurisdiction, ad hoc arrangements will need to be negotiated and concluded between the two sides each time a transfer application is received and processed.

The Government of the Hong Kong Special Administrative Region would be able to effect the transfer of a prisoner into or out of Hong Kong provided that all the relevant requirements stipulated in the TSP Ordinance have been met, including the conclusion of TSP arrangements as required by section 3. As far as an outward transfer is concerned, we are prepared to conclude such arrangements if we are satisfied that the receiving jurisdiction will continue to enforce the remainder of the sentence imposed in Hong Kong after the transfer, that there are no public policy objections to the transfer and that the other requirements of the TSP Ordinance can be met. An application for transfer also requires the consent of the other jurisdiction concerned. The requirement that both jurisdictions consent is spelt out in the TSP Ordinance and our bilateral agreements. Obviously, if there is a bilateral agreement in place, the expectation of the parties is that transfers will not be routinely refused. But

equally it is accepted that there would be refusals. The processing of a transfer application depends on the efforts of both the sending and receiving jurisdictions, and the time required varies from case to case. There must be sufficient time to complete the whole process before the prisoner concerned is released from prison, otherwise the transfer will no longer be required.

For privacy reasons, it would not be appropriate for the authorities to comment on the transfer application of any individual prisoner.

Against the above policy background and with reference to the outward transfer cases since the enactment of the TSP Ordinance in June 1997, my reply to the Honourable Member's specific questions is as follows:

(a) We have transferred four prisoners to the United Kingdom and one prisoner to Nigeria, as all the requirements for transfer have been met in these cases.

(b) Information regarding outward TSP applications which were unsuccessful, and applications which are being processed, is provided at Annex.

Annex

Status/reasons for applications being unsuccessful	*Jurisdictions*	*Number of prisoners*
Insufficient time to complete the processing of the applications or the negotiation of ad hoc arrangements before discharge (or death, in one case) of the prisoners concerned	Australia	1
	Bangladesh	1
	Colombia	2
	Honduras	1
	India	1
	Nepal	1
	Nigeria	2
	Pakistan	1
	Peru	2
	Philippines	16
	Portugal	1
	Thailand	1
	United Kingdom	1
	Vietnam	2

Status/reasons for applications being unsuccessful	*Jurisdictions*	*Number of prisoners*
Unable to conclude satisfactory ad hoc arrangements or reach consensus on transfer	Malaysia	2
	Nigeria	8
	Pakistan	1
	Singapore	1
	South Africa	2
	Thailand	1
	United States	2
Applications being considered or processed	Bolivia	2
	Colombia	1
	India	1
	Indonesia	8
	Lebanon	1
	Nepal	1
	Nigeria	1
	Pakistan	1
	Peru	1
	Philippines	4
	Thailand	1
	Vietnam	11

Courses at Diploma to Degree Levels Conducted by Local and Non-local Education Institutes

9. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, with regard to courses at diploma to degree levels conducted in Hong Kong individually or jointly by local education institutes (except those registered in accordance with the relevant university and post-secondary education ordinances) and non-local education institutes, will the Government inform this Council of:*

(a) the respective numbers of applications received by the Government with respect to courses conducted in Hong Kong by the local education institutes and those conducted in co-operation with non-local education institutes, and the numbers of applications approved over the past five years; whether it has provided any

support or funding to these education institutes, and helped them start such courses;

(b) the ordinances governing the quality of the courses conducted jointly by the local and non-local education institutes; and the organizations responsible for monitoring the quality of teaching upon registration of these courses; and

(c) details of the authorities' arrangements for monitoring matters concerning the payment and refund of fees for courses conducted individually or jointly by the local and non-local education institutes?

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

(a) Over the past five years, the Non-local Courses Registry under the Education and Manpower Bureau has received a total of 912 applications for registration or exemption from registration[Note] of non-local higher and professional education courses. Of these, 331 have been approved for registration and 363 have been exempted from registration. At present, the Government does not provide any subsidy or funding support for educational institutions offering these courses. Students enrolled in these courses may apply for non-means tested loans from the Student Financial Assistant Agency to cover their tuition fees.

(b) Non-local higher and professional education courses conducted in Hong Kong are regulated under the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493). The Ordinance requires the non-local institutions awarding the academic or professional qualifications to be recognized in their respective countries, and the courses conducted by them in Hong Kong to be maintained at a standard comparable with that of the

Note Section 8 of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) stipulates that courses conducted by non-local institutions of higher education or professional bodies in collaboration with local higher education institutions (including University Grants Committee-funded institutions, Open University of Hong Kong, Hong Kong Shue Yan College and Hong Kong Academy for Performing Arts) listed in Schedule 1 of the Ordinance shall be exempted from registration.

home courses. Course operators are required to provide annual reports to the Registry setting out the operation of the courses offered in the past year, including course content, teacher qualifications, and so on. The Hong Kong Council for Academic Accreditation (HKCAA) will advise the Registry on programme quality and standard. If needed, the HKCAA will approach course operators and non-local institutions for a detailed understanding of the conduct of the courses. It will also examine the annual reports submitted. For courses conducted by non-local educational and professional institutions in collaboration with local tertiary institutions, quality assurance is the responsibility of the local institutions.

(c) To safeguard the interests of students, the Ordinance provides that in general, operators of registered courses should not collect more than three months' tuition fees. Upon the cancellation of registration or exemption, or the premature cessation of a course, the course operator has to refund the fees for the remaining part of the course to students within one month. Any person who contravenes the above requirements commits an offence and is liable on conviction to a fine of $25,000 and to imprisonment for six months.

Application for Security Personnel Permits

10. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, according to the Criteria for Issuing a Security Personnel Permit (the Criteria) and the Application for Security Personnel Permit — Guidance Notes (the Guidance Notes) issued by the Hong Kong Police Force, on his/her first application for the Security Personnel Permit (SSP), the applicant must either produce a letter of employment from the prospective employer or ask the current employer to sign on the application form to certify the employment. As for the renewal of the SSP, the relevant legislation provides that the application shall be made not earlier than six months and not later than three months before the SSP is due to expire. In this connection, will the Government inform this Council of:*

(a) the respective numbers of applications for the SSPs and successful cases of first-time applicants and renewal applicants over the past

three years, the ages of the successful applicants, together with a breakdown by the type of security work undertaken by the successful applicants;

(b) the justifications for stipulating in the Criteria and the Guidance Notes that first-time applicants for the SSPs must obtain certification of employment; whether the application will definitely not be approved if certification of employment is not provided; if this is not the case, of the criteria for approving first-time applications for the SSPs; and

(c) the justifications for requiring that renewal applications shall be made not earlier than six months and not later than three months before the SSPs is due to expire; and whether late applications for renewal of the SSPs will be given discretionary consideration; if so, of the criteria?

SECRETARY FOR SECURITY (in Chinese): Madam President,

(a) The number of applications for new issue of SPPs and that for applications for renewal of SPPs in the past three years are as follows:

	1999	*2000*	*2001*
New applications	35 224	28 855	36 706
Renewal applications	0 Note1	950	18 553

(Note 1: SPPs are valid for five years. The police started processing the first batch of applications for renewal of SPPs on 1 July 2000. There is therefore no renewal application in 1999.)

The police do not keep statistics on the number of persons who are granted SPPs or whose SPPs are renewed in a particular year. Instead, they maintain cumulative figures on the SPPs issued. Relevant statistics are as follows:

Number of SPPs by types of security work

Types of Security Work	*As at end of 1999*	*As at end of 2000*	*As at end of 2001*
Category A: Guarding work restricted to a "Single Private Residential Building"	153 760	181 398	184 390
Category B: Guarding work for all types of premises and properties	134 179	157 062	167 564
Category C: Guarding work, the performance of which requires the carrying of arms and ammunition	1 161	1 143	1 121
Category D: Installation, maintenance and/or repairing of a security device and/or designing (for any particular premises or place) a system incorporating a security device	3 818	4 523	4 098

(Remark: Some SPP holders may at the same time hold more than one SPP issued under different categories.)

Age profile of SPP holders

Age	*As at end of 1999 (Percentage)*		*As at end of 2000 (Percentage)*		*As at end of 2001 (Percentage)*	
Below	3 037	(1.9)	3 373	(1.8)	3 034	(1.6)
21-30	18 247	(11.6)	22 418	(12.1)	24 094	(12.8)
31-40	21 550	(13.7)	25 005	(13.5)	26 511	(14.1)
41-50	33 620	(21.4)	39 441	(21.2)	44 388	(23.6)
51-55	21 107	(13.4)	25 274	(13.6)	28 560	(15.2)
56-65	43 686	(27.7)	50 005	(26.9)	48 372	(25.7)
66-70	11 289	(7.2)	13 913	(7.5)	9 952	(5.3)
Above 70	4 840	(3.1)	6 277	(3.4)	3 349	(1.7)
Total	157 376	(100)	185 706	(100)	188 260	(100)

(b) The criteria was drawn up by the statutory body, the Security and Guarding Services Industry Authority (SGSIA), with its power given under the Security and Guarding Services Ordinance (SGSO). The SGSIA, when drawing up the criteria, specified that first-time applicants for SPPs were required to produce letter of employment from the prospective employers. The objective of this requirement is to ensure that applicants for SPPs have genuine intention to join the security industry, and are considered by the prospective employers as capable persons of assuming security and guarding duties.

Under the existing legislative provision, the Commissioner of Police (the Commissioner) cannot accept, nor does he has the discretion to process, first-time applications for SPPs made without employment certification. In view of the changing social circumstances and the demand and supply in the labour market, the SGSIA is reviewing the criteria including the requirement to produce employment certificate.

(c) Section 15 of the SGSO stipulates that application for renewal of SPP should be made not earlier than six months and not later than three months before the SPP is due to expire. This requirement on the one hand ensures that the police will have sufficient time to complete the processing of renewal applications, and on the other hand prevents SPP holders from making renewal applications only after their SPPs have expired. This would help avoid the situation under which a security personnel is forced to stop performing security duties temporarily due to his lack of a valid SPP, while his renewal application is being processed.

Given the above statutory requirement, the Commissioner does not have discretion to process late renewal applications. Late applicant may apply for a fresh SPP so that he does not have to discontinue with his security work due to lack of a valid SPP.

Outsourcing of Property Management Services by Housing Department

11. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, regarding the outsourcing of property management services by the Housing Department (HD), will the Government inform this Council:*

(a) whether the performance pledges and service standards of the contractors of outsourced public housing management services (contractors) are on a par with those of the HD; if not, of the differences;

(b) of the way the HD exercises its supervision over the contractors to see if they have fulfilled and achieved their performance pledges and service standards;

(c) whether there are easily accessible channels for public housing tenants to get to know the performance pledges and service standards of the contractors; and of the channels available for them to lodge complaints with the HD about the service standards of the contractors or to make suggestions on the services provided by the contractors; and

(d) whether the contractors have the personal particulars of tenants in their possession; if so, of the sources from which such particulars are obtained?

SECRETARY FOR HOUSING (in Chinese): Madam President, in outsourcing property management services, the Housing Authority (HA) requires contractors to comply with its established performance pledges on estate management and maintenance. Some contractors have, on their own initiatives, made enhanced performance pledges such as longer office hours and further reduction of response time.

The performance of contractors is vigorously monitored by the HA through the following arrangements:

(i) vetting of monthly management reports submitted by contractors;

(ii) surprise site visits conducted periodically to audit contractors' performance. Contractors will be instructed to make improvements if substandard performance is identified; and

(iii) assessment of performance of contractors regularly by an objective scoring system which takes into account appraisals of the HD's

Property Services Managers, ratings of Estate Management Advisory Committees and tenants' satisfaction quarterly surveys. Contractors with unsatisfactory scores will be interviewed and warned by the HA. Those with persistently unsatisfactory performance will not be considered for contract renewal and will be suspended from tendering. For serious breaches of contractual obligations, the HA may also terminate contracts.

Contractors' performance pledges are posted on notice boards of estate offices for tenants' reference. Leaflets setting out key performance pledges adopted by the HA are also distributed to tenants for general information. If tenants have suggestions or complaints, they may approach estate offices directly or call the relevant contractor's hotline. Tenants may also provide feedback to or file complaints with the HD in writing, through hotline (telephone no. 2712 2712) or e-mail.

To enable contractors to perform tenancy management functions and to assist tenants in case of emergency, the HA provides contractors with essential personal particulars of tenants, such as household size, contact details and special needs. Contractors have been advised to handle such private information carefully. They are prohibited to provide such information to other parties or to keep the information longer than necessary.

Fare Concessions to Elderly Persons by Green Minibuses

12. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, at present, concessionary scheme for senior citizens is available on very few green minibus (GMB) routes. In this connection, will the Government inform this Council whether it will discuss with GMB operators and encourage them to set up concessionary schemes for senior citizens, such as offering fare concessions during off-peak hours, so as to reduce the travelling expenses of senior citizens, promote respect and care for the elderly, and at the same time increase the patronage of GMBs; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, the Transport Department (TD) has been encouraging GMB operators to provide concessionary schemes for senior citizens. In the past year, concessionary

fares for senior citizens were introduced on six more GMB routes. At present, a total of 21 GMB routes offer such concessionary schemes.

The TD will continue to encourage GMB operators to provide concessionary schemes on a voluntary basis taking into account their financial and operating conditions. As an incentive to encourage more GMB operators to provide concessionary schemes for senior citizens, the TD will also include the provision of such schemes as a factor for consideration in its assessment of operator selection for new GMB routes in future.

Illegal Meat Roasting Workshops

13. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it has been reported that the Food and Environmental Hygiene Department (FEHD) seized a total of over 1 100 kg of raw and cooked meat from two illegal meat roasting workshops which were cracked down in two raids in the Eastern District of Hong Kong Island in mid-January. In this connection, will the Government inform this Council of:*

(a) the number of illegal meat roasting workshops cracked down as well as the number of such workshops in the urban area, in each of the past five years;

(b) the penalties imposed by the Court on convicted persons in charge of such workshops during the past five years and whether it has assessed the deterrent effect of the penalties on operators of such illegal workshops; and

(c) the measures to prevent the illegal roast meat products from reaching the market and causing health hazards to the public?

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

(a) The number of illegal meat roasting workshops closed down by the former Urban Services Department/Regional Services Department and the FEHD from 1997 onwards is as follows:

The number of illegal meat roasting workshops	*1997*	*1998*	*1999*	*2000*	*2001*	*2002 (As at February)*
Urban Area	2	5	5	11	33	4
New Territories	2	2	4	34	34	3
Total	4	7	9	45	67	7

(b) Persons in charge of illegal meat roasting workshops, once prosecuted and convicted, are liable to a maximum penalty of $50,000 and six months' imprisonment. According to records, the average penalty imposed was about $10,000. The seized meat and tools would also be confiscated.

The number of illegal meat roasting workshops discovered each year in the past two years was greater than that before 2000. This is probably due to the FEHD setting up a special task force and strengthening actions against these illegal workshops. The statistics earlier this year indicate that operation of illegal meat roasting workshops has diminished, and that the current level of penalty should carry sufficient deterrent effect.

(c) The most effective measure to prevent illegal meat products from reaching the market is to cut off the supply of these products at source. The FEHD will continue to rigorously combat illegal meat roasting workshops. At the retail level, the Health Inspectors of the FEHD will regularly inspect shops and food premises selling *siu mei* and *lo mei*. While examining the hygiene condition of the food, the inspectors will also check whether the food provided is by legal suppliers to ensure that the *siu mei* and *lo mei* supplied to the public are safe and hygienic.

Moreover, the Public Health and Municipal Services (Amendment) Bill was passed by the Legislative Council early this year. The objective of the Bill is to streamline the legal procedures to close unlicensed food establishments, and empower the Director of Food and Environmental Hygiene to close unhygienic food

establishments that pose an immediate health hazard to the public. We are now drafting the relevant subsidiary legislation. Once the legislative provisions come into force, the Government's ability to combat unlicensed and unhygienic food premises and preventing food safety incidents would be very much enhanced.

Regulation of Beauty Products and Services Provided by Beauticians

14. **MR FRED LI** (in Chinese): *Madam President, regarding the regulation of beauty products and services provided by beauticians, will the Government inform this Council:*

(a) of the number and types of complaints received by the Government or the Consumer Council over the past three years about beauty products or services provided by beauticians;

(b) of the number of beauticians at present;

(c) whether beauty products, skin care products, and so on, will be included in the category of controlled drugs to enhance regulation;

(d) whether it has assessed the current professional standards of the beauticians; if it has, of the results; and

(e) whether it has considered introducing a licensing system for beauticians in order to raise the standard of their services; if it has, of the details?

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

(a) In the three years between 1999 and 2001, the Government and the Consumer Council received about 1 000 complaints relating to products or services which we believe, may be taken to be beauty products or services. Details are as follows:

Types of Complaint	*1999*	*2000*	*2001*	*Total*
Disputes over charges	14	15	23	52
Products/services suspected of causing damage to health	20	10	35	65
Problematic sales practice	63	89	66	218
Failure to deliver products/ services as scheduled (reasons including termination of business)	22	136	105	263
Goods not meeting the specifications, or unsatisfactory products/services	64	88	148	300
Others	26	23	54	103
			Total	1 001

(b) According to the "Quarterly Survey of Employment and Vacancies" of the Census and Statistics Department, the number of establishments categorized as "Barber and beauty shops" is estimated to be about 6 200 as at end September 2001. The number of persons engaged in these establishments is about 23 700. These included persons providing beauty, manicure, hairdressing and hair shampoo services, as well as persons engaged in other trades in these establishments. Constrained by the source of data and the way in which the Survey was conducted, self-employed persons engaged in providing these services had not been included in the figures.

(c) Pursuant to the Pharmacy and Poisons Ordinance (PPO) (Cap. 138), "pharmaceutical product" is any product manufactured or sold for use in the diagnosis, treatment, or prevention of any disease. Products, including beauty and skin care products, are regulated as pharmaceutical products if they contain substances which are defined as pharmaceutical products or make medicinal

claims as stipulated in the PPO. Otherwise, beauty and skin care products are generally regarded as consumer products and regulated under the Consumer Goods Safety Ordinance. In other words, different arrangements are in place for the regulation of beauty and pharmaceutical products.

(d) "Beautician" is neither defined as a sector nor a trade. In general it can mean a person who is engaged in hairdressing, facial treatment or image design, and so on. The Government has not made any specific assessment on the "professional standards" of practitioners in this loosely defined field.

(e) The term "beautician" has broad and varied definitions. The Government has no plan to introduce a licensing system for "beauticians".

To safeguard public interests, we have in place legislation requiring all persons who provide products and services, including those in the "beautician trade", to comply with the relevant safety standards for food and commodities, and abide by the legislation governing pharmaceutical products. The Health and Welfare Bureau is currently conducting a review of the regulatory framework for medical equipment, with a view to further protecting public health.

Award of Contracts by Single Tender

15. **MR ALBERT CHAN** (in Chinese): *Madam President, the Kowloon-Canton Railway Corporation has been involved in a number of scandals about its awarding of contracts, among which the adoption of single tender has caused much criticism. In this connection, will the Government inform this Council whether:*

(a) various government departments, the Airport Authority, the MTR Corporation Limited (MTRCL) and the Hong Kong Housing Society have awarded contracts of over $10 million by single tender over the past three years; if so, of the number of such contracts awarded, the details and justifications;

(b) it has assessed if it is proper for these departments and organizations to award contracts by single tender; if it is considered proper, of the reasons for that; and

(c) measures are in place to ensure that these departments and organizations will refrain from awarding contracts by single tender in future so as to uphold the principle of impartiality and fairness in the tendering of contracts; if so, of the details; if not, the reasons for that?

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

(a) Over the past three years, government departments have awarded, through single tendering, 72 contracts of over $10 million each (see Appendix A). Of these, 60 contracts were awarded by the Government Supplies Department, including 49 contracts for the procurement of medical equipment and medicine and 11 contracts for the procurement of other items. The main reason for adopting a single tender approach was that the purchased items were patent or proprietary products or they could only be acquired from the relevant suppliers. The remaining 12 contracts included nine service contracts and five construction and engineering contracts. The nine service contracts were awarded by single tendering as the contractors had exclusive rights or were the sole service providers. As for the construction and engineering contracts, a major reason for single tendering was to avoid technical problems or contractual disputes that might arise from the employment of different contractors on the works. Another main reason was that the works required were of extreme urgency: for example, the works had to be completed before the typhoon or rain season; open tendering in these circumstances would delay the works and prejudice public or security interests.

According to information supplied by the Airport Authority and the MTRCL (see Appendix B), over the past three years the Airport Authority has awarded or extended a total of six contracts of over $10 million each by single tendering. The MTRCL has awarded nine contracts of over $10 million each by single tendering. The

two organizations adopted the single tendering approach for reasons similar to those quoted by government departments. The Hong Kong Housing Society has not awarded any contracts of over $10 million each by single tendering over the past three years.

(b) The practice of and justifications for government departments adopting a single tender approach are in line with the Government's internal procurement procedures as well as the Agreement on Government Procurement of the World Trade Organization (WTO GPA). We believe such an approach is appropriate. According to information provided by the Airport Authority and the MTRCL, the two organizations have followed their own procurement procedures and have not infringed the relevant provisions of WTO GPA in adopting the single tendering approach.

(c) We agree that open tendering should be adopted as far as possible in normal circumstances and single tendering should only be considered in exceptional circumstances on a case-by-case basis. We have specified in the Stores and Procurement Regulations that single or restricted tender procedures should only be used in circumstances when open competitive tendering would not be an effective means of obtaining the requisite supplies or services, for example:

(i) where there is extreme urgency brought about by unforeseeable events and where the delay that would arise as a result of open tendering would seriously harm the public or security interests of the Hong Kong Special Administrative Region;

(ii) where for reasons connected with the protection of copyrights or technical reasons, the products or services can only be supplied by a particular supplier and where no reasonable alternative or substitute exists;

(iii) where there is no response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for

participation, on condition that the requirements of the initial tender are not substantially modified in the contract as awarded;

(iv) where the equipment or services to be purchased must meet requirements of compatibility or interchangeability with already existing equipment or services;

(v) where it can be demonstrated that "patent" or "proprietary" items are the only items which can meet the specification;

(vi) where services are to be provided by utility companies;

(vi) where maintenance is to be executed on patent or specialized equipment and where the warranty of the equipment gives the supplier of the equipment the exclusive right to carry out the maintenance service; and

(viii) where lease terms require that work must be executed by a particular firm.

The WTO GPA also allows the use of "limited tendering" (including single tendering) in circumstances similar to those mentioned above. Except for procuring stores and services of a value not exceeding $1.3 million or for procuring construction and engineering services of a value not exceeding $3 million, government departments may only initiate the single tendering procedure with the prior approval of the Secretary for the Treasury. When seeking approval to adopt the single tendering procedure, departments are required to describe the background of procuring the stores or services required, state the estimated costs, explain why open tenders should not be invited, and describe the professional capability and experience of the contractors recommended. These regulations and procedures ensure that government departments will only adopt the single tendering procedure in appropriate circumstances. As explained, there is the need for the adoption of the single tendering procedure in special circumstances. Hence, the Government has no intention to debar government departments from awarding contracts by single tendering.

The Airport Authority, the MTRCL and the Hong Kong Housing Society have established their own procurement procedures. If they are subject to the WTO GPA, they are also obliged to adhere to the provisions in WTO GPA relating to limited tendering.

Appendix A

Government Supplies Department Contracts awarded by Using Single Tender Approach in 1999, 2000 and 2001

Reasons for using Single Tender Approach:

(a) where "Patented" or "Proprietary" Items are involved.

(b) on the ground of compatibility with existing equipment.

Year	*Description of Contract*	*Value of Contract*
1999	Supply of pharmaceutical preparations and medical equipment, and so on, to the Hospital Authority and the Department of Health (13 contracts)	Total value amounting to $536M (The value of each contract ranges from over $10M to $254M)
	Supply of spares for diesel engines to the Marine Department	$35M
	Supply of specialized photographic materials to various government departments	$21M
2000	Supply of pharmaceutical preparations and medical equipment, and so on, to the Hospital Authority and the Department of Health (19 contracts)	Total value amounting to $619M (The value of each contract ranges from $11M to $229M)
	Supply of spare parts for communications system and equipment to various government departments	$30M

Year	*Description of Contract*	*Value of Contract*
	Supply of spare parts for vehicles to various government departments (for 745 vehicles, mainly vans, ambulances and rescue vehicles)	$18M
2001	Supply of pharmaceutical preparations and medical equipment, and so on, to the Hospital Authority and the Department of Health (17 contracts)	Total value amounting to $469M (The value of each contract ranges from over $10M to $59M)
	Agreement for the Power by the Hour Programme for the Helicopter AS332L2 and EC155	$110M
	Supply of legal publications	$13M
	Enhancements of Radar Data Processing and Display System/Flight Data Processing System/Simulator System for the Civil Aviation Department	$20M
	Supply and installation of gas cookers and water heaters for government buildings and quarters	$16M
	Supply of spares for diesel engines to the Marine Department	$36M
	Enhancements of Speech Processing Equipment System for the Hong Kong International Airport	$19M
	Supply of specialized photographic materials to various government departments	$11M

Government Departments Contracts awarded by Using Single Tender Approach in 1999, 2000 and 2001

Procuring Department	*Description of Contract*	*Value of Contract*	*Reasons for Using Single Tender Approach*
Highways Department	Installation, Maintenance and Operation of the Public Lighting System in New Territories West (Contract period: 1 October 1999 to 30 September 2001)	$158M	The contractor was a subsidiary of a public company and at the time of the award of the contract, was the only contractor capable of providing the needed experience for the project. Prequalified tendering is now adopted for the award of the contract in September 2001.
Electrical and Mechanical Services Department	Maintenance Service for the Hong Kong Area Traffic Control System (Contract period: 1 July 1999 to 30 June 2004)	$49M	The contractor had designed the original system and had the exclusive right to supply some of the products required by the system.
Hong Kong Post Office	Provision of security service for the Air Mail Centre at the Hong Kong International Airport (Contract period: 8 October 1999 to 7 October 2001)	$13M	The contractor had already been providing security service for the restricted area of the airport. For security reason, it was necessary to have the same contractor providing security service for the Air Mail Centre.
Treasury	Provision of Integrated Electronic Payment Services (Contract period: 19 March 2000 to 18 March 2003)	$16M	The contractor was the sole supplier of integrated electronic payment services in the market.
Education Department	Development of Basic Competency Assessments in	$185M	The contractor was required to design, develop and administer

Procuring Department	*Description of Contract*	*Value of Contract*	*Reasons for Using Single Tender Approach*
	Chinese, English and Mathematics (Contract period: 2001 to 2007)		programmes for Basic Competency Assessments for Primary Three to Secondary Three students. The contractor was a statutory body providing public examination service and was the only contractor having the required knowledge, experience, capability and credibility.
Education Department	Provision of Programme Development of the Understanding Adolescent Project (Primary) (Contract period: 2001 to 2004)	$15M	The contractor had originally designed a related project for secondary schools. There was a need to award the contract for provision of the service for primary schools to the same contractor to establish a link with the original project undertaken for secondary schools.
Hong Kong Post Office	Provision of Aviation Security service for the Air Mail Centre at the Hong Kong International Airport (Contract period: 29 October 2001 to 30 September 2003)	$13M	The contractor had already been providing security service for the restricted area of the airport. For security reason, it was necessary to have the same contractor providing security service for the Air Mail Centre.
Civil Engineering Department	Construction of Hei Ling Chau Typhoon Shelter — Remaining Works (Contract awarded in 1999)	$38M	There was urgency for the award of the contract as the works had to be completed before the typhoon season. Open tendering would cause delay to the project.

Procuring Department	*Description of Contract*	*Value of Contract*	*Reasons for Using Single Tender Approach*
Territory Development Department	Construction of a box culvert (about 500 m long) and associated works along Wan Po Road and Road D9 in Tseung Kwan O (Contract awarded in 1999)	$51M	The contractor had been employed on the project of widening of Wan Po Road. There was a need to award the contract on construction of the box culvert and associated works to the same contractor to prevent interface problems.
Architectural Services Department	Construction of a link bridge between Kowloon Medical Rehabilitation Centre and Kowloon Hospital, Kowloon (Contract awarded in 1999)	$11M	The contractor had been employed on the project of construction of Kowloon Hospital Rehabilitation Building (KHRB). There was a need to award the contract on construction of the link bridge to the same contractor to prevent problems of maintenance responsibility arising from the alteration of the fabric and KHRB and contractual disputes.
Drainage Services Department	Debris flow mitigation measures and drainage improvement works at Sham Tseng San Tsuen (Contract awarded in 1999)	$10.3M	There was urgency for the award of the contract as the works had to be completed before the rainy season. Open tendering would cause delay to the project.
Architectural Services Department	Design and Construction of fitting out works at 9/F and 10/F of the Cheung Sha Wan	$14M	The contractor had been employed on the project of design and construction of the

Procuring Department	*Description of Contract*	*Value of Contract*	*Reasons for Using Single Tender Approach*
	Government Office Building (Contract awarded in 2000)		Cheung Sha Wan Government Office Building. There was a need to award the contract on the fitting-out works to the same contractor to facilitate compatibility with the design of the building and completion of the fitting-out works within the tight time frame. The arrangement was also necessary to prevent problems of maintenance responsibility and contractual disputes which might arise from engaging a different contractor to carry out the fitting-out works.

Appendix B

Contracts Awarded by Using Single Tender Approach by the Airport Authority in 1999, 2000 and 2001

Description of Contract	*Value of Contract*	*Reasons for Single Tender Approach*
Provision of Maintenance Services to the Lifts Installed at the Airport	$27M	The Contractor is the original equipment manufacturer and the sole-supplier for majority of the critical spare parts required for maintenance. Although not bound by GPA, the limited tendering provisions of the GPA Article XV 1(d) were applied.
Provision of Maintenance Services to the Escalators and Walkways Installed at the Airport	$50M	

Description of Contract	*Value of Contract*	*Reasons for Single Tender Approach*
Provision of Maintenance Services to the Management Information and Control System (MICS) and Sort Allocation System (SAC) of Baggage Handling System	$26M	The Contractor is the original equipment manufacturer and software provider of MICS and SAC. The Contractor was selected due to its in-depth knowledge of the equipment for this vital airport operational activity. Although not bound by GPA, the limited tendering provisions of the GPA Article XV 1(d) were applied.
Provision of Maintenance Services to Mechanical Service Installation (Contract M110)	$50M	The contracts concerned were originally awarded through open tender process. The contracts were extended for a further period of 2.5 years due to the operational criticality of these contract services and the 30 plus years experience of the contractor at Kai Tak. The Airport Authority subsequently conducted a comprehensive review in the light of the operational experience at Chek Lap Kok and repackaged the works and services of these three contracts. The repackaged contracts were awarded through open tendering in 2001.
Provision of Maintenance Services to Electrical Service Installation (Contract M120)	$38M	
Provision of Maintenance Services to Pumping Services and Building Services Installation (Contract M130)	$44M	

Note:

Under Article XV 1(d) of the WTO GPA, limited tendering may apply for additional deliveries by the original supplier which are intended either as part replacement for existing suppliers, or installations, or as the extension of existing suppliers, services, or installations where a change of supplier would compel the entities to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services.

Contracts Awarded by Using Single Tender Approach by the MTRCL in 1999, 2000 and 2001

Description of Contract	*Value of Contract*	*Reasons for Using Single Tender Approach*
Signalling modifications for Platform Screen Door Retrofit	$27M	The work involved maintenance or modification to an existing system requiring the specialist knowledge or proprietary spares of the original supplier (WTOGPA Article XV 1(d) refers).
Signalling Control Panel modifications	$24M	
Expansion of Radio System	$19M	
Maintenance of Baggage Handling Equipment and Flight Information Display for Airport Express	$17M	
Maintenance of Lifts and Escalators	$35M	
Maintenance of Lifts and Escalators	$19M	
Cab Simulator Modifications for enhanced training	$22M	
Additional Platform Screen Doors at Nam Cheong Station	$18M	
Main Control System Modifications to accommodate Nam Cheong Station	$40M	

Note:

Under Article XV 1(d) of the WTO GPA, limited tendering may apply for additional deliveries by the original supplier which are intended either as part replacement for existing suppliers, or installations, or as the extension of existing suppliers, services, or installations where a change of supplier would compel the entities to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services.

Production Values of Information Technology Industries

16. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, information technology (IT) industries have become an essential component of the Hong Kong economy. However, they are not classified under a single industry grouping in the Government's various economic data. In this connection, will the Government inform this Council whether:*

(a) it keeps separate statistics on the production values of IT industries in Hong Kong and how they compare to the Gross Domestic Product (GDP) of Hong Kong; if it does, of the figures for each of the past three years; if not, the reasons for that; and

(b) it plans to classify IT industries under a separate grouping in various economic data so that the public can understand the development of the industries; if so, of the timetable; if not, the reasons for that?

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

(a) In changing over to an "E-economy", industries providing "information technology and telecommunications" (IT&T) services have emerged. These industries may be collectively called the "IT&T sector". However, there is so far no international standard definition of the IT&T sector. Different economies adopt their own definitions in the course of formulating policy or undertaking statistical research work. With reference to the definition recommended by the Organization for Economic Co-operation and Development (OECD), we have delineated a number of industries as belonging to the "IT&T sector" for statistical purposes. Statistics on the "IT&T sector" have been compiled starting from the reference year of 1998. The value added for the "IT&T sector" was $38.1 billion in 1998 and $32.9 billion in 1999. The contribution to the GDP was 3.3% in 1998 and 2.9% in 1999. Figures for 2000 would be available in end-March 2002.

(b) The industry classification for economic statistics compiled by the Government is currently based on the "Hong Kong Standard Industrial Classification" (HSIC). The HSIC has been devised with reference to the United Nations' International Standard Industrial Classification (ISIC), with adaptation to reflect the structure of the local economy. As IT activities straddle several traditional economic sectors, there is no separate IT sector within the HSIC. However, since 2001, we have delineated the following industries as belonging to the "IT&T sector" for statistical purposes by making reference to the definition promulgated by the OECD as mentioned above:

(1) manufacturing of computing machinery and equipment; telephone and communication equipment; and electronic parts and components of computer and telecommunications equipment;

(2) maintenance of intercommunication system and telecommunications system;

(3) wholesale/retail of telecommunications equipment, computer, computer peripherals and software packages;

(4) import and export of computer, computer peripherals, software packages and telephone system;

(5) telecommunications services such as radio paging services, fixed and mobile telephone services, Internet access services, and so on;

(6) software development and maintenance; data processing and tabulation services; Internet related technical services and other computer related services; and

(7) engineering and technical supporting services related to computer and telecommunications equipment.

Statistics on the "IT&T sector" for 1998 and 1999 have been published in a feature article entitled "Provision and Usage of

Information Technology and Telecommunications Services" in the November 2001 issue of the *Hong Kong Monthly Digest of Statistics*.

English Proficiency of Primary Students

17. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that, as revealed in a research conducted by the Education Department (ED) on Cross Level Subject Setting, the English proficiency level of two thirds of the more than 100 Primary Six students from four participating schools was below that set in Primary Two English textbooks, and many of them are newly arrived children. The findings of the research also show that the contents of textbooks used by local primary schools are too difficult for pupils. In this connection, will the Government inform this Council:*

(a) of the basis on which the ED sets the English curriculum standards at various primary school levels to ensure that students are able to take in the course content;

(b) apart from examinations conducted in schools, of the mechanism in place to test regularly the English proficiency of primary school students at all levels; and

(c) whether it has assessed the differences in English proficiency between the newly arrived children (NAC) and their fellow classmates; if so, of the details?

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

(a) The current English Language curriculum for primary schools is prepared by the Curriculum Development Council after extensive consultation, which has taken into consideration the classroom experience of front-line teachers, the professional views of school heads, language specialists and scholars, as well as evidence of students' abilities collected from schools. This is to ensure that the content and level of the curriculum are suitable for students at

each key stage. In addition, the ED encourages schools to adapt the curriculum and teaching materials to cater for the abilities, interests and needs of their students, and enhance the effectiveness of their learning.

(b) Apart from schools' internal examinations, the ED provides a battery of Hong Kong Attainment Tests for schools to assess students' performance in Chinese, English and Mathematics from Primary One to Secondary Three levels before the end of each school year. The ED collects samples for analysis and distributes the analysis results to schools to help teachers monitor their students' performance in Chinese, English and Mathematics.

(c) To assist schools in assessing the standard of NAC from the Mainland in the subjects of Chinese, English and Mathematics, the ED has developed the Language and Mathematics Test (LMT) for secondary and primary schools. The Test helps schools assess the NAC's standard in these three subjects, so as to place them at the appropriate class levels and provide them with suitable learning support. In addition, the ED provides the following support services for the NAC:

(i) Funding non-governmental organizations to run a 60-hour Induction Programme for NAC. The Programme covers personal development, social integration and basic learning skills, and so on;

(ii) Funding schools ($2,720 for each primary NAC pupil and $4,035 for each secondary NAC student) to provide school-based support services, such as running English tutorial classes and preparing special teaching materials, and so on; and

(iii) Organizing a half-year integrated full-time Initiation Programme which includes English, traditional Chinese characters, computer application, learning skills and social integration. NAC may opt to complete this programme before being placed by the ED to suitable primary and secondary schools.

Cleaning of Country Parks

18. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding the cleaning of country parks, will the Government inform this Council:*

(a) of the respective average monthly numbers of refuse collection operations carried out by the workers of the departments concerned in various country parks;

(b) whether refuse collection operations are carried out less frequently in remoter country parks;

(c) whether all refuse in country parks is manually collected and then carried away by vehicles; and

(d) how the workers are assisted in carrying manually the refuse which they have collected in the country parks on high hills, such as the top of the Lantau Peak, or rough terrains to locations accessible by handcarts or vehicles?

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

(a) and (b)

The Agriculture, Fisheries and Conservation Department (AFCD) determines the number of refuse collection operations required for different locations within country parks according to their usage. The objective is to provide a clean environment for visitors to enjoy the beauty of nature.

At popular barbecue sites and visiting spots, the AFCD arranges collection of refuse two to four times a day, which sum up to an average of 80 times or more each month. For more remote walking trails or sites, the department, on average, arranges four to eight refuse collection operations a month according to the situation of the areas concerned. The AFCD will increase the number of refuse collection operations where necessary, for example, when

there are large-scale hiking events or other activities, and during the peak outing season from October to April each year.

(c) and (d)

All the refuse in country parks is collected manually. Depending on individual site conditions, workers use simple tools such as refuse tongs, rubbish bags and trolleys to collect refuse. For example, refuse deposited in the vicinity of footpaths or trails (in particular refuse on high hills and rough terrains) is usually small in size and volume compared to that found at barbecue or camping sites. Therefore, to facilitate collection, workers will only take along with them rubbish bags into which they will put the refuse collected. All the refuse collected in country parks is transported to designated refuse collection points where it is taken away for disposal by vehicles arranged by the Food and Environmental Hygiene Department.

Attendance at A&E Departments of Public Hospitals During Public Holidays

19. **MR MICHAEL MAK** (in Chinese): *Madam President, it is learnt that during the Lunar New Year holiday this year, the attendance at the Accident and Emergency (A&E) departments of public hospital reached 7 859 persons per day on average, representing an increase of 16.6% over normal days. The increase was especially significant in Tsueng Kwan O Hospital, Alice Ho Miu Ling Nethersole Hospital and Yan Chai Hospital. In this connection, will the Government inform this Council if it knows whether the Hospital Authority (HA):*

(a) has assessed the reasons for the drastic increase in attendance over normal days; if so, of the number of cases which involved the misuse of A&E services;

(b) will implement corresponding improvement measures before the forthcoming long Easter holidays so as to cope with the probable significant increase in demand for A&E services during the long holidays; if so, of the details;

(c) has recently assessed the effectiveness of the provision of holiday clinic services and private clinic services in the vicinity of A&E departments in easing the service demand at A&E departments; and of the new initiatives the HA will implement to relieve the pressure from the rising attendance at A&E departments during public holidays; and

(d) will consider stepping up education and publicity efforts to reduce the misuse of A&E services before a consensus on the charges for A&E services is reached; if so, of the details?

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

(a) The daily average of attendances at the A&E departments in the HA during the Chinese New Year holidays this year was 7 913, representing a 17% increase over that of January 2002. A breakdown of average daily A&E attendances by triage categories during Chinese New Year and January 2002 are set out below.

Triage category	*Average daily attendances at triage level*		
	1 – 31 January 2002 (a)	*12 - 14 February 2002 (b)*	*Increase/ Decrease (c)=(b)-(a)*
Triage I (critical case)	49 (0.73%)	52 (0.66%)	3
Triage II (emergency case)	123 (1.82%)	127 (1.60%)	4
Triage III (urgent case)	1 578 (23.36%)	1 538 (19.44%)	-40
Subtotal for critical, emergency and urgent cases	1 750 (25.91%)	1 717 (21.70%)	-33
Triage IV (semi-urgent case)	4 009 (59.36%)	4 505 (56.93%)	496
Triage V (non-urgent case)	908 (13.44%)	1 528 (19.31%)	620
Subtotal for semi-urgent and non-urgent cases	4 917 (72.80%)	6 033 (76.24%)	1 116
Unclassified case	87 (1.29%)	163 (2.06%)	76
Total	6 754 (100%)	7 913 (100%)	1 159

It should be noted that semi-urgent and non-urgent cases constituted the bulk (96%) of the additional daily A&E attendances during the Chinese New Year holidays while critical, emergency and urgent cases did not register any increase.

(b) to (d)

There is in place an effective triage system in A&E departments of the HA hospitals to ensure that patients requiring urgent medical attention will be treated promptly at all times. Despite the increase in A&E attendances during the Chinese New Year holidays, the A&E departments were able to meet their performance pledge on waiting time for critical, emergency and urgent cases. Patients with semi-urgent or non-urgent condition would have to wait longer.

To relieve the workload of A&E departments, the HA has been working in close collaboration with the Department of Health (DH) and the Hong Kong Medical Association (HKMA) to educate the public on proper use of A&E services and to enhance public awareness of the availability of alternative choices of medical services for treatment of non-urgent conditions. Such measures include:

(i) informing A&E patients of their expected waiting time and encouraging "non-urgent" patients to consider other alternative treatment options;

(ii) educating the public on the proper use of A&E services by distributing leaflets and displaying signboards at A&E departments;

(iii) educating the public on the proper use of A&E services and the availability of alternative channels of medical services through issuing press release prior to long holidays and broadcasting the Government's Announcements of Public Interest via television and radio during long holidays;

(iv) publicizing public holiday clinics run by the DH through posters displayed at all the DH's general outpatient clinics, A&E departments of the HA hospitals, public housing estates, centres for the elderly and District Offices. Information on the DH's Sunday/public holiday clinics is available through the DH's 24-hour telephone information and fax service; and

(v) providing information on the consultation hours of private medical practitioners through the MediLink telephone hotline service operated by the HKMA during long public holidays lasting three days or more.

The HA also deploys doctors in the family medicine specialty to busy A&E departments during long public holidays to attend to patients with less urgent conditions in order to relieve the workload of A&E departments.

In the coming Easter holiday, we shall continue to implement the above measures to relieve the workload of A&E departments. The DH will also step up publicity of the public holiday clinics in those districts with high A&E attendances. In addition, the HA will continue to work closely with other community health care providers to educate the public on the proper use of A&E services and to encourage patients to use other alternative treatment facilities.

As for the provision of holiday clinic services and private clinic services in the vicinity of A&E departments, the HA has, back in August 2000, in co-operation with the HKMA, launched a pilot project to operate two private medical clinics adjacent to the A&E Department of Queen Mary Hospital and Tuen Mun Hospital respectively. The objective of the pilot project was to develop a model of shared care through public-private collaboration and to relieve the workload of A&E departments by diverting "non-urgent" patients who could be cared for by the primary care practitioners. Due to low attendances at the private clinics, the pilot project only operated for about four months. The HA has subsequently conducted a review of the pilot project. It was found

that average attendances at these clinics were low (only 4.5 patients for a three-hour session). Also, the attendances at the clinics did not show any direct correlation with the waiting time of the adjacent A&E departments. As such, the extent by which these two private clinics had relieved the workload of the adjacent A&E departments was minimal.

To cope with the demand for out-patient services during public holidays, all 11 public holiday clinics operated by the DH provide both morning and afternoon sessions during public holidays. The average utilization rate of these clinics amounted to about 70% only, indicating that these clinics still have spare capacity to serve more patients during public holidays.

Arrivals from Mainland on One-way Exit Permits

20. **MR WONG SING-CHI** (in Chinese): *Madam President, regarding arrivals from the Mainland (arrivals) on one-way exit permits, will the Government inform this Council:*

(a) of the age profile (in age groups each covering five years) and academic qualifications of the arrivals in the past year;

(b) of the employment situation of the arrivals, other than those full-time housewives and students, in the past three years, together with a breakdown by the following age groups: 18 to 29, 30 to 39 and 40 to 50;

(c) whether assessment has been made of the age profile and academic qualifications of the arrivals in the next three years; and

(d) of the measures in place to assist new arrivals in integrating into the community; whether the policies on various fronts (such as social welfare, education, housing, and so on) for the next decade have been suitably planned and devised taking particular account of the age profile and academic qualifications of the arrivals; if so, of the details?

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

(a) Statistics on the age profile and academic qualifications of new arrivals from the Mainland on a One-Way Permit (new arrivals) in 2001 are at the Annex. The statistics are based on a questionnaire completed by new arrivals upon their entry into Hong Kong at the Lo Wu Control Point.

(b) We do not have statistics on the employment situation of new arrivals in the past three years.

(c) Mainland residents who meet the requisite criteria under the Points System of the One-Way Permit Scheme will be given exit permission by the mainland authorities to come to Hong Kong for settlement under a daily quota of 150. The One-Way Permit Scheme is administered and implemented by the mainland authorities. The Government is not in a position to make any reliable projection of the age profile and academic qualifications of new arrivals in the next three years.

(d) It is the Government's policy to facilitate early and smooth integration of new arrivals into the local community. Apart from the general services provided by various government departments and non-governmental organizations (NGOs) to all residents, there are also dedicated services to cater for the specific needs of new arrivals.

On the welfare front, the Social Welfare Department provide a wide range of post-migration services including orientation programmes, language classes, family/parent education, counselling and outreach services to new arrivals through eight dedicated service centres located in districts where many new arrivals reside. The Department has also supported 12 Integrated Neighbourhood Projects which provide outreach and referral services. These projects target vulnerable groups in old urban areas, including new arrivals.

As for education, the Education Department provides nine years of free and universal education for all eligible newly-arrived children. Specific placement assistance will be offered to newly-arrived children to ensure that they have school places allocated to them

within a short period of time. Other support services to help newly-arrived children integrate into the local education system include briefings conducted for their parents before the arrival of the children, publicity on our education services, proactive measures to contact newly-arrived children for placement service, as well as various education programmes specifically devised for assisting newly-arrived children to fit in more easily at schools. Furthermore, new arrivals who are over the school age are offered opportunities for further study through adult education courses and subvented adult education programmes conducted by the Education Department and the NGOs respectively.

We have also provided employment service to new arrivals. The Labour Department has 11 job centres, two of which are dedicated to employment and guidance services tailor-made for new arrivals. Labour market information, employment counselling, briefing on practices and conditions of work in Hong Kong, career guidance, job matching and job referrals, as well as information on training opportunities, are available in these centres.

As regards housing, the Housing Authority has taken into account the housing needs of new arrivals in its planning parameters and projection of overall flat production requirements. To meet the needs of new arrivals, the residence requirements for allocation of public rental housing have been relaxed. Only half of the applicant's household members are now required to have at least seven years' residence in Hong Kong upon flat allocation. All children under the age of 18, regardless of their place of birth, will be deemed as having satisfied the seven-year residence rule provided that one of their parents has lived in Hong Kong for seven years or more. In addition, new arrivals who are dependants of existing tenants in public rental housing can be added to the existing tenancy. The households concerned can be considered for reallocation to larger flats in cases of overcrowding. For those who have real difficulties in finding accommodation, transit centres, interim housing and compassionate rehousing are also available.

To ensure services provided by the government departments and the NGOs are co-ordinated and could meet the needs of new arrivals, we have in place a central co-ordination machinery, district level committees, as well as a forum for discussion and

co-ordination between the Government and the NGOs. A community education programme was also launched in 2001 to promote community acceptance of new arrivals and mutual understanding between new arrivals and local residents. We have also published a service handbook for new arrivals which provides updated information about Hong Kong and the services provided to new arrivals. Since 1996, more than 900 000 copies of this handbook have been issued.

We have kept a close watch on the needs of new arrivals and have regularly reviewed our services in order to better serve them. To cite welfare services as an example, we have strengthened the provision of family/parent education and the outreach services of post-migration centres in anticipation of the family problems arising from the increasing number of women and children who arrived for family reunion in recent years. Feedback of new arrivals on the services provided is also closely monitored so as to improve these services.

Annex

Number of One-way Permit holders entering Hong Kong by age group and educational attainment* 2001

Age Group	*No Schooling/ Kindergarten*	*Primary*	*Secondary*	*Tertiary*	*Total*
0-4	9 135	0	0	0	9 135
5-9	2 464	2 075	0	0	4 539
10-14	627	2 478	797	0	3 902
15-19	243	324	913	26	1 506
20-24	120	163	508	127	918
25-29	236	4 480	3 047	635	8 398
30-34	145	5 195	4 964	693	10 997
35-39	118	2 948	4 045	353	7 464
40-44	74	1 092	1 494	125	2 785
45-49	30	590	309	89	1 018
50-54	19	451	190	35	695
55-59	34	280	134	44	492
60 and over	228	791	613	174	1 806
All ages	13 473	20 867	17 014	2 301	53 655

* refers to the educational level attained in the Mainland before they entered Hong Kong

BILLS

First Reading of Bill

PRESIDENT (in Cantonese): Bill: First Reading.

EXTENSION OF VETTING PERIOD (LEGISLATIVE COUNCIL) BILL 2002

CLERK (in Cantonese): Extension of Vetting Period (Legislative Council) Bill 2002.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

EXTENSION OF VETTING PERIOD (LEGISLATIVE COUNCIL) BILL 2002

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I move that the Extension of Vetting Period (Legislative Council) Bill 2002 be read the Second time. The Bill seeks to change the existing extension period under the negative vetting procedure for subsidiary legislation, as prescribed in section 34 of the Interpretation and General Clauses Ordinance.

At present, all pieces of subsidiary legislation subject to negative vetting are tabled at the Legislative Council at its sitting immediately after gazetting. The Council may by resolution amend or repeal a piece of subsidiary legislation at a sitting held not later than 28 days after its tabling in this Council. Before the expiry of the 28-day vetting period, the Council may by resolution extend the vetting period by one Council sitting.

In response to Members' concern that the existing extension period of one Council sitting is insufficient for the scrutiny of complicated subsidiary legislation, the Administration has reviewed the processing of subsidiary legislation that was subject to the negative vetting procedure in the first term of the Legislative Council. Our findings indicate that the statutory 28-day vetting period had worked reasonably well in most circumstances, but there were instances where the Council required a longer scrutiny period for complex or lengthy subsidiary legislation.

The Administration is committed to working closely with the Legislative Council. In particular, we do our best to enable the Council to carry out its constitutional function of law-making in the most efficient and effective way. Following discussions with the Panel on Constitutional Affairs of the Legislative Council, we have agreed that Members should have sufficient time to perform this important function, especially in the case of complicated or lengthy subsidiary legislation. The proposal in the Extension of Vetting Period (Legislative Council) Bill 2002 reflects the consensus that we have reached with the Panel in this regard.

Under the proposed arrangement, the Legislative Council may by resolution extend the 28-day vetting period, from the existing one Legislative Council sitting to 21 days, or if there is no Council sitting on that 21st day, to the first sitting after 21 days. Similar arrangement is proposed for a vetting period that straddles two Legislative Council Sessions.

Vetting mechanism identical to the negative vetting procedure applies also to a number of instruments provided for under different ordinances. We also need to introduce, through the Bill, similar amendments to these ordinances so as to bring the vetting period in line with the proposed new arrangement.

Madam President, the Bill strikes a proper balance, in my view, between efficiency and flexibility in our negative vetting procedure. The proposed new arrangement has also the support of the House Committee. I recommend the Bill to this Council.

Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Extension of Vetting Period (Legislative Council) Bill 2002 be read the Second time.

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

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Securities and Futures Bill.

SECURITIES AND FUTURES BILL

Resumption of debate on Second Reading which was moved on 29 November 2000

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee to study Bills including the aforementioned, will now address the Council on the Committee's Report in respect of the Bill.

MR SIN CHUNG-KAI (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000, I report the deliberations of the Bills Committee on the Securities and Futures Bill (the Bill). The Bill seeks to consolidate and modernize 10 existing Ordinances regulating the securities and futures market into one single ordinance. It aims to enshrine a user-friendly regulatory regime for the development of a fair, orderly and transparent market and to enhance both the attractiveness and competitiveness of the market. In view of the importance of the Bill and the Banking (Amendment) Bill 2000 to Hong Kong in maintaining its position as an international financial centre, some members of the Bills Committee conducted an overseas duty visit to the United States and the United Kingdom early last year to study the regulatory and legislative reforms of the financial markets there. The overseas duty visit has

contributed positively to the examination of the Bill. In the course of scrutiny, the Bills Committee has made constant reference to the findings from the overseas duty visit.

The Bills Committee has raised a number of points of concern in the course of scrutiny, and I will now highlight a few of the key points.

With regard to the proposed regulatory regime for market intermediaries, the Bills Committee welcomes the introduction of a single licensing system to replace the existing multi-registration system, so that a market intermediary only needs one single licence to engage in all types of regulated activities relating to securities, futures contract and other investment products, thereby reducing the costs of both the intermediaries and the regulator. Yet at the same time, the Bills Committee is aware of the serious concern expressed by the brokerage sector over the proposal to maintain the existing arrangement to enable the authorized institutions (AIs) conducting regulated activities, which are banks, to retain their "exempted status". The brokerage sector is concerned that since the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) will be responsible for monitoring the regulated activities conducted by brokers and the AIs respectively, the regulatory standards and requirements adopted by the two regulators can hardly be consistent with each other. Moreover, the Bills Committee also notes that some of the requirements applicable to broker's firms, such as the Financial Resources Rules, are not applicable to AIs; and that under the proposed regulatory system, the disciplinary sanctions and appeal mechanism for AIs and SFC's licensees are different. The three new types of disciplinary sanctions, for example, are not applicable to AIs; besides, while SFC's licensees may appeal to the Securities and Futures Appeals Tribunal against the decisions made by the SFC, an aggrieved AI can only appeal to the Chief Executive in Council. Some members of the Bills Committee are gravely concerned that if AIs should retain their exempted status, unfair competition between brokers and AIs would be resulted. For this reason, some members suggest the Administration adopt the regulatory approach of having one single regulator supervising the same regulated activities and put all the regulated activities conducted by intermediaries under SFC regulation.

According to the Administration's explanation, the purpose of vesting in the HKMA the responsibility to supervise the regulated activities conducted by AIs is to minimize regulatory overlap, thereby cutting unnecessary regulatory

costs. Since the HKMA regulates all business activities of the AIs on a consolidated basis, even if the SFC should take the place of the HKMA to regulate the regulated activities conducted by AIs, the HKMA still has to regulate the activities concerned in order to regulate the AIs on a consolidated basis. On the other hand, regarding the Bills Committee's concern that the term "exempt persons" fails to reflect the requirement that the AIs shall be subject to appropriate supervision in their conduct of regulated activities, the Administration has accepted the Bills Committee's suggestion and will move Committee stage amendments to replace the term "exempt person" with "registered institution", "exempt" with "registered", and "exemption" with "registration" in the entire Bill. Moreover, in order to ensure consistency in the regulatory standards and requirements of the two regulators, the Bill also specifies that AIs shall be subject to the day-to-day front-line supervision by the HKMA using the regulatory standards set by the SFC. The SFC rules, codes and guidelines will apply to the AIs and their securities staff direct unless there are equal or more stringent requirements under the Banking Ordinance. The two regulators are currently drafting a revised Memorandum of Understanding to confirm the implementation details of the new regulatory framework and to facilitate co-operation. The relevant official secrecy provisions under the Bill will also be relaxed to enable exchange of regulatory information between the two regulators on a timely basis.

To address the Bills Committee's concern over the difference between the disciplinary sanctions and appeal mechanisms for brokers and AIs, the Administration will amend the relevant provisions to subject the AIs and their securities staff to the same range of sanctions and appeal mechanism applicable to the SFC's licensees.

The Bills Committee supports the aforementioned amendments proposed by the Administration and believes that this will, to a certain extent, help to provide a level playing field in the securities and futures market for brokers and AIs.

The Bills Committee supports the provisions under the Bill to strengthen and specify clearly the powers of the SFC to enable it to perform more effectively its functions as market regulator. Nevertheless, the Bills Committee holds that in addition to ensuring the autonomy of the SFC, measures must be taken to enhance the SFC's accountability and impose

sufficient checks and balances on its powers, with a view to preventing abuse of powers by the SFC. With regard to the autonomy of the SFC, some members of the Bills Committee have expressed serious concern over clause 11 of the Bill, which gives the Chief Executive the power to give written directions to the SFC, and opined that the work of the SFC would be subject to interference while its autonomy would be affected. The Bills Committee notes that the laws of the United Kingdom and the United States do not confer on the executive branch of the government any power to direct the activities of regulators; instead, accountability is assured through the exercise of the power to appoint the officers in charge of the regulatory authority and to require them to make reports and give evidence to the legislature on a regular basis. According to the explanation given by the Administration, clause 11 is the only statutory tool available to the Government to take remedial measures in a critical situation, so that the Administration can continue to perform its role in the regulatory framework as overseer of the stability of the financial system. Despite the Administration's assurance that the power concerned is just a reserve power to which the Chief Executive will not resort unless in unforeseen and very special circumstances and in the public interest, and that the Chief Executive will endeavour to maintain transparency in making the directions, the Honourable Margaret NG and the Honourable Albert HO have indicated that they would oppose the clause.

On enhancing the accountability of the SFC, some members of the Bills Committee have suggested setting up statutory bodies similar to the Consumer Panel and Practitioner Panel established under the Financial Services and Markets Act in the United Kingdom, with a view to ensuring that the SFC would take into account the views of different sectors before formulating any policies or rules. In addition, such statutory bodies should have a role to play in checking the powers of the SFC. The Bills Committees holds that the role of the Consumer Panel is particularly important. Given that it can consolidate the views of consumers (investors) and enhance their understanding of the market, the Consumer Panel should be an effective means to ensure the SFC fulfils its regulatory objective in investor protection. In this connection, the Administration has explained that the SFC can similarly consult investors and the industry through its statutory Advisory Committee, as well as other committees and working groups. Moreover, the SFC has also undertaken to upgrade the current Shareholder Group to a statutory standing committee with enhanced roles to enable investors to participate more effectively in the consultation exercises held by the SFC.

With regard to the surveillance mechanism, the Bills Committee is aware that the Bill has already prescribed measures to ensure that the SFC will follow the relevant statutory procedures in exercising its regulatory, investigative and disciplinary powers, the power to intervene, and so on; and that it will give the relevant party a reasonable opportunity of representation. As regards the provisions that empower the Administration and the SFC to make rules, the Bills Committee and market practitioners are concerned that under the Bill, the Administration and the SFC may make rules to implement the requirements specified in the principal ordinance, and breaches of the rules may result in criminal sanction and substantial fines. According to the Administration, the approach to empowering the SFC to make rules is adopted to give the SFC flexibility to respond to the continuously changing market situation. The Administration emphasizes that all the rules to be made by the Administration or the SFC under the Bill shall be introduced in the form of subsidiary legislation vetted and passed by the Legislative Council unless otherwise provided. The Bills Committee notes that in order to implement the provisions of the Bill, 39 pieces of subsidiary legislation will have to be made by the Administration or the SFC. In view of the complexity of the said subsidiary legislation and the far-reaching impact they may have on the operation of the industry, the House Committee has agreed, in the interest of allowing sufficient time for scrutiny, to form a subcommittee to study the proposed subsidiary legislation with the Administration. Furthermore, to enhance the checks on the SFC's rule-making power, the Administration will move an amendment to add a new clause 384A to specify that the SFC must consult the public before making any rules. The Bills Committee also notes that the Bill has already set out clearly the maximum fines for breaches of the rules made by the SFC. Regarding the level of fines applicable to intermediaries, the Administration accepts the view of the Bills Committee and will move an amendment to add a new clause 191A to state expressly the factors that the SFC has to consider in determining the amount of fines, including the impact of the misconduct on the operation of the market, the level of intent, the loss to the affected parties, and so on.

Given that the existing regulatory regime is insufficient to effectively combat acts of market misconduct, the Bills Committee supports the Administration's proposal to introduce dual civil and criminal regimes to deal with six types of market misconduct, with a view to enhancing the deterrent and punitive effect. The Bills Committee notes that similar dual regimes are also adopted in the United Kingdom, the United States and Australia.

The proposal is to set up under the civil regime a Market Misconduct Tribunal to hear cases of suspected market misconduct. The Tribunal may impose a number of civil sanctions on the person found guilty of breaching the SFC rules, including demanding the person to surrender any profit secured or increased by that person as a result of market misconduct. Under the criminal regime, six types of market misconduct and acts of fraud will be made criminal offences. The Administration will pursue the criminal route for a market misconduct offence where there is sufficient evidence, reasonable prospects of a conviction, and when it is in the public interest to bring a prosecution. As regards the maximum criminal sanction, it will be increased to a fine of $10 million and 10 years' imprisonment. During the course of scrutiny, the Bills Committee has emphasized that when combating market misconduct, the rights of the defendant must at the same time be protected. The Bills Committee notes that to avoid a person being subject to dual punishment in relation to the same conduct under the dual-regime arrangement, it is specified clearly under the Bill that the person concerned will not be subject to both civil and criminal proceedings for the same conduct at the same time. Further still, to ensure that evidence admitted before the Market Misconduct Tribunal will not be admissible in any other legal proceedings indiscriminately, and thereby give rise to the issue of self-incrimination, the Administration has accepted the Bills Committee's suggestion and undertaken to introduce amendments to the effect that the relevant evidence will not be admissible in any other legal proceedings except in cases of perjury, giving of false or misleading information, civil or criminal proceedings under Part XIII, and civil proceedings under Parts XI and XIV. With regard to the criminal regime, the Bills Committee, noting the views from a number of deputations, stresses that the Administration must apply the criminal standard of proof in dealing with criminal offences such as the proof beyond reasonable doubt, establishment of "intentional" or "reckless" mental element for offences, and provision of adequate defences. The Administration clarifies that it is already specified under the relevant provisions that the prosecution is required to establish an "intentional" mental element for offences. With the exception of "wash sales" and "matched orders", which are two types of blatant illegal acts, the onus of proving the offence will be on the prosecution. Besides, the relevant provisions also provide adequate defences for the possible affected persons to help them avoid committing offences inadvertently. In order to ensure that legitimate market activities will not be affected, the Administration will make rules to create a "safe harbour" for exceptions under the relevant civil and criminal provisions.

Strengthening the protection for investors is also one of the key proposals in the Bill. The Bills Committee welcomes the proposals of establishing a new Investor Compensation Scheme and improving the existing regime for disclosure of interests in securities for these proposals are helpful to enhancing the protection for investors and market transparency. The Bills Committee stresses that the new disclosure regime should be consistent with international standards and not adding to the operating costs of market practitioners, so as not to affect their competitiveness. The Administration has undertaken to review the regime with the Legislative Council Panel on Financial Affairs in the light of the implementation of the new disclosure regime in due course.

Further still, the Bills Committee also supports the clauses providing for investors the rights of civil action to institute civil proceedings to claim compensation for losses from persons who have induced others to make investments by fraudulent misrepresentation, disclosed false or misleading market information to the public, made false or misleading public communications, or committed acts of market misconduct. The relevant provisions can accord investors better protection on the one hand, and give market practitioners a clear message that the Administration does not tolerate any acts of misconduct on the other. The Bills Committee agrees that the relevant provisions should set out clearly the rights and obligations of both the plaintiff and the defendant to facilitate judgement by the Court.

Madam President, the Bills Committee has held 55 meetings and spent a total of some 140 hours scrutinizing the Bill and the Banking (Amendment) Bill 2000 over a 14-month period. On top of the over 300 information papers, the Bills Committee has also discussed submissions from the industry and the public. Besides, deputations from the industry have also reflected the points of concern of market practitioners to the Bills Committee while it was making its best efforts to scrutinize the two Bills. The Bills Committee has engaged in active discussions with the Administration to find solutions to problems. The Administration has readily accepted the views expressed by the Bills Committee and the industry. Having received and accepted the industry's suggestions, the Administration has also undertaken to introduce a number of amendments. I should like to take this opportunity to thank members of the Bills Committee and the Administration for their hard work, and to express my gratitude to the Secretariat staff for their help and support.

Madam President, given that the Administration has accepted most of the recommendations made by the Bills Committee and undertaken to introduce corresponding amendments, the Bills Committee will not move any Committee stage amendments to the Bill. I hereby recommend the resumption of the Second Reading debate on the Bill.

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

MR HENRY WU (in Cantonese): Madam President, the purpose of the Securities and Futures Bill (the Bill) introduced by the Government is to consolidate the 10 relevant ordinances made over the past 25 years into one single ordinance which aims to enshrine a user-friendly regulatory regime for the development of a fair, orderly and transparent market that is competitive internationally as well as attractive to investors, issuers and intermediaries. This major principle merits support to and is also very much endorsed by the industry (participants in the securities and futures markets).

The Bill, which is formed by consolidating 10 existing ordinances, is divided into 17 Parts and nine Schedules. Since it is "unprecedentedly" complicated, the drafting of the Bill is a "mammoth" task for the Government. According to my understanding, not only the government departments concerned but also four teams of officers from the Law Drafting Division have participated in drafting the Bill. We could always see an army of government officials at the meetings of the Bills Committee. Doubtless, the Government has devoted considerable manpower, resources and time to the Bill. Perhaps many hands do make light work, but it does not necessarily mean that things will always turn out this way; more often than not the army of government officials just could not submit the necessary papers or complete the Chinese translation work punctually within a reasonable timeframe. As a result, the Bills Committee could hardly have enough time to examine the Chinese text of the Bill, and staff members of the Legal Services Division of the Council could not but do their best. This is really incomprehensible to me. Compared to the army of government officials, Members had to examine this securities law on their own with the support of only an assistant or two. So, the work was really very difficult.

During the course of scrutiny, I recalled those sleepless nights in my student years. I believe many Members also have such experience: staying up late reading fiction books under the blanket. The two volumes of the Bill span a total of 1 126 pages, comprising approximately 600 000 words. These figures are very close to the 1 195 pages and 600 000 words of the novel *Adventures of Monkey King,* which is one of the four classical Chinese novels I have in my treasured possession. Speaking of the way they interest me, however, the two are a far cry from each other. I am now a little bit advance in age and do not have the energy I used to have as a youngster when I could go sleepless for several consecutive nights to munch novels cover to cover. Nevertheless, I have still spent many sleepless nights reading through these two thick volumes of legislation from cover to cover, again and again.

In fact, there have been many cases in which the relevant papers were not available until the afternoon immediately before the meeting day. In order to prepare well for the Bills Committee meeting to be held at 8.30 am the following day, we could not but sacrifice our sleep to read the papers. Many a time I had to read the papers until the small hours in the morning, which was around five o'clock, sleep two hours and then hurry to attend the meeting at 8.30 am. Looking back, those days were really inhuman.

Actually, I am not the only person who was forced to stay up late to study the Bill. All of the 10 members on the working group, which was initiated by me to examine the Bill, have similarly spent many nights staying up late studying the Bill; what is more, studying the Bill under the mahjong lamp some have even sacrificed both their meals and sleep. It is not an exaggeration to say that some members on the working group have sacrificed both their meals and sleep. Indeed, at the 16 working group meetings called by us, which were all held from 6.00 pm to deep in the night, we could only grab a bite or two while discussing the contents of the Bill in great detail. This was because we had to meticulously look into each of the clauses from different angles to assess the impact they would have on the industry as a whole, and then sum up the various views and suggestions for submission to the Government via the Bills Committee or other different channels.

Hence, I should like to take this opportunity to express my heartfelt thanks to members of the working group who have participated in studying the Bill and giving invaluable opinions. They include senior market participants in the securities and futures industries, the Hong Kong Stockbrokers Association,

Institute of Securities Dealers, Hong Kong Securities Institute, as well as representatives and legal advisors of the nine major investment banks in Hong Kong. Without their active participation and concerted efforts, I would not have the support to reflect the representative voices of the industry to the Bills Committee.

Why did I have to stay up late to study the Bill? I think we should first ask the Government why must the papers for use at the relevant meetings be submitted to Members at the last minute? Moreover, the papers I had to bring along to each meeting would pile up to some 12 inches on average. It was by no means easy for me to completely digest the contents of the papers in just a couple of days, to say nothing of consulting the industry. Under such pressing time constraints, how could I ensure that the views of the industry would be brought before the Bills Committee in time?

The Government was always late in submitting the papers. As I mentioned just now, in some cases the relevant papers for a meeting to be held at 8.30 am the following day could only reach Members' hands after 4.00 pm in the afternoon immediately before the meeting day; whereas in other cases, the discussion papers could only be submitted to Members right at the relevant meetings. As a result, Members could not digest fully the contents of the papers or find any opportunity to consult the industry. I had expressed my dissatisfaction with the situation at the meetings of the Bills Committee for many times, but each time things could only improve for a short while and the Government would relapse into its old ways again. Such cycle repeated for many times. So, at the Bills Committee meeting held on 18 July last year, I walked out on the meeting demonstrate my dissatisfaction. Many Members present at the meeting gave me their support and expressed their dissatisfaction with the Government's delay in submitting papers. Hence, I support very much the proposal put forward earlier on by the House Committee to require the Administration to provide the relevant papers at least five calendar days before the meeting. I just hope the Government can really make some improvements in future, rather than saying one thing but doing another.

Actually, in addition to the time needed to prepare the relevant papers, the Government has also made incorrect estimations in many other cases. For example, the Government had originally thought that the scrutiny of the entire securities legislation could be completed quickly in just three months' time (before the end of April 2001); later on, it just kept calling additional meetings

in the hope that the Bill could be passed in July 2001 before the end of the previous Legislative Session. However, when the Bill is finally tabled before the full Legislative Council today, the deliberation time has already been extended many folds while amendments introduced to over 80% of its contents. This is reflective of the fact that the Government has underestimated the complexity of the Bill and the amendments required to be made. Or perhaps the Government had thought that it could fully control the situation and rush through the scrutiny of the Bill hastily within a short time, so that the Bill, which would have such significant and far-reaching effects on Hong Kong as a financial centre, could be passed quietly.

It is an undeniable fact that the Government has accepted many views from the industry during the deliberation process and made certain amendments accordingly. The effort made by the Government is welcomed by the industry. Nevertheless, the Government and the industry are still holding divergent views on certain issues of principle. For this reason, I have to emphasize that the existing Securities Ordinance has not yet fully met the reasonable demands of the industry, but I will come to the details later on. With regard to certain individual unfair clauses, I wish to mention here that after rounds of discussion with the industry, I still believe the Government should do something more to bring about a genuinely level playing field that is in line with international regulatory approaches.

As regards other issues of principle, including different regulators for the securities business run by banks and securities firms, certain local securities laws containing comparatively harsher provisions than their counterparts overseas, excessive powers of the SFC, and so on, I believe Mr SIN Chung-kai has already mentioned them in his speech just now. I hope very much that the Government will give the industry some specific promises in its reply later on and keep its promises by devoting efforts to ensuring the impartiality of the regulatory regime and providing a genuinely level playing field. For example, the Memorandum of Understanding between the SFC and the HKMA and any future amendments to it may be made public or even uploaded to the Internet for public inspection, with a view to alleviating the people's concerns through the Government's open-minded attitude. I hope the Government will confirm this point in its reply later on.

At the same time, I also hope that when making the relevant subsidiary legislation in future, the authorities concerned will, rather than making light of

the task, consider the views of the industry more seriously and join hands with the industry to perfect the different sets of legislation. Since those sets of subsidiary legislation are concerned with issues of practical operational, specific technicalities, and so on, which only the industry can best understand, I just hope the Government will consult the industry on the remaining 39 pieces of subsidiary legislation in a more systematic manner, and allow the industry a sufficient and reasonable consultation period. I consider it very important to enable the industry to have more opportunity to learn more about the legislation which is so closely related to them. For this reason, I have already put forward a proposal to the authorities concerned to jointly organize a series of briefing and consultation meetings to solicit opinions from the industry, with a view to resolving as early as possible the technical and practical issues involved in the subsidiary legislation, thereby reducing the deliberation time required of the Council in future.

With regard to the time spent on scrutinizing the Bill, the Bills Committee has spent 140 hours in meeting, including the additional four-hour special meetings held four times a week during certain periods. The time spent on these meetings is close to the length of 32 Legislative Council panel meetings in comparison. Moreover, according to the measurement I have made, the pile of papers that each Member on the Bills Committee has handled just pile up to some three to four feet high, which is more or less the height of a four-to-five-year-old, or even six-year-old child. I once chatted with a government official during meeting and she even referred to the huge amount of paper used on this securities legislation as a whole forest's trees. From the high frequency of the meetings and the huge pile of papers we can imagine just how hard Members had to work to scrutinize the Bill.

Insofar as I understand it, in view of the complexity of the Bill, the frequency of meetings, the large amount of papers handled and the huge workload involved, the Bills Committee had to contract out the minuting work of its meetings. If I have not taken it wrong, this is the first time that verbatim minutes were taken for Bills Committee meetings. Since there are verbatim minutes of the meetings held by the Bills Committee on the Bill, when I rise to speak later on today, I will not repeat the points raised many times in the past other than highlighting the major ones. The time taken to make this securities legislation is also the longest in the history of Hong Kong. Almost 10 years have lapsed since it was first drafted in 1992, today the Bill is finally submitted to this Council for Third Reading and passage. From all this we can see how

complicated and enormous this piece of legislation is. Hence, I should like to take this opportunity to express my heartfelt gratitude to the parties who have contributed to the Bill, including the government officials of the relevant authorities, the department responsible for drafting the Bill, staff members of the Legislative Council Secretariat, members on the Bills Committee, as well as Honourable colleagues in this Chamber. All of us are witness to the birth of this securities legislation of special historic significance and far-reaching effects on the securities industry.

Madam President, since there are so many people I need to thank, in order not to miss out any one, I hereby express my gratitude to every one who has put in his or her efforts, and particularly representatives from the industry. Without their active participation and appropriate suggestions, we would not have been able to achieve the results today. After working so hard for 14 months, we have finally completed the work of the present stage. I just hope the relevant authorities can enhance communication and co-ordination with the industry in the years to come, and make appropriate subsidiary legislation to perfect this securities law and to cater for the needs of the different parties concerned.

Even though it has been a tough job scrutinizing the Bill, I am glad and consider it an honour to be able to have a part in the entire process. There are of course gains and losses. I have lost many hours of sleep, brain cells, hair and the time to make money; yet at the same time I have also gained a lot during the process, including the "holes" stabbed into my back. Most importantly, I have gained the trust and support of the industry, as well as Honourable colleagues' understanding and help.

I really have mixed feelings upon completing scrutinizing the Bill. I am pleased to see the Government successfully consolidating the 10 existing ordinances into one, yet at the same time I am so angry to see that the legislation will further confer unchecked powers on the SFC. Madam President, I believe Members know it very well that businessmen "fear no government officials but hate to be governed", and that business operators do feel indignant but not dare to speak out. I regret that the amended legislation still does not adopt the so-called "single regulator approach", which is a mechanism whereby an industry is subject to only one single regulator; besides, I have also found the inconsistent strength of enforcement of the two regulators regrettable. It has been 471 days since the Bill was gazetted, and I am glad that the lengthy process of scrutiny finally completes. I believe Members will

be glad to see this process come to an end as soon as possible. As for my part, I am particularly glad about that, having experienced the so-called inhuman days.

Thank you, Madam President.

MISS MARGARET NG: Madam President, I support the Second Reading of the Bill.

Hong Kong has long been recognized as an important international financial centre. It is imperative for Hong Kong to have a world-class regulatory system. We must rise to the challenge of globalization, otherwise we will soon be left behind. This Bill seeks to consolidate and update our regulatory system. It deserves our best efforts and our support. Some people lament that the legislative process has taken too long, but a similar exercise in the United Kingdom, the Financial Services and Markets Act 2000, had taken just as long, after what, in the British system, was also an unusual process. This is not at all surprising, because the issues which have to be dealt with by them and by us are similar, and similarly difficult.

Our goal is the same: a regulatory system which is fair, efficient and inspires confidence. It must, therefore, be transparent and accountable, protect investors' interests and facilitate transactions. We must strike a balance between over-regulation which could undermine Hong Hong's competitiveness, and inadequate supervision. The right balance can only be achieved by listening with an open mind to the full spectrum of views and concerns, while keeping sight of approaches which have been developed in other markets in the world.

Madam President, I need not rehearse tonight the numerous issues that the Bills Committee has tackled. I would just like to highlight a few of the guiding thoughts that pervaded throughout.

The first is consumer protection. Very early on, when we heard deputations from the public and the industry, we were forceably reminded of the inequality of representation. The industry was well-placed and well-funded to examine the proposals in the Bill, and made sustained representations to protect its proper interests. The small investors and the consumers, on the

other hand, are not so well equipped. Their case may not be put as strongly as can be; their interests may be more easily compromised; for they are often not there, or not as able, to suggest solutions. Because of this, this Council must assume a special mandate for the under-represented, in order to achieve a balanced outcome. Only time will tell whether we have discharged our duties adequately.

In this connection, while acknowledging the great common goal that we and the Administration share, I regret that on one important issue we have failed to persuade the Administration. It was our proposal that provisions be made in the Bill to set up a Consumer Panel which the Securities and Futures Commission (SFC) must consult in making rules, and although the SFC is not bound to accept the Panel's views, its rejection of the Panel's views must be recorded and explained to this Council. Although this device originates from the United Kingdom Act, we felt that it is also right for Hong Kong, because over time, the Consumer Panel will develop the experience and understanding to safeguard consumer interests while working with the SFC to find the right solution. While I believe that the Administration genuinely tried to meet our concern half-way, I remain convinced that ours is the better solution. I hope that it will be reconsidered some day.

An equally important guiding thought is to ensure that the rule of law and fundamental rights are in no way compromised. Central to the regulatory system is the regulator — the SFC, and in the case of banks, the Hong Kong Monetary Authority (HKMA). A major part of the Bill enlarges their powers, in licensing, in supervision, in requiring more thorough disclosure, in investigation, in intervening in business operation, in imposing or bringing about sanctions against misconduct or offences, in setting norms and in making rules with far-reaching and serious consequences. There is need to check that no power is conferred more than necessary to achieve the statutory duty, and to provide those affected by the regulator's decisions with proper channels for review and appeal. On the whole, we are satisfied that the new powers are considerable, but within the statutory scheme, largely subject to proper checks and balances.

There is, however, one concern which merits mentioning. Madam President, the ultimate check and balance of an authority lies in public scrutiny. One can appreciate that, to protect the privacy and proper business interests of those regulated, the regulator has to operate to a certain extent in confidence,

thereby restricting public scrutiny. To partially allay concerns about the arbitrary, oppressive or improper exercise of power in secret, as well as to instill internal discipline, the SFC submits to the scrutiny of a Procedural Review Committee. However, this Committee is non-statutory, appointed by the Chief Executive, and operates entirely behind close doors. Without any disrespect to the Committee, it has to be said that public confidence to a very large extent will depend on the criteria of appointment adopted by the Chief Executive. Integrity, public credibility and quality must come first. Considerations of political affiliation and connections will harm confidence not just in the Committee, but in the SFC itself.

Another major proposal of the Bill is the introduction of the concept of "market misconduct", and a more extensive and clearly structured regime of three-tier sanctions: disciplinary, civil and criminal. We have carefully scrutinized the provisions, with particular anxiety over the introduction of strict liability offences. We believe that these require strict justification; penalty arising from them must be within bounds, and statutory defences must be provided where required by fairness. We believe that investor protection cannot be used as an excuse for compromising the normal burden of proof. I believe that our combined efforts have succeeded in avoiding that danger. In two cases, called "wash sales" and "matched orders" I think, the prosecution is not required to prove criminal intent, and once the facts of an act of "wash sale" or "matched order" are established, the burden falls on the accused to give an innocent explanation. But it may be argued that these two cases fall within the well-established principle of a rebuttable presumption of criminal intent, namely, such a presumption is lawful because it is justified by evidence and is proportionate. To do less would compromise investor protection. On the other hand, we have opposed making negligence sufficient "intent" for the criminal offence of false information, because it would stifle the free flow of information and commentary in an open society. I am glad that our objection was accepted by the Administration.

Madam President, speaking for myself, I believe that the resulting modifications make the sanctions a fairer and more unassailable, but not weaker or less efficacious regime. Any regime, to be effective in practice, has to be accepted by the community as reasonable. In the case of this Bill, it must be compatible with what international practice regards as within the range of reasonableness. Anything more stringent than the proposed system as will be

modified by amendments to be introduced at the later stage will be, in my view, unsafe.

Yet another major guiding thought is the consistency of criteria and standards of regulation or, as some of my colleagues see it, the level playing field. In the course of studying this Bill, a delegation of the Bills Committee visited key regulatory authorities in the United States and the United Kingdom. We noted that the two countries have adopted very different regulatory systems: multi-legislation and multi-regulators for the United States; single-legislation and single-regulator for the United Kingdom. But what they have in common is this principle: the same regulator for the same regulated activities. In contrast, the Bill before us proposes that the same regulated activities would be regulated by different regulators depending on whether the activities are carried out in a licensed corporation or in a bank.

In my view, this rightly gives rise to concern, first of all about the propensities for double standards when enforced by different authorities. But a more fundamental reason is this. It is expected that banks will diversify aggressively in the financial products and services that they offer. This is well and good. But is it to be said that the elaborate regulatory framework set up by this Bill including provisions particularly directed to investor protection will, after all, apply with full force only to licensed corporations? Will the SFC be running a tight ship, while the HKMA a gentlemen's club?

Madam President, part of the lesson that we have learned in our overseas visit is that the regulatory system must be based on the practicable circumstances of its financial and broader community. In Hong Kong, such split supervision has to be tolerated at least for some time. We have, therefore, set to work to ensure identity or at least parity of criteria and standards, from those applying to a "fit and proper person" to requirements of disclosure, conduct, discipline, tribunals and procedures of appeal, sanctions and penalties. The result, taken into account the Committee stage amendments to be proposed, though imperfect, is, in my view, not unacceptable.

It goes without saying that we need to keep our financial system under review. In this connection, I wish to refer to the role of the HKMA which is being expanded under the Banking (Amendment) Bill. I regret that this had not been preceded by a thorough discussion in our panels of the changing role of the HKMA in the context of the rapidly evolving activities of banks. As banks diversify more and more into securities dealing, investment advice,

insurance and many other activities, the HKMA will take on a more and more extensive and intrusive supervision and monitoring role. To this role may be added a further role: If a major function and duty that the SFC has to discharge is consumer protection, what about the HKMA? The HKMA has recently suggested that the Banking Ordinance be further amended to provide for its functions and powers regarding consumer protection.

All this is to be added to the function and very special powers of the HKMA regarding the Exchange Fund under the Exchange Fund Ordinance. Is it desirable that so much power is exercised by one authority? How can the powers conferred on account of the Exchange Fund be kept separate? Would there be potential conflicts for the HKMA as both investor and regulator? I believe that these issues need to be considered as soon as possible.

I now come to a point which I shall elaborate upon at the Committee stage, when we come to clause 11 of the Bill. This concerns the independence of the SFC. I strongly oppose the overriding power of the Chief Executive to give directions to the SFC. It places the whole regulatory framework which carries every feature of a free market, free from executive interference, upon an interventionist basis. It stinks of the authoritarian mistrust of professional independence. Inherited from Hong Kong's colonial past, it is allowed to blossom into a working weapon. I strongly urge Members to vote against clause 11 when we shall come to it.

Madam President, the record shows that the scrutiny of this Bill has taken 70 sessions or 140 hours. Preparation work outside these sessions may well double the time spent. Our task this evening is, however, to inspect the baby, not to gloat over the labour. I should just say this in closing. The long process has thrown up some problem areas in the preparation and approach of legislative proposals, and the way that bills are scrutinized. They should be considered in detail in a separate exercise. In the process, we have tried our best to accommodate each other without compromising on quality. I compliment the Administration team on their hard work and devotion to duty. But the induced birth has left its mark on the baby. Certainty of legal effect has been achieved at the expense of leaving the Bill cumbersome and in some places almost unreadable. We have to accept this because of the need to avoid further delay. It is not an exercise which I would like to see repeated. We must put our heads together to find an easier way to do things better.

Thank you, Madam President.

DR DAVID CHU (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance (HKPA) I speak in support of the passage of the Securities and Futures Bill. It is not an easy task to consolidate 10 ordinances made in the past 25 years, for purposes of regulating the securities and futures market, into a single ordinance. In fact, the Bill is enormously complicated, for it does not only involve the reform of the functions and structure of the SFC as well as the regulation of intermediaries, but also the combat against misconduct and the mechanism to compensate and protect investors. Generally speaking, the Bill has struck a balance among the interests of most parties concerned.

The financial market in Hong Kong has been enjoying a high degree of liberalization all along. The industry is much the same as other industries, for it has been competing for survival and seeking development in a extremely free and open market. The industry, which has been making great contribution to the Hong Kong stock market over the years by doing business on a commercial arms-length basis and serving investors with a law-abiding attitude, has put up no resistance to fair and reasonable reforms which may help to enhance the competitiveness of the financial market of Hong Kong on a global scale. The industry wishes to see a business environment which permits the operation of both large and small enterprises. The HKPA hopes that after the Bill is passed, the Government can listen to views of the industry with an unbiased and open mind, and be more concerned about the immediate interests of the industry.

Madam President, I so submit.

MRS SOPHIE LEUNG (in Cantonese): Madam President, the success of Hong Kong pivots on the impressive achievements of the financial sector. Whether we can prepare for future adversities and weather the storms of the world economy depends on whether the system devised by us can come up with measures suited to the times. Therefore, it can be said that no elaboration is necessary to drive home the importance of the Bill. Now that the process of amending the Bill is coming to a close, there is reason for celebration.

The Liberal Party believes that not only have the relevant Bills introduced reforms to the financial system, promoted the development of the securities and banking sectors and elevated Hong Kong's status as an international financial centre, they can also protect investors more effectively, which is of the utmost

importance to the sustained development of the financial sector and economy in Hong Kong.

Since the economy of Hong Kong is facing an unprecedented plight, the Bill can on the one hand maintain the fairness and independence of the market, on the other, it can increase its transparency, which will certainly encourage the inflow of capital, therefore facilitate various trades and industries in raising capital to expand their business. It is hoped that this will add impetus to economic activities and bring about a revival of Hong Kong economy.

Madam President, the greatest controversy concerning this Bill is centred on the inclusion of clause 11 in the Bill so that the Chief Executive can give written directions to the SFC providing the statutory requirements are met. Concerning this issue, the Liberal Party agrees that there is a need to do so, since firstly, the relevant Bill is subject to the scrutiny of the Legislative Council, and in the event of exigencies in the financial markets, when the systems are knocked out of balance, the reserved power vested by the provision will be conducive to the speedy restoration of stability to Hong Kong's financial system.

In fact, the relevant provision originated from existing legislation and has been in place since 1989. From the Governors of the past to the Chief Executive after the reunification, all of them were vested with such a power. However, I do not mean to say that what is being practised must be followed. I believe this power has also to be considered in the light of how it has actually been exercised. This provision has never been invoked, which shows that the Government is very prudent in exercising this power, and the Liberal Party cannot see any practical problem.

Furthermore, the Chief Executive is also vested with similar reserved power in other legislation, such as the Banking Ordinance and the Mandatory Provident Fund Schemes Ordinance. Therefore, it is indeed unnecessary for us to be overly sensitive. Furthermore, the new provision has also clearly delineated the scope in which this power can be exercised, to enable the original regulatory framework to function more effectively. Therefore, the Liberal Party supports this provision.

As to the supervisory arrangements for authorized institutions in the Bill, the Liberal Party believes that the SFC and the HKMA will be able to strike a

balance and carry out comprehensive supervision on banks, so that fair competition in the securities industry under the new framework can be maintained. The authorities have also listened to the views of members of the industry earlier on. Members of the industry have also made representations on a number of occasions in the meetings of the Legislative Council, and we have been audience to many views on this issue. The Government has also made amendments accordingly to the provisions relating to securities companies, so as to strike a balance amongst the views of different parties. In fact, securities companies and banks are financial institutions which are entirely different in nature and it is necessary to make corresponding arrangements. Therefore, it is difficult to enforce identical supervisory standards.

The SFC and the HKMA have in the first place accumulated professional supervisory experience relating to the securities industry and the banking sector respectively and have at their disposal information on the relevant sectors. The new system will be able to enjoy the best of both worlds and exercise effective supervision to bring the activities of authorized institutions in compliance with the requirements of the new legislation. The most important thing is to enhance the transparency of activities relating to securities transactions and Hong Kong's competitiveness as an international financial centre.

Madam President, Members have taken part in the deliberations in respect of the Bill for a long period of time, during which some of them formed a delegation and visited various countries in Europe and the United States. Although I could not take part in the visit, I appreciate the information that they brought back and the efforts that they made. They have indeed devoted a great deal of effort and achieved a lot. In the course of scrutiny, Members from the legal sector have also given a lot of valuable suggestions on the contents of the Bill, so that all Members, and I in particular, can express views on the Bill with greater effectiveness. The efforts made by all parties are meritorious for commendation.

I so submit.

MR JASPER TSANG (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the passage of the Securities and Futures Bill (the Bill). We believe the passage of the Bill is a

very important step for the development of Hong Kong's financial industry, as well as the efforts to enhance the competitiveness of Hong Kong as an international financial centre, strengthen the protection for investors and provide the industry with a fair and orderly business environment.

As a member of the Bills Committee on the Bill, I believe Honourable colleagues are, like me, very glad to see the Second Reading debate on the Bill resume today after 14 months' deliberation. Earlier, the Honourable Henry WU compared the Bill to the novel *Adventures of Monkey King* and considered the way the two interested him a far cry from each other. However, he did not elaborate which one was more interesting. While *Adventures of Monkey King* is one of the four classic Chinese novels and the only classic I cannot complete reading, I can say I have read this securities-related *magnum opus* from cover to cover, albeit I must admit that I still cannot quite understand some of its content.

I have noted in the course of scrutiny that we really have to strike a balance between the various considerations. On the one hand, we must give regulators a sufficient degree of autonomy and powers of adequate coverage to enable them to perform their supervisory functions effectively; on the other hand, we must also consider applying appropriate checks and balances to provide against abuse of such powers. We must build into such regulatory powers enough flexibility, so that the regulators can keep in pace with the continuously developing and ever-changing market, rather than being tied down by rigid rules and requirements. Yet at the same time we must also ensure that there are enough certainty and clarity to prevent market practitioners from breaching the rules and requirements inadvertently. In short, we have to safeguard the interests of investors on the one hand and allow the industry and market practitioners enough room for operation and conduct of activities on the other.

What impressed me most during the whole process was that Members from the securities and banking industries were never slack in representing the interests and views of their respective sectors, and that on many occasions they had adopted an unyielding attitude to argue strongly on just grounds. Honourable colleagues on the Bills Committee who come from the legal profession have examined the contents of the provisions in a meticulously attentive manner. In some cases, we have spent more than a meeting session to discuss just one single word or sentence. Thanks to the painstaking efforts made by Honourable colleagues and the Government's active responses to most

of the views raised by the Bills Committee, I believe the Bill that came back to this Council for Second Reading debate today and the Committee stage amendments to be moved by the Government should be a great improvement on the original text. Nevertheless, as Members have heard from the Honourable colleagues who spoke before me, the controversial issues actually still exist. Hence, even though the Bill will be passed today, the completion of one stage does not necessarily mean that our efforts to perfect the regulation of the securities market can slacken off. While Miss Margaret NG has mentioned earlier on that further amendments would be introduced to the Bill in the light of the practical implementation experience, Mr Henry WU also pointed out that there would be plenty of legislative work relating to many pieces of subsidiary legislation awaiting in the future. On top of that, the Government and the SFC also need to formulate several dozen sets of rules as well. With the market changing continuously, we believe the work of perfecting the regulatory regime will be carried on endlessly.

I met with many securities dealers during the time when the Bill was still under examination. Miss Margaret NG said earlier on that she saw an imbalance from the very beginning. While members of the industry and market practitioners, with their ample financial capacity and sound organization, can often reflect their views fully and forcefully; the views of the small investors at large, who are not grouped together, just can hardly be heard. This is certainly the fact; but then, we believe there may also be a certain kind of imbalance among the market practitioners who came before the Bills Committee to reflect their views: Those who have ample financial capacity and sound organization may not necessarily include the large number of individual practitioners and operators of small and medium securities firms (SMSFs). During the meetings with these SMSFs and practitioners, I had heard the views they raised, some of which have already been reflected by Mr Henry WU earlier on. I believe Mr WU will continue to reflect the views of the industry when it comes to discussing certain specific clauses at the Committee stage later on.

Here, I should like to supplement one point. I feel that, over time, a certain form of mutual suspicion and distrust has already been built up between the SMSFs and the market regulator. Many members of the industry we met during the course of scrutiny have given me the impression that they were afraid that the attempts made by the Government to open up the market to international consortia would eventually strangle the local SMSFs. They feel

that the Government is rushing to develop Hong Kong into an international financial centre without paying any regard to the restructuring the SMSFs are undergoing or their struggle to catch up with the process of development.

On the other hand, in our conversations with members of the regulatory authority, we sometimes have heard them express the view that the securities industry are faced with so many problems today mainly because these SMSFs do not observe rules, do not keep their words, do not care about good practices, do not improve themselves and, hence, cannot keep up with the times. Thus, in their view, these substandard SMSFs of poor quality are hindering the development of Hong Kong into a world-class international financial centre. For these reasons, the regulatory authority has found the SMSFs an obstacle. I feel that this is most unfortunate. In my opinion, the SMSFs at large are in fact an important pillar of the securities market in Hong Kong. The local securities market has experienced many serious ups and downs over the past two to three decades, yet these SMSFs have remained in Hong Kong and continued to operate all along. It was because of the perseverance of these SMSFs that the securities industry in Hong Kong could continue developing over the past two to three decades. As regards the international consortia, while they may enter or even snatch a share of the local market with their strong financial power when the market situation is good, they may also leave at any time when things turn bad. As described by the SMSFs, these international consortia will remove "pallets of banknotes" from Hong Kong when the market is in a hard time. This is indeed distressing. Perhaps this is an exaggerated description, but I do believe it really reflects the situation observed by the SMSFs.

If giving support to the local small and medium enterprises is an overall economic policy of the Hong Kong Government, the SMSFs should be a target of support by the Government insofar as the securities industry is concerned. At present, when we are trying to introduce reforms to enable the local market to meet the international standards, the Government should help the SMSFs to catch up, rather than considering them as a stumbling block hindering our progress and striving to sweep them aside. The Government should have noted that the majority of these SMSFs are willing to make continuous improvements in this ever-changing market environment and keep on striving to catch up with the times. Hence, the Government should help these SMSFs to move along with the times. I therefore hope that this securities legislation can strengthen the communication among the Government, the regulatory authority,

and the many securities firm operators and market practitioners, so that the reforms of the securities industry and its market can really mobilize the active factors in all aspects.

Madam President, earlier on, Miss Margaret NG has referred to the controversy over clause 11 of the Bill, which gives the Chief Executive the power to issue directions. Having examined in detail the contents of the clause, the explanations given by the Government, as well as the views raised by Honourable colleagues at the meetings of the Bills Committee, the DAB considers that the relevant provision is not created for this securities legislation but is a long-standing practice that has met no objection from market practitioners or investors. We have noted that other regulatory authorities are also subject to similar checks and balances. I have particularly consulted members of the industry on this issue. Given that none of the operators or practitioners I consulted have expressed any differing views on this clause, we will give support to its passage.

Thank you, Madam President.

DR DAVID LI: Madam President, at the outset, may I declare my interest as an executive of a registered institution, as defined in this Bill.

The Securities and Futures Bill is a cornerstone of our ongoing effort to establish Hong Kong as the financial centre for the Asian time zone. The Bill sets high standards to protect investors, and rationalizes the rules under which our markets operate.

This Bill is a monumental piece of legislation, and has been the subject of wide-ranging consultation within our community. Many able individuals have devoted considerable time, energy and efforts to fine-tune the Bill's complex provisions. The Bill promotes transparency and encourages fair competition. It avoids wasteful duplication of resources, both public and private.

During our deliberations, one Member, in particular, has questioned the wisdom of assigning two watchdogs to oversee market intermediaries. The Member asked, "Why should the securities business of banks be supervised by the Hong Kong Monetary Authority (HKMA), while that of brokerages is

supervised by the Securities and Futures Commission (SFC)?" He complained that the playing field would not be level.

This point has been fully debated within the Bills Committee. The overwhelming majority of Committee members recognize that the approach adopted in this Bill is the sensible and correct way forward.

In the interests of both efficiency and effective supervision, the Bill stipulates that the oversight of registered institutions will be the responsibility of the HKMA. The HKMA is in contact with these institutions on a day-to-day basis, and has a thorough understanding of their business. This arrangement is desirable, as it avoids supervisory overlap and reduces the compliance burden on registered institutions. This, in turn, will promote the efficient operation of our markets.

Furthermore, the growing sophistication of the financial services industry worldwide has blurred the borders between the services offered by those within the industry. The approach adopted in this Bill provides flexibility, allowing the supervisory regime to evolve over time along with the industry.

The Bill provides that registered institutions will operate under a regime every bit as stringent as that which applies to licensed corporations.

- Registered institutions are subject to the same statutory provisions, rules and codes as licensed corporations.

- Securities staff of registered institutions and licensed corporations are required to satisfy the same fit and proper criteria established by the SFC.

- If a member of the securities staff of a registered institution has committed misconduct, he or she is subject to the same range of disciplinary sanctions as a licensed person. Any appeals will be heard by the Securities and Futures Appeals Tribunal, the same body that will hear appeals lodged by licensed corporations.

In short, in relation to securities business, registered institutions and their staff will be subject to the same regime as licensed corporations and their staff.

The only major area of difference in the regime governing registered institutions and licensed corporations is found in the Financial Resource Rules. This reflects the fact that banks are already subject to stringent capital adequacy and liquidity ratio requirements, requirements that are considerably greater than those imposed upon licensed corporations.

There is, therefore, no basis whatsoever to claim that the Bill will lead to unfair competition between registered institutions and licensed corporations.

The present Bill has been widely reviewed and debated. First circulated as a white bill and then as a blue bill, the Bill and the Committee stage amendments introduced today reflect years of sustained efforts to reform and streamline our securities markets.

The Bill provides a strong foundation for our future. However, the work of building Hong Kong into a world-leading international financial centre does not end with its passage. If the years of hard work are to be rewarded, we must continue to keep abreast of developments in the marketplace and adapt to changing circumstances. We must be alert to new opportunities, and refine our supervisory regime and our strategies on an ongoing basis.

Madam President, on behalf of the Finance Functional Constituency, I would like to express my deep thanks and appreciation to the Chairman and Deputy Chairman of the Bills Committee for their hard work in guiding this complex legislation through the Bills Committee.

May I also compliment the Administration, the Financial Services Bureau, the HKMA and the SFC for their tireless efforts in accommodating the views of the many competing interests affected by this Bill, while holding firm to the basic principles of fairness, equity and transparency.

I sincerely hope that all Members of this Council will join me in supporting the passage of this Bill and the amendments.

Thank you.

MR NG LEUNG-SING (in Cantonese): Madam President, the Securities and Futures Bill and the Banking (Amendment) Bill 2000 to be read the Second time here in this Chamber today are important bills which help to promote a series of

reforms of the financial market. After the authorities, this Council, the industry and professionals have exerted efforts in scrutinizing the bills over a long and painstaking process, I am grateful that the relevant Bills are entering the final stage of the legislative proceedings. As a member of the banking sector and as a member of the Bills Committee which scrutinizes the Bills, I believe the passage of the two Bills will facilitate the operation and regulatory structure of the local financial market to progress with the times, which is also helpful to consolidating the position of Hong Kong as an international financial centre.

Under the new legal framework, the supervision of intermediaries in the securities and futures market should become clearer and simplified, which should be favourable to the promotion of fair competition in the market. All along the banking industry has been introducing more dynamics into the market by taking part in securities and futures business and providing more reliable alternatives and convenience in financial management. Being the regulatory authority of the banking industry, the HKMA has achieved good results in risks and conduct supervision in the respect of all sorts of financial activities, including securities business, undertaken by the banking industry. This perhaps explains why local banks have still been able to adhere to stable and prudent business principles and provide consumers and investors with adequate confidence and reliable services in the face of increasing ferocious competition and continued liberalization of the market in these days after suffering the impact of the Asian financial turmoil. Under the new legal framework, to uphold the role of HKMA in regulating banks engaging in securities activities is very important, as it can ensure comprehensive supervision of the banking sector whilst maintaining the rationality of the regulatory system and reduce unnecessary regulatory overlap. As we all know, the diversification of banking service is the general trend for the development of a financial market, but the basic business of a bank is taking deposits. After all, credibility and conduct are the prerequisites for their survival, which are also the capitals crucial to winning over customers. In fact, compared to other institutions engaging in securities business, the regulation on banks in terms of capital and risk undertaking is more stringent. A series of provisions proposed in Committee stage amendments involving the registration, the financial position and business of authorized institutions, qualifications of employees and disciplinary procedures will further enhance the already stringent regulation. From another perspective, assuming that the degree of supervision on the securities business conducted by banks is relaxed, it only reflects that the risks of investors in making securities investment through banks are greater, as it will not increase the competitiveness of banks in participating in securities business.

The future development of the local financial market and the consolidation of its position as the global financial centre depend on the joint and positive efforts contributed by all parties concerned in the market in the respect of facing internal and external competition, the promotion of business diversification, the improvement of economies of scale, as well as the upgrading of professional service quality. I also believe that market development and market competition is not a zero-sum game. The gain on one side is not equivalent to deficit on the other side, for the participation of the banking sector will help to attract investors who were originally earning fixed-interest income to take part in securities investment, as a result of which the turnover will increase and trading will be more active. Eventually, the overall market potential will further develop and a win-win situation for all can be achieved, to the benefit of helping to promote the position of Hong Kong as an international financial centre.

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

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

MR ALBERT HO (in Cantonese): Madam President, I rise to speak on behalf of the Democratic Party to support the passage of the Securities and Futures Bill (the Bill) and the Banking (Amendment) Bill 2000 today.

Madam President, doubtless the Bill is an important milestone in the history of Hong Kong's financial development. We hope Hong Kong can really establish, upon the passage of the Bill, a regulatory regime that is capable of catering to the needs of and keeping pace with the times, and at the same time facilitating the development of a more favourable investment environment for both international and local investors.

Throughout the entire process of scrutinizing the Bill, there are of course many issues that call for our attention and have given rise to many in-depth discussions and studies. We have adopted a number of approaches to scrutinizing the Bill. First, we must ensure, on the one hand, that the newly introduced regulatory powers are not excessive powers conducive to the problem of over-regulation; yet on the other, we must also ensure that the additional powers granted to the regulator can be exercised effectively to safeguard the normal and orderly operation of the market as well as the

interests of investors. Hence, it is very important to strike a balance between these conflicting needs. If there should be over-regulation, the industry or investors would naturally be made to pay many unnecessary prices.

Second, we must ensure that the many participants or operators in the industry uphold the principle of fair competition, and that the interests of investors are sufficiently protected in this orderly and transparent market.

Third, we must ensure that the powers newly vested in the regulators are subject to adequate checks and balances. Certainly, such checks and balances will have to be achieved by means of clauses relating to the relevant system and operating mechanism. For example, we have to ensure that the new provisions governing non-compliance, breaches of discipline, and acts leading to civil or criminal liabilities are clearly set out and reasonable, and that the resulting consequences are proportionate. We consider it necessary to have clear definitions of the "intentional" mental element in particular. For such acts as non-compliance and breaches of discipline, for example, the "intentional" mental element must be established to avoid confusion with acts that will create "strict liability".

In addition, we must also ensure the impartiality of the procedures, which means that every affected person will have the opportunity to appeal and to be heard, and that the arbitrators or regulators shall give reasonable grounds for the decisions they make. We have to adhere to these principles to meticulously examine the entire Bill. Certainly, as pointed out by the Chairman of the Bills Committee and many Honourable colleagues, the Bills Committee has raised many views and received very comprehensive information and replies from government officials, including the information and active response from the SFC.

Nevertheless, today I still have to highlight some of the areas we are not totally satisfied with. Since it is not possible for me to list out all these areas here, I will only quote a few examples. For instance, we believe there should be more checks and balances on the powers of the Government, and that some of the clauses should be more clearly written. So, these are some of the areas with which we are not 100% satisfied. But then, we note today that the Government has accepted many of our views and would introduce quite a number of amendments to address our concerns. In view of the circumstances today, we therefore consider the amendments to be introduced by the Government acceptable at the present stage, with the only exception of

clause 11 (the clause providing the Chief Executive with the power to give written directions to the SFC) which we will raise our objection. We are ready to approve the enactment of this Bill, observe continuously the effects of its operation and conduct reviews in due course.

In view of the complexity of the Bill and the many professional issues it involves, we understand that it is not easy to make any clear conclusion concerning the effects of a number of provisions upon the enactment of the eventual law. After taking all factors into consideration, the Democratic Party has come up with the decision I referred to just now, that is, we support the passage of the Bill today subject to the amendments to be introduced by the Government.

We have also raised a number of points which we hope the Government will also pay attention to upon the passage of the Bill. Firstly, clause 369 of the Bill, which is related to the responsibilities of auditors. We have in fact seriously considered moving an amendment to this provision. We have intended to specify that when auditing the accounts of listed corporations, auditors have a duty to report to the relevant regulatory authority any irregularity or even suspected unlawful activities and matters identified by them, and that failure to do so may cause them to incur criminal liability or other statutory consequences. We later on learnt that the Hong Kong Society of Accountants (HKSA) representing the profession was very much concerned about this proposal. The HKSA held several meetings with us to point out that according to overseas experience, not many places impose on auditors the statutory duty to report criminal offences. As regards the Bill before us, there is already an immunity clause to encourage auditors to make such reports, which is a very important step. We understand that the HKSA is willing and already taken actions to amend its professional code of practice to instruct its members to make more use of the protection provided by this immunity clause and make reports to help the relevant authorities to find out such breaches of rules or unlawful activities.

Under the circumstances, we are willing to accept the arrangements for the time being, but we will continue keeping a close watch on the future development in this respect. As Members all know, the Enron case in the United States has shocked the world and aroused grave concerns worldwide. From this case we can see how important the responsibilities and roles of accountants and auditors are. Hence, I can only emphasize at this stage that today we are willing to observe the implementation of the Bill and the HKSA's code of practice, and than request for reviews in future where such need arises.

Secondly, regarding the procedural review committee (Process Review Panel), we certainly welcome the setting up of this committee. However, we consider that it should be given a statutory status and vested with clearer powers and responsibilities to enable it to genuinely play its check-and-balance role and, more importantly, to have the necessary power to receive cases of complaint. I believe this should be helpful to the operation of the SFC, particularly after its power has been increased so tremendously. But then, the Government is of the view that the present stage should be taken as the first step of a trial run, subject to review. I therefore have to stress that while we will keep a close watch on the operation of the procedural review committee and hope to conduct a view within two years' time, the view of the Democratic Party at the present stage remains that the committee should be given a clear status and powers to enable it to function as an internal monitor.

Thirdly, I also agree very much to Miss Margaret NG's view on the Consumer Panel earlier on. As Members all know, the Panel in the United Kingdom has a very clear statutory status and advisory role. As regards Hong Kong, since we do not have the ombudsman or complaints committee for financial matters available in many other countries, it is by no means easy to seek redress for complaints involving financial matters. Even though our Complaints Division does not keep completely aloof from complaints in this connection, more often than not the complaints can be handled more effectively by a similar committee set up under the relevant regulators. On the one hand, these committees can help to promote protection for investor interest; on the other hand, they can also raise views from the perspective of investors during the legislative process. As Miss Margaret NG said earlier, the interests of investors are always overlooked. Even though both the Government and the Legislative Council have a responsibility to protect consumers in this respect as far as possible, we must not forget that this is a very professional issue and that in order to make any insightful advice, it is necessary to have a team of persons looking into the operation of the market for a long time. For this reason, I believe the Consumer Panel is necessary. I just hope the Government will consider setting up the Consumer Panel and I also hope that this issue will be made an item on the agenda of review in the next stage.

Fourthly, as Members are aware, in many cases the existing compensation mechanism has to rely on subsidiary legislation to define more clearly issues like the rights and interests of the parties to be compensated, and so on. In my view, however, so far we must note one point from the incident of the C.A. Pacific Securities Limited, that is, the crux of the problem may

perhaps be attributable to the inadequacy of our bankruptcy legislation and the failure to reform the legislation in keeping with the changes of the times, particularly in the present situation where transactions are conducted by electronic means. Madam President, the C.A. Pacific Securities Limited has been closed down for several years already, but so far many fundamental issues have remained outstanding because the Court is taking actions in accordance with the existing legislation. Even though the Court is trying to return the relevant properties to their owners, the process of returning the properties is so complicated that despite the Compensation Fund set up for this, a good mechanism is still lacking to help investors suffering heavy losses to recover their money expeditiously. I think the Secretary will agree that corresponding reviews or even comprehensive reviews of our legislation on corporate governance and the Bankruptcy Ordinance should be conducted promptly in future. I just hope the relevant laws can be passed and implemented expeditiously.

Lastly, I wish to speak on the provisions under clause 11 of the Bill. We will certainly speak on that at the Committee stage later on, but still should I like to lay emphasis on one point. If the Chief Executive defines himself as a super regulator, he should set out clearly his roles and powers. I consider it perfectly fine for him to be a part of the regulatory regime. However, the real situation is just not case. At present, he is still the superior Chief Executive who will intervene and give instructions whenever he wishes. At least, judging from the relevant provisions as they stand, the system is operating in this manner, and this is exactly what we cannot accept.

If the Chief Executive is the regulator, he is the regulator; if he is not, he should not play the role of a regulator. The regulator should be independent of the Government, and this is the practice we have seen operating in different parts of the world. Earlier, some Members said this was the standing practice. Well, it would be fine if the standing provisions should still be implemented. But the problem remains that we have entered a new era and have to make a set of comprehensive legislation and introduce comprehensive reforms in many aspects. That being the case, why should we not abandon the obsolete things and establish a brand new regime? If the name is not correct, the words will not ring true. Since the Chief Executive is not the regulator, he should not have the power to make such directions. What is more, he should never assume himself as having unsurpassed wisdom and access to unlimited information, which can enable him to make 100% correct and indisputable decisions or even give instructions to the relevant regulators. Can the Chief Executive play such a role? Why can the Chief Executive play such a role if

even the SFC or other regulators cannot manage to do so? So, these are the reasons why we oppose clause 11 of the Bill. Nevertheless, we still hope that Members will support the Bill as a whole. Thank you.

MR ERIC LI (in Cantonese): Madam President, I think considerable consensus has been reached among Honourable Members with respect to the spirit and direction of the Bill. While I do not intend to repeat Members' views here, I would like to say a few more words from the angle of a professional accountant. I promise I will cut a long story short.

In the course of brewing the Bill, dating back to a few years ago when the consultation paper was published, to the time when the Bill was drafted and finally presented for discussion, things have not proceeded smoothly, though the Bill was finally reluctantly accepted by all sides. We can thus see that, as long as we are willing to spend more time holding discussions on finer details, the matter can finally be resolved. Of course, the perseverance of the Secretary for Financial Services and his staff, his effort to liaise with various parties, and the numerous amendments made by the Government, have also played a part in making the Bill a success. I believe it is the wish of Honourable Members (some Members have already made this request) that the Secretary for Financial Services can, in the course of the debate, assure them that he will explain certain provisions carefully. All this work, including our understanding of the Bill, and how the spirit of the Bill should be appreciated and interpreted, is of paramount importance. In case some people might be interested in referring to the deliberation process of the Bill, the speeches recorded in the Official Record of Proceedings today will help them understand and interpret the Bill.

Professional accountants are definitely not the protagonists of the Bill. Provisions related to accountants have only taken up a few pages out of the entire Bill covering thousands of pages. The accountancy profession has proposed a number of technical amendments with respect to certain provisions, and two of them are of grave concern to the profession. As pointed out by me earlier, accountants are not the suspects in the Bill. Nor are they prime targets of supervision. Nevertheless, with the trend of taking "public interest" and "global supervision" as prerequisites, accountants have been forced to carry the "cross", with many of them being asked to bear considerable social responsibilities for no reward. At the same time, they are required to bear additional operational costs and risks because of their some sort of partnership with the regulatory authority. This trend has caused professional accountants

to feel gravely concerned. In this connection, they hope they can reflect their situation to the Government through various channels.

Some Members have mentioned two points of the gravest concern to the profession during the deliberation period. First, clause 369 of the Bill.

There is bound to be a lot of people, including lawyers, company secretaries, directors, and even assessors and managers, in the structure of governance of a company. Among all these people play a part in corporate governance, only accountants have been singled out and required to report suspicious acts involving the company. The relevant procedures and matters that have to be handled are specially provided for in this Bill.

I hope this is intended as a means to strengthen supervisory channels, not to put an extra burden on professional accountants, as the Secretary for Financial Services has supposedly explained clearly. However, according to the legal advice given to the profession, such provisions will easily give rise to the misconception that accountants are legally and morally obliged to fulfil this duty. This is why I hope this debate can provide us an opportunity to reflect in the Official Record of Proceedings that this is actually not the case. I also hope Members can see clearly that this provision is not intended to impose mandatory legal responsibilities on the profession. The Honourable Albert HO has also explained this point very carefully earlier.

Another concern to us is related to the presentation of audit working papers. We are now required by the law to provide audit working papers to the SFC voluntarily and free of charge. This requirement will incur additional costs and probably aggravate our workload. What is even more worrying is that the drafts may contain a lot of confidential data provided by our clients. We are concerned that, if the data were made easily available for reference, it may undermine the relationship between auditors and their clients, and eventually affect our primary work auditing, that is, the equity and impartiality in auditing accounts. Accountants are also greatly worried that the openness of their auditing services and the supply of information may be undermined. What is more, their clients may misunderstand or have the misconception that accountants have become the watchdog's underlings. Holding accountants refusing to provide information liable for criminal offences is definitely

something we refuse and do not wish to see. Actually, there has been considerable resistance since we have the feeling that the Government is trying to use criminal liability to force us to comply with its requirement even if no offences have been committed and there is no ground for suspicion.

I would like to thank a number of Honourable colleagues, including the Chairman of the Democratic Party and Mr Albert HO, who spoke earlier on in the debate, for pointing out in the course of the discussions that this provision serves to reflect that the public expects the professionals in the accountancy profession to be responsible, to a certain extent, for safeguarding public interest. After listening to the views reflected by colleagues from the Democratic Party as well as other Members, we have finally decided that we may perhaps make some concessions. We are indeed grateful to them for what they have strived to achieve and reminded us. We have, conversely, chosen to "surrender voluntarily" since the profession has finally decided to make a major concession and even lay down a code of practice. This will enable practitioners to, through a self-regulatory mechanism, endeavour to help the supervisory framework to, with the full understanding of clients, strengthen regulation where reasonably possible and specific operation permits.

I have pointed out during the course of scrutiny that the requests made to different sectors, including the accountancy profession, the sector represented by Mr Henry WU, the banking sector, and so on, in more than a thousand pages in the Bill, will eventually transform into extra costs for many of the listed companies, intermediaries and operators. Insofar as Hong Kong is concerned, such cost increases are important. Not only do we need to consider and closely examine the key elements, we have to also consider whether Hong Kong can reach the world-class standard in the international arena. In terms of market scale, Hong Kong still lags behind New York and London, the so-called critical mass. This is particularly so when it comes to the powers conferred on the regulatory authority and the political power of monitoring at its disposal. For instance, the British Parliament has the Over-sight Committee, whereas the Ruling Party has the power to rule. Their powers to manage regulatory bodies to prevent abuse are much greater than those practised in Hong Kong. If we are to confer on an authority comparable powers and considerable independence, we must exercise extra care in scrutinizing costs or monitoring the exercise of powers so as to avoid undermining the interests of small and medium listed companies and our international competitiveness, when putting this piece of legislation into actual implementation.

Under the existing framework, the question of whether the power of the SFC is excessive is still worrying me. With respect to the Consumer Panel, employees associations and the procedural review committee mentioned by many Members, I have even asked in the Bills Committee whether such organs should be given statutory status. Though many Members still hold the view that this is worth considering, they have eventually decided not to raise this issue in conjunction with the Bill on the following grounds. First, the SFC has made a number of concessions in different areas. Second, the Financial Services Bureau has carefully listened to our views and has, in many circumstances, answered the aspirations of Members and made numerous undertakings. The efforts made by the Bureau staff have not only moved colleagues in the Bills Committee, but also my colleagues in the profession. We feel that we should perhaps give the Government a chance and give it a vote of confidence to enable the SFC to overcome its first hurdle in being given this supervisory power. This is why we decided to let the Bill pass in this manner today.

Nevertheless, I personally feel that it is not a bad idea to give the residual power of discretion to the Chief Executive for this implies that statutory organs are already having considerable powers. As many other statutory organs are given similar powers, I think it is not most opportune for Miss Margaret NG to move her amendment today. I will therefore oppose her arguments.

I have to reiterate that I accept the Bill because I believe the Bill will encompass all the amendments to be moved by the Government today as well as the explanations and undertakings to be given later in the debate. Therefore, I will listen to what the Government has to say before the voting and then make my final decision. I also concur with the other colleagues that it is not easy at all for the Bill to be passed today. We will definitely continue to closely watch and monitor the situation. Nevertheless, we should also appreciate that we have overcome enormous difficulties before we can achieve this point of equilibrium today. I also understand that a number of other laws and subsidiary legislation will follow. I hope the Government can, after gaining experience from this whole exercise, endeavour to maintain this delicate point of equilibrium when proposing legislative amendments, and refrain from making significant changes.

Madam President, I am sorry that I have spoken at quite some length. I hope the Bill can be passed smoothly today. Thank you, Madam President.

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

(No Member responded)

SECRETARY FOR FINANICAL SERVICES (in Cantonese): Madam President, I would like to thank Members for their speeches given just now. The Government announced a series of initiatives in 1999 to modernize the regulatory regime of our financial markets to keep it on par with prevailing international standards. The reform is built upon the Securities and Futures Bill (the Bill), which seeks to consolidate the existing 10 ordinances governing the securities and futures markets with new elements of regulation adding to it. The aim of the reform is to provide optimal market regulation which affords sufficient protection for investors on the one hand and leaves enough room for market development on the other. It seeks to provide a regulatory framework capable of responding to the changing market environment.

The key objective of the Bill is, through the establishment of a streamlined and effective regulatory framework, to maintain fair, transparent and orderly markets; promote public confidence in the markets; secure an appropriate degree of investor protection; minimize market misconduct and facilitate market innovations and competition. In implementing the relevant proposals and drafting the legislation, we have been guided by the following principles: firstly, the new framework should be on par with international standards and compatible with international practices with necessary adjustments in response to local circumstances and needs; secondly, a proper balance should be struck between the need for investor protection and promotion of market development; thirdly, procedures and processes should be simplified and made user-friendly whenever possible to minimize regulatory burden; fourthly, the exercise of regulatory powers should be subject to adequate checks and balances; and lastly, a smooth transition from the existing to the new regulatory framework should be ensured as far as possible for market participants.

The Bill is divided into 17 Parts, which together with its nine Schedules, contains a total of 643 provisions and over 1 100 pages. It has been drafted by nine law draftsmen designated by the Department of Justice. Since the introduction of the Bill into this Council in November 2000, the Bills Committee has devoted itself entirely to scrutinizing the Bill by holding 55

meetings and examining more than 300 papers. I will propose amendments to a number of provisions in the Bill at its Committee stage, which represent the consensus reached among members of the Bills Committee, the industry and relevant parties after more than one year of deliberation. The figures I just mentioned have reflected the significance and complexity of the Bill, the heavy workload of the Bills Committee and the importance attached by its members to the Bill. Due to their co-operation and hard work, the Bill has now successfully entered the final stage. I would like to express my sincere gratitude to Mr SIN Chung-kai, Chairman of the Bills Committee, Miss Margaret NG, the Deputy Chairman, and other members of the Bills Committee. The time and energy they have devoted during the past 14 months in scrutinizing such "great works" on financial matters have certainly set a record for this Council in recent years. I wish to take this opportunity to express my appreciation for their enthusiasm and hard work. The many valuable comments given by the Bills Committee on the Bill have helped in enhancing its operation and clarifying the policy intent. Mr Henry WU has just taken considerable time to air his grievances. I hope he is feeling better now. *(Laughter)* While Mr WU has complained about the occasional late submission of papers, he has also been fair in pointing out that our colleagues have been through hard times to cope with the meetings held twice or thrice a week for four hours each time, with documents piling as high as three to four feet. Although they had little sleep and had to work on Sundays and holidays, they could not be careless with their work. I hope Mr WU would appreciate their situation and I also thank other Members for their understanding. Indeed, we are very grateful to Mr WU who just said that he had been working hard under the "mahjong lamp" to read so many papers.

I would also like to thank all those who have given their views and comments on the Bill including securities brokers' associations, market participants, investment banks, professional bodies and academics. I am very pleased to see that there have been active and positive discussions on the subject, through which a consensus has been reached and a balance struck between the need for investor protection and facilitation of market development. A consultation on the policy direction was first conducted in July 1999. The Bill, in the form of a White Bill, was then published in April 2000 and was gazetted in November 2000. In the process, we have conducted comprehensive and in-depth public consultations, which have been proven to be very useful in ensuring the proposals in the Bill are practicable and no excessive compliance burden will be put on the industry.

I also wish to respond to the Honourable Jasper TSANG who just asked if we have considered the views of the small and medium brokers in the process, and expressed concern about their future. As Hong Kong is an international financial centre, we have no doubt attached great importance to the views of all brokers, big or small, who have made tremendous contribution to our market. I cannot agree more with Mr TSANG that small brokers are certainly not our obstacles. However, under the present environment, they must make unremitting efforts to move on with the times. I am glad to see that there has been close communication between the industry including the small and medium brokers and us in the course of consultation. I hope our co-operation and communication, which has turned out to be even better after this consultation exercise, can be maintained in future.

During consultation and deliberation of the Bill, this Council, the executive authority, the SFC, HKMA, the industry as well as other interested parties have formed close partnership among themselves, and have devoted much time and energy to perfecting the Bill. In the course of deliberation, their common objective has been to develop an effective and feasible regulatory framework for Hong Kong, with a view to broadening our scope for future development in the Asian as well as global markets. Our security legislation has to be updated from time to time to keep up with market developments. We will continue our discussion with this Council and the industry. Let me thank you again for your active participation and support.

We have made quite a number of amendments to the Bill due mainly to the wide coverage and complexity of the Bill itself, and to the valuable comments from various parties, which enable us to refine the Bill as far as possible. To complete the work on the amendments in such a short span of time was extremely difficult. I would like to extend my heartfelt thanks to colleagues of the Law Drafting Division, Department of Justice, other legal experts, colleagues of the SFC, as well as the Legislative Council Secretariat. The amendments could not have been finalized on schedule without their expertise, diligence and whole-hearted dedication. We all recognize that to better prepare Hong Kong for the challenges and opportunities presented by the globalization of the world markets, reform on our regulatory framework affords no further delay. The vast amount of information papers we prepared for the Bills Committee can also provide those interested in the study of our securities and futures market with much background information. This can be viewed as another achievement of our hard work.

Madam President, the amendments I propose, though considerable in number, are fully consistent with the policy objectives and principles of the Bill. Now I would like to give a brief account of them. The Bill has already contained a number of proposals on investor protection. These proposals, which include setting up a new investor compensation scheme, specifying the compensation limit per investor by way of subsidiary legislation and introducing a "management responsibility" concept to specify the market intermediaries who are required to apply to the SFC to become "responsible officers", are aimed at improving regulation for intermediaries and enhancing the quality of intermediation service. In addition, the SFC can impose civil fines on non-compliant intermediaries to reflect properly the severity of the contravention. To enhance investor protection, I will propose at the Committee stage some amendments, which include setting up a mechanism for appeal against the decision of the new Investor Compensation Fund; clarifying that the SFC can immediately suspend the licence of the brokerage house which fails to comply with the Financial Resources Rules, regardless of whether it will appeal against the decision of the SFC or not; requiring intermediaries to disclose any interests in the financial products that they introduce to clients for the reference of investors; and requiring the SFC and HKMA to disclose the information of intermediaries by electronic means for access of investors, and to update it from time to time.

In the context of streamlining procedures to facilitate compliance by the industry, we have proposed in the Bill to introduce a single licensing regime. This has the support of both the Bills Committee and the industry. An intermediary will only need to apply for one licence to carry out various activities regulated by the SFC in the securities and futures market. This will help reduce administrative costs and burdens. The SFC has proposed that licence fees for most of the intermediaries be reduced upon the commencement of the new legislation. Public consultation on this issue is being conducted. We will enact subsidiary legislation to give effect to the new licence fee structure. I will propose amendments to the Bill to allow for the extension of the period of exemption from application for grant of a new licence from the current 90 days to 180 days when a licensed representative has changed employer.

We also do our utmost to avoid undue market regulation. For example, for criminal offences relating to provisions governing holding of clients money or disclosing securities interests, and so on, conditions for incrimination have

been stipulated. Only those who "without reasonable excuse" contravene the provision commit an offence. Furthermore, we have also accepted the comments of the Bills Committee and the media that disclosure of false and misleading information negligently, which has induced investors to engage in securities and futures contract transactions, will not constitute a criminal offence.

We clearly understand the grave importance of enhancing the accountability and transparency of the SFC. Therefore, apart from retaining all existing accountability arrangements, a number of additional checks and balances have also been introduced in the Bill to avoid the possible abuse of power. There are, for example, inclusion of regulatory objectives of the SFC so that the public and the industry can use them as the criteria for assessing the performance of the SFC as well as setting up of the Securities and Futures Appeals Tribunal to review the decisions of the SFC. To further enhance the accountability of the SFC, I will propose amendments stipulating that the number of non-executive directors should be greater than that of executive directors. Furthermore, the SFC should comply with strict procedural requirements when exercising its statutory powers such as offering regulated persons reasonable opportunities to be heard to safeguard their interests. Besides, the SFC should also consult the public and consider the views gathered in detail before enacting any subsidiary legislation. These will help to ensure that any proposal it made will be practicable and that due consideration has been given to the needs of the public and the industry.

As regards enhancement of transparency, I will propose that the SFC be required to publish any modification or waiver of licensing conditions or requirements grant under specified circumstances for information of other market participants.

Madam President, we fully appreciate the views of those in the securities sector on the conduct of securities business by banks. In response, we have proposed specific amendments to establish a more level playing field. In brief, under the revised regulatory mode, the SFC is responsible for setting regulatory standards, deciding whether to grant approval for registration of the securities business of banks, revoking the relevant registration, making investigations and taking disciplinary actions. The HKMA is the front-line regulator of banks and responsible for routine inspection and supervision. When performing these functions, the HKMA should follow the regulatory standards set by the

SFC under the relevant legislation. Our principle of setting regulatory standards is that unless the Banking Ordinance contains equivalent or even stricter requirements, the same requirements should be applied both to brokerage houses and the securities divisions of banks. For example, since the Banking Ordinance contains stricter requirements on capital adequacy ratio, liquidity ratio and risk weight, and so on, the financial resources rules under the Bill need not be applied to the securities business of banks in order to avoid regulatory overlap. We believe that protection for investors will not be enhanced if banks are compelled to comply with two similar sets of requirements. On the contrary, this will increase operation cost of banks and ultimately affect the overall interests of the public.

For the disciplinary regime, we have reached a consensus with the Bills Committee and the industry and have proposed amendments to the effect that the disciplinary sanctions and appeal mechanism applicable to brokerage houses and their employees should equally be applied to the securities divisions of banks and the relevant personnel. The disciplinary sanctions include revocation or suspension of registration, pecuniary penalty, reprimand and prohibition from continuing securities business, and so on. All appeals will be dealt with centrally by the newly established Securities and Futures Appeals Tribunal.

The eligibility criteria for the employees of securities divisions of banks are stipulated in the Bill and the Banking (Amendment) Bill 2000. Only those banking practitioners whose names are on the register maintained by the HKMA are allowed to carry out securities business. The requirements imposed on these individuals including those relating to business conduct and continued professional training are generally the same as those for licensed representatives. Non-compliance by these individuals, may like licensed representatives, be liable to prosecution or disciplinary sanction.

To ensure good co-operation, the SFC and HKMA are revising their existing Memorandum of Understanding (MOU) on co-operation with a view to setting out the specific mode of co-operation. To enhance transparency, the new MOU, when drawn up, will be uploaded to the web pages of the SFC and the HKMA for public information. The senior management of the two regulators will maintain regular close contact to discuss regulatory policies and routine supervision. Besides, a designated group on securities of the HKMA will communicate and exchange information with the SFC from time to time to

ensure consistent interpretation and effective implementation of the relevant standards. We believe that the revised regulatory framework will fit the present market conditions of Hong Kong. Through its implementation, a proper balance can be struck between providing adequate protection and choices to investors and maintaining a level playing field and minimizing regulatory overlap.

Two parts of the Bill deal with market misconduct such as insider dealing, market manipulation, as well as disclosure of false and misleading information inducing others to engage in securities or futures contract transactions. I am pleased that the proposals on establishing the Market Misconduct Tribunal and extending the existing system of prosecution are generally supported by the Bills Committee and the public. The Tribunal has the power, through civil sanctions, to order any person who has contravened the provision concerned to pay a fine equivalent to the amount of any profit gained or loss avoided, prohibit market access of that person and disqualify him from serving as a director or officer of any corporation. In this regard, the maximum penalty for a criminal offence is a fine of $10 million and 10 years' imprisonment. These measures aim at conveying a clear message to market participants and the public that we are determined to maintain the fairness and orderliness of the market. We will on no account tolerate any market misconduct, which will harm investors as well as Hong Kong's reputation as an international financial centre. At the same time, we will not overlook market development. In this connection, I will propose an amendment which, with reference to practices adopted by overseas markets, defines more clearly the defence clauses for insider dealing. This will ensure that legitimate market activities can continue. I will also propose to amend the Market Misconduct Tribunal's arrangement for proceedings and appeals, with a view to striking a proper balance between protecting the interests of persons involved in the proceedings and dealing with the misconduct.

On enhancing market transparency, Madam President, the Bill requires listed companies to disclose to investors in a quicker and more accurate manner changes in interests in shares to enable them to make informed investment decision. This is an important element in enhancing corporate governance standard. Specifically, to bring Hong Kong on par with international standards, the Bill reduces the initial disclosure threshold of persons other than directors and major executives from 10% to 5% and the time limit for disclosure from five days to three business days in most cases. These proposals are welcomed by the Bills Committee and market participants.

While determined to enhance market transparency, we are concerned that the disclosure requirement may increase operational burden of market participants. To facilitate market development, we have proposed major amendments to simplify responsibilities and procedures of disclosure of interests. For instance, the Bill specifically empowers the SFC to waive the disclosure requirement of certain securities borrowing, and the SFC may specify the scope of waiver by way of subsidiary legislation to meet the need of market development. The SFC has set up a working group comprising representatives of the industry to consider the specific provisions of the subsidiary legislation for early implementation. In addition, we will keep close contact with the industry after the proposed amendments have been in force and will conduct review, where appropriate, taking into account operational experience and needs.

Due to its limited power, the SFC has encountered difficulties in investigating the misconduct of listed companies. The Bill therefore empowers the SFC to require persons closely associated with a listed company and its group to produce documents and give explanations, to assist the SFC in its inquiry to protect the interests of minority shareholders. These persons include relevant individuals from the banks and auditors of a listed company and those having business dealings with it. This measure can ensure that the SFC will be able to verify with these persons the information obtained from the listed company under inquiry, thereby facilitating the inquiry into whether the company has engaged in misconduct jeopardizing the interests of shareholders.

The Bill also provides statutory immunity from liability under common law for auditors of listed companies who have reported in good faith to the SFC any suspected fraud or misconduct in the management of those companies. We believe this will help to protect the interests of the investing public by encouraging auditors to report any suspected fraud or offence to the SFC in the course of auditing the accounts of listed companies.

The Bill states clearly a private cause of action for relevant persons to seek compensation for pecuniary losses suffered as a result of reliance on false or misleading public communications concerning securities and futures trading. The proposed provision can remind those responsible for issuing public communications (such as listed companies) to act with caution and ensure the information is true and correct before issuing it.

The Bill further confers a right for compensation through private actions on persons who suffer pecuniary loss as a result of market misconduct by others. The provision permits that the determination of the Market Misconduct Tribunal and criminal conviction record of the Court be admissible in evidence in a private action against market misconduct. This helps investors to make claims as they do not need to start from the very beginning to prove that market misconduct has taken place.

Madam President, I wish to point out specifically that proposals in the Bill can help raise our corporate governance standard. In particular, those proposals that seek to improve the quality of disclosure, investigate any misconduct by the senior management of listed companies, provide immunity for auditors to report any suspected fraud or misconduct of listed companies, prohibit the issue of false public information to induce investors to engage in transactions and confer a private cause of action on investors, can improve corporate governance of listed companies.

Upon the passing of the Bill, we will enact the subsidiary legislation as soon as possible so that the new legislation can commence at an early date. In drafting the subsidiary legislation, we will continue to consult the public and the market with a view to making the requirements practicable and facilitating compliance by the industry.

I am glad that a subcommittee has been set up by this Council to study the draft subsidiary legislation. We are actively working on the necessary preparations and will brief the subcommittee on the subsidiary legislation and the work progress shortly.

Madam President, an early implementation of the Securities and Futures Bill will help local securities and futures market to discharge its function of capital-raising fully as well as consolidate Hong Kong's status as an international financial centre. I earnestly request Members to support the Bill and the amendments I will propose at the Committee stage. Before I conclude, I wish to advise Honourable Members that if they should suffer from insomnia, it would be better for them to take out a copy of the "Great Works of Securities Legislation" than *Adventures of Monkey King*, I am sure they will soon fall asleep after reading it.

Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Securities and Futures Bill.

Council went into Committee.

Committee Stage

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

SECURITIES AND FUTURES BILL

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

CLERK (in Cantonese): Headings of Parts I to IV and VI to XVII, clauses 1, 6, 7, 9, 14, 25, 27, 32, 33, 42, 44, 45, 47 to 50, 52 to 55, 57, 60, 68, 69, 71, 73, 78, 82, 84, 86, 90, 94, 121, 140, 146, 181, 183, 185, 196, 198, 215, 219, 223, 227, 242, 248, 256, 270, 275, 282, 303, 311, 312, 329, 330, 334, 351, 362, 365, 371, 376, 377, 378, 387, 391, 392, 393 and 395.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 11.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move the amendments to clause 11, as set out in the paper circularized to Members.

The amendments to clause 11 are purely technical in nature, with the objective of improving the style of the Chinese text of the Bill so that the English and Chinese texts of the provision would correspond to one another. For instance, the word "written (書面)" is added before the word "direction (指示)" in the Chinese text to correspond to the use of "written direction" in the English text of the Bill.

Clause 11 empowers the Chief Executive to give written directions to the SFC after statutory requirements have been met. The power of the Chief Executive to give written directions to the SFC is an existing reserve power specified under section 11 of the Securities and Futures Commission Ordinance.

The power has existed since 1989 and it has been adopted by the industry as an effective checks and balances arrangement. No problems have ever arisen to date.

Such power is not unique to the securities legislation for the Banking Ordinance, the Mandatory Provident Fund Schemes Ordinance, the Hong Kong Sports Development Board Ordinance and the Hong Kong Tourism Board Ordinance also empower the Chief Executive to give written directions to the relevant organizations. These long-standing provisions have never been found to be inappropriate. The same arrangement has also been made in the Hong Kong Science and Technology Parks Corporation Ordinance passed by the Legislative Council in May last year.

The objective of the provision is to ensure the effective operation of the regulatory structure. According to Articles 109 and 110 of the Basic Law, the Government of the Hong Kong Special Administrative Region (SAR) shall maintain the status of Hong Kong as an international financial centre, formulate the relevant policies and regulations and regulate in accordance with law. Although the Government has entrusted the SFC with regulation, it should finally bear the overall responsibilities ultimately.

The financial market is regulated under a three-tier regulatory structure; namely, self-regulation by those in the market front line, market regulation by the SFC and the Government ensures effective regulation by the SFC and sufficient co-ordination with other regulatory organizations. Issuing directions to the SFC ensures the effective operation of the three-tier regulatory structure and minimizes market participants' worries about the powers of the SFC.

The Government appreciates that the power of the Chief Executive to give directions to the SFC cannot be abused. In this legislative reform, we have taken the initiative to adopt additional check and balance measures in respect of the exercise of the power, for instance, the directions must be related to the functions of the SFC and in public interest, and they must only be issued after the Chief Executive has consulted the Chairman of the SFC.

The reserve power under clause 11 can be exercised by the Government only in extraordinary emergencies to safeguard public interest. Probable cases include failure of checks and balances, improper performance of duties by the

SFC or fluctuations in the financial market that warrant prompt action by the Government to stablize the financial market with the co-operation of the SFC and other regulators.

During the consultation period of two years or so, the market participants and the public did not raise any opposition to clause 11, which reflects that the public expects the Government to ensure the stability of the financial market. Some Members worry that the arrangement may affect the international status of the SFC, but it is actually not the case. It is because the relevant check and balance measures had already been formulated when the SFC was established and it is an indisputable fact that the SFC enjoys a good reputation in the international arena.

Madam Chairman, the relevant check and balance measures are essential and suitable under our constitutional system and regulatory structure and they help the Government fulfil its responsibilities. To codify this arrangement by way of legislation can also enhance transparency and accountability, therefore, I hope Members will support the clause and the relevant amendment.

Proposed amendment

Clause 11 (see Annex III)

MISS MARGARET NG: Madam Chairman, I have no views on the amendments as such, but I oppose the whole clause 11 of the Bill. It has no place in a proposal to strengthen and modernize Hong Kong's regulatory system in response to globalization.

An independent regulating authority, free from political interference, is fundamental to a modern regulatory system which commands respect and confidence. The regulating authority must not only be independent, but clearly seen to be independent.

Yet, clause 11 is for no other purpose than to provide for intervention of the most blatant sort from the executive. Clause 11 reserves for the Chief Executive an overriding power to direct the Securities and Futures Commission (SFC) to follow his written order. The only conditions are that he must first consult the Chairman of the SFC, and that he is satisfied that it is "in the public

interest" to do so. The SFC is obliged to comply with an order once it is issued by the Chief Executive.

Such a power of direction is incompatible with an independent authority. It also offends the basic requirements of the rule of law. This is so no matter how rare this power is going to be used. It is enough that the power exists, since it would always remain as a threat. It will be assumed by the public that the SFC will refrain from doing anything which the Chief Executive may not like.

The power to direct reserved to the executive is out of line with other world-class regulators. It is not found in the United Kingdom or the United States system. In both jurisdictions, the independence of the regulator and its ability to act without reference to the executive is implicitly held to be vital.

In April this year, Sir Howard DAVIS, Chairman of the United Kingdom's "super regulator", told a visiting delegation of this Council that there is little support in the United Kingdom Parliament for the Treasury to have a power of direction. It is accepted that an independent authority free from interference and accountable to the Parliament alone would be better for the market. If the Treasury were to have a power of direction, then it will inevitably be drawn into controversies. For himself, Sir Howard told the delegation that he would consider any direction of the Treasury "a resignation issue".

Similar views were expressed to the Legislative Council delegation in the United States from the regulating authorities and Congress. Provision for a "reserve power" to direct was reacted to with bemusement. Accountability is achieved through reports and parliamentary questions.

The chairman and other members of the governing body of the United Kingdom authority are appointed, and are liable to be removed, by the Treasury. The chairman and chief officers of the United States authority are appointed by the United States President with the confirmation of Senate. Under the Bill, the Chairman and members of the SFC are appointed and may be removed by the Chief Executive. Independence and integrity must be among the most essential qualities for the office. Having the ultimate control in his own hands, the Chief Executive would have to have extraordinary reasons indeed for an additional power to undermine the authority of someone

that he has appointed. Such a power would undoubtedly lower the status of the SFC and Hong Kong's system in the perception of its counterparts in the world. It will show the world that our market is open to political intervention without notice.

The explanation given by the Administration is that the Government has the responsibility to provide the appropriate economic environment and regulation of the securities and futures industry in Hong Kong. It must ensure that the SFC does its duty properly. This reserve power is necessary as "checks and balances" against the extensive power of the SFC, to put a speedy stop to a misuse of its powers as a "last resort".

The appropriate way for the Government to meet its responsibility is by setting up healthy institutions to do the job. As in the United Kingdom and in the United States, the government can appoint independent commissions of inquiry should the SFC fail to discharge its duty. The powers of the United Kingdom and the United States regulatory authorities have even greater powers than the SFC and presumably can also misuse them. Yet this has not given rise to a need for a similar reserve power.

More importantly, safeguards against misuse of power should be met in the legislation and the supporting institutions. This is the rule of law. It should not be placed in the hands of one individual. This is the rule of man. Clause 11 puts the vast edifice of the Bill upon feet of clay.

A look at the provision as drafted shows that this power does not only allow the Chief Executive to override the views of the SFC. It also allows him to override the real checks and balances provided by law. Under clause 11(3), the Chief Executive's written direction overrides any provision in any ordinance which requires the SFC to form its own opinion or be satisfied of any matter (including the existence of certain circumstances) or consult any person before taking action.

In other words, the law requires the SFC to have come to a reasonable conclusion on cogent evidence, or to consult certain bodies or individuals before taking action. But all this will be swept aside when the Chief Executive directs the SFC to do anything. This can only be seen as the view of one person being given priority over all the safeguards of law.

It is also argued by the Administration that a power to direct already exists in the current Securities and Futures Commission Ordinance. But this is no reason for its continuation into the new law. Moreover, whereas the old provision is vague and general, clause 11 is far more elaborate and specific. The provision in clause 11(3) about overriding other statutory provisions is new. The end result is not a more restricted power more transparently exercised, as it may first appear, but more absolute and unchallengeable.

The metamorphosis from the old to the new version bears traces of fierce internal opposition and debate — as one would expect of any self-respecting regulator jealous of its independence. No doubt a scandal will explode when the proposed provision, if passed, is evoked. And the scandal will, without doubt, destroy the international reputation of the SFC as regulator and the Hong Kong Special Administrative Region as a free market. For this reason, the provision is a contradiction in terms: It cannot ever be in the public interest for any Chief Executive to issue such a direction. The risk is far too devastating.

Madam Chairman, the deletion of clause 11 is an issue of fundamental principle. I strongly urge Members to vote against it.

MR HENRY WU (in Cantonese): Madam Chairman, what the entire Securities and Futures Bill worries the profession most is that the law to be enacted very soon will, like the "Incantation of the Golden Hoop" imposed on the Monkey King in *Adventures of Monkey King*, further constraining the business environment and vitality of the industry, with the SFC being the manipulator of the "Incantation of the Golden Hoop". The powers of the SFC are unsurpassed in every aspect. When delivering his Budget in this Chamber last Wednesday, the Financial Secretary remarked that we need to "modernize our financial system and ensure efficient and effective regulation in line with international standards in order to maintain our edge in the region". Here I can tell the Financial Secretary that Hong Kong will not only measure up to, but also surpass, international standards. Nevertheless, I am only referring to the strictness of the securities legislation, particularly with reference to the powers of the SFC.

If the relevant laws are to be enforced according to a fair and impartial principle, we will certainly not connive at offenders. For the purpose of safeguarding the interest of investors and observing the rules of fair competition, offenders must be punished. However, as the securities

legislation we are going to pass will confer on the SFC some extreme powers, such as the power to deny the right to remain silent, the provision for making self-incrimination, the making of regulations that may lead to criminal sanctions, and so on, the industry and I have finally agreed and supported to preserve the reserve power of "the Chief Executive to give directions to the SFC" as a means of checks and balances against the SFC, a high-power regulatory body. Thank you, Madam Chairman.

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

MR ALBERT HO (in Cantonese): Madam Chairman, I rise to speak in support of the exclusion of clause 11 from the Bill. In other words, we object to the clause standing part of the Bill, whether the Government's amendment will be passed or not. Actually, Miss Margaret NG has presented the reasons of my objection in a forceful manner. There is not much I wish to add. I only wish to make one or two salient points. First, it has been argued that the provision appearing in the original ordinance should be retained since it has never been invoked. This is absolutely not an acceptable reason for we need to update the entire law. After deliberations, we feel that the original ordinance should reach a new milestone since an overhaul should be carried out in many areas. Anything that is obsolete and unnecessary should be abolished, particularly so when we have good reasons to do so.

The Secretary cited numerous examples earlier to illustrate that we can find similar provisions in many ordinances governing other organizations. We should however note that many of these organizations are executive or statutory bodies, which are eventually institutionally restrained by the Government. It is perhaps understandable for such provisions to appear in ordinances governing these organizations. We should nonetheless note that these organizations have never asked for independence. In my opinion, they are different from an independent regulator, particularly when the regulator is unique. This is the most important point. It is also the main reason why the regulator can command respect and trust from others. It is simply illogical for one to argue that since some organizations (including the Housing Authority) are required to follow the directions possibly given by the Chief Executive under such directional provisions, an independent watchdog should similarly accept such provisions. This example can therefore be considered absolutely inappropriate.

The Hong Kong Monetary Authority (HKMA) is unique in the sense that it is part of the government structure. Operating under the Financial Secretary, the HKMA is subject to full control of the Financial Secretary, who is in turn accountable to the Chief Executive. The HKMA is, therefore, structurally completely different from a regulator. If we are to pass a piece of legislation with respect to the HKMA in future, we might have to study it carefully. If we deem it necessary for the HKMA to become an independent regulator, we will have to use the same reason to oppose the conferment of unnecessary powers on the Chief Executive to intervene. This is the first point.

Secondly, many people see the need to have a person to co-ordinate these regulatory bodies since confusion frequently occurs in the market. If this stands, perhaps we should start examining the system to see whether a super regulator is really necessary? I recall that the Financial Secretary has mentioned repeatedly that an interdepartmental working group has been set up to co-ordinate through the Financial Services Bureau the so-called three-dimensional inter-market challenges. We have also been told by the Financial Secretary that the working group has operated very smoothly. If that is really the case, why is it still necessary for the Chief Executive to intervene with his invisible or visible hand? Therefore, the notion that it is necessary to supervise various regulatory bodies and enhance co-ordination among various institutions does not really make sense.

The Government should put in place a formal system by appointing a super regulator if it is really considered necessary to do so. It is actually not too clear in what capacity the Chief Executive is going to intervene. Is it just because the Chief Executive is the highest-ranking executive that makes it necessary for every organ to answer to him? Or is it because the Chief Executive is apparently the highest tier of the existing three-tier regulatory framework (I heard the Secretary make this remark for the first time a moment ago. I do not think he said that before though he might have probably done so)?

I was really surprised by the Secretary's remark since I was like being told that the Chief Executive was a super regulator. This is because the Chief Executive can, by virtue of clause 11, intervene without being subject to any restrictions or conditions. Members should be aware that he is subject to little checks and balances. As long as he has made some consultations, he may, upon being satisfied that it is in public interest to do so, give directions. Under such a system, he may give directions after going through the requisite procedures. I just cannot help asking this question: Are we trying to institutionalize such a super regulator?

We have carefully scrutinized the entire Bill and made careful planning with a view to restraining the regulator in different areas. Does it mean that our system will be completely destroyed instantly if we at last find out that there is no need to restrain the super regulator or that only negligible or minimal restraint is imposed on the super regulator? The Secretary should really tell us whether the Chief Executive is a super regulator and whether such a super regulator exists elsewhere in the world. Should we accept a super regulator who is absolutely not restrained and institutionalized, who can act according to his own will? This is the second point.

Thirdly, is there really such a need? If the Secretary tells me that this is a necessity, I would have to tell him we have learned from history that there is no such need because such powers have never been exercised before. There is no similar setup even if we look at all the advanced financial centres in the world. Even the American President, the United States Secretary of Treasury, the British Prime Minister, the British Treasury, and even the Australian Prime Minister have no such powers. Why do we need such powers in Hong Kong? Without such powers, will we perish, collapse or be thrown into chaos? Will the Secretary tell us why this system is going to work, even when our specially tasked professional regulator has failed to do so? Does the Chief Executive have divine wisdom and access to limitless information that enable him to make perfectly correct decisions? Will his orchestration definitely work? Can the Secretary tell me whether the Chief Executive's intervention in the very wise decisions already made by the regulator is intended either to benefit Hong Kong more or to guide Hong Kong to a more correct direction to safeguard public interest?

Actually, during the course of scrutinizing the Bill, I asked the Deputy Secretary at least once and cited such extreme examples as whether the Government had considered enabling the Chief Executive to give directions to the Legislative Council and Judiciary if the Chief Executive were considered to be such a wise man. Of course, this example is relatively extreme. I was immediately told by the Secretary that it was not applicable. But the crux of the question is, if the Chief Executive is such a wise man and he can tell us what we should do to be perfectly right, the Government should naturally consider enabling him to override this Council and the Judiciary in order to avoid confusion. I believe this is definitely not an acceptable answer to any one of us, though both assumptions run on the same logic. In my opinion, if we feel that an independent regulatory body is necessary institution-wise, we

must respect rather than undermine its independence. Allowing an exception will compromise the independence of such a system.

The rule of law is also confronted with a similar situation. This point was also strongly emphasized by Miss Margaret NG just now. This is actually a matter of principle. It will be extremely dangerous if we allow an exception for no reasons and, at the same time, we fail to explain how the special powers can be exercised exceptionally when such powers are not subject to restriction. Allowing an exception for no reasons will even destroy our legal system and undermine the rule of law. As a matter of principle, I therefore strongly oppose the government proposal. The relevant industry may have some other reasons or it may feel concerned about the excessive power of the SFC. In that case, why did it not do something to improve the system? Is it possible to consider strengthening the power of the review committee mentioned by me earlier? We may even consider setting up a Consumer Panel! Understandable it may be to impose more checks and balances, it is not advisable to find a so-called man of divine wisdom to take up the regulatory role. Come to think about this. If a man of divine wisdom is allowed to intervene and regulate the industry at any time, does it mean that the interest of the industry can then be safeguarded? I think this is only wishful thinking.

Lastly, I hope Members can support my views and oppose the inclusion of clause 11. Thank you.

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

(No Member responded)

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, in fact, we have discussed this issue many times before and I do not wish to read out the speech I just made again. I believe I have not said that the Chief Executive is a "super regulator". I wish to point out that the power has been in existence since 1989 and we have always been very careful. The power has never been exercised, which proves that we fully appreciate Members' concern. But the Government still has an important role to play and it cannot let go monitoring after it has handed over the responsibility to the

SFC, otherwise, it would not have been necessary for me to debate the matter with Members here today.

As Mr Albert HO has said, some government organizations hold meetings and take concerted actions together with the SFC. I also believe that some mechanisms are necessary and it was clearly indicated in the past that the Government would not abuse the power.

As Mr HO has just said, arbitrary acts would be conducted if there were no restriction. That will certainly not be the case. We have introduced additional check and balance measures today and though we had a very good record in the past, I wish to say that the Government would exercise the reserve power only in emergencies. The Government must have the reserve power to safeguard public interest. Since the Government does not have the power only today, I find it very strange of Mr HO to oppose the power only today.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 11 as amended.

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

(Members raised their hands)

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

(Members raised their hands)

Miss Margaret NG rose to claim a division.

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

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

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

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

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

THE CHAIRMAN announced that there were 51 Members present, 30 were in favour of the motion and 20 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Clauses 2 to 5, 8, 10, 12, 13, 15 to 24, 26, 28 to 31, 34 to 41, 43, 46, 51, 56, 58, 59, 61 to 67, 70, 72, 74 to 77, 79, 80, 81, 83, 85, 87, 88, 89, 91, 92, 93, 95 to 112, 228 to 236, 366 to 370, 372 to 375, 379 to 386, 388, 389, 390 and 394, and the subheading before clause 386.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move the deletion of clause 108, and the amendments to the other clauses and the subheading read out just now, as set out in the paper circularized to Members.

I wish to briefly elaborate the major amendments.

Clause 5(4) of the Bill provides for the general powers of the Securities and Futures Commission (SFC) in the discharge of its functions as making contracts or other agreements and receiving and expending moneys. It is clearly specified in the amendments that the powers are only restricted to the items mentioned in the clause.

According to clauses 19, 30, 34, 35, 75 and 100, a person who contravenes any specified provision of the rules that applies to the person commits an offence. The amendments have added the conditions for conviction, thus, the person only commits an offence when he contravenes specified provisions without reasonable excuse. I also propose the deletion of the clause providing that a person who fails to comply with a condition imposed by the SFC in enforcement commits an offence to make the regulatory arrangement more reasonable. This decriminalization proposal is also applicable to clauses 59 and 61.

The amendments add new provisions to clauses 19, 37, 59, 79 and 95, specifying that if the SFC rejects an application for authorization, it shall state the reasons in writing to enhance protection for the applicant procedurally.

Under clause 20, no transaction may be conducted on a recognized stock market other than dealings in securities and other financial products approved in writing by the SFC. In view of the fact that the approval has significant effects on the market as a whole, the amendment specifies that the SFC shall publish the approval in the Gazette.

The original clauses 21, 38 and 63 specify the duty of a recognized exchange company, clearing house and exchange controller to ensure that the interests of the public prevail where they conflict with the interests that it is required to serve under any other applicable law. Since some market participants consider that the duty can hardly be fulfilled, the Government has agreed to delete it.

Concerning clause 13, the trading of securities regulated by overseas markets in the local recognized securities market may be approved to support the development of the local market. The amendment to clause 23 specifically empowers local recognized exchange companies to make rules for such trading.

Under clauses 23, 40 and 66, just as the existing arrangement, a recognized exchange company, clearing house and exchange controller has the right to make rules for its operation. The rules must be approved by the SFC which may request these organizations to make rules on the items specified by the SFC or amend the original rules. The Government has adopted the views of market participants and proposed an amendment to specify that, before the SFC requests such organizations to make or amend rules, it shall first consult the Financial Secretary to enhance protection procedurally.

Clause 23 empowers a recognized exchange company to require specified persons to make a statutory declaration concerning such matters as may be specified in the rules, such as a director of a corporation which is seeking to have any of its securities listed. The amendment increases the types of persons specified, for instance, an applicant to become a participant of the exchange company or the holder of the trading right, with the objective of ensuring the authenticity of the important information submitted to the exchange company.

Under clauses 28, 43, 85 and 98, the SFC has the power to withdraw the authorization granted to a recognized exchange company and clearing house, an investor compensation company and automated trading services provider. In order to allow these organizations to suspend their operation in an orderly

manner, the amendment empowers the SFC to permit them to continue to carry on certain specified activities after their recognition has been withdrawn.

The original clause 77 restricts the appointment of members of the board of directors of a recognized exchange controller, but the specific provisions are designed in the light of the unique situation of a stock exchange or futures exchange in Hong Kong. The amendment narrows down the application of the provision; so, it is only applicable to a stock exchange or futures exchange in Hong Kong to reflect the policy intent.

Under the original clause 80, the SFC may request the Chief Executive in Council to transfer to a recognized independent investor compensation company its function to handle investor compensation, excluding the function to make the relevant subsidiary legislation. The Government has accepted the views of the Bills Committee and proposed an amendment to specify that the SFC cannot transfer to the investor compensation company its functions of signing the financial statements of the compensation fund and submitting the financial statements to the Financial Secretary.

Clause 87 specifies that a recognized investor compensation company, after making partial or full payment in relation to the loss sustained by the claimant, can subrogate the claimant to claim compensation through other channels. The amendment aims at reflecting the judgement made by the Court of First Instance in 2000, that is, relative to the original claimant's claim for the loss that has not been compensated, the SFC should not have priority in claiming the paid compensation, in other words, both parties should have equal rights to claim. The same principle also applies to the provision under clause 235 concerning the arrangement made by the SFC for the subrogation of the claimant's right.

Clause 91 allows the SFC, a recognized exchange company, a recognized clearing house, a recognized exchange controller and a recognized investor compensation company to provide each other with specified types of information. To further ensure that the exchange of information complies with the Personal Data (Privacy) Ordinance, the amendment also specifies that the supply of the information is reasonably required for the performance of the specified functions of the organizations to which the information is supplied.

We propose to amend clause 93 by adding subclauses (2A) and (2B) to allow a recognized exchange company, recognized clearing house, recognized

exchange controller or recognized investor compensation company to appeal to the Chief Executive in Council against a suspension order made in respect of the exchange company, clearing house, exchange controller or investor compensation company to check the powers of the SFC.

In the light of market development, clauses 95 to 99 of the Bill introduce a framework for the regulation of automated trading services. A person who intends to provide automated trading services must first apply for the SFC's authorization for providing automated trading services. The original provisions deal with a person or a stock exchange or futures exchange outside Hong Kong and other applicants differently. Some market participants are of the view that to uphold the principle of fair competition, the procedures for dealing with applicants should be standardized. The Government has accepted the view and proposed the corresponding amendment.

To better protect investors, the amendments incorporate overseas automated trading services provided to Hong Kong investors into the scope of regulation, limited to the active promotion of services to non-existing clients. In respect of this arrangement, we have consulted market participants and obtained the consent of the Bills Committee.

Clause 102 restricts the issue of advertisements, invitations or documents relating to investments and the persons concerned are allowed to issue only information recognized by the SFC, unless the provision otherwise exempts or the issuer of the information, such as a publisher or newspaper dealer, has only provided the "mere conduits". In the light of public opinion, the Government has proposed an amendment to improve the provision. It mainly includes:

Clearly specifying that the restriction is applicable to the relevant information issued to the public in Hong Kong or from a place outside Hong Kong, which is consistent with the arrangement made by other international financial centres.

Two types of exemption have been added to avoid duplicate regulation. Firstly, the restricted information is related to securities that are regulated by overseas regulatory organizations and traded in the local securities market under the rules of a recognized exchange company in Hong Kong. Secondly, the relevant information is issued by an intermediary regulated by the SFC.

Technical amendments are made to improve the exemption clauses on an issuer of information who has only provided the "mere conduits" to ensure that nobody who has only provided conduits of information would be open to criminal liability. The relevant amendment is also applicable to clause 109.

Clause 106 makes it a criminal offence to fraudulently or recklessly induce others to invest money. The amendment aims at stating more explicitly that the criminal intent must be proven to incriminate the person, that is, the misrepresentation must be made for the purpose of inducing another person to carry on a specified investment activity. The Government has also accepted the view of the Bills Committee that the nature of fraudulent and reckless misrepresentation differs, so, it has proposed an amendment to separately define such misrepresentations.

Clause 107 empowers a person who has been induced to invest by a third party who makes fraudulent, reckless or negligent misrepresentation to initiate civil proceedings to claim compensation for the pecuniary losses incurred. Upon the request of the Bills Committee, the amendments aim at specifying more explicitly that an investor may only claim compensation from the persons concerned under this clause if he has been induced to invest and has actually incurred losses.

PART XII on investor compensation outlines the compensation mechanism and the specific details will be set out in the subsidiary legislation, to flexibly cope with future market development. The Bills Committee agrees to this arrangement in principle and considers that the Government should, without affecting the flexibility of the mechanism, try its best to give a more specific account of the compensation arrangement in the principal legislation. The Government has accepted the view, and the amendments proposed to clauses 228, 229 and 236 outline the circumstances under which a person is entitled to claim compensation. The Chief Executive in Council shall ensure that the compensation fund shall, so far as reasonably practicable, be financed by the securities and futures market to achieve the "user pays" objective.

We propose an amendment to clause 230 to empower the SFC to pay into the compensation fund from its reserves with the consent of the Financial Secretary. This is consistent with the existing arrangement.

Clause 232 is amended by adding subclause (9A), specifying that the Financial Secretary shall cause to be laid on the table of the Legislative Council any financial statement and report sent to him, to make better arrangement for accountability.

After the Unified Exchange Compensation Fund and the Futures Exchange Compensation Fund have returned the deposits and repaid their debts to the exchange company, the exchange company does not have any interests in the new compensation fund, thus, subclause (4) of clause 234 is deleted to reflect the policy intent more clearly.

Amendments are made to subclauses (2), (7) and (8) of clause 366 to reflect the policy intent of the provision on preservation of secrecy, that is, no one should be prohibited from disclosure of information in the exercise of his legitimate right, including disclosure for the purpose of seeking advice from counsel or a solicitor or other professional adviser; disclosure in connection with any judicial or other proceedings to which the person is a party; or disclosure in accordance with an order of a court.

In response to the views of the Bills Committee, an amendment is proposed to clause 366 (7) prohibiting overseas authorities from onward disclosure of information provided by the SFC. As the use of confidential information disclosed to the authority will be subject to the Memorandum of Understanding entered into between the SFC and the authority, and any conditions attached therein relating to onward disclosure; it is not necessary to impose restriction on the authority on onward disclosure under the provision of clause 366(10) on offences. Clause 366 also provides adequate protection, specifying that the SFC must satisfy the requirements of the provision on preservation of secrecy before disclosing secret information to an authority outside Hong Kong. Therefore, the amendment will not relax the restrictions on the disclosure of secret information.

Madam Chairman, clause 366 is also amended by adding a new subclause (8A) so that the SFC may impose conditions on the disclosure of any secret information or granting any consent to the disclosure of secret information by another party. It actually reflects the existing practice of the SFC and the proposed deletion of subclause (11) is only a technical amendment as the persons to whom this subclause applies have already been covered by subclause (7).

The amendment to clause 368 is proposed on basis of the views of the Bills Committee, to reflect the right of preservation of secrecy of the legal profession more clearly.

The amendment to clause 369 is consistent with that to clause 172, with the objective of clarifying the scope of exemption granted to an auditor of a listed company, including the case in which the auditor transmits the information to the SFC before the company is listed.

Amendment is proposed to clause 370 in response to the views of the Bills Committee, restricting the application of the clause to "specified person" and the word "reasonable defence" is added to safeguard the defendant.

The amendment to clause 384 deletes the requirement for the SFC to consult the SFC regarding the rules it proposes to make, and provides for the application of the relevant rules since the relevant provisions have been incorporated into new clause 384A.

As financial products are coming onto the market day after day and becoming increasingly complicated, the amendment to clause 390 therefore proposes that the SFC may make rules to prescribe any class of transactions or activities to which the Gambling Ordinance shall apply so that the SFC can clarify the regulation of new products on the basis of need and prevent lawless persons from packaging gambling products as financial products regulated under the Bill to evade regulation under the Gambling Ordinance.

Madam Chairman, the major amendments have been set out in the foregoing while other minor and technical amendments have been set out in the amendments.

Proposed amendments

Clause 2 (see Annex III)

Clause 3 (see Annex III)

Clause 4 (see Annex III)

Clause 5 (see Annex III)

Clause 8 (see Annex III)

Clause 10 (see Annex III)

Clause 12 (see Annex III)

Clause 13 (see Annex III)

Clause 15 (see Annex III)

Clause 16 (see Annex III)

Clause 17 (see Annex III)

Clause 18 (see Annex III)

Clause 19 (see Annex III)

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Clause 51 (see Annex III)

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Clause 105 (see Annex III)

Clause 106 (see Annex III)

Clause 107 (see Annex III)

Clause 108 (see Annex III)

Clause 109 (see Annex III)

Clause 110 (see Annex III)

Clause 111 (see Annex III)

Clause 112 (see Annex III)

Clause 228 (see Annex III)

Clause 229 (see Annex III)

Clause 230 (see Annex III)

Clause 231 (see Annex III)

Clause 232 (see Annex III)

Clause 233 (see Annex III)

Clause 234 (see Annex III)

Clause 235 (see Annex III)

Clause 236 (see Annex III)

Clause 366 (see Annex III)

Clause 367 (see Annex III)

Clause 368 (see Annex III)

Clause 369 (see Annex III)

Clause 370 (see Annex III)

Clause 372 (see Annex III)

Clause 373 (see Annex III)

Clause 374 (see Annex III)

Clause 375 (see Annex III)

Clause 379 (see Annex III)

Clause 380 (see Annex III)

Clause 381 (see Annex III)

Clause 382 (see Annex III)

Clause 383 (see Annex III)

Clause 384 (see Annex III)

Clause 385 (see Annex III)

Clause 386 (see Annex III)

Clause 388 (see Annex III)

Clause 389 (see Annex III)

Clause 390 (see Annex III)

Clause 394 (see Annex III)

Subheading before clause 386 (see Annex III)

MR HENRY WU (in Cantonese): Madam Chairman, the industry has no strong views on the power given to the SFC to make its own rules. It also agrees that the SFC can make rules pertaining to the market and its operation in order to ensure that the market and transactions are operated in a fair and orderly manner. Nevertheless, I hope the relevant authorities can, in making such rules, maintain close liaison with the industry and take full account of its professional advice.

Nevertheless, we must not omit the point that the industry cannot accede to the proposal that the market rules made by the SFC may lead to criminal sanctions. The industry is of the view that, given the seriousness of the penalty, it must be dealt with by the Government through the normal legislative procedure, rather than through the "negative vetting" procedure provided for subsidiary legislation.

In April last year, the Panel on Financial Affairs, joined by the Bills Committee, conducted an overseas duty visit to the United Kingdom and the United States, which may well be described as a modern version of the "Journey to the West". Upon its return, the delegation published a report in June and special reference was made to acts of a criminal nature. Now let me quote paragraph 6.8 of the report, "According to the Financial Services Authority, the rules it makes cannot impose a criminal sanction on their own. Breaking a rule is therefore not criminal unless the act itself constitutes an offence under a piece of legislation already in place" and paragraph 6.9, "In the United States, the rules and regulations made by the Securities and Exchange Commission under Securities Exchange Act of 1934 and Securities Act of 1933

do prescribe unlawful acts, such as manipulative and deceptive devices and contrivances, but no sanction is imposed by the rules and regulations. The criminal penalties are provided in the principal legislation". From this duty visit, we can clearly learn that no criminal sanctions will be induced in connection with the making of regulations by regulatory bodies of the two prime international financial centres, the United Kingdom and the United States.

The power of the SFC is actually greater than that of major overseas financial centres. In this connection, the industry earnestly hopes that the Government can gain a full understanding of the situation before conducting a review and introducing effective checks and balance appropriately.

Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Financial Services, do you wish to reply?

(The Secretary for Financial Services indicated that he did not wish to reply)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to clause 108, which deals with deletion, has been passed, clause 108 is deleted from the Bill.

CLERK (in Cantonese): Clauses 2 to 5, 8, 10, 12, 13, 15 to 24, 26, 28 to 31, 34 to 41, 43, 46, 51, 56, 58, 59, 61 to 67, 70, 72, 74 to 77, 79, 80, 81, 83, 85, 87, 88, 89, 91, 92, 93, 95 to 107, 109 to 112, 228 to 236, 366 to 370, 372 to 375, 379 to 386, 388, 389, 390 and 394 and the subheading before clause 386 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Heading of Part V, clauses 113 to 120, 122 to 139, 141 to 145, 147 to 170, 186 to 195, 209 to 214, 216, 217, 218, 220, 221, 222, 224, 225 and 226, and the subheading before clause 192.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move the deletion of clauses 189 and 225, amendments to the heading and other clauses read out just now, addition of a subheading before clause 191 and deletion of the subheading before clause 192, as set out in the paper circularized to Members.

The purpose of the amendment to clause 118 is to determine in an more appropriate manner the roles separately taken by the SFC and the Hong Kong Monetary Authority (HKMA) in granting registration to banks to put it beyond doubt that the final decision with respect to the granting of registration rests with the SFC. Furthermore, banks are required to take up a new statutory responsibility to ensure that their securities staff must meet the fit and proper standard set by the SFC.

The purpose of the amendments to clauses 186, 189, 190, 191, 192 and 193 is to implement new proposals to make disciplinary sanctions imposed on securities brokers fully applicable to securities businesses operated by banks. Specifically, through the Securities and Futures Bill and amendments to the Banking (Amendment) Bill 2000, five disciplinary sanctions, namely "reprimand", "civil penalty", "suspension", "revocation", and "prohibition order", shall apply to banks, executive officers of banks, the management and persons entered in the register maintained by the HKMA.

The purpose of the amendments to clauses 209 and 225 is to change the appeal organ dealing with securities businesses of banks from the Chief Executive in Council to the Securities and Futures Appeals Tribunal (SFAT) to bring it in line with the channel for dealing with appeals from securities brokers.

Moreover, we have accepted the advice of the Bills Committee which opines that references to "exempted persons" and "exemption" as contained in the Bill have failed to reflect the proposed regulatory framework, that is, banks engaging in securities businesses are required to observe a series of regulatory regulations and are liable to disciplinary action. The amendments therefore seek to replace all references to "exempted persons" and "exemption" in the entire Bill with references to "registered institution" and "registered" to more appropriately reflect the Government's policy objective.

Clauses 116 and 120 empower the SFC to grant temporary licences to facilitate an overseas corporation and its staff to carry on regulated activities related to its overseas operation. The amendments require the corporation to appoint a person to supervise the conduct of the regulated activities in Hong Kong and prohibit the licensed corporation from holding any client assets in carrying on regulated activities in order to provide further safeguard to investors.

Considering the crucial impact of failure to comply with the Financial Resources Rules (FRRs) on the fitness of a licensed corporation to continue its operation, clause 142 is amended by deleting the requirement on the licensed corporation to inform the SFC on the day on which it becomes aware of its inability or uncertain of its ability of complying with specified requirements and cease the conduct of regulated activities. Instead, the licensed corporation is required to inform the SFC as soon as reasonably practicable and immediately cease the conduct of regulated activities.

Meanwhile, I propose to add subclause (7B) to clause 142 to enable the SFC's decision to temporarily suspend the licence of a licensed corporation for failure to comply with the FRRs to take effect before the appeal possibly lodged is dealt with satisfactorily. This is because failure to comply with the FRRs will lead to extremely serious consequences. The SFC must be able to enforce its decision immediately to ensure its power to protect investors will not be compromised.

Under clauses 142, 144, 145, 147, 148, 161 and 213, when intermediaries and their associated entities contravene the FRRs and the specified requirements prescribed in other rules, the relevant persons were originally required to inform the SFC of such contraventions to ensure the SFC can take timely remedial action to protect investors. A new provision is introduced by the amendments to clearly provide that a person is not excused from complying with a requirement to inform the SFC only on the ground that to do so might incriminate the person.

Meanwhile, the SFAT should be allowed to make reference to the information referred to by the SFC in making the relevant decision for the purpose of determining whether the SFC's decision is appropriate. In this connection, a similar amendment will be introduced to clause 213 to stipulate that a person is not excused from complying with an order or requirement of the SFAT only on the ground that to do so might incriminate the person.

I will move new clauses 161A and 213A later to strictly provide that, with the exception of a few circumstances in which the principle of human rights is met, such notification or evidence shall not be used as evidence against the person giving notification to the SFC in criminal proceedings.

Under the original clauses 149 to 154, an associated entity of a bank, which is itself not an authorized financial institution, is not required to comply with the regulations related to audit under the Bill and the Banking Ordinance. The amendments propose to require all associated entities of a bank shall be subject to audit regulation.

Clause 156 empowers clients of licensed persons and their associated entities clients to lodge an application to the SFC with respect to the appointment of an auditor to carry out investigation on such ground as the relevant organization has failed to act according to instructions. If the application is approved, the SFC may require the clients to bear all or part of the audit costs incurred. In a meeting of the Bills Committee, some members expressed concern for the enormous audit costs that might possibly incur since the investigation might involve other regulation problems of supervision, such as the propriety of the operational system of the relevant licensed corporation. Accepting the views of the Bills Committee, the Government will propose an amendment to limit the audit costs to be borne by the client lodging the application to costs reasonably incurred and are of direct relevance to the application.

New clause 163(2)(ea) empowers the SFC to make rules to require an intermediary, and any representative of an intermediary, when making recommendation concerning any financial product to their client, to disclose to the client in the specified manner any interest the intermediary or the representative may have in the financial product.

The purpose of the amendment to clause 169 is to provide clearly for restriction on cold calling by an intermediary, and any representative of an intermediary, covers the "call" they made in Hong Kong or elsewhere in order to prevent them from evading the restriction by making use of advanced information technology.

Accepting the views of the Bills Committee, the Government will propose an amendment to clause 209 to allow investors to appeal to the SFAT with respect to the decision relevant to the compensation granted to them.

Clause 131 empowers the SFC to amend or exempt certain rules in the light of an application by a market participant. In order to enhance transparency, an amendment will be proposed to add a general provision to require the SFC to disclose the reasons for giving its approval or exemption, and the condition imposed. Furthermore, the SFC may, for the reason that

such disclosure will jeopardize the commercial interest of the applicant, exercise discretion to withhold the condition imposed. However, it must make known the reasons for withholding the disclosure. This practice is similar to the arrangement adopted by international financial centres in other parts of the world.

As I mentioned earlier, a licensed corporation having failed to comply with the requirements made in the FRRs with respect to capital must immediately cease the conduct of its regulated activities. The SFC is further empowered by a relevant provision to allow the licensed corporation to, after complying with the verbal condition imposed by it, continue carrying on its regulated activities. The SFC is permitted to impose a verbal condition in the hope that the matter can be dealt with expeditiously and minimize any negative impact on the market. This arrangement was supported by some members of the industry. However, some members of the industry were worried that verbal conditions might more easily lead to disputes in future. In this connection, amendments will be moved to clauses 142 and 143 to provide an additional choice for licensed corporations so that they may request the SFC to impose conditions only in writing.

Under clause 186, the SFC may take disciplinary action against a regulated person for "misconduct", which is defined as covering acts prejudicial to the interest of the investing public or to the public interest. As it was held by some members that the relevant definition was relatively loose, the amendment seeks to require the SFC to, before making the relevant decision, consider the relevant code of practice and guidelines issued to the industry.

The amendment to clause 187 seeks to delete references to guidelines for disciplinary fines. I will move a new clause 191A to provide for disciplinary fines in a more detailed manner, including the requirement on the SFC to issue guidelines for imposing fines, set out the factors that must be considered when formulating the guidelines, and make the reference to the guidelines compulsory when making the final decision.

The purpose of the amendments to clauses 142, 143, 155 and 156 is to require the SFC to give the relevant persons a reasonable opportunity of representation.

Under the original clause 122, a licensed representative not belonging to any licensed corporation for 90 consecutive days will be disqualified as a licensed representative. After considering the views of the market and the

actual market situation, the SFC comes to the view that relaxing the period to 180 days is acceptable from the regulatory angle.

The original clauses 145 and 168 empower the SFC to make regulations with respect to the handling of client money and options trading, and provide that contravention of any of these regulations shall constitute an offence. The amendments propose to include conditions of incriminating a person so that only contravention of specified requirement "without reasonable excuse" will constitute an offence. The Government considers the amended clause more reasonable and more consistent with similar provisions in the Bill.

In the light of the views of the Bills Committee and the market, the amendment to clause 169 will tighten the original provision which allows a client to, within 28 days after the day on which he becomes aware of a contravention, rescind the agreement signed in consequence of a contravention of an intermediary so that he may do so within 28 days after the day on which the agreement is entered into or seven days after the day on which he becomes aware of a contravention, whichever is the earlier. The amended provision can better balance the interests of investors and the industry.

As regards clause 187, the time limit for payment of disciplinary fines is amended so that the original limit of not earlier than 30 days after the making of the relevant decision by the SFC is extended to within 30 days after the effective date of the appeal decision.

The original clause 211 provides that the relevant person is required to appeal to the SFAT within 21 days upon receipt of an appealable decision. The Government has accepted the suggestion of the Bills Committee proposed an amendment to empower the SFAT to extend the appeal period for a conducive reason.

Clause 130 is derived from an existing provision. Under this provision, any person who becomes a major shareholder of a licensed corporation under the circumstances specified without being approved by the SFC will be deemed to have committed an offence. Any share transfer and voting rights exercised by the relevant person will become null and void. Considering that such an arrangement will affect the interest of the third party of share transfer effected in a reasonable manner and the practical difficulty in reinstating the relevant share transactions, I propose to amend clause 130 and will later move new clauses 130A and 130B. This will enable the SFC to give directions in the light of the realistic situation to flexibly order the relevant person to take

appropriate remedial measures, and to apply to the Court of First Instance for enforcement of its directions.

Taking on board the view of the Bills Committee, the Government will move an amendment to delete such restricted titles as "stockbroker" listed under clause 136. These titles will instead be listed in Schedule 6A, and may be updated by the SFC by notice published in the Gazette according to clause 139A to facilitate amendment and cope with the development of the market. I will move new clause 139A and Schedule 6A a moment later.

Madam Chairman, these are the major amendments. Amendments which are relatively minor and technical in nature are set out in the paper carrying the amendments.

Proposed amendments

Heading of Part V (see Annex III)

Clause 113 (see Annex III)

Clause 114 (see Annex III)

Clause 115 (see Annex III)

Clause 116 (see Annex III)

Clause 117 (see Annex III)

Clause 118 (see Annex III)

Clause 119 (see Annex III)

Clause 120 (see Annex III)

Clause 122 (see Annex III)

Clause 123 (see Annex III)

Clause 124 (see Annex III)

Clause 125 (see Annex III)

Clause 126 (see Annex III)

Clause 127 (see Annex III)

Clause 128 (see Annex III)

Clause 129 (see Annex III)

Clause 130 (see Annex III)

Clause 131 (see Annex III)

Clause 132 (see Annex III)

Clause 133 (see Annex III)

Clause 134 (see Annex III)

Clause 135 (see Annex III)

Clause 136 (see Annex III)

Clause 137 (see Annex III)

Clause 138 (see Annex III)

Clause 139 (see Annex III)

Clause 141 (see Annex III)

Clause 142 (see Annex III)

Clause 143 (see Annex III)

Clause 144 (see Annex III)

Clause 145 (see Annex III)

Clause 147 (see Annex III)

Clause 148 (see Annex III)

Clause 149 (see Annex III)

Clause 150 (see Annex III)

Clause 151 (see Annex III)

Clause 152 (see Annex III)

Clause 153 (see Annex III)

Clause 154 (see Annex III)

Clause 155 (see Annex III)

Clause 156 (see Annex III)

Clause 157 (see Annex III)

Clause 158 (see Annex III)

Clause 159 (see Annex III)

Clause 160 (see Annex III)

Clause 161 (see Annex III)

Clause 162 (see Annex III)

Clause 163 (see Annex III)

Clause 164 (see Annex III)

Clause 165 (see Annex III)

Clause 166 (see Annex III)

Clause 167 (see Annex III)

Clause 168 (see Annex III)

Clause 169 (see Annex III)

Clause 170 (see Annex III)

Clause 186 (see Annex III)

Clause 187 (see Annex III)

Clause 188 (see Annex III)

Clause 189 (see Annex III)

Clause 190 (see Annex III)

Clause 191 (see Annex III)

Clause 192 (see Annex III)

Clause 193 (see Annex III)

Clause 194 (see Annex III)

Clause 195 (see Annex III)

Clause 209 (see Annex III)

Clause 210 (see Annex III)

Clause 211 (see Annex III)

Clause 212 (see Annex III)

Clause 213 (see Annex III)

Clause 214 (see Annex III)

Clause 216 (see Annex III)

Clause 217 (see Annex III)

Clause 218 (see Annex III)

Clause 220 (see Annex III)

Clause 221 (see Annex III)

Clause 222 (see Annex III)

Clause 224 (see Annex III)

Clause 225 (see Annex III)

Clause 226 (see Annex III)

Subheading before clause 192 (see Annex III)

MR HENRY WU (in Cantonese): Madam Chairman, I guess I have to compete with the Secretary to see which one of us can speak faster.

The industry is most concerned and dissatisfied with Part V of the Bill, mainly because it gives rise to the question of principle concerning "two regulators for the same industry" approach. The emergence of numerous "holes" on my back is a result of this too. With respect to the provision of clause 118 concerning "exempt persons", which is now renamed as "registered institutions", and clauses 142 to 145, 147 to 149, 152, 155, 156 and 161, in which provisions concerning discrepancies and inequality between banks and securities firms are contained, although the Government has proposed numerous amendments in a bid to bring legislation regulating the engagement of banks in securities businesses in line with that regulating the industry, certain differences still exist. Although the industry welcomes the many amendments introduced by the Government, it regrets that the Government can still not agree to the "one regulator for the same business" approach.

The "one regulator for the same business" approach is actually a question of principle. No matter how "exempt persons" is renamed, these people will still be exempted and treated differently. This is why unfairness will arise.

The amendments have managed to preserve some preferential treatment to banks, which are still enjoying special treatment in operating securities businesses.

We can see from clauses 142 to 145, 147 to 149, 152 and 161 that banks and securities firms are still being regulated differently, examples being the Financial Resources Rules and the "code on client assets". Although it has been repeatedly stressed by the Government that banks are strictly supervised by the Hong Kong Monetary Authority (HKMA) under the Banking Ordinance, the Ordinance only serves to regulate general banking operations and banks are being regulated specifically in a wider context. The Ordinance is not as detailed as the Securities Ordinance.

Furthermore, there are obvious discrepancies between the licensing system of the Securities and Futures Commission (SFC) and the registration system of the HKMA. At present, securities brokers or operators supervised by the SFC must apply to the SFC on an annual basis. In addition, they have to go through a strict vetting system and pay a huge sum in licence fee before they can obtain a licence. The SFC can be said to have supreme power insofar as licensing is concerned. Conversely, after the enactment of the relevant ordinances, staff selected by the executive officers of banks supervised by the HKMA can engage in dealing in securities after registering with the HKMA. In other words, the executive officers are given the same licensing power enjoyed by the HKMA. Therefore, the decision-making power fundamentally rests with the executive officers. Moreover, the arrangement of allowing an internal staff member of a company to vet other employees according to the company's need is apparently not stringent enough.

Under clause 118 of the Bill, a person engaging in dealing in securities in a bank only needs to be "engaged" rather than "employed" by the bank. The word "engage" is different in meaning from "employ", in the sense that the two parties are not bound by any employment relationship and responsibility. They purely co-operate under a contractual relationship. Theoretically, a bank can engage any man in the street who is deemed suitable to do the job, regardless if he has the appropriate licence. On the contrary, a person engaging in dealing in securities in a securities firm, whether or not he is "engaged" or "employed", must obtain the requisite licence. Securities business is a professional job. Not every person randomly picked to do the job can do it well. Although the Government responded by saying that the banks would ultimately be held responsible, time will tell whether this is true and whether the system will be subject to abuse.

In addition to the inconsistency of the regulatory systems, the strength of supervision is also a matter of the gravest concern to the industry. This also explains why the industry has been so persistent. As more and more banks are concentrating their efforts on diversifying their businesses, including dealing in securities, amid keen market competition, most banks have now set up a securities department. It was supposedly a good idea for banks to join the securities market to make it more prosperous. It is however regrettable that the banks have chosen to violate the existing rules and order of the game observed in the market by taking advantage of the exemption granted to them and started eating into the business of local small and medium securities firms. Displaying the posture of "a bully boy", banks have posed constant worry and fear to local operators and brokers of small and medium securities firms.

Why has this happened? It is all because banks and securities firms are regulated by different organs. Although banks engage in securities businesses in a similar manner as securities firms, the former are supervised by the HKMA only. On the other hand, the SFC is often required to consult the HKMA before taking further action. Although the Government stresses that the SFC and the HKMA will enforce the law and determine the strength of enforcement in accordance with a Memorandum of Understanding signed between both, there is a huge difference between the two organs in terms of their strength of enforcement, particularly in handling client complaints. The looseness of the HKMA contrasts sharply with the stringency of the SFC.

I would like to cite an obvious example here. Under clause 156 of the Bill, the SFC is empowered to, in response to an application, appoint an auditor to carry out auditing work on a securities firm. In other words, when a client has a reasonable cause or doubt to lodge an application to audit a certain securities company, the SFC is empowered to appoint an auditor to carry out the task. Although the Bill has been amended to specify that a person deliberately makes a false report is liable to criminal liability and bearing the cost incurred, it is actually extremely difficult to define whether the false report is deliberately made. As the saying goes, both parties claim to be right. Who will eventually be held responsible for meeting the enormous audit expenses?

As far as I understand it, the HKMA may appoint an auditor to examine a bank in a wider context under the Banking Ordinance. However, details have not been set out as mentioned above. I hope the Government can make it clear that the SFC can, as provided in clause 156, directly appoint an auditor to carry

out examination work in response to client requests to examine the securities department of a bank, either in subsidiary legislation or in the Memorandum of Understanding signed with the SFC.

Although the industry has repeatedly discussed with the Administration to reflect these questions of principle, our demand for standardized regulation has so far not received any positive responses. In reply to the enquiry made by the industry, the Government has merely stated briefly that the Banking Ordinance has provided similar regulation and assured the industry not to worry. I would like to reiterate that even if more stringent legislation is in place, equality can still not be achieved if the law is not enforced with equal strength.

Apart from this, the Bill requires the responsible person of a securities firm to bear the wrongdoing of his subordinate and bear criminal liability, or even serve jail terms. The industry considers the relevant provision excessively harsh. May I ask whether senior officials under the accountability system are required to bear criminal liability for the wrongdoing of their subordinates (I must stress that I am talking about criminal liability)? The provision has actually greatly disturbed the industry, for there is bound to be dry branches in a big tree. An employer can hardly know which employee has a conduct problem before the problem really arises. Of course, every employee is considered to be good in the eyes of his boss, and those who were considered not good should have been sacked a long time ago. Excessively strict regulation will not only impede the development of the local securities industry, but also deter international investors. If that really happens, the local securities industry will find it even harder to measure up to international standards.

As uniform regulation is not yet in place, the Memorandum of Understanding signed between the SFC and the HKMA has thus become a crucial criterion for enforcement. It also serves as an agreement between the two regulatory bodies in respect of the roles they should play. It is just a window-dressing tactic for the SFC to consult the HKMA. What matters most is who holds the decision-making power. In order to allay the worries of the industry and the public, the relevant authorities should indeed handle the matter in a liberal, fair and highly accountable manner by making the Memorandum of Understanding and future amendments to it open to the public in future. I understand that the Government is actually preparing to do so. I have also

been told that a similar memorandum in the United Kingdom is available for public inspection on the Internet. As electronic services are being actively promoted in the territory, I believe we should have no problem following suit.

Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Financial Services, you may speak again.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, Mr WU has just stated the industry worry that clause 156 may be abused by clients. The Government and the industry have discussed this clause in detail at the many consultative meetings held over the past two years and, upon the request of the industry, it has incorporated more safeguards into the Bill to avoid abuse.

Under this clause, a client should give the reasons for an application and the relevant information in the form of statutory declaration, and making a false statutory declaration constitutes a criminal offence. Upon receipt of the application, the SFC must first carry out a preliminary investigation; secondly, it must give the relevant organization a reasonable chance to make representation; thirdly, it must be satisfied that the applicant has good reasons; and fourthly, it must ensure that the appointment of auditors is in the interest of the applicant, the licensed corporation, the associated entity or the investing public. The SFC can only make a decision to appoint an auditor after the four prerequisites have been met.

Moreover, I have explained earlier that the SFC may direct the client making the application to pay the whole or part of the expenses of audit.

The position of the Government is that clause 156 has struck a reasonable balance between investors and intermediaries. To further dispel the worries of

the industry, the SFC has promised to conduct a review together with the industry from time to time to ensure the appropriate use of the provision.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to clauses 189 and 225 and the subheading before clause 192, which deal with deletion, and the subheading before clause 191, which deals with addition, have been passed, clauses 189 and 225 and the subheading before clause 192 are deleted from and the subheading before clause 191 is added to the Bill.

CLERK (in Cantonese): Heading of Part V, clauses 113 to 120, 122 to 139, 141 to 145, 147 to 170, 186, 187, 188, 190 to 195, 209 to 214, 216, 217, 218, 220, 221, 222, 224 and 226 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 171 to 180, 182, 184, 197, 199 to 208, 237 to 241, 243 to 247, 249 to 255, 257 to 269, 271 to 274, 276 to 281 and 283 to 298.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move the deletion of clauses 199, 208 and 276, and amendments to the other clauses read out just now, as set out in the paper circularized to Members.

The amendments mainly cover two areas, that is, the powers of investigation, regulation and intervention of the SFC and the handling of market misconduct.

Clauses 172 and 207 of the Bill are amended to clarify the application of the provisions. Clause 172 empowers the SFC to carry out a preliminary investigation into the misconduct of a listed corporation while clause 207 allows the SFC to apply to the Court for an order on discovery of misconduct by the listed corporation to protect the interests of members of the listed corporation. The amendments improve the existing provisions and enable the SFC to handle the misconduct of a listed corporation before listing to protect investors more effectively.

We note that the industry has asked for the regulation of the securities business of banks and securities brokers in the same way. I restate here that the provisions in the Bill on investigation and regulation are also applicable to the securities business of banks and securities brokers, only that the HKMA is responsible for the day-to-day regulation of the securities business of banks.

Amendments are proposed to clauses 175 and 207 to clearly specify that the securities business of banks is also subject to these two clauses and regulated by the SFC. The amendment to the power of investigation under clause 175 ensures that the SFC has the power to investigate the persons in charge of the securities business of banks to ascertain if there are grounds for disciplinary sanctions in accordance with Part IX of the Bill and the provisions of the Banking (Amendment) Bill 2000 on disciplinary sanctions.

The Bills Committee and market participants have inquired if clauses 172, 173, 174 and 177 of the Bill would deprive the right of a person to avoid self-incrimination. The amendments further amend clauses 172 and 177 to clearly specify that when the SFC makes preliminary inquiry into misconduct of a listed corporation by invoking clause 172 or carries out an investigation by virtue of 177, it may request information from the relevant persons. Even if the information may cause the person to be incriminated, he must furnish the information. Yet, the amendments also provide protection for the person who furnishes information. According to clause 180 as amended, the information furnished by the person shall not be admissible as evidence against the person in any criminal proceedings unless in other circumstances specified. The amendments are consistent with the policy intent of sections 29A and 33A of the existing Securities and Futures Commission Ordinance.

Clause 197 of the Bill empowers the SFC to issue a restriction notice to a licensed intermediary to restrict its dealing with client assets. The amendment clearly defines and narrows down the scope of such assets. We agree with the Bills Committee that it is impossible for a licensed intermediary to deal with assets beyond its control, such as the assets of a third party, but a licensed intermediary cannot be allowed to cover assets ownership through a third party. Therefore, the amendments add a provision to prohibit a licensed intermediary from assisting, counselling or procuring another person to dispose of any relevant assets, to effectively protect client assets.

The amendments propose the deletion of clause 199 from the Bill and the Bills Committee has agreed, after detailed discussion, that clauses 197 and 206 of the Bill have given clients reasonable protection and the application of clause 206 is similar to that of clause 199, therefore, clause 199 is not essential. In fact, the major difference between clause 206 and clause 199 is that the former specifies that the SFC must file an application to the Court before dealing with the relevant client assets while the latter has deleted this provision to enable the SFC to deal with urgent cases more quickly. The Bills Committee has expressed worries about this arrangement, and experience shows that the SFC can get a court order or injunction within a short time. After negotiation with the SFC, we believe the relevant amendment would not affect the actual capability of the SFC in protecting investors.

To further enhance the transparency of the exercise of the power of intervention by the SFC, we have accepted the views of the Bills Committee. An amendment is proposed to clause 202 of the Bill to specify that the SFC must publish in the Gazette the decisions of regulation it made according to clauses 196, 197, 198 or 201.

The amendments also propose the deletion of clause 208 since the relevant provision will be moved to Part XVI as new clause 378A.

In the following, I would focus on the amendments to Parts XIII and XIV of the Bill. The amendments cover mainly two areas: firstly, improving the proceedings of the Market Misconduct Tribunal (MMT) to enable more effective handling of the relevant cases. Secondly, making the provision on market misconduct more explicit to enable market users to understand more easily what is unacceptable market misconduct. The amendments also clarify the intent of act and the defence provision under certain clauses to protect market users against innocent violation of law.

To improve the proceedings of the MMT, an amendment is proposed to clause 243(7) of the Bill to empower the Chief Executive to establish additional Tribunals where he thinks fit, to deal with cases more expeditiously.

Amendments are also proposed to clauses 245 and 246 to clearly specify that the power of the MMT to request information or evidence from a person overrides the common law right of a person to avoid self-incrimination. In other words, even a person may be incriminated, he must observe the order of the MMT. The amendments expressly reflect the existing practice of the Insider Dealing Tribunal.

I also propose an amendment to clause 247 to ensure that the information furnished by a person to the MMT shall not be admissible as evidence in any legal proceedings against that person unless in circumstances specified under clause 247 (such as perjury). The amendment to clause 247 also allows the use of the relevant information in private proceedings instituted under clause 272 or 296. It facilitates the institution of proceedings by an investor who has incurred losses as a result of the market misconduct of other people to claim compensation from these people.

We have accepted the views of the Bills Committee and proposed an amendment to clause 249 to ensure that the MMT can only make an order

requiring the payment by persons who have engaged in market misconduct of costs as costs reasonably incurred in relation or incidental to any proceedings or investigations.

Amendments are proposed to clauses 249(1) and 250(1) to set out more specifically that the MMT must give a person an opportunity of representation before issuing an order to him.

Amendments to clauses 257(2) and 259 are made in compliance with the proposal of the Bills Committee to empower the MMT to grant stay of execution of its determination or order, and the relevant proposal is reflected in new clause 256A.

I would like to briefly outline the specific amendments to the provisions on market misconduct and offence. When the Bills Committee discussed the criminal prosecution arrangement related to market misconduct, it remarked that the onus of proof should rest with the prosecuting authority. Market participants have expressed the same views. I wish to restate that, with the exception of some very special cases accepted by the public, in general, whether under the civil tribunal system under Part XIII or the criminal system under Part XIV, the onus of proof is on the MMT prosecutor or the prosecuting authority. The amendment to clause 294 on offences seeks to clarify that, unless the prosecuting authority has proven that a person knows or has recklessly committed the relevant act, he will not be deemed as having violated the law.

The Bills Committee is very much concerned about whether the provisions on market misconduct have specifically set out the mental element to avoid the innocent violation of the law by market users. Thus, amendments are proposed to clauses 265 and 287 to make the provisions more explicit.

Some market participants have also proposed updating the defence provisions related to insider dealing under the existing Securities (Insider Dealing) Ordinance to match the standards of other international financial centres. After in-depth discussions with these market participants and making reference to the relevant provisions of the United Kingdom Criminal Justice Act 1993, we propose amendments to clauses 262 to 264 and 284 to 286. We believe the amendments have clarified the application of the defence provisions and complied with the international standards. We can thus avoid inadvertently prohibiting acts that are accepted by markets outside Hong Kong and promote the normal development of our stock market. We have been

given to understand that the defence provisions as amended are generally accepted by market participants.

The amendments to clauses 265(5) and 287(5) have responded to the views of market participants and excluded off-market transactions from application because these transactions will not influence the prices of stocks in a regulated market.

Clause 290 provides for offence related to the disclosure of false or misleading information by which a person is induced to carry on securities or futures contract transactions. The amendment proposes the deletion of negligence as mental element. The Bills Committee and we have examined in-depth whether negligence should be deemed as mental element, and the Bills Committee has particularly consulted the media on the matter. Our position is that the dissemination of false or misleading information to the public has very negative effects on the market and the investors and the quality of disclosure of a listed corporation directly reflects the level of corporate governance and affects the values of its shares. Therefore, we think that a person responsible for disseminating information is duty-bound to make his best efforts to ensure the accuracy of the information and avoid misleading investors.

Since the Bills Committee and the media have expressed strong views on the matter, we accept that we should not criminalize the negligent dissemination of false information at this stage, thus, we propose the deletion of negligence as mental element from clause 290. However, in the civil provisions of clause 268, we propose preserving negligence as mental element to protect investors and maintain the quality of market information. Consequential to the amendment to clause 290, we also propose the deletion of negligence as mental element from clause 293 which is related to offences similar to those related to leveraged foreign exchange transactions.

Although the provision on the dissemination of false or misleading information to induce a transaction has clearly set out the relevant mental element, we propose amendments to some defence provisions applicable to persons related to information dissemination channels such as printers, the broadcasting sector or Internet service providers. Hence, the provision is not only applicable to a corporation but also extended to a person acting on behalf of the corporation such as an employee or agent. We believe it is a more reasonable arrangement and the relevant amendments are reflected in clauses 268, 290 and 293.

Amendments are also proposed to clauses 273 and 297 so that the SFC may make "safe harbour" rules to prescribe the circumstances under which defence may be claimed in respect of market misconduct or offence. These are purely technical amendments. The original provision requiring the SFC to consult the public on the draft rules has been deleted since the provision has been incorporated into new clause 384A and is applicable to all rules to be made by the SFC. Later, I will brief Members on the relevant provisions when I propose the addition of clause 384A.

In the light of the views of market participants and having made reference to the experience of foreign countries, the SFC proposes making "safe harbour" rules on price stabilization activities in an initial public offering to prescribe the circumstances under which any activity that would otherwise constitute market misconduct shall not be regarded as constituting such misconduct, and a public consultation will be conducted on the rules.

Amendments are also proposed to clauses 272 and 296 of the Bill to enable an investor who has brought an action under the two clauses to claim compensation from a person who has engaged in market misconduct to more effectively use the determination or evidence of the MMT, which will further facilitate the exercise of the investor's right to claim compensation.

Lastly, the amendments propose the deletion of clause 276 because the clauses in Part XIII do not have retrospective effect, and Part 1 of Schedule 9 provides for the transitional arrangements in Part XIII.

The technical amendments to other clauses clarify the application of the provisions and make the provisions more consistent. Thank you, Madam Chairman.

Proposed amendments

Clause 171 (see Annex III)

Clause 172 (see Annex III)

Clause 173 (see Annex III)

Clause 174 (see Annex III)

Clause 175 (see Annex III)

Clause 176 (see Annex III)

Clause 177 (see Annex III)

Clause 178 (see Annex III)

Clause 179 (see Annex III)

Clause 180 (see Annex III)

Clause 182 (see Annex III)

Clause 184 (see Annex III)

Clause 197 (see Annex III)

Clause 199 (see Annex III)

Clause 200 (see Annex III)

Clause 201 (see Annex III)

Clause 202 (see Annex III)

Clause 203 (see Annex III)

Clause 204 (see Annex III)

Clause 205 (see Annex III)

Clause 206 (see Annex III)

Clause 207 (see Annex III)

Clause 208 (see Annex III)

Clause 237 (see Annex III)

Clause 238 (see Annex III)

Clause 239 (see Annex III)

Clause 240 (see Annex III)

Clause 241 (see Annex III)

Clause 243 (see Annex III)

Clause 244 (see Annex III)

Clause 245 (see Annex III)

Clause 246 (see Annex III)

Clause 247 (see Annex III)

Clause 249 (see Annex III)

Clause 250 (see Annex III)

Clause 251 (see Annex III)

Clause 252 (see Annex III)

Clause 253 (see Annex III)

Clause 254 (see Annex III)

Clause 255 (see Annex III)

Clause 257 (see Annex III)

Clause 258 (see Annex III)

Clause 259 (see Annex III)

Clause 260 (see Annex III)

Clause 261 (see Annex III)

Clause 262 (see Annex III)

Clause 263 (see Annex III)

Clause 264 (see Annex III)

Clause 265 (see Annex III)

Clause 266 (see Annex III)

Clause 267 (see Annex III)

Clause 268 (see Annex III)

Clause 269 (see Annex III)

Clause 271 (see Annex III)

Clause 272 (see Annex III)

Clause 273 (see Annex III)

Clause 274 (see Annex III)

Clause 276 (see Annex III)

Clause 277 (see Annex III)

Clause 278 (see Annex III)

Clause 279 (see Annex III)

Clause 280 (see Annex III)

Clause 281 (see Annex III)

Clause 283 (see Annex III)

Clause 284 (see Annex III)

Clause 285 (see Annex III)

Clause 286 (see Annex III)

Clause 287 (see Annex III)

Clause 288 (see Annex III)

Clause 289 (see Annex III)

Clause 290 (see Annex III)

Clause 291 (see Annex III)

Clause 292 (see Annex III)

Clause 293 (see Annex III)

Clause 294 (see Annex III)

Clause 295 (see Annex III)

Clause 296 (see Annex III)

Clause 297 (see Annex III)

Clause 298 (see Annex III)

MR HENRY WU (in Cantonese): Madam Chairman, the powers of the SFC to supervise, investigate and intervene, the legal procedures, the Market Misconduct Tribunal and crimes related to dealings in securities and future contracts are definitely matters of the utmost and immediate concern to the industry. In this connection, the industry has repeatedly reflected its views to the Government and raised proposals during the scrutiny of the Bill. As pointed out by me at Second Reading, the verbatim record of the Bills Committee has reflected our views and suggestions with respect to the excessive

powers of the SFC. I therefore do not intend to repeat the views here since there should be detailed records of the relevant discussions.

Clauses 172, 173 and 176 stipulate that the SFC is empowered to appoint officers to investigate a suspected company. Having no right to remain silence, the person being investigated must report everything to the investigation officers, including giving self-incriminatory evidence. In other words, this person is obliged to provide information that may even lead to self-incrimination, and is even stripped of his entitled right to remain silent. This shows that the powers of the SFC are really enormous.

In clauses 265, 269, 287 to 291, the term "artificial price" has been repeatedly translated as "非真實價格". I am afraid disputes may arise in future since the Bill has failed to provide a statutory interpretation for this term. I would like to point out here that although market trading prices are determined in an artificial manner in accordance with the market situation, the "artificial price" is nonetheless a real one.

In addition, the industry has made enquiries in connection with the following provision and sought clarifications from the relevant authorities. This is because it is stated in the provision that a broker engaging in trading upon the instruction of a client will very probably be deemed as having assisted the client to carry out a misconduct act and thereby contravening clause 269, if the client is subsequently convicted of misconduct. On the other hand, a broker refusing to trade in accordance with a client's instruction will contravene clause 156. Faced with such a dilemma, the broker is "doomed" whatever choices he makes. As far as I understand it, it is still undecided as to how this situation should be addressed.

In this connection, I hope the relevant authorities can, in making subsidiary legislation or putting the relevant law into actual implementation in future, fully consider the views of the industry.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Secretary for Financial Services, do you wish to reply?

(The Secretary for Financial Services indicated that he did not wish to reply)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to clauses 199, 208 and 276, which deal with deletion, have been passed, clauses 199, 208 and 276 are deleted from the Bill.

CLERK (in Cantonese): Clauses 171 to 180, 182, 184, 197, 200 to 207, 237 to 241, 243 to 247, 249 to 255, 257 to 269, 271 to 274, 277 to 281 and 283 to 298 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 299 to 302, 304 to 310, 313 to 328, 331, 332, 333, 335 to 350, 352 to 361, 363 and 364, and the subheading before clause 358.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move the deletion of clause 355 and amendments to the other clauses and the subheading read out just now, as set out in the paper circularized to Members.

Part XV updates the existing system for the disclosure of interest in respect of securities. The amendments can roughly be divided into three parts: first, under the premise of enhancing market transparency, simplifying the responsibilities and procedures for disclosure of interest; second, improving the provisions related to breach and offence; and third, making the provisions more explicit and effectively reflect the policy objective.

The proposals in the amendments reflect the intent of the industry and Members, that is, while enhancing disclosure, the burden on the industry should be reduced as far as possible to facilitate market operation.

In respect of simplifying the responsibilities and procedures of disclosure, we propose simplifying the responsibilities for disclosure of securities borrowing. In regard to securities borrowing, there may be a large amount of lending and returning of the same type of shares, but over elaborate disclosure of such transactions may not have practical value for investors. Therefore, clause 304(11)(iii) is added to the Bill, granting exemption to certain securities borrowing transactions. After conducting further consultations with market participants, we have accepted their views and agreed to extend the scope of exemption.

As a result of the complicated nature of securities borrowing transactions and other similar transactions, the SFC set up a working group in April last year to study how to regulate the responsibility of notification without affecting market operation. The Working Group concluded that the SFC should be empowered to make subsidiary legislation to establish a simplified disclosure system for certain securities borrowing transactions.

Therefore, clause 304(11) is amended to remove from the Bill relevant provisions to be incorporated into the rules, and new clause 365A is added to the Bill to empower the SFC to make such rules.

We also propose the deletion of the provision requiring duplicate disclosure in respect of the same matter. The amendment proposes that so long as a holding company has added up all interests of its wholly owned subsidiary, the wholly owned subsidiary will not have to make independent disclosure. The relevant proposal is reflected in the amendment to clause 304(9).

The amendments also propose the deletion of subclauses (3) to (5) of clause 335 so that a director or the chief executive of a listed corporation does not have to give notification twice on the shares or debentures granted to his spouse or any minor child. After the amendment, a director or the chief executive only needs to give notification on the above matter once under subclauses (1) and (2) of clause 335.

The amendment to clause 317(1) further simplifies the notification procedures, when a person gives a notification, he only needs to disclose the percentage of his interests but not the percentage level. Since duplicate notification does not have any practical value to investors, the above amendment can reduce the responsibility for disclosure without affecting market transparency and the right to information of investors.

I have also proposed simplifying the responsibility for disclosure of change in the nature of interests, so that a person buying or selling interests only needs to give notification if the percentage level of his long or short positions after the relevant transaction exceeds a whole number. In response to the suggestions of market participants propose that similar provisions should be applicable to change in the nature of interests. In other words, the person will not be responsible for disclosure of minor change in the nature of interests. The proposal is reflected in the amendment to clause 304(7).

Lastly, under the original clause 314, the holder, trustee or custodian of an overseas registered collective investment scheme approved by the SFC does not have to give notification on the interests in the scheme. After discussions with the industry, to further simplify the procedure, we propose abolishing the above requirement and procedure for approval. So long as an overseas scheme complies with the provisions under clause 314(4) of the Bill, it is

eligible to become an exempted overseas scheme. Thus, the industry can save the expenses required for an application for approval of an overseas scheme and reduce the administrative burden.

In respect of the amendment related to breach and offence, we have accepted the views of the Bills Committee to specify clearly in the provisions that only a failure to observe the requirement on disclosure without reasonable excuse will be deemed as a breach. The proposal is reflected in the amendments to clauses 319, 325 and 356(4). The amendments respond to the request of the industry and further ensure that a person with the responsibility for disclosure will not be prosecuted and convicted as a result of innocent oversight or omission.

The rest of the amendments make the provisions more explicit and easily understood, and accurately reflect the policy objective. More important amendments include the amendments proposed to clauses 314(1), 319(4) to (6) and 347(5).

Under clause 347(3), members of a listed corporation may make an application to the Financial Secretary for an investigation with respect to particular shares in or debentures of a listed corporation. Depending on the result of the investigation, the applicant may have to bear the costs and expenses incurred by the investigation. I agree with Members that the applicant has the right to know the estimated expenses required for the investigation and the expenses to be met by the applicant at the end shall not exceed the estimated expenses. This proposal will enable an applicant to know more clearly the expenses he may have to bear, make the application procedures more transparent and more effectively protect the interests of the applicant.

Other amendments are technical amendments to better reflect the policy objective and make the provisions more explicit.

The provisions on disclosure of interests as amended strike a balance between market development and transparency and the right to information of investors. Nevertheless, as I have said during the resumption of Second Reading debate, since the market is developing at a tremendous pace, we promise to keep close contacts with the industry after the implementation of the amendments proposed. We will also conduct a review where appropriate in the light of the experience and needs in actual operation.

Proposed amendments

Clause 299 (see Annex III)

Clause 300 (see Annex III)

Clause 301 (see Annex III)

Clause 302 (see Annex III)

Clause 304 (see Annex III)

Clause 305 (see Annex III)

Clause 306 (see Annex III)

Clause 307 (see Annex III)

Clause 308 (see Annex III)

Clause 309 (see Annex III)

Clause 310 (see Annex III)

Clause 313 (see Annex III)

Clause 314 (see Annex III)

Clause 315 (see Annex III)

Clause 316 (see Annex III)

Clause 317 (see Annex III)

Clause 318 (see Annex III)

Clause 319 (see Annex III)

Clause 320 (see Annex III)

Clause 321 (see Annex III)

Clause 322 (see Annex III)

Clause 323 (see Annex III)

Clause 324 (see Annex III)

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Clause 327 (see Annex III)

Clause 328 (see Annex III)

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Clause 335 (see Annex III)

Clause 336 (see Annex III)

Clause 337 (see Annex III)

Clause 338 (see Annex III)

Clause 339 (see Annex III)

Clause 340 (see Annex III)

Clause 341 (see Annex III)

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Clause 343 (see Annex III)

Clause 344 (see Annex III)

Clause 345 (see Annex III)

Clause 346 (see Annex III)

Clause 347 (see Annex III)

Clause 348 (see Annex III)

Clause 349 (see Annex III)

Clause 350 (see Annex III)

Clause 352 (see Annex III)

Clause 353 (see Annex III)

Clause 354 (see Annex III)

Clause 355 (see Annex III)

Clause 356 (see Annex III)

Clause 357 (see Annex III)

Clause 358 (see Annex III)

Clause 359 (see Annex III)

Clause 360 (see Annex III)

Clause 361 (see Annex III)

Clause 363 (see Annex III)

Clause 364 (see Annex III)

Subheading before clause 358 (see Annex III)

MR HENRY WU (in Cantonese): Madam Chairman, the industry, particularly representatives of investment banks, has reflected to me that although numerous appropriate amendments have been made to Part XV in the light of its views, the amended provisions related to disclosure of interests is still considered too complicated and strict, even more so than the regulatory laws enacted for securities markets in other international financial centres. It is feared that this will impede the proactiveness of international investors in investing in the market.

Clauses 306, 316 and 339 provide that, under the new disclosure system, the initial shareholding disclosure threshold for persons other than directors and chief executives will be lowered from 10% to 5%. At the same time, certain disclosure requirements are extended to cover short positions, unissued shares and cash-settled derivatives products, and the disclosure notification period will be shortened from five to three business days. All these remain matters of concern to the industry.

It is pointed out by the industry that the relevant provisions will make actual operation more complicated, particularly for operators handling large volumes of investment transactions. After the initial shareholding disclosure threshold so lowered to 5%, they will be required to make frequent reports on their daily transactions, which will in turn increase their administrative costs. The industry is of the view that the new disclosure system will not bring actual benefit to investors. On the contrary, the requirement for making constant reports in the course of investment might hamper investor desires. Alternatively, investors might even be driven to other markets as a result. This will, to a certain extent, affect the trading and circulation of Hong Kong stocks.

The Financial Secretary once said that expeditious measures must be taken to bring Hong Kong's financial and securities market on a par with international standard with a view to maintaining our competitive edge in the region. However, the industry is worried that these measures, which go far beyond international practices, will not succeed in attracting investors from overseas. What is more, overseas investors who have already entered the local market might be even scared away and might leave the local securities market, thereby further dealing a blow to its growth.

I remember not long after the Financial Secretary, Mr Antony LEUNG, took office, he and I argued about the viewpoint on "clear water breeds no

fish". My viewpoint was shared by Mr LEUNG, probably because of his experience in the business sector for many years. Regrettably, not everyone in the Policy Bureaux is as liberal as Mr LEUNG. It is not impossible for this phenomenon to be found in the local securities market. What does "clear water breeds no fish" really mean? In brief, when water reaches the pure water state when no impurities can be found, fish can no longer live in it. This is because it is absolutely impossible for Nature's biological chain to be found in pure water. If there is no micro-organisms in the water, small fish will be unable to live; and if small fish cannot survive, big fish will likewise die. Like over regulation or intervention of market operation will stifle the vitality and momentum of the market, we will end up having pure water without live fish. Should that happen, even if Mr LEUNG teaches us how to fish and give us a net, we will still starve to death!

Thank you, Madam Chairman.

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

(No Member responded)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to clause 355, which deals with deletion, has been passed, clause 355 is deleted from the Bill.

CLERK (in Cantonese): Clauses 299 to 302, 304 to 310, 313 to 328, 331, 332, 333, 335 to 350, 352, 353, 354, 356 to 361, 363 and 364 and the subheading before clause 358 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):	New clause 98A	Commission to maintain register of authorized automated trading services
	New clause 114A	Application of section 114 in relation to conduct or activities outside Hong Kong
	New clause 130A	Approval to become or continue to be substantial shareholder
	New clause 130B	Commission's power to give directions
	New clause 139A	Amendment of Schedule 6A

New clause 161A	Use of incriminating evidence in proceedings
New clause 169A	Requirements for offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity
New subheading before new clause 170A	Division 5 - Miscellaneous
New clause 170A	Amendment of Schedule 6B
New clause 189A	Disciplinary action in respect of registered institutions, etc.
New clause 191A	Guidelines for performance of functions under section 187(2) or 189A(2)
New clause 213A	Use of incriminating evidence required by Tribunal
New clause 220A	Applications for stay of execution of decisions of Tribunal
New clause 230A	Management of compensation fund
New clause 256A	Applications for stay of execution of orders of Tribunal under section 249, 250, 251 or 252

New clause 295A	Transactions relating to contravention of Divisions 2 to 4 not void or voidable
New clause 357A	Power of Court of First Instance to impose restrictions on shares, etc. in case of failure to provide information required by listed corporation
New clause 357B	Power of Financial Secretary to impose restrictions on shares, etc. in case of conviction of offences for non-compliance of notification requirements
New clause 357C	Power of Financial Secretary to impose restrictions on shares, etc. in connection with investigation
New clause 365A	Rules by Commission
New clause 378A	Civil liability for false or misleading public communications concerning securities and futures contracts
New clause 384A	General provisions for rules by Commission.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move that the new clauses and the new subheading read out just now, as set out in the paper circularized to Members, be read the Second time.

New clause 98A specifies that the SFC shall maintain a register of authorized automated trading services and cause the register to be available to the public in the form of an on-line record.

To better protect investors, clause 114A is added to incorporate regulated activities carried out in a place outside Hong Kong into the scope of regulated activities.

The Government has accepted the views of the Bills Committee and added clause 220A to empower the Securities and Futures Appeal Tribunal to, where it considers appropriate, grant the stay of execution of a decision of the Tribunal relating to a review, for instance, when the appellant may file an appeal against the decision with the Court of Appeal.

New clause 256A responds to the proposal of the Bills Committee to empower the Market Misconduct Tribunal to grant the stay of execution of its orders.

As I have said earlier, we propose the establishment of a simplified disclosure system for certain securities borrowing transactions and the details should be reflected in the rules rather than the principal legislation. New clause 365A is proposed to empower the SFC to make such rules.

New clause 378A originates from clause 208 of the Bill, the purpose of which is to give an investor a cause for bringing an action. If an investor incurs pecuniary losses on the basis of public communications concerning securities and futures contracts which is false or misleading in material, he may claim compensation from the responsible person. The proposal originates from the consensus of market participants that it is necessary to further improve the quality of the prescribed public communications, especially information related to listing, acquisition and merger. Empowering an investor to bring an action will directly enhance the investor's right to claim compensation and send a positive message to the market. Thus, a person responsible for the public communication will understand his responsibility to ensure the authenticity of the information.

Clause 378A also makes an investor understands that even if other provisions in the law sanction false or misleading public communications, an investor also has the right of action. Under clause 378A, an investor does not have to prove the existence of his right of action through bringing an action.

So, it is more convenient for an investor to bring an action and it will help reduce the relevant legal costs.

New clause 378A also improves the contents of clause 208 of the Bill. Firstly, clause 378A(3) makes "fair, just and reasonable" the criteria for determining legal responsibility and the degrees of responsibility. According to our Legal Adviser, these are the most appropriate criteria, incorporating the basic common law principles and supported by quite a few precedents. Secondly, we have improved the defence provisions in subclauses (4) to (6) applicable to a person who provides mere conduits of information. We have also set out clearly that the provisions are applicable not only to corporations but also agents of the corporations. This will dispel the worries of the industry.

With this new clause, we wish to enhance the right of action to claim compensation of an investor and further improve the quality of the public communications by listed corporations and the professionals concerned. I believe it will help upgrade the standard of corporate governance.

On the basis of the views of market participants and the Bills Committee, the amendments propose the addition of subclauses (1) to (3) and (5) to clause 384A. These new clauses specify that the SFC, before making any rules in accordance with the Bill, must observe other provisions in the clauses related to making rules, and unless the SFC finds it inappropriate to conduct a consultation, it must first conduct a public consultation on the draft rules. It is also specified that the SFC must publish the result of the consultation and make amendments to the draft rules accordingly. We believe this provision will enhance the transparency of the SFC and ensure the rules will meet the needs of the investing public, the industry and the market as well as facilitating compliance by the persons concerned.

Subclauses (4) and (6) to (8) of clause 384A originate from subclauses (7) to (10) of clause 384 without any material amendments.

The SFC has started to conduct a public consultation on each of the rules to be made under the Bill and it will submit the draft rules to the subcommittee of the Legislative Council for examination of the relevant subsidiary legislation after consultation.

Other new clauses are technical additions as set out in the paper carrying the amendments.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses and the new subheading moved by the Secretary for Financial Services be read the Second time.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the new clauses and the new subheading moved by the Secretary for Financial Services be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 98A, 114A, 130A, 130B, 139A, 161A, 169A, 170A, 189A, 191A, 213A, 220A, 230A, 256A, 295A, 357A, 357B, 357C, 365A, 378A and 384A, and new subheading before new clause 170A.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move that the new clauses and the new subheading read out just now be added to the Bill.

Proposed additions

New clause 98A (see Annex III)

New clause 114A (see Annex III)

New clause 130A (see Annex III)

New clause 130B (see Annex III)

New clause 139A (see Annex III)

New clause 161A (see Annex III)

New clause 169A (see Annex III)

New clause 170A (see Annex III)

New clause 189A (see Annex III)

New clause 191A (see Annex III)

New clause 213A (see Annex III)

New clause 220A (see Annex III)

New clause 230A (see Annex III)

New clause 256A (see Annex III)

New clause 295A (see Annex III)

New clause 357A (see Annex III)

New clause 357B (see Annex III)

New clause 357C (see Annex III)

New clause 365A (see Annex III)

New clause 378A (see Annex III)

New clause 384A (see Annex III)

New subheading before new clause 170A (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses and the new subheading moved by Secretary for Financial Services be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 9.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 to 9, as set out in the paper circularized to Members.

Schedule 1 contains interpretation of various terms and general provisions. The major amendments are as follows:

The amendments to the term "professional investors" are meant chiefly to reflect the views of the working group formed by the Securities and Futures Commission (SFC) comprising representatives of various market participants. One example of such amendments is the inclusion of the wholly-owned companies or holding companies of intermediaries and authorized financial institutions in the definition of the term.

The definition of "an opportunity to be heard" is to be deleted. One of the main procedural safeguards under the Bill is that the SFC is required to give

the specified party an opportunity to be heard. The original definition of this term is restricted to written representation. The Government has accepted the view of the Bills Committee and deleted the original definition of the term, to be substituted by the natural meaning of "an opportunity to be heard", that is, covering both written and verbal representations.

New section 7A specifies that "interests of investing public" where it appears in the whole Bill shall not prejudice the public interest.

Schedule 2 deals with the composition and procedures of the SFC, and it also specifies the non-delegable functions of the SFC.

The amendments to section 1, Part 1, Schedule 2 aims to provide that the majority of the members of the SFC shall be non-executive directors, so as to enhance its governance.

The amendments to sections 16, 21 and 23 of Part 1, which are proposed in response to the views of the Bills Committee, provides that the quorum for the SFC's meetings and written resolutions shall not be less than one third of its executive directors and not less than one third of its non-executive directors.

Under the Bill, the SFC is empowered to order that its decisions shall become effective before the relevant appeals are settled, so as to protect the investors. A new item is added to Part 2 to require that such a power is no-delegable, with a view to providing an additional measure of checks.

Schedule 6 defines the various regulated activities which can only be conducted after licensing and registration. The major amendments are as follows:

The amendments to the definition of "automated trading service" aim to state more clearly the scope of the term, such as by excluding pure electronic report services which do not form or result in a binding transaction.

The amendments to the definitions of "dealing in futures contracts" and "dealing in securities" deal with the relevant exclusion provisions and delete the references to "whose business involves the acquisition, disposal and holding of futures contracts/securities", so that only the intermediary services provided for professional investors will be excluded from regulation for the better protection of investors.

Besides, the amendments to the definition of "dealing in securities" aim to extend the scope of the definition to agreements with the purpose of securing a profit from the yield of securities or by reference to fluctuations in the value of securities. These products are already covered by the existing legislation.

The amendments to the definition of "advising on corporate finance introduce a new exclusion, whereby intermediaries giving such advice wholly incidental to the provision of securities dealing services are not required to apply for licences or to register, so as to reduce the burden of regulation.

The amendments to the definition of "leveraged foreign exchange trading" aim to exclude from regulation the contracts signed by corporations the main business of which is not currency trading with overseas corporations because of the currency exchange risks resulting from its hedging business. The exclusion under the original clauses is restricted to contracts signed with companies registered under the Companies Ordinance.

Regarding the definition of "securities margin financing", the Government has accepted the views of market participants and proposed corresponding amendments. Under the amendments, in cases where an intermediary effects an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation, the intermediary is not deemed to be providing any securities margin financing.

Schedule 7 deals with the appointment and hearing procedures of the Securities and Futures Appeals Tribunal (SFAT). The major amendments are as follows:

When I moved amendments to the provisions of Part XI earlier, I proposed that the SFAT be empowered to handle appeals relating to investor compensation and the securities business of banks, to stay the execution of its own decisions and to extend the appeal period. Parts of this amendment are meant to tie in with the implementation of these new proposals.

To impose new checks on the removal of the chairman and members of the SFAT from office, the Chief Executive shall be required to consult the Chief Justice of the Court of Final Appeal before removing the chairman from office by virtue of statutory grounds, and the Secretary for Financial Services is required to consult the chairman of the SFAT before appointing any member.

The original clauses contain arrangements for the appointment of temporary members, the aim being that in case a Tribunal member becomes incapacitated in the course of proceedings, a temporary member can be appointed to replace him, thereby saving the necessity of appointing a new Tribunal and thus the costs and time of the various parties involved in the appeal. The Bills Committee was of the view that the relevant arrangements might not be appropriate. Having considered that an average appeal may take only about one week to complete, we have moved an amendment to delete the original back-up arrangement.

In order to ensure fairer and more efficient handling of appeals, the original clauses contain arrangements for preliminary conferences. The Government has accepted Members' suggestion on the introduction of more safeguards, including specifying the aims of such conferences and matters that they can deal with. The SFAT Chairman shall also be required to chair such conference, and the Chairman must appropriately report to members of the SFAT on the matters relating to such meetings.

The amendments to Schedule 8 are basically meant to perfect hearing procedures of the Market Misconduct Tribunal (MMT).

First, the amendments propose to delete the definition of "temporary members" from section 1 of Schedule 8. The detailed provisions on appointing and removing ordinary members are listed in the amended sections 9 and 13, and the circumstances under which an ordinary member can be appointed are spelt out more clearly. Sections 10 to 12 can consequentially be deleted.

We also propose, for the sake of ensuring fair hearings, to add a new section 9A, specifying that a person to replace an ordinary member shall not be appointed unless the chairman of the MMT has recommended that a person should be so appointed having regard to the interests of justice and has given a reasonable opportunity to be heard to the affected persons. The above amendments have all be moved in response to the views of the Bills Committee.

The arrangement of appointing a person to replace an ordinary member is meant to provide flexibility. In case an ordinary member of the MMT is unable to complete all the hearing procedures for one reason or another, the appointment of another person to replace him can save the necessity of appointing a new Tribunal. This is intended to save the costs and time of the MMT and the parties involved in appeals.

The amendments propose to delete the arrangement for appointing a replacement Chairman. Although the legal adviser of the Government was of the view that the presence of such an arrangement could enable the MMT to function more smoothly and reduce the hearing time and expenses of the parties involved, the Bills Committee considered that it might make a hearing unfair. We have therefore accepted the view of the Bills Committee and proposed to delete the arrangement concerned. But the arrangement on appointing a replacement ordinary member is retained.

New section 6A in the amendments is introduced in response to the view of the Bills Committee; it specifies that before removing the chairman of the Tribunal from office, the Chief Executive must first consult the Chief Justice of the Court of Final Appeal, with a view to enhancing procedural safeguard. The amendments also propose to amend clause 7, making it applicable to the removal of ordinary members only.

The remaining amendments to Schedule 8 aim to make the hearing procedures of the Tribunal more formal and smoother.

Part 1 of Schedule 9 contains provisions that can enable the existing system to function smoothly, reasonably and orderly during its transition to the new system. The amendments involved are minor and technical ones based on this principle. The relevant details can be found in the amendments.

The amendments to Part 2 of Schedule 9 are also technical in nature, the aim being to reflect the latest amendments to the other parts of the Bill. They also contain some consequential legislative amendments drawn up after the publication of the Bill.

Madam Chairman, outlined above are the major amendments to the Bill. The remaining amendments involve only some minor and technical adjustments, the details of which can be found in the texts of the amendments.

Proposed amendments

Schedule 1 (see Annex III)

Schedule 2 (see Annex III)

Schedule 3 (see Annex III)

Schedule 4 (see Annex III)

Schedule 5 (see Annex III)

Schedule 6 (see Annex III)

Schedule 7 (see Annex III)

Schedule 8 (see Annex III)

Schedule 9 (see Annex III)

MR HENRY WU (in Cantonese): Madam Chairman, I think the part concerning the chairman and members of the Securities and Futures Commission (SFC) as set out in Schedule 2 should be reviewed again. Given that the recent Kowloon-Canton Railway Corporation (KCRC) incident has aroused public interest in the *modus operandi* of public bodies, a transparent and accountable *modus operandi* is set to become a trend and strong public demand. There is therefore even a greater need for the SFC, being such a high-powered regulatory body, to demonstrate a high degree of accountability and transparency.

The KCRC incident does remind us that past practices may not necessarily be the most satisfactory practices. We must make constant review and make improvement. Members did not raise much objection when the part concerning the "chairman of the SFC" was deliberated by the Bills Committee since the KCRC had not yet come to light at that time. Since the exposure of the incident, I came to realize that it is necessary to set up *modus operandi* with checks and balances for high-powered public bodies.

Drawing experience from the KCRC incident, we will find that the present set-up where the chairman of the SFC also acts as an executive director will possibly cause undue centralization of power. In order to solve this problem and perfect the organization and operation of the SFC, we may perhaps follow the practice of the KCRC by creating the post of Chief Executive, whereas the post of Chairman is to be taken up by a non-executive director instead. This will bring about checks and balances and greater accountability.

Furthermore, the industry has reservations about the single licensing system and transitional arrangements separately set out in Schedules 6 and 9. Under the Bill, a single licensing system will be introduced to replace the existing multi-registration system with a view to helping the SFC reduce administrative costs. At the same time, it will cut down the licensing fees for intermediaries for they will be permitted to structure their activities within one licence, including the regulated nine activities defined in Schedule 6, thereby allowing them greater flexibility in capital and resources deployment. Clients will also have the benefit of one-stop services from their intermediaries.

This single licensing system is apparently fit and proper. Moreover, both the industry and clients will be benefitted. We have therefore, in theory, no grounds to disapprove of it. However, we will appreciate the worries of the industry if we take a closer look at the relevant provision.

After the alteration of the licensing system, regulated activities will be classified into nine categories. The industry will be required to re-apply before the end of the two-year transition period. Moreover, only those who qualify can be granted a licence. The industry is worried that, after the enactment of the Bill, the numerous activities allowed to be carried out under a single licence on the existing licensing conditions will need to be split up. Alternatively, such activities might not be able to carry on because of the alternation of the licensing conditions governing certain regulated activities.

Though it is now argued that a single licensing system can help applicants reduce cost, the exact fees to be charged for a single licence in future will not be known until the passage of the relevant subsidiary legislation. The industry is worried that there might be a possibility for the nine regulated activities to be calculated separately under the new system because of the splitting arrangement mentioned by me just now. As a result, the cost might even multiply and we might face increases rather than reductions in licence fees at the end.

In order to allay the worries of the industry, I hope the Government can assure us that there will be no increases in future licence fees. Moreover, licensees can continue to carry on under the new system the regulated activities operating under the existing licences.

Thank you, Madam Chairman.

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

(No Member responded)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 9 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New Schedule 6A SPECIFIED TITLES.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move that new Schedule 6A, as set out in the paper circularized to Members, be read the Second time.

The new Schedule sets out the titles originally listed under clause 136, and the use of which is subject to restriction, such as "stockbroker", and stipulates that the titles can be updated by the Securities and Futures Commission by notice in the Gazette in order to tie in with the development of the market.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new Schedule 6A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New Schedule 6A.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move that new Schedule 6A be added to the Bill.

Proposed addition

New Schedule 6A (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new Schedule 6A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

SECURITIES AND FUTURES BILL

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

Securities and Futures Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Securities and Futures Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Securities and Futures Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Banking (Amendment) Bill 2000.

BANKING (AMENDMENT) BILL 2000

Resumption of debate on Second Reading which was moved on 29 November 2000

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee to study bills including the above, will now address the Council on the Committee's Report in respect of the Bill.

MR SIN CHUNG-KAI (in Cantonese): Madam President, as Chairman of the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000, I wish to report on the deliberations of the Bills Committee on the Banking (Amendment) Bill 2000. The Bill seeks to amend the Banking Ordinance to match the newly introduced regulatory regime for intermediaries under the Securities and Futures Bill so as to enhance the functions of the Hong Kong Monetary Authority (HKMA) in relation to the securities business conducted by authorized institutions (AIs).

During the course of deliberations, the Bills Committee was concerned about clause 3 of the Bill, which amends section 7(2) of the Banking Ordinance. The amendment stipulates that the HKMA shall take all reasonable steps to ensure "any other business" carried on by AIs are operated in a prudent manner. The Bills Committee was of the view that the amendment may unnecessarily expand the powers and functions of the HKMA which are unrelated to the regulation of regulated activities conducted by AIs. In response, the HKMA clarifies that the amendment seeks to state clearly that the supervisory duties of the HKMA embrace all businesses conducted by AIs, so that the HKMA may effectively perform its front-line regulatory role in respect of AIs. The amendment also reflects the existing practice of the HKMA in supervising the business of AIs on a consolidated basis. The Bills Committee accepted the explanation of the Administration and requested that assurance be given to the effect that the amendment is not intended to expand the powers and functions of the HKMA.

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

Furthermore, the Bills Committee was concerned that representatives who conduct regulated activities for exempt AIs are not required to be licensed by the Securities and Futures Commission (SFC). This would make it difficult to ensure that the representatives are qualified and fit and proper persons. The Administration explained that the HKMA will under clause 4 of the Bill maintain a register of such individuals for inspection by the public. The Administration also accepted a suggestion by the Bills Committee to amend the Securities and Futures Bill to state that AIs must ensure that their employees in the securities division must meet the same fit and proper criteria promulgated by the SFC in respect of its licensees for admitting the employees to the register, the information on which should be consistent with that on the register for licensees kept by the SFC. The HKMA and the SFC may conduct background checks on these representatives. The HKMA will even check if the representatives comply with the criteria in its day-to-day on-site inspection of AIs.

To ensure consistency in disciplinary actions and appeal mechanisms for SFC's licensees and AIs, the Administration accepted a suggestion from the Bills Committee to move an amendment to apply all sanctions and appeal mechanisms applicable to SFC's licensees to AIs and their employees in their securities divisons. Specific amendments include empowering the HKMA to take the names of AI representatives who have committed misconduct or are considered not fit and proper off the register, or suspend or withdraw the consent granted to the appointment of executive officers of AIs, transferring the power to reprimand the securities divisions of an AI from the HKMA to the SFC, extending such reprimand to employees in the relevant securities divisions, and routing all appeals against decisions in respect of the regulated activities of AIs and their representatives to the Securities and Futures Appeals Tribunal.

Madam Deputy, the Bills Committee supports the above amendments by the Administration and does not intend to move any Committee stage amendments. I commend that the Second Reading debate of the Bill be resumed.

MR HENRY WU (in Cantonese): Madam Deputy, I have spoken at some length about the principles and issues regarding the inconsistent supervision of banks carrying on securities business and securities firms during the Second Reading debate on the Securities and Futures Bill and at the Committee stage.

I do not think I need to repeat my points here again. I must, however, reiterate that I hope that despite the separate supervisory mechanism, the SFC and the HKMA may state clearly in the future Memorandum of Understanding details regarding the division of labour and enforcement so that both may enforce the law with the same vigour. I hope that in making the 39 items of subsidiary legislation in future, the Administration may take into careful consideration the professional and practical experience of the industry to ensure the securities industry may operate smoothly, may prosper and may continue with its securities and futures business to serve the investing public.

Thank you, Madam Deputy.

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

(No Member responded)

DEPUTY PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Financial Services to reply. The debate will come to a close after the Secretary for Financial Services has replied.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Deputy, to begin with, let me express my gratitude to Mr SIN Chung-kai, Chairman of the Bills Committee on Banking (Amendment) Bill 2000, and members of the Bills Committee for offering their valuable advice during the scrutiny of the Bill to assist the Government in introducing amendments to the Bill.

As I pointed out during the resumption of Second Reading debate on the Securities and Futures Bill, the SFC will introduce a new licensing system for regulated intermediaries. It is therefore necessary to introduce consequential amendments to the Banking Ordinance to bring the regulatory regime for AIs engaging in securities business into line with that of the SFC.

During the deliberations of the Bills Committee, Members were most concerned about whether the regulation of AIs by the HKMA on the one hand and the regulation of stockbrokers by the SFC on the other would bring about any differential treatment and unfair competition. They were also worried

about whether the new regulatory regime could ensure sufficient protection of the interests of investors and members of the public.

THE PRESIDENT resumed the Chair.

We appreciate Members' concerns. We consider that there are several important principles behind the making of this new regulatory regime. We must provide adequate protection to investors and create a level playing field for registered institutions and licensees of the SFC; at the same time, we must minimize duplicate regulation, so as to reduce unnecessary expenses.

I wish to emphasize that the HKMA is already exercising very prudent supervision on the overall business of AIs. In the case of securities business, for example, the HKMA requires, by means of administrative measures, AIs engaging in securities business to comply with the regulations and guidelines of the SFC. The Bill proposes to enhance the HKMA's supervision of the securities business of AIs on the basis of the existing framework, so as to bring about improvements both in terms of legal framework and enforcement. We propose to spell out the HKMA's statutory functions in respect of regulating the securities business of AIs under the new regulatory regime, so that the HKMA can effect supervision on the day-to-day securities business of AIs by virtue of the relevant provisions of the Securities and Futures Ordinance. This will ensure that these institutions will always comply with the provisions of the Securities and Futures Ordinance and other relevant regulations and guidelines. That way, the effectiveness of regulation and protection of investors' interests can be enhanced.

We propose to introduce a new registration system under the new regime. AIs wishing to engage in regulated activities must register with the SFC to become registered institutions. Later on, when I move the Committee stage amendments, I shall further explain the arrangements under this registration system. In effecting day-to-day regulation of the business of registered institutions, the HKMA will also adopt the same standards applied by the SFC in respect of its licensees. The HKMA will maintain close contact and co-operation with the SFC and discuss with it the common practical problems encountered in the course of supervision, so as to ensure effective supervision, avoid any grey areas and achieve the same standards applied by the SFC in respect of its licensees. Besides, we also propose that the HKMA should be

required to maintain a register of persons employed by registered institutions to engage in "regulated activities", which is identical to the register kept by the SFC. It is also proposed that there should be an electronic version of such a register, so that the public can access it on the Internet. That way, transparency can be enhanced.

According to the amended proposals, besides the above measures, disciplinary actions now applicable to licensees of the SFC, such as revocation of licence, suspension of licence, prohibition orders, private or public reprimand and fines, will also be applied to registered institutions and their securities employees found guilty of misconduct. I shall move an amendment to the Bill, with a view to transferring the power of reprimanding registered institutions from the HKMA to the SFC. Besides, the amended Bill will also empower the HKMA to take disciplinary actions against front-line staff of registered institutions for misconduct or conduct that reflects on their fitness and propriety.

To standardize the channels of appeal against the above disciplinary actions for registered institutions and licensees, I shall move an amendment later on to route all appeals to the Securities and Futures Appeals Tribunal instead of the Chief Executive-in-Council under the original arrangement.

I know that some Members are concerned about whether the powers of the HKMA will increase as a result of the addition of new clause 7(2) to the Bill. I wish to point out that the purpose of this clause is to clarify the functions of the HKMA under the Banking Ordinance, to make it clear that all the business activities of AIs, including their securities business, are subject to regulation by the HKMA. This clause does not seek to enlarge the functions and ambit of the HKMA.

To sum up, we believe that the Bill as amended will be able to provide an effective and fair regulatory regime for the securities business of registered institutions and enhance the protection for investors and members of the public. To tie in with the amendments in respect of the Securities and Futures Ordinance, I shall move several Committee stage amendments which have been discussed and endorsed by the Bills Committee.

Madam President, I hope that Members will support the Banking (Amendment) Bill 2000.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Banking (Amendment) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Banking (Amendment) Bill 2000.

Council went into Committee.

Committee Stage

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

BANKING (AMENDMENT) BILL 2000

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Banking (Amendment) Bill 2000.

CLERK (in Cantonese): Clauses 1, 7, 8, 13 and 14.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 to 6 and 9 to 12.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

During its deliberations of the Banking (Amendment) Bill 2000, the Bills Committee considered that it was inappropriate for the Bill to mention the "exempt status" of authorized institutions (AIs). In fact, under the proposed regulatory regime, an AI wishing to engage in securities business must register with the Securities and Futures Commission (SFC) and comply with the same regulatory standards applicable to licensees of the SFC. To avoid any misunderstanding that AIs can enjoy "exempt status", we therefore propose to replace the term "exempt authorized institutions" by "registered institutions". We also propose to amend clause 2 of the Bill to define such terms as "registration certificates" and "registered institutions", and for this reason, it is necessary to introduce consequential amendments to various provisions of the Bill.

As I pointed out in my earlier speech, the proposed amendments to the Bill basically aim to tie in with the new licensing system under the Securities and Futures Ordinance. For this reason, most of the amendments I am going to discuss are consequential amendments related to the Securities and Futures Ordinance. The objective is to standardize regulation and create a level playing field for the industry.

Under the proposed regulatory regime, the Hong Kong Monetary Authority (HKMA) is required to cause to be kept a register for the securities staff of registered institutions, and only those listed in the register are permitted

to engage in regulated activities on behalf of registered institutions. To standardize the regulation of registered institutions and that of licensees of the SFC, we propose to amend clause 4 of the Bill, so that the registers kept by registered institutions and those kept by the SFC for its licensed institutions can be brought into line with one another in terms of information coverage. We also propose to extend the coverage of these registers to include securities staff "hired" by registered institutions not necessarily on any direct employment relationship. This is identical to the arrangement for the licensees of the SFC. We also propose to introduce another amendment that allows members of the public to access the registers online free of charge.

As I explained earlier on, one of the main amendments in relation to the proposed regulatory regime is about disciplinary sanctions. The consensus of the Bills Committee is that registered institutions and their securities staff must be subject to the same disciplinary sanctions applicable to licensees of the SFC. To reflect this, we propose to amend clause 5 of the Bill, so as to transfer the power of reprimanding registered institutions from the HKMA to the SFC. It is also proposed that a new section 58A be added to the Banking Ordinance, empowering the HKMA to suspend or revoke the qualifications of the securities staff of AIs. The HKMA may also advise the SFC on whether any of these securities staff should be given disciplinary sanctions. Since the power of making a reprimand is to be transferred to the SFC, it is necessary to introduce a consequential amendment to clause 11 of the Bill.

I also propose to introduce a similar amendment to clause 9 of the Bill, so that the HKMA can be empowered under section 71C of the Banking Ordinance to revoke or suspend the consent given to executive officers of registered institutions. Besides, to more accurately reflect the legislative intent, we propose that it should be clarified in section 71D that the requirements on appointing two executive officers shall apply to each regulated activity, not a registered institution.

As for the appeal mechanism, under the original arrangement, appeals against the HKMA's decisions concerning the regulated activities of registered institutions should be lodged with the Chief Executive-in-Council. To standardize the regulatory procedures, we propose that such appeals should be lodged instead with the Securities and Futures Appeals Tribunal set up under the Securities and Futures Ordinance. For this reason, we have to amend clause 12 of the Bill.

In the amendment related to clause 6, we propose to delete the penalty of imprisonment for contravention of section 59B. This provision requires a registered institution to report to the HKMA on various matters such as changes in the ending date of a financial year. The amended penalty will be consistent with the penalty for violations of similar nature and severity under the Securities and Futures Ordinance, that is, only fines, not imprisonment. According to the original clauses, the relevant penalties are applicable to every director and manager in a registered institution. However, under the Banking (Amendment) Ordinance 2001, the definition of a "manager" no long covers the chief executive of a registered institution. For this reason, we must introduce a consequential amendment to clause 6, so as to ensure that the chief executive of a registered institution is also subject to the penalties stipulated in section 59B(4).

The rest of the amendments to the Bill are mostly technical in nature, or improvements to drafting.

The above amendments have all been discussed in detail by the Bills Committee. I hope that Members can support them.

With these remarks, Madam Chairman, I beg to move the above amendments.

Proposed amendments

Clause 2 (see Annex IV)

Clause 3 (see Annex IV)

Clause 4 (see Annex IV)

Clause 5 (see Annex IV)

Clause 6 (see Annex IV)

Clause 9 (see Annex IV)

Clause 10 (see Annex IV)

Clause 11 (see Annex IV)

Clause 12 (see Annex IV)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 to 6 and 9 to 12 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 8A Section added.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move that new clause 8A be read the Second time, as set out in the paper circularized to Members.

The object of clause 8A is to add section 63B to the Banking Ordinance to require auditors of registered institutions who in the course of discharging their duties have discovered events such as failure on the part of the institution concerned to comply with the regulations and guidelines set down in the Securities and Futures Ordinance and by the Securities and Futures Commission (SFC), to report the events in writing to the Hong Kong Monetary Authority. Similar provisions exist in the Securities and Futures Ordinance and it is applicable to auditors in licensed institutions under the SFC. The purpose of adding the proposed section to the Banking Ordinance is to ensure consistency in the regulation of registered institutions and licensed institutions. I hope Members can lend their support to the new provision.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 8A be read the Second time.

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

(No Member indicated a wish to speak).

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 8A.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam Chairman, I move that new clause 8A be added to the Bill.

Proposed addition

New clause 8A (see Annex IV)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 8A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

CHAIRMAN (in Cantonese): Bill: Third Reading.

BANKING (AMENDMENT) BILL 2000

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

Banking (Amendment) Bill 2000

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Banking (Amendment) Bill 2000 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Banking (Amendment) Bill 2000.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Dangerous Goods (Amendment) Bill 2000.

DANGEROUS GOODS (AMENDMENT) BILL 2000

Resumption of debate on Second Reading which was moved on 1 November 2000

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

MR JAMES TO (in Cantonese): Madam President, I rise to speak in my capacity as Chairman of the Bills Committee on Dangerous Goods (Amendment) Bill 2000 (the Bills Committee). The Bill seeks to improve control over dangerous goods to put the control regime in Hong Kong on par with the international system and to make it better meet the current needs of Hong Kong. The Bill contains all the necessary amendments to the principal Ordinance and enabling provisions, which will form the basis of future amendments to subsidiary legislation.

The Bills Committee has held a total of seven meetings and met with representatives of the retail industry.

The Bills Committee agreed to impose heavier penalties for offences under the Dangerous Goods Ordinance (DGO) to preserve the necessary deterrent effect which may have been eroded by inflation over the years. It also agreed to impose heavier penalties on repeat offenders.

Section 7 of the DGO outlaws the manufacture, possession, custody and control of prohibited goods (that is, goods which are extremely dangerous including certain explosives). The Bill also provides that any person who contravenes section 7 shall be guilty of an offence and shall be liable to a fine at level 6 (currently $100,000) and to imprisonment for six months. In view of the gravity of the offence, the Bills Committee is of the view that a heavier penalty should be imposed to preserve the necessary deterrent effect. The Administration has accepted the Bills Committee's view and will move a Committee stage amendment to raise the penalty for the offence to a level in line with that proposed for contravention of section 6 (the manufacture, storage, conveyance or use of dangerous goods without a licence), which is a fine at level 6 and imprisonment for six months for a first offence and a fine of $200,000 and imprisonment for 12 months for a subsequent offence.

Section 13 of the DGO requires the report of any accident by explosion or fire in any licensed premises. The Bill provides that the occupier of any premises who fails to report an accident in contravention of the provisions of section 13 shall be guilty of an offence and shall be liable to a fine at level 2 (currently $5,000). Some members of the Bills Committee are of the view that the proposed penalty may not be adequate to achieve the desired deterrent effect. Having considered the views of the Bills Committee, the Administration agrees to move a Committee stage amendment to raise the fine to level 3 (currently $10,000) to increase the deterrent effect.

The Bills Committee is concerned that with the future expansion of the coverage of control of dangerous goods on land from about 400 types to some 1 600 types in accordance with the International Maritime Dangerous Goods Code scheme of classification, some people may be inadvertently caught by the proposed legislation. The Bills Committee has therefore examined whether a due diligence defence provision is necessary.

The Administration observes that the full vigour of the offence provision on ordinary people has been significantly mitigated by the exempted quantity provisions in the subsidiary legislation. In other words, ordinary, personal use of daily products which are dangerous goods would unlikely be caught by the legislation, especially after the proposed relaxation of the exempted quantities under the subsidiary legislation to be made.

The Bills Committee notes that the current Bill only provides for a framework of legislative control over dangerous goods. Details of the regulatory regime would be set out in the subsidiary legislation which is now under preparation. The deputations which have submitted views to the Bills Committee have also expressed grave concern about the existing regulatory regime for dangerous goods. They are of the view that in the existing legislation there is no distinction between the handling of pure dangerous goods in bulk and the handling of dangerous goods in small packs. Hence, this will create undue hardships and difficulties to the retail trade, both in terms of cost control and daily operation.

The Bills Committee shares the views of the deputations and points out that the new regulatory regime should strike a right balance between protecting public safety and facilitating the retail business. The Bills Committee has taken the opportunity to review the various proposals in the subsidiary legislation to be made. The Bills Committee is pleased to note that the

Administration has taken on broad the views expressed by members and the retail trade, and appointed a consultant to review the regulatory regime for dangerous goods in small packs.

The Bills Committee accepts a three-tier system of control for regulating storage of dangerous goods in small packs as recommended by the consultant and the Administration. The Bills Committee has examined the proposed exempted quantities for different dangerous substances under different Classes of dangerous goods. The Bills Committee is satisfied that the proposed exempted quantities are set at a sufficiently high level to exempt ordinary storage in residential or domestic premises from control. The proposed exempted quantities will also be larger than the exempted quantities specified in the existing DGO.

To ascertain the impact of the proposed regulatory regime for dangerous goods in small packs on retail outlets, the Bills Committee has sought confirmation from the Administration to ensure the normal business of the trade will not be adversely affected. The Administration has advised that the Hong Kong Retail Management Association has been consulted and it finds the proposed approach agreeable in general.

The Administration has accepted the Bills Committee's view to move a number of Committee stage amendments to improve the contents and drafting of the Bill.

The Bills Committee supports the Bill to further strengthen control over dangerous goods.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the import and export industry I rise to speak in support of the Dangerous Goods (Amendment) Bill 2000. The new legal framework can make our regulatory regime on the import, export and transit of dangerous goods compatible with the relevant regulation and arrangements of our major trading partners. It can also strike a better balance between protecting the public and facilitating the operation of the import, export and retail industries.

Given that new law will expand the coverage of control of dangerous goods on land from about 400 types to some 1 600 types, some people may be

inadvertently caught by the legislation. However, the full vigour of the offence provision on ordinary people (especially regarding ordinary, personal use of daily products which are dangerous goods) has been significantly mitigated by the exempted quantity provisions in the subsidiary legislation. So, the nuisance caused by the new law has been kept to a minimum.

It should be noted that the Bill still falls short of providing measures that can serve to minimize its impact on the retail industry in the regulatory regime for dangerous goods in small packs. To comply with the relevant licensing regime, the trade will incur additional operating costs in driver training and retrofitting of vehicles. I hope the Administration will endeavour to act in a sympathetic manner and lead and educate the trade in compliance during a suitable length of time after the law when has come into effect. It should not add to the operating difficulties of the trade by executing one as a warning to a hundred others.

Madam President, I so submit.

MRS SELINA CHOW (in Cantonese): I support the resumption of the Second Reading of the Dangerous Goods (Amendment) Bill 2000. I would like to express my support for the resumed Second Reading on behalf of the industry, that is, the retail and wholesale industry, especially the retail industry. I would like to point out that in the process, the Government has undoubtedly tried its best in carrying out consultation, having frequently discussed with the industry. That was why at the final stage, concerns expressed by the industry during the initial stage were dispelled completely. But I must say the industry had experienced an initial period of extreme worry. Members, especially those who sat on the Bills Committee, will recall that under the old regime of control, enforcement was carried out by the Agriculture, Fisheries and Conservation Department (AFCD) for a considerable length of time. Then the work was taken over by the Fire Services Department (FSD). The change appeared to have involved changes in enforcement and policy, so much so that the industry felt very much worried. That is because the AFCD understood that retailers faced certain difficulties and that many of the storage limits were unrealistic. So, it frequently held discussions with the industry. When the FSD took over, however, it took a completely different course and the industry was worried. Then, at the Bills Committee we had discussions on the situation, and the Bureau and the industry had held in-depth discussions as well.

I very much support the Honourable James TO's remarks a while ago. The retail industry now regards the three-tier system and storage limit reasonable. This is of course due to the fact that both are suggested by the consultant after consultations with the industry. In addition to the Hong Kong Retail Management Association, other industries, as I understand it, have had the chance to express their opinions. I did consult them and found they seemed to be satisfied. Members will certainly know that the limits set in Hong Kong now are experimental because we do not follow exactly the practice in overseas countries. Even overseas countries may have different limits. So, during the implementation stage at the moment, I trust we must monitor the situation closely. But, specifically speaking, the industry considers the agreement reached with the Government acceptable.

I trust that in future there may be more laws to safeguard public safety. I hope the Government may then do what it has done this time, which is to conduct more discussions with the industry at an early stage to see what difficulty they may actually have in operation and enforcement and to give due consideration to international experience. In this way, the law will gain wide acceptance. If the law is reasonable, I trust this may make it easier for the Government in the enforcement of the same.

MR LAU KONG-WAH (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the passage of the Dangerous Goods (Amendment) Bill 2000. The practice for the import, export and transit of dangerous goods into from and through Hong Kong has been made in compliance with various land and sea regulatory requirements in Hong Kong and in overseas countries. Thus, it is imperative for the packing, labelling and other requirements in the Dangerous Goods Ordinance (DGO) to be revised in order to bring them in line with international standards.

The amendment this time imposes heavier penalties for the various offences under the DGO, for example, violations of section 7 thereof, relating to the manufacture, possession, custody and control of prohibited goods, may be liable to imprisonment for six months and a fine of $100,000. We support the imposition of heavier penalties for such more serious offences for enhanced deterrent effect. In addition, the amended DGO empowers the Director of Fire Services and the Director of Marine to issue codes of practice, stating in detail the guidelines and safety codes that trade practitioners must follow in

dealing with dangerous goods. The code also specifies that in addition to conveyance of Categories 1, 2 and 5 dangerous goods by vehicles, the licensing regime should be extended to cover conveyance of all other Classes of dangerous goods. It also requires that mandatory training of the vehicle driver should be introduced. All this will greatly enhance protection for the public.

Indeed, public safety is of the utmost importance. Drivers of vehicles that carry dangerous goods must have sufficient knowledge and experience required in dealing with various kinds of dangerous goods. Hence, the authorities should set a higher safety standard for such drivers and vehicles. For example, they should provide an enhanced training programme for drivers, additional safety installation and facilities for vehicles that carry dangerous goods and the installation of safety devices to prevent short-circuiting in liquid petroleum gas tankers or devices that prevent fires.

Madam President, on behalf of the DAB, I hereby indicate my support for the Dangerous Goods (Amendment) Bill 2000, and urge the Government to show its concern about training for drivers of vehicles that carry dangerous goods. I also hope that the Government will enhance promotion for the code of practice under the amended DGO so that the trade and the public may know the ambit of the law at an early stage.

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

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Dangerous Goods (Amendment) Bill 2000 was submitted to the Legislative Council for First and Second Readings on 1 November 2000.

I am very grateful to Mr James TO and other members of the Bills Committee for their detailed scrutiny of the contents of the Bill and other related issues. During the seven meetings of the Bills Committee, members put forward many valuable views, all of which are very useful. As pointed out by the Honourable HUI Cheung-ching and the Honourable Mrs Selina CHOW earlier on, the Bills Committee reminded us that we must pay more heed to the views of the trade, and that we must conduct in-depth studies and maintain

close contact with the trade following the implementation of the legislation, so as to find out how it is actually affected. Following thorough discussions, we have obtained the Bills Committee's support for the Bill and the amendments to it. I shall move corresponding Committee stage amendments and offer explanation on them, so as to perfect all the relevant proposals.

Our policy objective is to impose effective control over various categories of dangerous goods and protect public safety, but we also note that we must take account of the *modus operandi* of the trade, so that the development of trade and commerce can be facilitated. Following a review of the existing dangerous goods legislation by the Fire Services Department, Marine Department and Civil Engineering Department, we have proposed a series of legislative amendments aimed at improving the control over dangerous goods, bringing the local regulatory regime into line with international standards and suiting current local needs better. The Bill sets out all the necessary amendments to the principal Dangerous Goods Ordinance; some of these are specific provisions about the implementation of the proposed measures and others are enabling provisions required for making amendments to the related subsidiary legislation in the future. During its scrutiny of our legislative proposals, the Bills Committee conducted a detailed examination not only of the Bill itself, but also the various regulatory measures we intended to introduce to the related subsidiary legislation, and it also provided many valuable opinions. This will be of immense help to our future legislative work, and we are deeply grateful.

The dangerous goods legislation of Hong Kong aim to control various categories of dangerous goods mainly through putting in place a licensing system under which various licensing conditions are imposed and exemptions provided to cater for the needs of different circumstances. The effectiveness of this regulatory framework is proven. The legislative amendments proposed by us are founded precisely on such a foundation.

Regarding the classification of dangerous goods, we will adopt the International Maritime Dangerous Goods (IMDG) scheme of classification, and the coverage of control of dangerous goods on land will be expanded from 400 types under 10 broad "Categories" of dangerous substances to some 1 600 types under nine broad "Classes". Besides, to keep abreast of the rising fire safety standards over the years, we will update the quantities of classified dangerous goods below which exemption from specified control is allowed; following this, trade will be facilitated, as those in the industry will need to apply for licences

only when they store or convey massive quantities of dangerous goods. This can also ensure that average households will not be subject to any unreasonable control over small quantities of daily necessities classified as dangerous goods.

In regard to conveyance of dangerous goods on land, we propose to extend the coverage of the existing licensing regime from the conveyance of three Categories of dangerous goods to the conveyance of all Classes of dangerous goods. We also propose to introduce mandatory basic training for drivers of dangerous goods vehicles. The Bills Committee expressed concern about the impacts of the proposed requirement on the trade, such as the expenses of upgrading vehicle facilities and providing driver training. We appreciate this concern very well. In fact, when the legislative proposal was being drafted, we already conducted a regulatory impact assessment. The report of this assessment suggests that this new regulatory measure will bring benefits to the community as a whole without imposing any heavy financial burden on the trade. Besides, the Fire Services Department has approached the Occupational Safety and Health Council, the Vocation Training Council and other institutions and advised them to organize the required driving training courses. So far, the Occupational Safety and Health Council has held five pilot courses on this, with a satisfactory enrollment of 108 trainees. In addition, we will also accept driver training courses organized by the trade itself. Provided that the contents of these courses are generally identical to those required by the Fire Services Department, the drivers concerned will be permitted to drive dangerous goods vehicles. These measures should be able to reduce the impact of new regulation on the trade.

One of our legislative proposals is to increase the penalties for the various offences related to dangerous goods, so as to offset the effect of inflation over the years and thus maintain an adequate deterrent effect. During the scrutiny of clause 10 of the Bill, the Bills Committee considered that a couple of the penalties might perhaps fail to reflect the severity of the relevant offences. Following discussions, we have reached a consensus with the Bills Committee on appropriately raising the penalties for violations of sections 7 and 13 of the Dangerous Goods Ordinance. I shall offer a detailed account of the relevant amendments when I move the corresponding Committee stage amendments later on.

During the deliberations of the Bills Committee, members and representatives of the retail sector expressed particular concern about the regulation on storage and conveyance of dangerous goods in small packs. We

subsequently considered this view of Members and the trade with an open mind, and even commissioned a consultancy study especially on this issue. Following an in-depth study, we have concluded that although the dangerous goods for daily use possessed by the retail sector, such as strong liquors and paint, are stored in separate small packs, they will still pose a certain degree of hazard if they are stored and conveyed in massive quantities. It is therefore necessary to place them under a suitable degree of regulation. However, we are also of the view that the regulatory measures for them can be more lenient than those applicable to small packs of industrial dangerous goods in general.

With the support of the Bills Committee and the retail sector, we have worked out a regulatory regime tailor-made for dangerous goods in small packs based on the consultant's recommendations. In regard to the storage of these dangerous goods, we will put in place a multi-tier system of control on the basis of storage quantity. In brief, if the storage quantity is less than the exempted quantity, there will be exemption from control. If the exempted quantity is exceeded, the operator will have to comply with a number of basic safety regulations. For instance, if the storage quantity is greater than the notifiable quantity, the operator will have to inform the Fire Services Department of the storage of dangerous goods on his premises, so that the Department can conduct inspections and provide him with specific guidelines on compliance with the relevant regulations. An operator will have to obtain a licence and meet the specified requirements only when the storage quantity exceeds the licensing quantity. These requirements will be drawn up with due consideration given to dangerous goods in small packs and their places of storage, and they will be different from the licensing conditions applicable to large warehouses. The maximum quantity for small packs of dangerous goods at each tier will be set at an appropriately high level that can both facilitate retail operation and ensure public safety.

In regard to conveyance by vehicles, if the vehicle concerned conveys only dangerous goods in small packs, it will be exempted from licensing, and its driver will not be required to receive any mandatory training. If the quantity of dangerous goods in small packs exceeds the exempted quantity, the operator will have to comply with certain basic safety regulations.

To sum up, the various control and exemption measures contained in our legislative proposals can already strike a balance between safety and convenient business operation, and, they are also supported by the Bills Committee.

As I said at the beginning of my speech, the Bill is the first of a whole package of initiatives to amend the existing dangerous goods legislation, and it deals mainly with the regulatory framework. The passage of the Bill will be followed by the setting down of details of control in the related subsidiary legislation. The required legislative work is now in full swing, and we will maintain close contact with the trade and consult the Panel on Security of the Legislative Council, so as to ensure that a piece of sensible and reasonable legislation can be made at the end, and that the desired policy objective can be achieved. The Bill will take effect together with all the related subsidiary legislation after the latter's passage. To help the trade comply with the new regulation, we will launch a large-scale publicity and education campaign before the implementation of the ordinance, and we will also allow a grace period of not longer than two years in the case of those regulatory measures of greater impact.

Madam President, I hope that Members can support the Dangerous Goods (Amendment) Bill 2000 and the amendments I should be moving at the Committee stage later.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Dangerous Goods (Amendment) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Dangerous Goods (Amendment) Bill 2000.

Council went into Committee.

Committee Stage

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

DANGEROUS GOODS (AMENDMENT) BILL 2000

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Dangerous Goods (Amendment) Bill 2000.

CLERK (in Cantonese): Clauses 1, 3, 5, 6, 7, 9, 12, 14 and 15.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 8, 10, 11 and 13.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clauses 2, 4, 8, 10, 11 and 13 be amended as set out in the paper circularized to Members.

Clause 4 of the Bill seeks to amend the enabling provisions required for the making of subsidiary legislation to facilitate the making of regulations on various details of control in the future, including matters relating to exemption. In order to make sure that the relevant enabling provisions can cover all the

envisaged circumstances under which exemption would need to be made, and to clarify the authority of granting exemption to specific cases of dangerous goods at sea and that related to dangerous goods on land belong respectively to the Director of Marine and the Director of Fire Services, I propose to amend clause 4(a)(ii) and (ix) and delete clause 4(c) consequentially.

Clause 4(a)(ix) aims, among other things, to lay down enabling provisions for the drawing up of regulations governing the handling of emergencies. For example, drivers of dangerous goods vehicles are required to notify the police or the Fire Services Department as soon as possible after an accident and observe the emergency instructions stated in the relevant papers on the conveyance of dangerous goods. Besides drivers, other persons on board, or all those involved in the conveyance of the dangerous goods, should also assist in reducing the damage caused by the accident. Part of the amendment to clause 4(a)(ix) seeks to give more clarity to our original policy intent.

Another aim of clause 4(a)(ix) is to make enabling provisions to empower the enforcement authorities to detain vessels, vehicles and aircraft with improper carriage of dangerous goods until the danger posed to public safety has been removed. We have accepted the view of the Bills Committee and decided that the justifiable power of detention required should be drawn up directly in the principal Ordinance by amending the original provisions on detention. We therefore propose to amend clause 8 of the Bill and delete the relevant provisions in clause 4(a)(ix).

Section 7 of the principal Ordinance outlaws the manufacture, possession, custody and control of prohibited goods (that is, goods which are extremely dangerous, including certain explosives). We consider that the level of penalty should be brought on par with that proposed for contravention of section 6 (the manufacture, storage, conveyance or use of dangerous goods without a licence), which is a fine of at level 6 (being $100,000 currently) and imprisonment for six months for a first offence and a fine of $200,000 and imprisonment for 12 months for a subsequent offence. We therefore propose to amend clause 10(a) of the Bill.

Section 13 of the principal Ordinance requires the report of any accident by explosion or fire in any licensed premises. We consider it appropriate to increase the fine from level 2 (currently $5,000) to level 3 (currently $10,000) to increase the deterrent effect. We therefore propose to amend clause 10(b) of the Bill.

Clause 11 of the Bill proposes to add a new section to the principal Ordinance requiring that where dangerous goods being carried on board a vessel are packed, marked and labelled in accordance with the International Maritime Dangerous Goods Code, they shall be deemed to be in compliance with the requirements of the regulations made under the principal Ordinance. The amendment proposed by me aims to clarify and ensure that the deeming provision will cover dangerous goods being conveyed in a journey involving Hong Kong (whether as a destination, an embarkation point or a transit point) and a place or places outside Hong Kong, or those being transported to Hong Kong by vehicle after unloading at mainland ports, or those being transported by vehicle from Hong Kong to mainland ports for shipment to other places.

The other amendments proposed for the Bill are just technical, minor or textual improvements to the provisions of the Bill.

All the amendments outlined above have been introduced following detailed discussions in the Bills Committee, and they are supported by the Committee. I hope Members will support these amendments. Thank you.

Proposed amendments

Clause 2 (see Annex V)

Clause 4 (see Annex V)

Clause 8 (see Annex V)

Clause 10 (see Annex V)

Clause 11 (see Annex V)

Clause 13 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 8, 10, 11 and 13 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

DANGEROUS GOODS (AMENDMENT) BILL 2000

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

Dangerous Goods (Amendment) Bill 2000

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Dangerous Goods (Amendment) Bill 2000 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Dangerous Goods (Amendment) Bill 2000.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Hong Kong Export Credit Insurance Corporation Ordinance.

PROPOSED RESOLUTION UNDER THE HONG KONG EXPORT CREDIT INSURANCE CORPORATION ORDINANCE

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be approved.

The Hong Kong Export Credit Insurance Corporation (ECIC) was established in 1966 under the Hong Kong Export Credit Insurance Corporation Ordinance to encourage and support export trade through the provision of insurance protection for Hong Kong exporters of goods and services against non-payment risks arising from commercial and political events.

Section 18 of the Hong Kong Export Credit Insurance Corporation Ordinance provides that the Government shall guarantee the payment of all moneys due by the ECIC, and section 23 stipulates that the contingent liability of the ECIC under contracts of insurance shall not exceed a specified amount which may be determined by the Legislative Council by resolution. The existing cap on the contingent liability of the ECIC stands at $10 billion.

As at December 31, 2001, the ECIC's contingent liability amounted to $9,479 million, or 95% of the maximum liability permitted. The ECIC forecasts that the existing cap on its contingent liability will be reached by May 2002. If the cap is not raised, the ECIC would not be able to expand its business, limiting its capability to provide export credit insurance services for more exporters. To cater for the ECIC's business growth in the next few years so as to ensure that it continues to promote export trade effectively, the Government agrees to the ECIC's proposal to raise the cap on its contingency liability by $2.5 billion to $12.5 billion.

I would like to point out here that contingent liability refers to the total amount which the ECIC is contractually liable to indemnify policy-holders in respect of all its insurance policies at any point of time. The actual gross claims of the ECIC amount to a much lower figure than the cap on the

contingent liability, for example, the gross claims for the financial year 2000-01 amounted to $78.98 million. The ECIC will adhere to the principle of prudence in underwriting and risk management.

Madam President, I beg to move.

The Secretary for Commerce and Industry moved the following motion:

"That the contingent liability of the Hong Kong Export Credit Insurance Corporation under contracts of insurance shall not at any time exceed the sum of 12,500 million dollars."

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

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

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the import/export sector and the Hong Kong Progressive Alliance, I rise to speak in support of the proposal of the Government to raise the cap on the contingent liability of the ECIC under contracts of insurance from $10,000 million at present to $12,500 million.

In view of the increasingly keen competition in the international market, such mature markets as Europe, the United States and Japan have little room for development. The import/export sector in Hong Kong is trying very hard to explore new markets. If the ECIC can enhance its ability to underwrite insurance, it would certainly be a great boost to the sector in market development. With more resources, I hope the ECIC can continuously improve its insurance policies, including enhancing liaison with banks and commercial associations in developing countries, expanding its insurance cover and finding ways to reduce premiums to further encourage small and medium trading firms in striving for overseas clients.

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

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

(No Member responded)

PRESIDENT (in Cantonese): Secretary for Commerce and Industry, do you wish to reply?

(The Secretary for Commerce and Industry indicated that he did not wish to reply)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Public Finance Ordinance.

PROPOSED RESOLUTION UNDER THE PUBLIC FINANCE ORDINANCE

SECRETARY FOR THE TREASURY: President, I move the motion standing in my name on the Agenda.

The purpose of this motion is to seek funds on account to enable the Government to carry on existing services between the start of the financial year

on 1 April 2002 and the enactment of the Appropriation Ordinance. This follows the procedure long established in this Council.

We have determined the funds on account sought under each subhead in accordance with paragraph four of the resolution, by reference to percentages of the provision shown in the 2002-03 draft Estimates of Expenditure. If the draft Estimates are changed by the Finance Committee or officers under delegated powers, the provision to which the percentages are applied will also change accordingly. Thus, the provision on account under each head is not constant but may vary, with every increase being matched by an equal decrease. The initial provision on account under each head is shown in the footnote to this speech. The aggregate total under all heads is fixed, however, at $76,256,151,000 and cannot be exceeded without the approval of this Council.

The resolution also enables the Financial Secretary to vary the funds on account in respect of any subhead, provided that these variations do not cause an excess over the amount of provision entered for that subhead in the 2002-03 draft Estimates of Expenditure or an excess over the amount of funds on account for the relevant head.

The Financial Secretary will issue a vote on account warrant to the Director of Accounting Services, authorizing him to make payments up to the amount specified in this motion and in accordance with its conditions. The vote on account will be subsumed upon the enactment of the Appropriation Ordinance, and the general warrant issued after the enactment of the Appropriation Ordinance will replace the vote on account warrant.

President, I beg to move.

Footnote

Head of Expenditure	*Amount shown in the draft Estimates $'000*	*Initial amount of provision on account $'000*
21 Chief Executive's Office.....	54,798	11,378
22 Agriculture, Fisheries and Conservation Department.....	819,663	238,963

	Head of Expenditure	*Amount shown in the draft Estimates $'000*	*Initial amount of provision on account $'000*
25	Architectural Services Department.....	1,596,293	319,259
24	Audit Commission	135,701	27,200
23	Auxiliary Medical Service	65,592	13,119
82	Buildings Department	854,641	195,703
26	Census and Statistics Department	554,272	111,756
27	Civil Aid Service.....	79,399	16,043
28	Civil Aviation Department	685,216	144,076
43	Civil Engineering Department	915,157	195,741
29	Civil Service Training and Development Institute	170,260	45,252
30	Correctional Services Department	2,657,349	601,569
31	Customs and Excise Department	2,019,809	443,808
37	Department of Health	3,681,191	802,441
92	Department of Justice	981,820	215,440
39	Drainage Services Department.....	1,662,016	361,280
40	Education Department.....	32,608,883	7,537,630
42	Electrical and Mechanical Services Department.....	289,085	99,938
44	Environmental Protection Department ..	2,283,070	536,701
45	Fire Services Department.....	3,264,512	822,838
49	Food and Environmental Hygiene Department.....	4,730,306	1,003,155
46	General Expenses of the Civil Service ..	4,944,203	1,131,147
166	Government Flying Service	271,278	147,745
48	Government Laboratory	263,548	70,344
50	Government Land Transport Agency....	152,666	111,044
51	Government Property Agency	1,870,714	382,926
35	Government Secretariat : Beijing Office	50,920	11,664
143	Government Secretariat : Civil Service Bureau	217,879	55,575

	Head of Expenditure	*Amount shown in the draft Estimates $'000*	*Initial amount of provision on account $'000*
152	Government Secretariat : Commerce and Industry Bureau	112,841	37,174
144	Government Secretariat : Constitutional Affairs Bureau	36,575	9,459
145	Government Secretariat : Economic Services Bureau	120,143	40,992
146	Government Secretariat : Education and Manpower Bureau	395,983	282,523
154	Government Secretariat : Environment and Food Bureau	58,742	12,349
147	Government Secretariat : Finance Bureau	120,006	24,002
148	Government Secretariat : Financial Services Bureau	165,394	43,997
149	Government Secretariat : Health and Welfare Bureau.....	124,088	34,672
53	Government Secretariat : Home Affairs Bureau	216,873	54,669
96	Government Secretariat : Hong Kong Economic and Trade Offices.....	270,208	84,922
150	Government Secretariat : Housing Bureau	43,243	9,209
55	Government Secretariat : Information Technology and Broadcasting Bureau.....	143,753	36,057
155	Government Secretariat : Innovation and Technology Commission.....	156,406	43,538
142	Government Secretariat : Offices of the Chief Secretary for Administration and the Financial Secretary.....	384,687	105,433
56	Government Secretariat : Planning and Lands Bureau and Works Bureau ...	291,038	64,035

	Head of Expenditure	*Amount shown in the draft Estimates $'000*	*Initial amount of provision on account $'000*
151	Government Secretariat : Security Bureau	130,245	30,681
153	Government Secretariat : Transport Bureau	86,398	22,343
58	Government Supplies Department	177,482	37,522
60	Highways Department	1,994,279	403,160
63	Home Affairs Department	1,408,682	338,169
168	Hong Kong Observatory	227,341	46,493
122	Hong Kong Police Force	12,445,751	2,629,421
62	Housing Department	387,593	77,519
70	Immigration Department	2,265,240	471,924
72	Independent Commission Against Corruption	719,832	146,708
121	Independent Police Complaints Council	15,014	3,803
74	Information Services Department	416,787	92,558
47	Information Technology Services Department	616,600	123,320
76	Inland Revenue Department	1,349,635	278,080
78	Intellectual Property Department	113,667	51,542
79	Invest Hong Kong	73,709	34,199
174	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	18,730	3,746
80	Judiciary	1,037,782	227,090
90	Labour Department	941,518	237,552
91	Lands Department	1,727,562	364,581
94	Legal Aid Department	791,403	158,385
112	Legislative Council Commission	383,013	80,480
95	Leisure and Cultural Services Department	5,243,008	1,129,562
98	Management Services Agency	61,263	12,253

	Head of Expenditure	*Amount shown in the draft Estimates $'000*	*Initial amount of provision on account $'000*
100	Marine Department	988,820	215,531
106	Miscellaneous Services	7,554,141	5,947,103
114	Office of The Ombudsman	99,084	20,880
115	Official Languages Agency	128,327	25,902
116	Official Receiver's Office	144,065	35,861
120	Pensions	12,784,952	4,244,764
118	Planning Department	481,208	120,824
130	Printing Department	234,170	46,834
136	Public Service Commission	21,234	4,247
160	Radio Television Hong Kong	514,989	115,241
162	Rating and Valuation Department	416,866	83,374
163	Registration and Electoral Office	114,805	22,961
170	Social Welfare Department	32,292,685	7,675,011
173	Student Financial Assistance Agency	2,737,043	547,409
176	Subventions : Miscellaneous	301,155	83,048
177	Subventions : Non-Departmental Public Bodies	34,821,580	7,524,980
180	Television and Entertainment Licensing Authority	120,539	40,124
110	Territory Development Department	231,607	46,571
181	Trade and Industry Department	1,040,884	789,048
186	Transport Department	956,472	229,457
188	Treasury	338,999	70,042
190	University Grants Committee	13,497,105	2,701,068
194	Water Supplies Department	5,493,398	1,109,014
		218,466,883	55,237,151
184	Transfers to Funds	21,019,000	21,019,000
	Total	239,485,883	76,256,151

The Secretary for the Treasury moved the following motion:

"That

1. Authority is hereby given for a sum not exceeding $76,256,151,000 to be charged on the general revenue in advance of an Appropriation Ordinance for expenditure on the services of the Government in respect of the financial year commencing on 1 April 2002.

2. Subject to this Resolution, the sum so charged may be expended against the heads of expenditure, and expenditure for each such head shall be arranged in accordance with the subheads, shown in the draft Estimates of Expenditure 2002-03 laid before the Legislative Council on 6 March 2002 or, where such estimates are changed under the provisions of the Public Finance Ordinance (Cap. 2) as applied by section 7(2) of that Ordinance, in accordance with such estimates as so changed.

3. Expenditure in respect of any head shall not exceed the aggregate of the amounts specified in respect of each subhead in that head, by reference to percentages, in section 4(a) and (b).

4. Expenditure in respect of each subhead in a head shall not exceed -

   (a) in the case of a Recurrent Account subhead, an amount equivalent to -

      (i) except where the subhead is listed in the Schedule hereto, 20% of the provision shown in respect of it in the draft Estimates;

      (ii) where the subhead is listed in the Schedule hereto, that percentage of the provision shown in respect of it in the draft Estimates which is specified in relation to that subhead in the Schedule; and

   (b) in the case of a Capital Account subhead, an amount equivalent to 100% of the provision shown in respect of it in the draft Estimates,

or such other amount, not exceeding the provision shown in respect of the subhead in the draft Estimates, as may in any case be approved by the Financial Secretary.

SCHEDULE [s. 4]

Head of Expenditure		*Subhead*		*Percentage of provision shown in draft Estimates*
28	Civil Aviation Department	170	Airport insurance	100
30	Correctional Services Department	149	General departmental expenses	40
40	Education Department	325	Direct Subsidy Scheme	36
		326	Kindergarten Subsidy Scheme	50
		330	Assistance to private secondary schools and bought places	27
		340	English Schools Foundation junior schools	41
		345	English Schools Foundation secondary schools	41
		489	Miscellaneous educational services	23
46	General Expenses of the Civil Service	013	Personal allowances	40
53	Government Secretariat: Home Affairs Bureau	536	Uniformed groups and other youth organizations	25

Head of Expenditure		*Subhead*		*Percentage of provision shown in draft Estimates*
63	Home Affairs Department	110	Honoraria for members of committees	25
76	Inland Revenue Department	189	Interest on tax reserve certificates	30
92	Department of Justice	234	Court costs	25
		243	Hire of legal services and related professional fees	25
		287	Legal services for construction dispute resolution	25
106	Miscellaneous Services	163	Write-offs	50
		192	Refunds of revenue	100
120	Pensions	015	Public and judicial service pension benefits and compensation	30
		017	Surviving spouses' and children's pensions, widows' and orphans' pensions and increases	30
		021	Ex gratia pensions, awards, allowances and increases	50
		026	Employees' compensation, injury, incapacity and death related payments and expenses	50

Head of Expenditure	*Subhead*		*Percentage of provision shown in draft Estimates*
170 Social Welfare Department	176	Criminal and law enforcement injuries compensation	25
	177	Emergency relief	100
	179	Comprehensive social security assistance scheme	25
	180	Social security allowance scheme	25
	187	Agents' commission and expenses	100
	214	Hire of services	30
	412	Refunds of rates	30
176 Subventions : Miscellaneous	414	Environmental Advisory Service	25
	420	Asian and Pacific Development Centre	100
	437	Hong Kong - Japan Business Co-operation Committee	25
	446	Duty Lawyer Service	25
	475	Outward Bound Trust of Hong Kong	25
	503	Subventions to non-government organization camps	26

Head of Expenditure		*Subhead*		*Percentage of provision shown in draft Estimates*
		521	Skills centres	25
		527	Open University of Hong Kong	25
		528	Guardianship Board	25
l77	Subventions : Non-Departmental Public Bodies	520	Vocational Training Council	25
		526	Legal Aid Services Council	25
		537	Employees Retraining Board	25
188	Treasury	187	Agents' commission and expenses	70"

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Dutiable Commodities Ordinance.

PROPOSED RESOLUTION UNDER THE DUTIABLE COMMODITIES ORDINANCE

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I move that the resolution to extend the existing concessionary duty rate on ultra low sulphur diesel (ULSD) of $1.11 per litre for another year, that is, from 1 April 2002 to 31 March, 2003, be approved.

In his Budget speech on 6 March, the Financial Secretary announced that in view of the operating difficulties of the transportation industry, the Government decided to extend the duty concession for ULSD for another year. The resolution moved by me today is to implement the Financial Secretary's proposal.

In the past three years or so, the Government has provided a series of concessions for motor diesel or ULSD. In June 1998, we reduced the duty rate on regular diesel from $2.89 to $2 per litre in light of the economic climate at that time. Later, in July 2000, ULSD was introduced at a concessionary rate of $1.11 per litre on environmental grounds. The duty rate was to be adjusted to $2 per litre on 1 January 2001 and was to revert to $2.89 per litre on 1 January 2002. In order to relieve the operating pressure on the transportation industry, the Government, however, introduced two resolutions to the Legislative Council in December 2000 and June last year respectively to postpone the reversion of the duty rate. According to the approved resolutions, the duty rate was scheduled to revert to $2.89 per litre on 1 April 2002. The above relief measures have cost government revenue a total of $3.4 billion.

As regular motor diesel has been completely replaced by ULSD at petrol filling stations in the territory, it is not necessary for us to consider encouraging the use of ULSD by maintaining the duty concessionary rate from the environmental point of view. Similar to the previous two extensions of duty

concession for ULSD, the Government's proposal this time is a special measure to relieve the operating difficulties of the transportation industry in the light of the present sluggish economic conditions. We propose that the duty concession for ULSD ceases on the expiry of the new concessionary period, that is, the duty rate on ULSD will revert to $2.89 per litre on 1 April 2003. This special concession will cost $1.2 billion in 2002-03.

Madam President, I hope Members will support the resolution.

The Secretary for the Treasury moved the following motion:

"That Schedule 1 to the Dutiable Commodities Ordinance be amended in paragraph 1A of Part III:

(a) in subparagraph (a), by repealing "2002" and substituting "2003";

(b) in subparagraph (b), by repealing "2002" and substituting "2003"."

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

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

MS MIRIAM LAU (in Cantonese): Madam President, in his first Budget speech, the Financial Secretary announced that the duty concession on ULSD, which is due to expire by the end of this month would be extended for another year to the end of March next year, maintaining the duty rate of ULSD at $1.11 per litre. This further extension by the Government greatly relieves the operating difficulty of the transportation industry. For this the industry is very much grateful to the Government for its sympathy shown towards them.

For the past month or so, the transportation industry has been making a lot of efforts to fight for the extension. These efforts include convening meetings, writing to the Chief Executive, the Financial Secretary and the Secretary for the Treasury (I believe they must have received the letters) and

petitioning the Legislative Council and Government Secretariat. Workers had to leave their work to do the petitioning though this means they would sacrifice their time, which is in effect money. They were compelled to do so because as the expiry date neared, they became more and more anxious. They were worried the Government would terminate the concession, which would cause a surge in the cost which they knew very well they could not afford.

Other measures to increase income and reduce expenditure proposed by the Financial Secretary have in fact been made known over a month ago. Furthermore, the Secretary for the Treasury pointed out last month in high profile that Hong Kong had a huge deficit. This scared us very much indeed. On the other hand, the Administration had never mentioned extending the duty concession on ULSD and the industry was inevitably very much worried that the Government would grind the axe at them by not extending the concession. If that happens, the diesel duty would rise to $2.89 per litre at the end of this month or the beginning of next. We were really worried. If the Financial Secretary had not kept the issue under a veil and announced the duty concession early, the industry would not have been so frightened and worried. Nor would workers in the industry have left their work to spend time on liaising with various parties.

The industry repeatedly approached the Government for mercy and the Government granted the concession once and again albeit with reluctance. I read the article written by the Secretary for the Treasury, which contained ideas repeated in the past for several times. Every time she meant to say that big concessions had been granted and as a result the Treasury had incurred huge losses. However, the industry still faces an unfavourable environment in operation. I think the Government should conduct a thorough review on the policy to actually reduce the duty on ULSD, thus obviating the need to deal with the issue every year or every few months. This is better than taking the trouble to grant the concession on petition and the industry similarly having to tire itself out fighting for a concession on each occasion.

The business environment is indeed still very bad at the moment. This, all Members can tell. I believe the situation may persist for some time. Indeed, if the Government can put some thought to it, it may find that lowering the diesel duty to a reasonable level will help reduce the operating costs of public transport or passenger service so that people will need to spend less on transport and the entire community will benefit eventually.

The freight forwarding industry has to face keen competition from neighbouring regions, in addition to an unfavourable business environment. A high diesel duty has greatly compromised the competitiveness of the Hong Kong transport industry. As far as I know, diesel in the Mainland is being sold at $2.2 per litre, far below the $5.6 per litre level in Hong Kong, and the price of $5.6 per litre is a price with government concession. Without the concession, ULSD will cost over $7, three times the cost of diesel in the Mainland. How can we compete with other regions at such a high cost? The diesel duty is really heavy. I have gone through some data provided by the transportation industry showing that the high fuel cost does affect the operating costs so that the local transportation industry, that is, transportation by container trucks stands no chance of success in the competition against the Mainland. In the long run, this will harm the development of logistics in Hong Kong. I very much hope the Government will address this squarely.

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

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, the Budget responded to the demands of the transportation industry and the professional drivers by extending the period for concessionary duty on ULSD. This is a result of the hard work of us in the Hong Kong Federation of Trade Unions (FTU) and the Democratic Alliance for Betterment of Hong Kong (DAB). Though the concessionary period has been extended twice, we hope the Government can grant one more extension because the economy has yet to really turn the corner and the unemployment rate is still high.

The FTU and the DAB have been reflecting our demands to the Government. We invited the Secretary for the Treasury to a meeting with scores of representatives from transport organizations. We demanded an extension of the period for concessionary duty on ULSD. The Container Transportation Employees General Union pointed out that after the "September 11 incident", members recorded a 20% drop in their income. If the extension is not granted, the income of truck drivers will be severely affected. In addition, the Motor Transport Workers General Union also pointed out that taxi drivers and minibus drivers were facing an even worse situation.

The operating cost of minibus drivers has increased by around $30 per shift, but they cannot increase fares due to the poor economy. As a result, they have been making an even smaller income.

If the concession is discontinued, the livelihood of nearly 200 000 workers in the transportation industry will be affected. Fortunately, the Government is willing to sympathize with the plight of the industry by extending the concession. So, the FTU and the DAB very much support the motion. Thank you, Madam President.

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

(No Member responded)

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I would like to thank the two Honourable Members who have spoken earlier in support of this motion.

I would like to respond by pointing out that in the course of preparing the Budget, the Government has taken into full account how the duties for each type of vehicle fuel should be adjusted and how long the adjusted fuel duty should maintain. As a matter of fact, the revenue from diesel duty has been an important and stable source of revenue for the Government and it serves to help meet the expenditure on the delivery of public services. If the existing concessionary rate on the duty for ULSD is to be maintained for a long period of time, our financial pressure would certainly be further increased. So we can only propose to the Council to extend the effective period for concessionary rate on ULSD for one year.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTION

PRESIDENT (in Cantonese): Members' motion. Resolution proposed under the Interpretation and General Clauses Ordinance.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR LAW CHI-KWONG (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Madam President, I would like to explain why Mr James TO and I tabled the motions respectively but Mr TO eventually withdrew his. As Members know, we had only very limited time to deal with the issue of commencement date and so we tabled motions last week before deciding whether to retain the relevant motion. Finally, Mr TO who withdrew his motion. Mr TO will explain why when he speaks later.

Treatment centres all support the spirit of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance. As service providers, they do hope to improve the conditions and facilities of their centres to provide a better environment for users of their services.

Thus, today's resolution does not seek to stonewall the implementation of the law. Rather, we think we have to propose a postponement in the commencement date because many necessary conditions are lacking.

According to the current law, agencies providing rehabilitation services now may within three months of the commencement of the law apply for a certificate of exemption from the Social Welfare Department (SWD), whereupon they may be granted an exemption period of four to eight years. Otherwise, they would have to comply with all the licensing requirements as

from 1 July. However, the conditions of many centres are far from being able to meet the licensing requirements. A bigger problem is that some centres would find it difficult even to apply for exemption. For these centres, applying for exemption involves submitting the specified plans of their premises to the SWD. However, due to their limited resources, some centres find it difficult to hire professionals to do the job and they are not able to draw the plans themselves. Moreover, making an application for exemption involves submitting evidence of title or a certificate of the right to use in respect of the lot being used. But many centres are situated in rural areas, and some centres are using borrowed premises, the original authorized persons of which may not be the owner of the pieces of land or premises. The relevant owners may be out of Hong Kong. It would be difficult for the centre managers-in-charge to locate the owners, after some years of operation. It would be difficult for such centres to complete the relevant papers and procedures within three months. So, I suggest that the commencement date be postponed for six months to allow nine months for them to deal with the formalities, which I believe is a more practical approach.

All Members of this Council should have received a position paper issued jointly by several centres describing the problems they face. Five centres, particularly those among them without subsidy from the Government, are limited in all kinds of resources, making it difficult for them to appoint professionals to conduct examinations for their centres and compile reports on improvements required in terms of fire safety and building structure and assess the costs, liaise with owners and deal with applications for licences. These centres proposed in the past setting up an agency for co-ordination and provision of support. It was not until last week that the Government agreed at a Subcommittee meeting of the Legislative Council to set up an inter-departmental working group to provide guidelines and assistance to all centres and to co-ordinate the work of various departments. I believe the setting up of the working group is helpful to the operation of the centres. Up to now, the agency has not been set up yet. If my motion is not passed, the law will take effect on 1 April. Then all urgent issues will have to be dealt with before July, which, I think, is too hasty.

Of course, some colleagues may feel that some centres are not up to standard in all areas and may cause harm to residents and so the law should take effect as early as possible. However, some basic issues such as building safety are regulated by other laws. Problems such as unsafe buildings or landslides are already being monitored in accordance with law.

Lastly, I wish to reiterate that the Government wishes to put in place a law for licensing because it endorses the results of the services provided by these centres after a review on agencies such as Christian detoxification agencies. The Government hopes to raise the service standards and this is the spirit enshrined in this piece of legislation. Despite the poor conditions in some of these centres, their existence is to be valued. It would be an unintended harm done if the inopportune implementation of the law causes some centres to terminate their services or reduce the number of people they serve. Thus, a premise for the implementation of the law is that we must ensure the services being received by drug dependent persons will not be adversely affected.

I hope Members will support the motion.

Mr LAW Chi-kwong moved the following motion:

"That the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (10 of 2001) (Commencement) Notice 2002, published in the Gazette as Legal Notice No. 20 of 2002 and laid on the table of the Legislative Council on 6 February 2002 is amended by repealing "1 April" and substituting "1 October"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LAW Chi-kwong be passed.

MISS CYD HO (in Cantonese): Madam President, first of all, in my capacity as Chairman of the Subcommittee to consider the Commencement Notice, I would like to give a brief report on the deliberations of the Subcommittee.

The Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill was tabled before the Legislative Council in November 2002. The relevant Bills Committee held nine meetings to scrutinize the Bill, which was passed on 25 April 2001. Under section 1(2) of the Ordinance, the commencement date of the Ordinance will be on a day to be appointed by the Secretary for Security by notice published in the Gazette.

During the scrutiny of the Bill, the Bills Committee held detailed discussions on such issues as the commencement date of the Ordinance and

licensing conditions. The Administration indicated that it would provide assistance to the relevant agencies.

The notice on the commencement date of the Ordinance made pursuant to section 1(2) of the Ordinance was submitted to the Legislative Council on 6 February 2002. Subsequently, some treatment centres indicated that they were worried they might not be licensed to continue their operation due to problems concerning town planning or land issues. To understand their worries, the House Committee agreed to form a Subcommittee at the meeting on 1 March to consider the commencement notice.

The Subcommittee held two meetings. At the first meeting, it heard representations from 13 organizations operating drug treatment and rehabilitation centres and another organization submitted a written submission after the meeting.

At the meeting, the Administration explained in detail issues concerning town planning and land use and undertook to strengthen further work on co-ordination and communication with the organizations to solve any possible difficulties they may face when the licensing regime is implemented.

Regarding town planning, the Administration pointed out that the Planning Department on 8 March 2002 had proposed that the Town Planning Board (TPB) amend the Notes of the "Green Belt" zone to incorporate social welfare facility as a Column 2 use. As the TPB accepted the proposal on the same day, the four centres currently assessed to require application for rezoning would need to apply for section 16 permission only. The application procedure is rather simple and will take two months only.

The Government has accepted a suggestion of the organizations and the Subcommittee to establish an inter-departmental working group to further improve co-ordination in implementing the licensing regime. The Administration also indicated it would invite representation from interested Members of the Legislative Council and representatives of the affected centres. I hope the inter-departmental working group can be established as soon as possible.

Basically, all members of the Subcommittee and organizations support the spirit of the principal Ordinance and expect the Administration to try its best to

provide assistance to the relevant centres to solve problems relating to town planning and land use so that the centres may obtain exemption certificates and meet licensing requirements within the exemption period of four to eight years.

Concerning the commencement date, members of the Subcommittee had different opinions. Mr James TO is of the view that the Commencement Notice should be repealed but he has since withdrawn his motion. The Honourable LAW Chi-kwong thinks that commencement should be deferred to 1 October. There are also members who support the commencement date as it is.

I suggested at the meetings of the Subcommittee that the Government should provide the following assurances to address the concerns of the centre operators:

(i) there will be no immediate closure of centres save temporary closures in very exceptional circumstances such as heavy rainfall causing danger of landslide; and

(ii) centres which have to be relocated will be allowed to continue operation at their existing premises until the new premises are ready.

I hope the Secretary may give these assurances in her speech later.

I would now state my personal opinion on the commencement date of the Ordinance. Madam President, the Ordinance was originally advocated by the Government and voluntary drug detoxification organizations with a view to raising the standard of services they provide for the protection of drug dependent persons under treatment. As Members read the lobbying submissions from voluntary agencies sent to them, they may find the agencies are desirous of seeing the Ordinance take effect on the one hand but, on the other, they are worried that they may not be able to obtain certificates of exemption during the transitional period, which would make it impossible for the centres to continue their services for drug dependent persons.

During the scrutiny of the principal legislation last year, the organizations and the legislative and executive authorities reached a consensus to let the Ordinance take effect through a gazette notice published by the Secretary so that

some preliminary preparatory work can be done during the interim. The arrangement was supported by the organizations, which did not raise any objections. But what has transpired in the communication between the executive authorities and the organizations that caused some organizations to become worried or have reservations? Was there a lack of communication between some government departments so that some departments, in dealing with applications from some organizations, compromised the mutual trust? Why has a well-intended project turned sour? This warrants a review.

At the moment, there are 14 organizations that provide such services. Most of the organizations that were invited to speak at the first meeting of the Subcommittee had reservations about the commencement date. However, through two public meetings, the organizations had the chance to raise questions and make suggestions through the Legislative Council to the executive authorities. Having received replies thereto, the organizations then became less worried, but their concerns had not been completely removed. This shows that effective communication may mitigate the problem. So, we suggest that the inter-departmental working group be established. Of particular importance is the need for the working group to invite participation from the organizations, especially the disadvantaged ones to join hands in dealing with matters concerning licence applications during the transition period of several years to enable centres providing treatment for drug dependents to improve their facilities smoothly.

Madam President, the working group, which involves these organizations, must be established as soon as possible to start operation, whether the Ordinance takes effect on 1 April or 1 October. I hope the Secretary will publish a timetable as soon as possible so that work with participation from both sides may be launched immediately.

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

MR MICHAEL MAK (in Cantonese): Madam President, to make up my mind on whether I should support the motion today, I carried out a site inspection on two rehabilitation centres last Friday, 8 March. They were the Christian Zheng Sheng Association Adult Detoxification Rehabilitation Training Centre and the SER's Therapeutic Community.

The two centres were very different. I think one of them was acceptable in terms of living environment and fire protection facilities. When the law takes effect, some minor renovation work will give the centre a very great chance of obtaining a licence. Another centre, however, had very poor living conditions and fire protection facilities. After the inspection, I found that if the relevant law were not put into effect without delay, the safety of inmates and the staff at the centre would be greatly jeopardized.

Thus, if the Government can unconditionally support or help applicants solve their land and finance problems, I would support the implementation of the law on 1 April because the law would then help such centres to operate effectively and provide protection to users and staff there. This can do only good. So, I hope that the law can take effect on 1 April. Thank you, Madam President.

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

MR IP KWOK-HIM (in Cantonese): Madam President, for a long time, many voluntary agencies and volunteers work in addiction treatment centres. Some of these people adopt an altruistic attitude, saving drug addicts from their worst nightmares, working on barren land where there is no supply of proper drinking water or electricity. Volunteer workers spend most of their lifetime helping others with immense loving care and bring them hope.

Voluntary agencies and volunteers do a great job in operating addiction treatment centres. The relevant authorities and Members in this Chamber will certainly be inspired and will very much hope that all existing addiction treatment centres can continue to exist, to show the world the worthy work they have been doing. No one single addiction treatment centre should go. This was a major consensus in the Bills Committee as it conducted its early stages of scrutiny work for the Bill. This is also a point we hold fast to up to this moment.

In 1998, the Government started to consult voluntary groups and seek funding from various charitable funds to cover in full expenses for the necessary renovation works. At the end of 2000, the Government tabled the

Bill before this Council. The legislative intent of the Government is to improve the existing facilities of addiction treatment centres as well as protect the safety of inmates. As the Honourable Michael MAK said, the Government was trying to help the centres. The Democratic Alliance for Betterment of Hong Kong (DAB) wholeheartedly supports the initiative and firmly believes that the Social Welfare Department, which enforces the law, will ensure as far as possible that existing centres will not have to close due to the enactment of the Ordinance.

The relevant groups indicate that they are facing three major difficulties. First, the locale of some centres does not fit the right land use. To modify the land use will involve certain difficulties. Second, within three months of the commencement of the Ordinance, certificates of exemption have to be applied for in order to continue operation by providing such details as plans for the premises. This, however, will be costly, as professional fees are required. Third, some centres stand on private properties and as the years go by the voluntary groups have lost contact with the owners and so owners' consent to conduct the relevant renovation works cannot be obtained.

Information papers from the Security Bureau and the Narcotics Division show that of the 38 addiction treatment centres in Hong Kong, which will be affected by the licensing regime, eight will have to modify their land use and make applications to the Planning Department under section 16 of the Town Planning Ordinance. Well before the commencement of the Ordinance, the Social Welfare Department notified the relevant district planning offices for assistance on their behalf. The Planning Department plans to amend the meaning of "green zone" so that addiction treatment centres may continue their operation. I trust the eight centres will succeed in obtaining assistance from the relevant authorities after the commencement of the Ordinance.

Regarding the application for certificates of exemption, section 8 of the Ordinance contains details of the procedures and papers required for the application. The Director may require an applicant to furnish him with information including particulars relating to the applicant, plans and details as to how the treatment centre is to be operated, and so on. The word "may" indicates flexibility in enforcement. Where plans are concerned, I enquired with some front-line staff, who act strictly according to the book, and the answer I got was that professionals are not necessarily required but plans drawn with layman standards showing the partitions and use of a centre will do.

Losing contact with owners is a most complicated issue. As Mr LAW said a short while ago, when the owner has migrated to overseas countries or even passed away, and when his descendants have disputes regarding his estate, the use to which the property is put may take three, five or seven years to settle. It would be too optimistic to expect the issue to be resolved after six months. A more desirable option is for the Government to find alternative sites for the centres, as the Government did for the five centres which operate on rented government properties. So, to take care of one or two more centres is something which I believe will be accomplished with determined efforts from the relevant government officials and no one single addiction treatment centre should go.

The DAB hopes that the Secretary for Security may do her best in the above areas and undertake, when she speaks in response later, to provide assistance in these matters to remove any anxieties Members and the public may have.

Madam President, the grace period of the Ordinance is four to eight years so that voluntary agencies may obtain charity funds, and so on, with the help of the Social Welfare Department. Moreover, it is over three years since the Government conducted the consultation in 1998. After its enactment, the Ordinance waits one year before it commences operation. So voluntary groups should be sufficiently prepared now. There is no real practical need to delay the commencement of the Ordinance. Any delay will only constitute a hurdle in the work of the relevant authorities. To improve safety facilities in treatment centres and protect users there, the DAB regards 1 April a suitable date for the commencement of the Ordinance.

With these remarks and on behalf of the DAB, Madam President, I oppose the motion.

MRS SOPHIE LEUNG (in Cantonese): Madam President, I believe many Honourable Members who are here in this Chamber are concerned with the growing tendency for drug abusers to become younger and younger. In addition, the way drugs are mixed has become increasingly complicated too. At present, detoxification services are provided by 38 addiction treatment centres operated by 14 organizations, whose staff and the organizations themselves have worked laboriously in silence for nearly two decades. We should indeed hold these organizations in high esteem for the contribution they have made.

In the meantime, it is necessary for our system to keep pace with the times in order to provide future potential users with a more suitable environment. As the saying goes, only through "pull and push" can the desired result be achieved. It is hoped that, after the enactment of the legislation on 1 April, a better environment can be provided to make those who are determined to receive treatment feel more at ease. We sincerely hope that this piece of legislation can achieve this purpose.

Numerous discussions have been held with respect to the Ordinance and many deputations, all of which welcome the implementation of the legislation, have come forward to express their views. The biggest controversy arisen recently is centred on the problem of the green belt ownership. This issue has just been mentioned by Honourable Members too. We have carefully studied this matter to examine the scope involved. Now that the green belt issue has eventually be resolved, for the Government has indicated that it will be resolved on compassionate grounds as far as possible. Honourable Members were relieved after confirming that the relevant problem has really been resolved.

However, there is still an urgent need for the Government to sort out since one organization is still confronted with the ownership problem. The reply given to me is that the problem should eventually be resolved since, insofar as ownership is concerned, no one has even pursued this matter. I am therefore of the view that the matter has not reached such a serious stage that it is insurmountable. I hope the relevant organizations can understand that the problems can definitely be resolved one after another one day. It will surely help if they can communicate with the newly set up inter-departmental working group to gain its understanding so as to help solve their problems.

Madam President, I would like to read out an article sent to us by a deputation. I think Members who are here in this Chamber have already got one too. One of the paragraphs in the article reads: "No matter the Ordinance comes into operation on 1 April or is to be delayed for a further six months, we (the organization) still hope that the Administration can endeavour to help treatment centres to ameliorate their existing problems in order to meet the requirements of the Ordinance. As was pointed out by Mrs C LO, the Commissioner for Narcotics, voluntary organizations work in partnership with the Government in tackling the drugs problem. It is strongly believed that only through the concerted efforts of these voluntary organizations, together with the support of the Administration and various sectors of society, can the

desirable result be achieved in waging this anti-drugs campaign and protect our society against drugs".

I feel that the article has reflected what is in the minds of many people. We should indeed support the implementation of the Ordinance starting from 1 April to give us an opportunity to make good preparations to face all the problems in a positive manner and resolve them one by one. After all, it is better to do so than delaying the matter for another six months.

Madam President, I so submit.

MR JAMES TO (in Cantonese): Madam President, perhaps let me put forward some more points of view and try a last-ditch attempt on it. I hope Honourable Members can be open about it and examine if the problems can be solved.

First of all, we should focus our discussions on two issues. One of these is the issue of title in land planning. I reckon the government official rising to speak later will assert that they will try their best to help and that they will assure us of that. But the question is, where does the ultimate authority lie in respect of planning? It lies in the Town Planning Board (TPB). With respect to the eight centres, one of them may have to solve the problem of green belt. Another one may need to solve the problem of permitted land use. They would of course try their best to deal with these problems, and the Planning Department may also offer some advice. Some Members said earlier that the existing procedures had been streamlined and it was unnecessary to wait for such a long time as nine months. The whole process could be completed in two months, for there was no need to hire an authorized person, that is, an architect to submit the plans. So it would be much easier than before. But the question is, irrespective of the explanation offered by the Narcotics Division and the Secretary for Security, no assurance can be given on that. If they cannot give us an assurance, then there is always a possibility of these centres being uprooted.

I have listened carefully to the speeches made by Honourable Members and I find the Honourable IP Kwok-him to have been most frank about it. Mr IP said that if the centres would really have to be uprooted, then the only thing that could be done was to find new sites for them. However, in the meantime, when the whole situation remains uncertain, and if you ask me what

I want, then the answer from the bottom of my heart is to repeal the notice and wait for two or three months so that the eight bodies representing the centres can go to the TPB and complete the various formalities. Then we will know how many of these centres can remain. For example, some centres may not be given the permission, while some may. So the Government can go about making initial assessments to see if those centres not granted permission would like to be relocated to a new site. If both these centres and the Government agree to this arrangement, then we can see how this can be done. In such circumstances, I figure in a few months the Government may be able to submit the proposal to the Legislative Council and to brief this Council on some of the matters which are likely to happen when the proposal is put into practice, that is, the things that they can be sure of.

As Mr IP Kwok-him has said, many of these centres grew up from scratch. Of course, their efforts and hard work are commendable. And so I do not wish to repeat that. But the question is that there is a great degree of uncertainty in the choice they make. They may even have to face the possibility of being uprooted, that is, they may need to find a new site. Please do not forget, these centres have been operating for many years, some of them even as long as 10 to 20 years. Regarding these choices which they have to make, if they are given some more time to consider, it would certainly be better than us telling them now things that we are not even sure of. All we know is that the Ordinance will come into force on 1 April and they should get everything done after that. We have talked about this question in the Subcommittee, and some Honourable Members are concerned about the safety of these centres. Mr Michael MAK visited two of these centres and he was shocked. But in fact these centres have been in operation for almost two decades and nothing had happened. Those drug addicts who go there to kick their habit rely mostly on the determination they get from their beliefs or religious faith. For them, the poor conditions are a kind of trial or test of their stamina.

If Members are worried about the safety of these places, I think the Government will give its assurance. The Buildings Department has also assured us that there are no immediate problems about the safety of these centres. If it so happens that a centre collapses, the Buildings Department will handle this right away. As for fire hazards, many of these centres are actually built at the seaside and should a fire break out, inmates may as well jump into the sea and swim to some safe place or they may get a boat and row to some safe place. Also, some of these centres are located in some remote

mountainous areas and in terms of security, I do not think the inmates can escape from these centres easily. We all know that most of these centres are only structures with one or two floors and they are actually not in a very dangerous state. So please do not exaggerate the point about immediate safety hazards. In other words, the safety of these places is basically assured, and the inmates are not living under any very dangerous conditions, that it is an impossibility that they will lose their lives even if they have kicked their habit. If Honourable Members have been to the centres, they should know that the reality is not as perceived.

The problem now is the other way round. If we cannot solve the planning problem, the centres may really have to be uprooted. We should give them a definite answer. Now out of the 14 centres, seven of them have made a statement and it is sitting on our desk right before us. Two centres have stayed neutral. We can read between the lines of this statement what these centres have in mind. After a meeting was held in the Subcommittee, we had another meeting. The Government has been luring us with money, saying that if the Ordinance can come into force on 1 April, the centres will stand a greater chance of getting funding. We can see from the letters addressed to us by these centres that they are really having a dilemma. They do not have much money. For some centres, they may want to see the Ordinance come into force on 1 April, but they have to say that they want to stay neutral. They have written to the Narcotics Division, but they have not written to Members to express a strong demand to see this Ordinance come into force. It is because they may sense that six or seven of these centres do have very profound and fundamental worries. So they would rather write secretly to the Narcotics Division, hoping that it will make a recommendation to Members of the Council. These centres will not make a firm opposition to either Mr LAW Chi-kwong's proposal or mine. Their stand is very obvious. They know very well that some of their fellow workers or some centres are facing great uncertainties.

As for the issue of land, Mr LAW Chi-kwong has talked about that briefly earlier. Let me try to say it again in detail. It is a fact that before the passage of the Ordinance, the issue of planning was not discussed in detail. The Government was frank when it told us that after the passage of the Ordinance last year, the problem of planning was discovered only when some officials inspected the centres. Prior to that, only inspections on building safety were carried out. Later they discovered that problems in planning existed. And that is why the story made the headlines in the papers. In fact, planning problems only appeared at a very late stage. I am not putting the

blame on the Government, nor can I blame myself for sensing the problem only during the deliberations of the Subcommittee. For had the problem been found, we would have to see if the Ordinance should come into force in such great haste or whether these centres are in a very dangerous state.

I believe the problem of land is far more serious than the problem of planning. This was what I heard from the sponsoring bodies last week when they held a meeting with the Government. At that time, I was listening and then I discovered that the problem of land is more serious than the problem of planning. What is the situation? I really want to see how the Government is going to give them exemption. The Government wants to first satisfy itself with the proof of title. We all know that these centres may have leased government land or private land. In some cases, they may have used some disused village houses. At that time, it may be the grandson of the village representative or the deputy village representative, and so on, who permitted the centres to use these disused village houses out of their own personal decision. However, at that time, the centres may have been told that if the property is to be developed later, the house will have to be returned to the owners and even repaired, to the benefit of both parties. Suppose the centres operate well, the villagers may not raise any objection. But during our meetings, it was proposed that we should provide positive proof of title and state who had agreed to lease the houses in question to the centres. To be frank, the Honourable LAU Wong-fat is also aware of the complexities of land title in the New Territories. Even the big developers, I would prefer not to name them here, would take great pains and undertake very complicated procedures and go to Vancouver, London, and so on to search for the holders of title. The developers will like to know where have the title holders gone and whether they are alive or dead, who can be the manager of the title, who are the descendants, how many lines of offspring are there in the holder of title and how many people can authorize decisions by giving their signature, and so on. We all know that these developers want to make money and they have the financial resources, but very often even they cannot find the holders of title. So if the Government requires the centres to find the holders of title within three months, will it work?

I have made a good suggestion to the Government to see if the practice of issuing licences to private homes for the aged can be adopted in this case. It is because in both cases, the Social Welfare Department is in charge of these matters. Under this kind of licensing scheme, even if the home for the aged in

question has breached the deed of mutual covenant, provided that no injunction or court order has been issued and that the fire protection installations comply with the requirements and those in building safety and emergency exits, a licence will be issued even though the Government is aware of the fact that the deed of mutual covenant is breached. The Government will not refuse to issue a licence because the setting up of the home has breached the deed of mutual covenant. Members of this Council have raised oral and written questions on such cases, but the Government thinks that this is only a problem between the home and the Owners' Corporation of the building concerned. Since I know the existence of such cases, so I asked the Government that with regard to proof of title, whether a flexible approach could be adopted. That is to say, regarding the village houses which the centres are using, even if there is no manager of title, no village representative or villagers who can produce any proof of title, and there is no injunction or court order which demands the sponsoring body to move out or that the houses should be demolished, then the SWD will issue a licence or grant an exemption. Can this approach be adopted?

But the initial reaction of the SWD was that this could not be done. The explanation given was that the sponsoring body might have illegally occupied the property of other people. Of course, under ideal conditions, everything has to be clarified first. The question is, if these centres are required to produce proof of title, I doubt if the centres can meet the requirement in three months before an exemption licence is issued. Now the Government wants to uphold the rule of law as well as trying to consider the merits of each case and to act reasonably, before an exemption licence is issued. I really do not understand how the Government can justify its moves. It is really creating problems for itself, for these problems are almost impossible to solve. So a licence cannot be issued.

At present, there are eight centres involved in this case. On the issue of title, unless these centres are cheating the Government, for example, they can say that the fish pond and the playground in the drug treatment centres do not have any title. But in fact it is only that the holders of title cannot be located. When the inmates play football, the centre operators may say that they are playing football in some place next to the centre. If they really do that, they can avoid the problem of title. But if the operators of the centres are honest, and they cannot tell the Government who the holder of title is in respect of the area used by the centre, I really do not know how the Government can grant them an exemption.

So the Honourable Mrs Sophie LEUNG was not right when she said earlier that it would be useless even if the implementation of the Ordinance could be postponed for half a year. The Government should understand that the grace period is extended for some more time, the chances of the centres finding more positive information are greater. In my opinion, the ideal thing would be to repeal the Ordinance which has been passed and to propose another ordinance at a right time, that is, after some period of time or a few months. These centres have indicated that they have to choose between a lesser evil out of the two options available. They know that some of the centres facing financial difficulties want the Ordinance to come into force on 1 April because they think that they may be able to get funding from the Beat Drug Fund, and so on. So they do not want to see any delay in the commencement of the Ordinance, they would prefer it to come into force at the latest by 1 October.

So if we are to strike a balance between the two, a more practicable option should be devised. Honestly, would a period of half a year be a matter of life and death? In fact, the brooding period of this Ordinance has been nearly two years. We cannot see any unscrupulous people trying to open some centres with some dubious purposes. No such centres were opened during the period. There was only one new centre and the Government had discussed with the sponsoring body before the centre was opened. The new centre is not one set up with some dubious purpose. It was not opened by some sponsoring body which wanted to do something dubious in the name of drug rehabilitation. We do in fact have many pieces of criminal law which deal with unscrupulous people in this respect.

In the present circumstances, I think that within this period of half a year, irrespective of the safety, fire protection facilities and the state of the building, and so on, the centres should all be given funding. The Beat Drug Fund does not state that funding can only be given after the licensing system has come into operation. During this couple of years, though the Government may not issue any licence to the centres, funding should nevertheless be given. It is because funding arrangements can be made flexibly on the administrative level, and the problem does not have to be solved only by licensing. I think that in the whole matter, what is really behind it all is that the Government is concerned about its face. I am really a bit agitated now for I think that it does not matter so much if the Government had not sensed the problem when it discussed planning and the title of the lands with us, for we can try to solve the problems together. It is because not all the problems can be discovered at once. We should face the

problems and try to solve them when the time is ripe. Now no one oppose the spirit of the Ordinance and what we hope is that we can get hold of more information so that the Government can issue licences at a more appropriate time and when the Government can rest assured.

I hope that this last-ditch attempt by me would be able to explain some of the very practical issues involved so that Honourable Members can understand these issues and lend their support to the motion. We are only asking for half a year more to strike a balance between all conflicting issues and to enable everyone to have a full picture of the whole matter. This will also enable the inter-departmental working group to come into operation for some time and to have a better picture of the situation. Besides, the Panel on Security can also make use of the interim to hold more meetings to follow up the matter. It will also allow other Honourable colleagues to take follow-up actions in other respects and so everyone can rest assured.

MRS SELINA CHOW (in Cantonese): Madam President, there has been deliberation but no resolution by Legislation Council Members rather than the Government this time around. As colleagues have said, discussions have repeatedly been made on the principal legislation. I am sorry that I have not participated in the discussions but I have listened to a report made by colleagues. I am not sure if Mr James TO has participated in the discussions. If he has done so, he may not have asked for a six-month extension. Most important of all, there were many similar licensing systems before. In respect of the establishment of licensing systems for homes for the aged, kindergartens and many social services in order to safeguard safety, health or public interests, licensing systems were built from scratch and some standards were set subsequently. All organizations, religious bodies and commercial organizations alike have to meet these standards. The most important task of this Council is to ensure that these standards are correct, suitable and reasonable and can achieve the intended objectives when the laws were originally made. Meeting all this, we should put them into practice. There are certainly some organizations that fail to meet any requirement. As far as I recall, the homes for the aged and kindergartens may not fully meet the standards when they were first licensed, and we tried our best to help them meet the standards. If we fail to do so, the organizations have to move out and we must act according to the law regardless of how great the objectives of their operation are.

It is particularly strange that Mr James TO has all along respected the rule of law but he said that he would like to consider how to help them find an easy way out. I do not think he should consider that. If the standards set are suitable and if there are other legislation regulating some uses, we must act according to the law. I also understand that, if the organizations have operated for a long time and they wish to help those who need their services, I believe the Government will certainly make its best efforts to help these organizations with the will and strength to stay in operation for it is duty-bound to do so.

I have heard that the Government intends to do so and it hopes that these organizations would make improvements within the four-year grace period. A grace period of four years rather than six years is pretty long and I have heard that the grace period may be as long as eight years. The problem is that many other organizations are already up to the standard and we can act according to the law, and most of those that are not up to standard have problems in planning and land. Similar circumstances were found in other licensing cases past but we have always acted on the basis of principles. If we have agreed in the course of legislating that it is suitable and that it can achieve the original objectives, we may as well put it into practice. If an objective has been set and everybody acts accordingly, it must be very reasonable. I do not understand why the period has to be extended for six months. How can we solve the problem if there is deliberation but no resolution? If some organizations completely fail to meet the requirements in respect of land or planning, would they be able to meet the requirements even if the period is extended for six months? It will be impossible for them to do so. If we can give them a grace period of a few years, why do we continue to have deliberation but no resolution?

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

DR LO WING-LOK (in Cantonese): Madam President, I am going to deliver a short speech to, in the first place, pay tribute to those people providing addiction treatment service. This is an arduous task. Not many people will like to do it too. Nevertheless, there is definitely such a need in Hong Kong. This is why I would like to pay tribute to these people.

In the second place, I agree with many colleagues that we must be careful, hardworking, and absolutely clear about what we are scrutinizing when enacting the law. It is definitely not the case that we only need to be careful

and work hard after the enactment of the principal legislation. In my opinion, the fixing of an effective date is merely an administrative measure. It serves to allow the executive to be fully prepared for the coming into effect of the law. Actually, we should work hard and exercise care even before the enactment of the principal legislation. Therefore, I am proud that I am a member of the Bills Committee. We had spent a lot of time and efforts before the principal legislation was passed. What we have done is absolutely correct. In my opinion, the law should take effect on 1 April.

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

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Government is of the view that the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance, which was enacted in April last year, should take effect on 1 April this year as scheduled, without any further delay.

As I pointed out on 1 November 2000 during the Second Reading of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill, the licensing scheme for drug treatment and rehabilitation centres is meant to raise the safety standards of these centres and protect the well-being of the persons using their services. The whole scheme is actually the outcome of a lengthy planning and preparation process, marked by detailed and thorough consideration, spanning from the establishment of an inter-departmental working group by the Government on the relevant proposal, to a public consultation exercise in 1998, to the Legislative Council's scrutiny and passage of the relevant bill last year, and eventually to the setting up of a licensing office by the Social Welfare Department (SWD) now. The effective date of 1 April 2002 was tabled before the Legislative Council only after consulting the various drug treatment and rehabilitation centres and after obtaining their acceptance.

We understand that since the licensing scheme is after all a new initiative, it is only natural that some drug treatment centres may worry about their inability to meet the licensing requirements. But as I have repeatedly stressed, the implementation of the new law does not mean that the daily operation of these centres will be upset, nor will it cause any problem of immediate closure

to some centres. Under the licensing scheme, only 38 centres operated by 14 non-governmental organizations will be affected. Available information shows that these centres do not have any structural safety problems which necessitate their immediate closure. Besides, there is also an exemption mechanism under the ordinance which enables these centres to operate with a certificate of exemption before they can obtain a licence. We have also promised to give these centres a grace period ranging from four years to eight, so that they can have sufficient time to make the improvements required. I wish to stress that the grace period is an administrative measure, and as such, it can be applied with flexibility. If necessary, the authorities may further lengthen the grace period as appropriate, taking into account the merits of individual cases.

Some Members are worried that some centres may be unable to meet the requirements of town planning. I wish to emphasize that the Government will do as much as it can to assist these centres in complying with the requirements concerned, including assisting them in lodging town planning applications. Available information indicates that the number of centres which need to lodge town planning applications is just eight, representing a very small portion of the 38 centres affected. Besides, we have also submitted a paper to Members, informing them that subsequent to the Town Planning Board's amendment to the definition of "green zones" in rural Outline Zoning Plans on the eighth of this month, the social welfare facilities currently located in green zones, including the four centres required to lodge new applications in respect of plans, will need to file simple applications under section 16 of the Town Planning Ordinance. The vetting of an application in respect of planning made under section 16 of the Town Planning Ordinance should be completed within two months. This will greatly reduce the money and time that the centres concerned have to spend on filing planning applications, as they are no longer required to commission "authorized persons" to lodge applications for them. We have notified the relevant centres accordingly, and all of them welcome this. Moreover, in view of the nature and operation history of these centres, we have obtained the agreement of the departments concerned to apply maximum flexibility and latitude to these centres in terms of land, building structure and fire protection requirements. The authorities will also take account of the situation of those centres which have to relocate and allow them to continue operate at their original sites as far as possible before relocation.

Some Members are worried that there may be inadequate co-ordination within the Government in respect of assisting the centres concerned in meeting the licensing requirements. In this connection, I wish to point out here that

following the enactment of the ordinance in April, the SWD already set up a special office to take charge of the co-ordination and implementation of the licensing scheme. The special office and the relevant departments have since conducted many site visits to various centres in an attempt to find out their worries and offer them the assistance required. To ensure that all the centres can understand the licensing requirements, the SWD has organized a series of seminars for the operators of these centres; and, following repeated and thorough consultations, a code of practice was issued in December 2001 to provide detailed guidance to theses centres. Although all the preparations for the licensing scheme are now completed, the Government has still, after listening to the views of Members and the centres, promised to set up a working group comprising members from all relevant departments as soon as possible, so as to further improve the co-ordination required. Interested Members and the drug treatment and rehabilitation centres to be affected may also join this working group. I cannot tell Mr HO exactly how soon it will be, but we will make a decision as quickly as possible, and Mr HO will be informed very soon. The working group will monitor the progress of licence application by the centres and offer them the assistance required.

In addition to the exemption mechanism and assistance in respect of planning and land, we have also obtained an undertaking from the Lotteries Fund that it will offer help to those centres applying for funds to meet the licensing requirements. A special funding scheme under the Beat Drugs Fund was also set up in January this year to provide assistance to those centres having difficulties in applying for funding elsewhere. This special scheme will come into operation at the same time as the ordinance.

Madam President, during the Subcommittee meetings on 4 and 5 March, when this commencement notice was discussed, all the representatives of the drug treatment centres present expressed approval of the legislative and policy intent behind the licensing scheme. It was pointed out that since the building and fire safety of most of these centres were far below the requirements of modern-day society, many of them would very much welcome the commencement of the ordinance as scheduled, so that the relevant improvements could be carried out as early as possible. We also emphasized then that the centres could apply for exemption only after the formal commencement of the licensing scheme, and that the Government could accurately assess the conditions of the centres and provide appropriate assistance to individual centres only after the receipt of exemption applications. To delay the commencement of the ordinance for half a year will not change the

fact that the centres must comply with the various legislative requirements, nor is this in line with the interest of the staff and users of the centres and society at large. Therefore, I hope that Members can support the originally proposed commencement date of 1 April 2002, which is agreed by the relevant organizations, so as to enable the licensing scheme to take the first important step. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr LAW Chi-kwong, you may now give your reply.

MR LAW CHI-KWONG (in Cantonese): Madam President, it seems as though it is not necessary for me to respond to the Secretary's remarks because Mr James TO has spoken in anticipation of the response in her remarks.

I am very pleased that a number of Members have frankly expressed their views on the issue. In particular, Mrs Selina CHOW has spoken for four minutes uninformed. Since Mrs Selina CHOW lacks the information, I should respond to the Secretary's remarks. A very important point is that we mostly considered business licensing systems before. Taking the Residential Care Homes (Elderly Persons) Ordinance as an example, the spirit of that piece of legislation is not to monitor subvented organizations but private organizations. In fact, the purpose of all licensing systems is to eliminate substandard operators.

On the contrary, the purpose of this ordinance is not eliminating any operator. Mr IP Kwok-him has just stated very clearly that the underlying spirit of the legislation is "not one less" rather than eliminating anything. Besides, we are not discussing exemption but the crux of the problem is exemption that may not be granted in three months' time. I have proposed this motion because I wish to give these organizations and the Government a chance to extend the period to six months or nine months for a three-month period is too short indeed.

A Member has said that I should not claim a division but I would not heed the advice and I would claim a division lest all of us should be held responsible if anything happens three months later. I certainly do not wish to see that we would not be able to help those organizations during these three months. Having listened to the remarks just made by Members, I know that

this motion would most probably not be passed but it does not matter and we would try our best to help those organizations so that they would at least be exempted. Should there be any incident, I hope Members would take up the responsibilities.

Why did I propose this motion? In fact, my views were initially the same as those of other Members. When I read the effective date published in the press, my first response was: although I knew there were such problems long ago, I was a bit upset. The law was passed in April last year, why has the Security Bureau suddenly become aware that there are problems and why did it that find out there were problems only last Friday? Now that it has found problems with an initiative that has been going for a year only today, how can it solve all the problems within three months? I am only asking for another six months. After the present discussions and responses, I believe 99.9% of the problems have been uncovered, of course, some problems may only appear when applications for exemption are filed. Is a three-month period really enough? The Government has not assured us of that. As Mr James TO has said, the Government has only assured us that it would make efforts. I hope Members who have not yet made a decision would consider carefully whether an initiative that has been ongoing for a year could be completed within three months.

I would like to ask Members to consider a light-hearted point: the National Day is on 1 October while the April Fool's day is on 1 April. Would Members please think about this? Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAW Chi-kwong 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 LAW Chi-kwong rose to claim a division.

PRESIDENT (in Cantonese): Mr LAW Chi-kwong 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 SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

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

Mr Michael MAK abstained.

Geographical Constituencies and Election Committee:

Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Miss Cyd HO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, four were in favour of the motion, 18 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, 12 were in favour of the motion and 11 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.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Honourable Members, it is now 10.37 pm and I think that this Council may not be able to finish debating two motions without legislative effect before 12 midnight. Therefore, I now suspend the meeting until 9.30 am tomorrow.

Suspended accordingly at twenty-three minutes to Eleven o'clock.

Annex I

WRITTEN ANSWER

Written answer by the Secretary for Health and Welfare to Miss CHOY So-yuk's supplementary question to Question 2

At present, a local resident on return from abroad is allowed to bring in, free of duty, for his or her own use, 60 cigarettes, or 15 cigars or 75 g of other manufactured tobacco. However, persons under the age of 18 are not entitled to this duty-free concession.

According to the statistics provided by the Customs and Excise Department, in 2000 and 2001, there were respectively 674 and 475 cases where people were fined for bringing in of duty-free cigarettes beyond the permitted quantity without making due declaration to the Customs. However, the Department does not maintain statistics on the number of such cases where the offenders were persons aged below 18.

Annex II

WRITTEN ANSWER

Written answer by the Secretary for Health and Welfare to Mr Michael MAK's supplementary question to Question 6

During the past three years, the most serious injured-on-duty case happened in Castle Peak Hospital when a health care assistant was injured by a newly admitted patient. In the course of assisting in subduing the patient, the staff concerned was bitten by the patient and sprained her arm. Her left shoulder and left wrist were injured and she was granted a total of 507 days of sick leave.