

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 22 May 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 BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE 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 CHAN YUEN-HAN, J.P.

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

**PUBLIC OFFICERS ATTENDING:**

MR MICHAEL SUEN MING-YEUNG, G.B.S., 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 JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR THE CIVIL SERVICE

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

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

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

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

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

MR KEITH KWOK KA-KEUNG, J.P.  
SECRETARY FOR WORKS

MR PAUL TANG KWOK-WAI, J.P.  
SECRETARY FOR TRANSPORT

**CLERKS IN ATTENDANCE:**

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Registered Designs Ordinance (Amendment of Schedule) Regulation 2002 .....	65/2002
Patents Ordinance (Amendment of Schedule 1) Order 2002 .....	66/2002
Layout-design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) Regulation .....	67/2002
Trade Marks Ordinance (Amendment of Schedule) Order 2002 .....	68/2002
Rehabilitation Centres (Appointment) Order .....	69/2002
Drug Addiction Treatment Centre (Chi Ma Wan Drug Addiction Treatment Centre) (Amendment) Order 2002 .....	70/2002
Prisons (Amendment) (No. 2) Order 2002.....	71/2002
Prisons (Hostel) (Amendment) Order 2002.....	72/2002
Detention Centre (Consolidation) (Amendment) Order 2002 .....	73/2002
Rehabilitation Centres Ordinance (Cap. 567) (Commencement) Notice 2002 .....	74/2002
Rehabilitation Centres Regulation (Cap. 567 sub. leg.) (Commencement) Notice 2002 .....	75/2002

Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2002 .....	76/2002
Commodities Trading (Trading Limits and Position Limits) (Amendment) Rules 2002 .....	77/2002
Lands Tribunal (Amendment) Rules 2002 .....	78/2002
Banking (Specification of Public Sector Entities in Hong Kong) (Amendment) Notice 2002 .....	79/2002
Dutiable Commodities (Amendment) Regulation 2001 (L.N. 248 of 2001) (Commencement) Notice 2002.....	80/2002
Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap. 59 sub. leg.) (Commencement) Notice 2002 .....	81/2002
Medical and Health Care (Miscellaneous Amendments) Ordinance 2002 (9 of 2002) (Commencement) Notice 2002.....	82/2002
Travel Agents (Amendment) Ordinance 2002 (10 of 2002) (Commencement) Notice 2002 .....	83/2002

#### Other Papers

Report of the Bills Committee on Hong Kong Court of Final Appeal  
(Amendment) Bill 2001

Report of the Bills Committee on Gambling (Amendment) Bill 2000

#### ORAL ANSWERS TO QUESTIONS

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

**Types of Business Operated in Shopping Centres Under HA**

1. **MR LEUNG FU-WAH** (in Cantonese): *Madam President, the Hong Kong Housing Authority (HA) requires shop operators in its shopping centres to run certain designated trades. Will the Government inform this Council whether it knows:*

- (a) the criteria with which the HA designates those trades;*
- (b) if the HA adjusted the criteria in the past year in order to contain the increasing vacancy rate of those shops; if so, of the details; and*
- (c) if the HA has considered developing some of its shopping centres into theme-specific shopping centres where goods of the same themes are on sale, so as to tie in with the development of the local community economy; if so, of the details, if not, the reasons for that?*

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

- (a) The HA provides shopping centres in public housing estates primarily to meet the retail needs of residents whilst optimizing financial returns from its assets. In planning for a new shopping centre, the Housing Department (HD) takes into account future estate population and demographic characteristics, household expenditure statistics extracted from the General Household Survey of the Census and Statistics Department, views of commercial tenants, availability of similar facilities in the district, pedestrian flow and sources of potential customers. Based on the spending patterns derived from such information, the HD draws up the trade mix and determines the shopping areas to be taken up by different trades. The HD will monitor the trade mix during the construction stage and make the necessary adjustments in the light of the latest market situation before lettings are made after completion of the shopping centre.
- (b) In general, if there is no suitable tenant bidding for a vacant shop in the originally designated trade, the HD will adjust the permitted



trade list according to the latest market trend as well as the views of commercial tenants and the Estate Management Advisory Committee. If the shop remains vacant, the HD would, on a case-by-case basis, allow tenants to propose their preferred trade, or to change the premises to community or welfare use, in order to reduce the vacancy ratio.

- (c) To tie in with the development of local community economy, the HA has considered the possibility of introducing theme shopping centres in whole or in part. For example, part of the Wo Che Estate Shopping Centre in Sha Tin is operated as a plaza for household goods. The HA welcomes proposals of themes for its shopping centres from interested commercial operators. At present, the HA is actively exploring the possibility of developing some of its existing shopping centres into theme malls, for instance, into a book city. As this possibility is still being discussed and commercial information is involved, I regret that details cannot be released to Honourable Members.

**MR LEUNG FU-WAH** (in Cantonese): *Madam President, in part (c) of her main reply, the Secretary said commercial information could not be released and she cited some examples to show that there were theme shopping centres. The Secretary said proposals on themes for the HA's shopping centres are welcomed, may I ask the Secretary how the operators of old shopping centres could make proposals? For instance, will the Government specifically consider proposals on redeveloping shopping centres into medical cities, fashion cities, computer cities, and so on? Can the Secretary give us more details?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I would like to thank the Honourable LEUNG Fu-wah for his supplementary question. As regards theme shopping centres, we have actually considered redeveloping several shopping centres into such centres, but as we were unable to find interested operators, several plans could not be implemented. For instance, we have considered developing the Chung Fu Shopping Centre in Tin Shui Wai into a fashion centre and part of the Lung Cheung Centre near the Wong Tai Sin Temple into a Chinese folk arts and crafts centre to sell products like "dragon

whiskers" candies and dough figurines. We have also considered setting up fitness centres or cafe centres, but operators have not indicated much interest. We are now considering the possibility of setting up a reflexology centre. In order to ensure the quality of operators and achieve the objective of maintaining compatibility in shopping centres, we would consider leasing the shops to one or two operators only, instead of subletting each shop. I hope such information could serve to answer Mr LEUNG Fu-wah's supplementary question. If he still needs other information, I am happy to provide it.

**PRESIDENT** (in Cantonese): Honourable Members, we have eight Members waiting to ask supplementary questions in relation to this question. Would Members please keep their supplementary questions as concise as possible, so that more Members can have the chance to raise theirs?

**MR FRED LI** (in Cantonese): *Madam President, a stall owner of a public housing estate market in Tuen Mun told me that the HD has allowed them to change their designated trades freely, but in return, they must not object to turning the supermarket in the same housing estate into a superstore (that is, to include the sale of wet goods). This is entirely different from the policy of designated trades as mentioned by the Secretary in part (a) of her main reply. Is this a change in the established policy of the Government and is the Housing Bureau aware of this situation?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, as regards the incident of the Tuen Mun public housing estate market stalls mentioned by the Honourable Fred LI, I think I have to go back and check on the details. (Annex I) However, the HD and HA are actually trying to meet the needs of residents by providing commercial facilities. As big chain stores (such as superstores) are very popular among residents of public housing estates, we think that the HA should respond to changes in this direction and in the market, to meet the needs of residents and to prevent losing the customers of shopping centres to private markets. As regards the deal that Mr Fred LI talked about earlier, this is the first time I have ever heard about it. Therefore, I have to go back and check the records, but it is really not necessary for the HD to make such a deal with the operators. In fact, we think that very often, big shopping

centres (such as superstores) could increase the pedestrian flow of shopping centres and thus enhance their competitiveness.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, very often, the vacancy rate of public housing estate shopping centres is very closely related to the flexibility of policies. Has the Secretary considered selling some public housing estate shopping centres to commercial organizations so that they could be managed by such organizations? Many a time, we discovered that the problems were totally attributable to the poor management and relatively inflexible policies of the HD. Does the Government have such intentions?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I would like to thank the Honourable CHAN Kam-lam for raising this supplementary question. Under the prevailing economic environment of Hong Kong, the vacancy rate of retail premises and situations where leases are not renewed are much lower and less than that of private shopping centres. The vacancy rate I have on hand is 5.9%; and if newly completed shopping centres are included, the vacancy rate is still only 6.7%, which is lower than that of 8.2% in private shopping centres. However, I agree that the flexibility of private operators are actually higher than that of the HA. There are many reasons leading to shop vacancies and it is not just attributable to operation. We have conducted a study in this relation and discovered that vacant shops are mostly located in older and more remote public housing estates where transportation is inconvenient and pedestrian flow is less, and the vacancy rate of larger shops is also higher than that of smaller shops. The vacancy rate of eating establishment premises in certain non-fully occupied new public housing estates is also relatively higher. In this respect, the HA hopes the situation can improve gradually. I recently mentioned in the Legislative Council that the HA had launched many publicity programmes, such as providing free parking to attract more customers, planning to deal with the issue of designated trades more flexibly, and so on. At present, if the shops were not leased after several bidding exercises, as I said earlier, changes would be made to convert the premises into community or welfare use.

Moreover, we are also very concerned about the business environment. In 2001, the HA endorsed a number of plans to install air-conditioning for 42 market stalls and reorganize 23 market stalls, with the intention of enhancing their competitiveness and reducing the vacancy rate. If it should turn out to be

impossible to turn the situation around, businesses could not operate or supply exceeds demand, we may close down the markets or stalls in question.

Recently, we have also carried out a major rental reassessment exercise. This exercise has been completed and on average, the rentals of most shops have been reduced by 19% to 20%, with the highest concession rate amounting to 76%, which is really a very high figure. Market stalls, in general, have been granted a reduction of 40% to 60%. The purpose of this exercise is to help shop owners to tide over their business difficulties.

**MR ALBERT HO** (in Cantonese): *Madam President, the Secretary said earlier that the average shop vacancy rate is not very high. However, the Panel on Housing of the Legislative Council learned from the relevant data that the continuous vacancy rate of many shopping centres under the HD — I recall that there were as many as a dozen to 20 — is as high as 40%. This is definitely not acceptable in the business sector. May I ask the Secretary, in addition to changing its inflexible policies and managing the shopping centres more flexibly, if the Secretary thinks that it is outdated to retain the existing policy of designated trades? The setback of this policy is that users are not allowed to choose their mode of operation in accordance with the market environment. Has the Secretary considered conducting a comprehensive review on the trade designation policy as a whole or even relaxing it?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I admit that what the Honourable Albert HO's point was correct. I am also very concerned about the problem of high vacancy rate in many shopping centres. As I said earlier, we have conducted a study on the vacancy problem and discovered that it is caused by many reasons, including the fact that the relevant housing estate is located in a remote area or that it is an old housing estate. Under the existing circumstances, an excessive supply of shops in many shopping centres has already occurred at the planning stage, so changes must be made. As regards the trade mix, in order to ensure that the basic needs of residents are met, the HA has drawn up a list of authorized trades for its shopping centres and markets, to ensure that residents are provided with certain daily necessities and necessary services. This is similar to the practice of private developers in their management of shopping centres and the HA also wants to avoid excessive competition between its shopping centres and markets. I could refer Mr Albert

HO's views on this subject to the HA for the consideration. However, designated trades could actually achieve certain purposes. It is hoped that designated trades could reflect the taste of residents and the latest trend of the retail industry. Moreover, the operation of certain trades is not allowed for social reasons.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, I would like to ask a supplementary question in relation to theme shopping centres. Apart from fashion cities that the Secretary talked about earlier, I am aware that many other trades could only form a market by grouping together. Take computer cities as an example, there are both software and hardware stores in the shopping centres. The Secretary earlier talked about difficulties in finding contractors to lease the shops. Has the Secretary ever make reference to the successful examples in the private market such as computer shopping centres? There are two such centres in Causeway Bay alone and also another in Tsim Sha Tsui. Are such centres leased by one contractor and then operated in the forms of shopping centres or do the landlords lease such centres to operators of certain trades? If these shopping centres can be successful, then why can the HA not consider giving up the idea of finding contractors and operating such shopping centres on its own by encouraging interested parties to lease the shops?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I would like to thank the Honourable Howard YOUNG for his suggestion. I have also made such a suggestion to the HA indeed. At present, the HA welcomes suggestions on themes from interested commercial tenants. In this connection, apart from the fact that it may be a two-way development, the HA could also take into account the special circumstances of certain shopping centres to allow individual tenants to let their shops to operators whose businesses are consistent with a particular theme. Consideration could be given to this proposal.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, has the Secretary considered adopting some flexible measures, such as leasing the shops on a trial basis or offering some longer rent-free periods, to allow business starters who do not have much capital but are interested in becoming self-employed to try to set up their own businesses? This could also reduce the vacancy rate of shops under the HD.*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I would like to thank the Honourable TAM Yiu-chung for his supplementary question. The HA has already introduced some short-term tenancies since January this year, to allow tenants to lease its shops on short-term tenancies of one to 12 months for short-term operation. Such commercial tenants could make proposals on trades they are interested in operating and the vetting process is also very speedy.

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

**MR WONG SING-CHI** (in Cantonese): *Madam President, there is already a Park'n Shop supermarket in Choi Yuen Estate, Sheung Shui and about a year or so, another very big Wellcome supermarket was opened in the same area. This has resulted in the closure of most market stalls. May I ask the Secretary whether this is the current policy of the Government? Is the Government trying to drive away small commercial tenants and recover the shops for other purposes by bringing such big supermarkets into public housing estates?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I would like to thank the Honourable WONG Sing-chi for his supplementary question. Madam President, in fact, I have said earlier that the HA considers how to operate the shopping centres in accordance with the market trend and the preferences of residents. As regards supermarkets, we have already taken into account the impact on small commercial tenants. Therefore, under certain circumstances, for example, if there is a market in the neighbourhood or if the area of shopping centres are not very big, we would not allow superstores to be opened in existing public housing estates. On the issue of competition, supermarkets pay much higher rentals than market stalls. Let me cite some figures for the reference of Members. The monthly rental of supermarkets ranges from \$500,000 to \$1.5 million, whereas the monthly rental of market grocery stalls (of course, they have a much smaller area) ranges from \$2,500 to \$20,000. In this regard, the HA is of the opinion that market stalls could compete with supermarkets.

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

## Potential Dangers in Piercing of Body Parts

2. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, to keep up with fashion, many young people have holes pierced on parts of their bodies for wearing ornamental rings. At present, the authorities do not have any control over the trade providing such piercing services. In the event of improper treatment in the process of hole piercing or after-care, the wounds may be infected and the persons receiving such services may even contract diseases. In this connection, will the Government inform this Council whether:*

- (a) *it will step up publicity and educational efforts to make young people aware of the potential dangers involved in piercing holes on parts of their bodies; and*
- (b) *it will consider establishing a licensing system for the trade providing body piercing services to ensure that the operational procedures and the instruments used comply with the prescribed hygiene standards?*

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

- (a) The health risks related to body piercing are caused by the use of unsterilized equipment or equipment contaminated by infected blood and body fluids.

As part of its health education programme, the Department of Health (DH) disseminates information on the prevention of diseases transmitted by blood or body fluids, including not sharing razors, tooth brushes, scissors or needles, and reminding the public to ensure all the instruments for acupuncture, tattoo, and body piercing are disinfected. The publicity measures include the distribution of an information leaflet targeting at beauty parlours as well as acupuncture, tattoo and hair dressing businesses. Posters were sent to youth centres for display. Guidelines have also been provided to the Education Department for incorporation into the school guidelines. The health messages are available at the website of the DH.

The DH will step up publicity of blood/body fluids transmitted diseases and the inherent risk arising from body piercing through its Central Health Education Unit and adolescent health programme.

- (b) Body piercing services are available from a variety of providers, including retailers of jewellery and ornaments. These are beauty, not health, services. We have no plans to regulate such services through a licensing system. Nevertheless, the DH will continue to provide health education for the trade and consumers on the hygienic practice of such services. Service providers have a duty to ensure that their services are hygienic and safe. Through better information and understanding, consumers could be empowered to take more responsibility for their own health and make informed choices.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, in addition to the increasing demand from young people, body piercing service is actually also much sought after by overseas visitors to Hong Kong. The Secretary said in his main reply that the Government has no plans to set up a licensing system. As such, may I ask the Secretary whether the Government will consider the second best option of liaising with members of the industry to help them to formulate their own set of hygiene standards and staff training codes?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): *Madam President, we have also discussed this issue with the DH. The DH will conduct inspections and gather information, in order to have a better understanding of the current situation. It will also further consider the Honourable CHOY So-yuk's proposal on inviting members of the industry to formulate their own codes and we will also provide the industry with more information for staff training purposes in the future.*

**MR JASPER TSANG** (in Cantonese): *Madam President, the Secretary said that body piercing service is only a beauty service. Nevertheless, it poses certain risks to human health. May I ask the Government whether any regulatory system has been implemented in European countries and the United States, where body piercing service is more popular? Has the Government looked into such information?*



**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, according to our research data, there is no licensing system in most places while the relevant industry of some places are required to register with the health authorities, but difficulties have been encountered in enforcement. As Miss CHOY So-yuk said earlier, many places have, on the one hand, requested the industry to draft their own codes, and on the other, made every effort to educate the public to pay close attention to their own health. Since it is impossible for the Government to monitor all health-related activities, it has to invariably count on the consumers themselves for they should know how their health would be affected if they do such things to their bodies, instead of solely relying on regulation by law.

**MR MICHAEL MAK** (in Cantonese): *Madam President, may I ask the Secretary whether there are any records or statistics on the most severe cases of injury or infection? Furthermore, since no legislation has yet been enacted in this connection, through what channels and under which ordinance could the relevant persons seek compensations?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, since such activities have not yet been brought under regulation, the Government could not possibly know about all such activities in society. However, according to our data on infectious diseases, every year, there are about four to six cases of acute hepatitis resulting from body piercing. As regards how consumers can protect their own rights, firstly, consumers should know that this is their own choice and they should be aware of the risk of infection carried by such activities and should, therefore, be more careful. Secondly, if consumers find that their health has been affected by such activities, proceedings can be initiated under common law.

**MR WONG SING-CHI** (in Cantonese): *Madam President, this question is on the issue of youth behaviour in catching up with fashion. In fact, apart from the fact that body piercing will have an impact on health, we are also worried that other youth behaviour in keeping up with fashion will also adversely affect their health. I would like to cite an example. My friend's daughter spent 10 days*

*and 10 nights queuing up to get a signature from the F4 group. I believe that queuing up for 10 days and 10 nights will affect her health. Has the Secretary conducted any regular studies on youth behaviour in keeping up with fashion and has the Government made any objective analysis on the impact of such behaviour after the studies so that young people could be made more aware of their own position?*

**PRESIDENT** (in Cantonese): Mr WONG Sing-chi, how is your supplementary question related to the main question?

**MR WONG SING-CHI** (in Cantonese): *Madam President, what I mentioned earlier is all youth behaviour in keeping up with fashion. Body piercing is only one of the activities that have an adverse effect on health. In fact, there are many other similar fashion-keeping activities which do have an impact on young people. I am now discussing a relevant issue and I hope that the Secretary could provide us with some information.*

**PRESIDENT** (in Cantonese): Mr WONG, I rule that your supplementary question has deviated from the scope of the main question, so the Secretary needs not answer it.

**MISS CHOY SO-YUK** (in Cantonese): *May I ask the Secretary, in the past year, how many cases of infection as a result of body piercing or tattooing had led to hospitalization?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, we have not gathered such information. However, I could try to find out after the meeting if such information is available. If so, I would provide a reply in writing, but I do not think we have such information. (Annex II)

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

### Quality of Potable Water

3. **MR FRED LI** (in Cantonese): *Madam President, it has been reported that in some of the samples drawn from Dongjiang water and the sources of Hong Kong reservoirs, the Open University of Hong Kong had detected the presence of parasites originated from animal wastes, and the Water Supplies Department (WSD) had also detected the presence of Cryptosporidia in treated potable water. Two years ago, the WSD undertook to release information on water quality in relation to Cryptosporidia through the Internet but it has not done so. In this connection, will the Government inform this Council:*

- (a) *of the test items and results of the regular water quality tests conducted by the WSD on the quality of water from Dongjiang and the sources of Hong Kong reservoirs over the past three years, including the per litre content level of each of those tested items;*
- (b) *of the test items and results of the tests conducted by the WSD on treated and filtered potable water over the past three years; and whether such test results have shown that potable water in Hong Kong meets the international safety standards of potable water; and*
- (c) *whether the WSD will consider releasing the test results on the quality of potable water regularly; if so, of the details; if not, the reasons for that?*

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

- (a) Water samples (including Dongjiang water and reservoir storage) are taken regularly from catchments, impounding reservoirs and water treatment works. As Dongjiang water accounts for about 80% of our raw water, the WSD monitors the Dongjiang water quality at Muk Wu Pumping Station, the reception point in Hong Kong, on a 24-hour basis for the sake of understanding the water quality and fine-tuning the treatment processes. The WSD also has stringent testing and monitoring on the quality of water in reservoirs.

Over the past three years, the test items and the concentration of these items for Dongjiang water are given in Annex 1.

According to the results of comprehensive testing by the WSD, Dongjiang water and the water in reservoirs are both suitable for use as raw water. In other words, after proper treatment, the treated water will comply with the World Health Organization (WHO) Guidelines for Drinking-water Quality.

- (b) Hong Kong enjoys one of the safest water supplies in the world. We adopt the WHO Guidelines for Drinking-water Quality (1993), which contains 94 parameters, to monitor the quality of drinking water. Samples are regularly taken from the entire water supply network, including treatment works, service reservoirs, watermains and consumers' taps for examinations of the relevant parameters.

Over the past three years, the test items and the concentration of these items for treated water are given in Annex 2.

The treated water in Hong Kong has to go through very comprehensive treatment processes, including sedimentation, filtration and disinfection, to ensure that the treated water quality complies chemically and bacteriologically with the WHO Guidelines for Drinking-water Quality. The treated water in Hong Kong is safe for lifetime consumption.

- (c) At the meeting of the Advisory Committee on the Quality of Water Supplies on 19 July 2001, members agreed at the publication of water quality data on the Internet on an annual basis. The WSD first published the Dongjiang raw water quality at Muk Wu and treated water quality data for 1999-2000 via the WSD website in August 2000. Subsequently, the water quality data for 2000-01 were published via the WSD website in July 2001. The data for 2001-02 are scheduled to be published in the WSD website in July this year in accordance with the annual publication programme. The practice of publishing water quality data on annual basis is in line with international practice as practised in the United States and the United Kingdom.

The main part of the question has mentioned the publication of water quality data in relation to Cryptosporidia. The WSD has considered this issue two years ago. However, there were some

diversified technical views in mid-2000. Therefore, the WSD has concentrated in the first publication exercise on the 94 parameters of the WHO Guidelines for Drinking-water Quality. As Cryptosporidia is not one of the 94 parameters, the related data were therefore not published.

On 4 April of this year, the Advisory Committee on the Quality of Water Supplies agreed to the inclusion of water quality data in relation to Cryptosporidia in raw water and treated water. When the WSD carries out the next update of water quality data in the WSD website in July 2002, the test results on Cryptosporidia will also be included.

## Annex 1

Quality of Dongjiang Water for the Period April 1999 - March 2000  
as received in Hong Kong at Muk Wu Pumping Station

<i>Parameters</i>	<i>Unit</i>	<i>Monitoring Data</i>		
		<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
pH	pH	6.9	6.5	7.4
Temperature	°C	24	14	31
Visible substances	N.T.U.	5.8	2.2	59
Colour	Hazen	9	<5	25
Odour	TON	No objectionable odour		
Dissolved Oxygen	mg/L	4.5	0.6	10.7
Biochemical Oxygen demand	mg/L	6	2	10
Permanganate value	mg/L	1.14	0.73	1.58
Total Cyanide	mg/L	<0.01	<0.01	<0.01
Total Arsenic	mg/L	0.0015	0.0011	0.0018
Total Mercury	mg/L	<0.00005	<0.00005	<0.00005
Total Cadmium	mg/L	<0.0001	<0.0001	0.00018
Chromium (VI)	mg/L	<0.04	<0.04	<0.04
Total Lead	mg/L	<0.001	<0.001	<0.001
Total Copper	mg/L	<0.09	<0.09	0.11
Total Phosphorus (as P)	mg/L	0.183	0.078	0.326
Total Nitrogen	mg/L	4.41	1.66	8.62
Sulphate (as SO <sub>4</sub> <sup>2-</sup> )	mg/L	16	10	24

<i>Parameters</i>	<i>Unit</i>	<i>Monitoring Data</i>		
		<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Chloride (as Cl <sup>-</sup> )	mg/L	16	12	20
Soluble Iron	mg/L	0.12	0.04	0.29
Total Manganese	mg/L	0.13	0.03	0.56
Total Zinc	mg/L	0.035	0.013	0.059
Nitrate (as N)	mg/L	3.20	0.91	6.60
Nitrite (as N)	mg/L	0.356	0.072	0.757
Fluoride (as F <sup>-</sup> )	mg/L	0.45	0.30	0.73
Selenium (IV)	mg/L	<0.001	<0.001	<0.001
Benzo[a]pyrene	mg/L	<0.00018	<0.00018	<0.00018
Total Coliform	no./L	3 700	200	22 000
E. coli	no./L	1 650	0	6 800
Cryptosporidium	no./L	0.27	0.00	0.80
Giardia	no./L	0.00	0.00	0.00

Quality of Dongjiang Water for the Period April 2000 - March 2001  
as received in Hong Kong at Muk Wu Pumping Station

<i>Parameters</i>	<i>Unit</i>	<i>Monitoring Data</i>		
		<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
pH	pH	6.9	6.5	7.5
Temperature	°C	25	17	31
Visible substances	N.T.U	3.7	0.4	11
Colour	Hazen	8	<5	15
Odour	TON	No objectionable odour		
Dissolved Oxygen	mg/L	4.6	1.4	8.1
Biochemical Oxygen demand	mg/L	6.3	4.0	12
Permanganate value	mg/L	1.2	0.86	1.6
Total Cyanide	mg/L	<0.01	<0.01	<0.01
Total Arsenic	mg/L	0.0015	0.0012	0.0019
Total Mercury	mg/L	<0.00005	<0.00005	0.00013
Total Cadmium	mg/L	<0.0001	<0.0001	<0.0001
Chromium (VI)	mg/L	<0.002	<0.002	<0.002
Total Lead	mg/L	<0.001	<0.001	0.0014
Total Copper	mg/L	0.0050	0.0031	0.0078

<i>Parameters</i>	<i>Unit</i>	<i>Monitoring Data</i>		
		<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Total Phosphorus (as P)	mg/L	0.28	0.12	0.52
Total Nitrogen	mg/L	5.0	2.8	6.2
Sulphate (as SO <sub>4</sub> <sup>2-</sup> )	mg/L	19	14	27
Chloride (as Cl <sup>-</sup> )	mg/L	19	15	23
Soluble Iron	mg/L	0.10	0.050	0.19
Total Manganese	mg/L	0.14	0.050	0.47
Total Zinc	mg/L	0.012	0.0062	0.017
Nitrate (as N)	mg/L	4.0	2.0	5.1
Nitrite (as N)	mg/L	0.41	0.15	0.98
Fluoride (as F <sup>-</sup> )	mg/L	0.43	0.34	0.54
Selenium (IV)	mg/L	<0.001	<0.001	<0.001
Anionic Surfactants	mg/L	-	-	-
Benzo[a]pyrene	mg/L	<0.00018	<0.00018	<0.00018
Total Coliform	no./L	2 600	100	14 000
E. coli	no./L	1 200	0	4 100
Cryptosporidium	no./L	0.00	0.00	0.00
Giardia	no./L	0.01	0.00	0.04

Quality of Dongjiang Water for the Period April 2001 - March 2002  
as received in Hong Kong at Muk Wu Pumping Station

#### TENTATIVE RESULT

<i>Parameters</i>	<i>Unit</i>	<i>Monitoring Data</i>
		<i>Average</i>
pH	pH	6.9
Temperature	°C	24.9
Visible substances	N.T.U.	5.4
Colour	Hazen	9
Odour	TON	No objectionable odour
Dissolved Oxygen	mg/L	5.3
Biochemical Oxygen demand	mg/L	7
Permanganate value	mg/L	1.09
Total Cyanide	mg/L	<0.01

<i>Parameters</i>	<i>Unit</i>	<i>Monitoring Data</i> <i>Average</i>
Total Arsenic	mg/L	0.0015
Total Mercury	mg/L	<0.00005
Total Cadmium	mg/L	<0.0001
Chromium (VI)	mg/L	<0.04
Total Lead	mg/L	<0.001
Total Copper	mg/L	<0.09
Total Phosphorus (as P)	mg/L	0.23
Total Nitrogen	mg/L	4.69
Sulphate (as SO <sub>4</sub> <sup>2-</sup> )	mg/L	17
Chloride (as Cl <sup>-</sup> )	mg/L	18
Soluble Iron	mg/L	0.13
Total Manganese	mg/L	0.13
Total Zinc	mg/L	0.035
Nitrate (as N)	mg/L	3.46
Nitrite (as N)	mg/L	0.361
Fluoride (as F <sup>-</sup> )	mg/L	0.38
Selenium (IV)	mg/L	<0.001
Benzo[a]pyrene	mg/L	<0.00018
Total Coliform	no./L	3 830
E. coli	no./L	2 230
Cryptosporidium	no./L	0.03
Giardia	no./L	0.55

## Annex 2

## Drinking Water Quality for the Period April 1999 - March 2000

## Part A. Bacteriological quality

<i>Parameter</i>	<i>Unit</i>	<i>WHO</i> <i>Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Total coliform	no. per 100 mL	0	Yes	0	0	0
E. coli	no. per 100 mL	0	Yes	0	0	0



## Drinking Water Quality for the Period April 1999 - March 2000

## Part B. Chemicals of health significance as described by World Health Organization Guidelines for Drinking-Water Quality 1993

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Antimony	mg/L	0.005 (P)	Yes	<0.001	<0.001	<0.001
Arsenic	mg/L	0.01 (P)	Yes	<0.001	<0.001	0.0014
Barium	mg/L	0.7	Yes	0.017	<0.005	0.040
Boron	mg/L	0.3	Yes	<0.07	<0.07	<0.07
Cadmium	mg/L	0.003	Yes	<0.0001	<0.0001	0.00023
Chromium	mg/L	0.05 (P)	Yes	<0.04	<0.04	<0.04
Copper	mg/L	2 (P)	Yes	<0.09	<0.09	0.14
Cyanide	mg/L	0.07	Yes	<0.01	<0.01	<0.01
Fluoride	mg/L	1.5	Yes	0.48	<0.10	1.40
Lead	mg/L	0.01	Yes	<0.001	<0.001	0.0048
Manganese	mg/L	0.5 (P)	Yes	<0.01	<0.01	0.10
Mercury (total)	mg/L	0.001	Yes	<0.00005	<0.00005	<0.00005
Molybdenum	mg/L	0.07	Yes	<0.02	<0.02	<0.02
Nickel	mg/L	0.02	Yes	<0.01	<0.01	0.030
Nitrate (as NO <sub>3</sub> <sup>-</sup> )	mg/L	50	Yes	7.27	0.13	21.88
Nitrite (as NO <sub>2</sub> <sup>-</sup> )	mg/L	3 (P)	Yes	<0.004	<0.004	0.010
Selenium	mg/L	0.01	Yes	<0.001	<0.001	<0.001
Carbon tetrachloride	µg/L	2	Yes	<0.50	<0.50	0.67
Dichloromethane	µg/L	20	Yes	<5.0	<5.0	5.4
1, 2-Dichloroethane	µg/L	30	Yes	<7.5	<7.5	<7.5
1, 1, 1-Trichloroethane	µg/L	2 000 (P)	Yes	<500	<500	<500
Vinyl chloride	µg/L	5	Yes	<1.2	<1.2	<1.2
1, 1-Dichloroethene	µg/L	30	Yes	<7.5	<7.5	<7.5
1, 2-Dichloroethene	µg/L	50	Yes	<12	<12	<12
Trichloroethene	µg/L	70 (P)	Yes	<18	<18	<18
Tetrachloroethene	µg/L	40	Yes	<10	<10	<10
Benzene	µg/L	10	Yes	<2.5	<2.5	<2.5
Toluene	µg/L	700	Yes	<175	<175	<175
Xylenes	µg/L	500	Yes	<125	<125	<125
Ethylbenzene	µg/L	300	Yes	<75	<75	<75

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Styrene	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Benzo(a)pyrene	µg/L	0.7	Yes	< 0.18	< 0.18	< 0.18
Monochlorobenzene	µg/L	300	Yes	< 75	< 75	< 75
1, 2-Dichlorobenzene	µg/L	1 000	Yes	< 250	< 250	< 250
1, 4-Dichlorobenzene	µg/L	300	Yes	< 75	< 75	< 75
Trichlorobenzenes (total)	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Di(2-ethylhexyl)adipate	µg/L	80	Yes	< 20	< 20	< 20
Di(2-ethylhexyl)phthalate	µg/L	8	Yes	< 2	< 2	< 2
Acrylamide	µg/L	0.5	Yes	< 0.4	< 0.4	< 0.4
Epichlorohydrin	µg/L	0.4 (P)	Yes	< 0.4	< 0.4	< 0.4
Hexachlorobutadiene	µg/L	0.6	Yes	< 0.15	< 0.15	< 0.15
Edetic acid (EDTA)	µg/L	200 (P)	Yes	< 50	< 50	< 50
Nitrilotriacetic acid	µg/L	200	Yes	< 50	< 50	< 50
Tributyltin oxide	µg/L	2	Yes	< 0.5	< 0.5	< 0.5
Alachlor	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Aldicarb	µg/L	10	Yes	< 2.5	< 2.5	< 2.5
Aldrin/Dieldrin	µg/L	0.03	Yes	< 0.008	< 0.008	< 0.008
Atrazine	µg/L	2	Yes	< 0.50	< 0.50	< 0.50
Bentazon	µg/L	30	Yes	< 7.5	< 7.5	< 7.5
Carbofuran	µg/L	5	Yes	< 1.2	< 1.2	< 1.2
Chlordane	µg/L	0.2	Yes	< 0.050	< 0.050	< 0.050
Chlorotoluron	µg/L	30	Yes	< 7.5	< 7.5	< 7.5
DDT	µg/L	2	Yes	< 0.50	< 0.50	< 0.50
1, 2-Dibromo-3-chloropropane	µg/L	1	Yes	< 0.25	< 0.25	< 0.25
2, 4-D	µg/L	30	Yes	< 7.5	< 7.5	< 7.5
1, 2-Dichloropropane	µg/L	20 (P)	Yes	< 5.0	< 5.0	< 5.0
1, 3-Dichloropropene	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Heptachlor/Heptachlor epoxide	µg/L	0.03	Yes	< 0.008	< 0.008	< 0.008
Hexachlorobenzene	µg/L	1	Yes	< 0.25	< 0.25	< 0.25
Isoproturon	µg/L	9	Yes	< 2.2	< 2.2	< 2.2
Lindane	µg/L	2	Yes	< 0.50	< 0.50	< 0.50
MCPA	µg/L	2	Yes	< 2.0	< 2.0	< 2.0
Methoxychlor	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Metolachlor	µg/L	10	Yes	< 2.5	< 2.5	< 2.5
Molinate	µg/L	6	Yes	< 1.5	< 1.5	< 1.5

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Pendimethalin	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Pentachlorophenol	µg/L	9 (P)	Yes	< 2.2	< 2.2	< 2.2
Permethrin	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Propanil	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
Pyridate	µg/L	100	Yes	< 25	< 25	< 25
Simazine	µg/L	2	Yes	< 0.50	< 0.50	< 0.50
Trifluralin	µg/L	20	Yes	< 5.0	< 5.0	< 5.0
2, 4-DB	µg/L	90	Yes	< 22	< 22	< 22
Dichlorprop (or 2, 4-DP)	µg/L	100	Yes	< 25	< 25	< 25
Fenoprop (or 2, 4, 5-TP)	µg/L	9	Yes	< 2.2	< 2.2	< 2.2
Mecoprop (or MCP)	µg/L	10	Yes	< 2.5	< 2.5	< 2.5
2, 4, 5-T	µg/L	9	Yes	< 2.2	< 2.2	< 2.2
Monochloramine	mg/L	3	Yes	< 1.0	< 1.0	3.0
Chlorine	mg/L	5	Yes	0.7	< 0.1	2.5
Bromate	µg/L	25 (P)	Yes	< 20	< 20	< 20
Chlorite	µg/L	200 (P)	Yes	< 100	< 100	< 100
2, 4, 6-Trichlorophenol	µg/L	200	Yes	< 50	< 50	< 50
Formaldehyde	µg/L	900	Yes	< 225	< 225	< 225
Bromoform	µg/L	100	Yes	< 25	< 25	< 25
Dibromochloromethane	µg/L	100	Yes	< 25	< 25	< 25
Bromodichloromethane	µg/L	60	Yes	< 15	< 15	17
Chloroform	µg/L	200	Yes	< 50	< 50	112
Dichloroacetic acid	µg/L	50 (P)	Yes	18	< 12	71
Trichloroacetic acid	µg/L	100 (P)	Yes	< 25	< 25	74
Chloral hydrate	µg/L	10 (P)	Yes	8.7	< 2.5	27
Dichloroacetonitrile	µg/L	90 (P)	Yes	< 22	< 22	< 22
Dibromoacetonitrile	µg/L	100 (P)	Yes	< 25	< 25	< 25
Trichloroacetonitrile	µg/L	1 (P)	Yes	< 0.25	< 0.25	< 0.25
Cyanogen chloride (as CN)	mg/L	0.07	Yes	< 0.02	< 0.02	< 0.02
Cryptosporidium	no./L	-	-	< 0.01	0.00	0.10
Giardia	no./L	-	-	0.00	0.00	0.00

*Note:*

(P) - Provisional guideline value

## Drinking Water Quality for the Period April 2000 - March 2001

## Part A. Bacteriological quality

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Total coliform	no. per 100 mL	0	Yes	0	0	0
E. coli	no. per 100 mL	0	Yes	0	0	0

## Part B. Chemicals of health significance as described by World Health Organization Guidelines for Drinking-water Quality 1993

## Drinking Water Quality for the Period April 2000 - March 2001

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Antimony	mg/L	0.005 (P)	Yes	<0.001	<0.001	<0.001
Arsenic	mg/L	0.01 (P)	Yes	<0.001	<0.001	0.0016
Barium	mg/L	0.7	Yes	0.014	<0.005	0.038
Boron	mg/L	0.3	Yes	<0.07	<0.07	<0.07
Cadmium	mg/L	0.003	Yes	<0.0001	<0.0001	0.00018
Chromium	mg/L	0.05 (P)	Yes	<0.002	<0.002	0.0025
Copper	mg/L	2 (P)	Yes	0.0027	<0.001	0.033
Cyanide	mg/L	0.07	Yes	<0.01	<0.01	<0.01
Fluoride	mg/L	1.5	Yes	0.49	0.10	1.4
Lead	mg/L	0.01	Yes	<0.001	<0.001	0.0037
Manganese	mg/L	0.5 (P)	Yes	<0.01	<0.01	0.040
Mercury (total)	mg/L	0.001	Yes	<0.00005	<0.00005	0.000072
Molybdenum	mg/L	0.07	Yes	<0.02	<0.02	<0.02
Nickel	mg/L	0.02	Yes	<0.01	<0.01	0.020
Nitrate (as NO <sub>3</sub> <sup>-</sup> )	mg/L	50	Yes	8.7	<0.04	31
Nitrite (as NO <sub>2</sub> <sup>-</sup> )	mg/L	3 (P)	Yes	<0.004	<0.004	0.0070
Selenium	mg/L	0.01	Yes	<0.001	<0.001	<0.001
Carbon tetrachloride	µg/L	2	Yes	<0.50	<0.50	<0.50
Dichloromethane	µg/L	20	Yes	<5.0	<5.0	<5.0
1, 2-Dichloroethane	µg/L	30	Yes	<7.5	<7.5	<7.5
1, 1, 1-Trichloroethane	µg/L	2 000 (P)	Yes	<500	<500	<500
Vinyl chloride	µg/L	5	Yes	<1.2	<1.2	<1.2

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
1, 1-Dichloroethene	µg/L	30	Yes	<7.5	<7.5	<7.5
1, 2-Dichloroethene	µg/L	50	Yes	<12	<12	<12
Trichloroethene	µg/L	70 (P)	Yes	<18	<18	<18
Tetrachloroethene	µg/L	40	Yes	<10	<10	<10
Benzene	µg/L	10	Yes	<2.5	<2.5	<2.5
Toluene	µg/L	700	Yes	<175	<175	<175
Xylenes	µg/L	500	Yes	<125	<125	<125
Ethylbenzene	µg/L	300	Yes	<75	<75	<75
Styrene	µg/L	20	Yes	<5.0	<5.0	<5.0
Benzo(a)pyrene	µg/L	0.7	Yes	<0.18	<0.18	<0.18
Monochlorobenzene	µg/L	300	Yes	<75	<75	<75
1, 2-Dichlorobenzene	µg/L	1 000	Yes	<250	<250	<250
1, 4-Dichlorobenzene	µg/L	300	Yes	<75	<75	<75
Trichlorobenzenes (total)	µg/L	20	Yes	<5.0	<5.0	<5.0
Di(2-ethylhexyl)adipate	µg/L	80	Yes	<20	<20	<20
Di(2-ethylhexyl)phthalate	µg/L	8	Yes	<2	<2	<2
Acrylamide	µg/L	0.5	Yes	<0.4	<0.4	<0.4
Epichlorohydrin	µg/L	0.4 (P)	Yes	<0.4	<0.4	<0.4
Hexachlorobutadiene	µg/L	0.6	Yes	<0.15	<0.15	<0.15
Edetic acid (EDTA)	µg/L	200 (P)	Yes	<50	<50	<50
Nitrilotriacetic acid	µg/L	200	Yes	<50	<50	<50
Tributyltin oxide	µg/L	2	Yes	<0.5	<0.5	<0.5
Alachlor	µg/L	20	Yes	<5.0	<5.0	<5.0
Aldicarb	µg/L	10	Yes	<2.5	<2.5	<2.5
Aldrin/Dieldrin	µg/L	0.03	Yes	<0.008	<0.008	<0.008
Atrazine	µg/L	2	Yes	<0.50	<0.50	<0.50
Bentazon	µg/L	30	Yes	<7.5	<7.5	<7.5
Carbofuran	µg/L	5	Yes	<1.2	<1.2	<1.2
Chlordane	µg/L	0.2	Yes	<0.050	<0.050	<0.050
Chlorotoluron	µg/L	30	Yes	<7.5	<7.5	<7.5
DDT	µg/L	2	Yes	<0.50	<0.50	<0.50
1, 2-Dibromo-3-chloropropane	µg/L	1	Yes	<0.25	<0.25	<0.25
2, 4-D	µg/L	30	Yes	<7.5	<7.5	<7.5
1, 2-Dichloropropane	µg/L	20 (P)	Yes	<5.0	<5.0	<5.0
1, 3-Dichloropropene	µg/L	20	Yes	<5.0	<5.0	<5.0
Heptachlor/Heptachlor epoxide	µg/L	0.03	Yes	<0.008	<0.008	<0.008
Hexachlorobenzene	µg/L	1	Yes	<0.25	<0.25	<0.25

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data</i>		
				<i>Average</i>	<i>Minimum</i>	<i>Maximum</i>
Isoproturon	µg/L	9	Yes	<2.2	<2.2	<2.2
Lindane	µg/L	2	Yes	<0.50	<0.50	<0.50
MCPA	µg/L	2	Yes	<2.0	<2.0	<2.0
Methoxychlor	µg/L	20	Yes	<5.0	<5.0	<5.0
Metolachlor	µg/L	10	Yes	<2.5	<2.5	<2.5
Molinate	µg/L	6	Yes	<1.5	<1.5	<1.5
Pendimethalin	µg/L	20	Yes	<5.0	<5.0	<5.0
Pentachlorophenol	µg/L	9 (P)	Yes	<2.2	<2.2	<2.2
Permethrin	µg/L	20	Yes	<5.0	<5.0	<5.0
Propanil	µg/L	20	Yes	<5.0	<5.0	<5.0
Pyridate	µg/L	100	Yes	<25	<25	<25
Simazine	µg/L	2	Yes	<0.50	<0.50	<0.50
Trifluralin	µg/L	20	Yes	<5.0	<5.0	<5.0
2, 4-DB	µg/L	90	Yes	<22	<22	<22
Dichlorprop (or 2, 4-DP)	µg/L	100	Yes	<25	<25	<25
Fenoprop (or 2, 4, 5-TP)	µg/L	9	Yes	<2.2	<2.2	<2.2
Mecoprop (or MCPP)	µg/L	10	Yes	<2.5	<2.5	<2.5
2, 4, 5-T	µg/L	9	Yes	<2.2	<2.2	<2.2
Monochloramine	mg/L	3	Yes	<1.0	<1.0	<1.0
Chlorine	mg/L	5	Yes	0.58	<0.1	2.5
Bromate	µg/L	25 (P)	Yes	<20	<20	<20
Chlorite	µg/L	200 (P)	Yes	<100	<100	<100
2, 4, 6-Trichlorophenol	µg/L	200	Yes	<50	<50	<50
Formaldehyde	µg/L	900	Yes	<225	<225	<225
Bromoform	µg/L	100	Yes	<25	<25	<25
Dibromochloromethane	µg/L	100	Yes	<25	<25	<25
Bromodichloromethane	µg/L	60	Yes	<15	<15	18
Chloroform	µg/L	200	Yes	<50	<50	102
Dichloroacetic acid	µg/L	50 (P)	Yes	16	<12	54
Trichloroacetic acid	µg/L	100 (P)	Yes	<25	<25	53
Chloral hydrate	µg/L	10 (P)	Yes	7.5	<2.5	31
Dichloroacetonitrile	µg/L	90 (P)	Yes	<22	<22	<22
Dibromoacetonitrile	µg/L	100 (P)	Yes	<25	<25	<25
Trichloroacetonitrile	µg/L	1 (P)	Yes	<0.25	<0.25	0.41
Cyanogen chloride (as CN)	mg/L	0.07	Yes	<0.02	<0.02	<0.02
Cryptosporidium	no./L	-	-	0.00	0.00	0.01
Giardia	no./L	-	-	0.00	0.00	0.00

*Note:*

(P) - Provisional guideline value

## Drinking Water Quality for the Period April 2001 - March 2002

## TENTATIVE RESULT

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data Average</i>
Antimony	mg/L	0.005 (P)	Yes	<0.001
Arsenic	mg/L	0.01 (P)	Yes	<0.001
Barium	mg/L	0.7	Yes	0.014
Boron	mg/L	0.3	Yes	<0.07
Cadmium	mg/L	0.003	Yes	<0.001
Chromium	mg/L	0.05 (P)	Yes	<0.002
Copper	mg/L	2 (P)	Yes	<0.003
Cyanide	mg/L	0.07	Yes	<0.01
Fluoride	mg/L	1.5	Yes	0.49
Lead	mg/L	0.01	Yes	<0.001
Manganese	mg/L	0.5 (P)	Yes	<0.01
Mercury (total)	mg/L	0.001	Yes	<0.00005
Molybdenum	mg/L	0.07	Yes	<0.02
Nickel	mg/L	0.02	Yes	<0.01
Nitrate (as NO <sub>3</sub> <sup>-</sup> )	mg/L	50	Yes	9.02
Nitrite (as NO <sub>2</sub> <sup>-</sup> )	mg/L	3 (P)	Yes	<0.004
Selenium	mg/L	0.01	Yes	<0.001
Carbon tetrachloride	µg/L	2	Yes	<0.50
Dichloromethane	µg/L	20	Yes	<5.0
1, 2-Dichloroethane	µg/L	30	Yes	<7.5
1, 1, 1-Trichloroethane	µg/L	2 000 (P)	Yes	<500
Vinyl chloride	µg/L	5	Yes	<1.2
1, 1-Dichloroethene	µg/L	30	Yes	<7.5
1, 2-Dichloroethene	µg/L	50	Yes	<12
Trichloroethene	µg/L	70 (P)	Yes	<18
Tetrachloroethene	µg/L	40	Yes	<10
Benzene	µg/L	10	Yes	<2.5
Toluene	µg/L	700	Yes	<175
Xylenes	µg/L	500	Yes	<125
Ethylbenzene	µg/L	300	Yes	<75
Styrene	µg/L	20	Yes	<5.0

<i>Parameter</i>	<i>Unit</i>	<i>WHO Guideline Value</i>	<i>Compliance</i>	<i>Monitoring Data Average</i>
Benzo(a)pyrene	µg/L	0.7	Yes	<0.18
Monochlorobenzene	µg/L	300	Yes	<75
1, 2-Dichlorobenzene	µg/L	1 000	Yes	<250
1, 4-Dichlorobenzene	µg/L	300	Yes	<75
Trichlorobenzenes (total)	µg/L	20	Yes	<5.0
Di(2-ethylhexyl)adipate	µg/L	80	Yes	<20
Di(2-ethylhexyl)phthalate	µg/L	8	Yes	<2
Acrylamide	µg/L	0.5	Yes	<0.4
Epichlorohydrin	µg/L	0.4 (P)	Yes	<0.4
Hexachlorobutadiene	µg/L	0.6	Yes	<0.15
Edetic acid (EDTA)	µg/L	200 (P)	Yes	<50
Nitrilotriacetic acid	µg/L	200	Yes	<50
Tributyltin oxide	µg/L	2	Yes	<0.5
Alachlor	µg/L	20	Yes	<5.0
Aldicarb	µg/L	10	Yes	<2.5
Aldrin/Dieldrin	µg/L	0.03	Yes	<0.008
Atrazine	µg/L	2	Yes	<0.50
Bentazon	µg/L	30	Yes	<7.5
Carbofuran	µg/L	5	Yes	<1.2
Chlordane	µg/L	0.2	Yes	<0.050
Chlorotoluron	µg/L	30	Yes	<7.5
DDT	µg/L	2	Yes	<0.50
1, 2-Dibromo-3-chloropropane	µg/L	1	Yes	<0.25
2, 4-D	µg/L	30	Yes	<7.5
1, 2-Dichloropropane	µg/L	20 (P)	Yes	<5.0
1, 3-Dichloropropene	µg/L	20	Yes	<5.0
Heptachlor/Heptachlor epoxide	µg/L	0.03	Yes	<0.008
Hexachlorobenzene	µg/L	1	Yes	<0.25
Isoproturon	µg/L	9	Yes	<2.2
Lindane	µg/L	2	Yes	<0.50
MCPA	µg/L	2	Yes	<2.0
Methoxychlor	µg/L	20	Yes	<5.0
Metolachlor	µg/L	10	Yes	<2.5
Molinate	µg/L	6	Yes	<1.5
Pendimethalin	µg/L	20	Yes	<5.0



<i>Parameter</i>	<i>Unit</i>	<i>WHO</i>	<i>Compliance</i>	<i>Monitoring Data</i>
		<i>Guideline Value</i>		<i>Average</i>
Pentachlorophenol	µg/L	9 (P)	Yes	<2.2
Permethrin	µg/L	20	Yes	<5.0
Propanil	µg/L	20	Yes	<5.0
Pyridate	µg/L	100	Yes	<25
Simazine	µg/L	2	Yes	<0.50
Trifluralin	µg/L	20	Yes	<5.0
2, 4-DB	µg/L	90	Yes	<22
Dichlorprop (or 2, 4-DP)	µg/L	100	Yes	<25
Fenoprop (or 2, 4, 5-TP)	µg/L	9	Yes	<2.2
Mecoprop (or MCP)	µg/L	10	Yes	<2.5
2, 4, 5-T	µg/L	9	Yes	<2.2
Monochloramine	mg/L	3	Yes	<1.0
Chlorine	mg/L	5	Yes	1.0
Bromate	µg/L	25 (P)	Yes	<20
Chlorite	µg/L	200 (P)	Yes	<100
2, 4, 6-Trichlorophenol	µg/L	200	Yes	<50
Formaldehyde	µg/L	900	Yes	<225
Bromoform	µg/L	100	Yes	<25
Dibromochloromethane	µg/L	100	Yes	<25
Bromodichloromethane	µg/L	60	Yes	<15
Chloroform	µg/L	200	Yes	<50
Dichloroacetic acid	µg/L	50 (P)	Yes	17
Trichloroacetic acid	µg/L	100 (P)	Yes	<25
Chloral hydrate	µg/L	10 (P)	Yes	7.7
Dichloroacetonitrile	µg/L	90 (P)	Yes	<22
Dibromoacetonitrile	µg/L	100 (P)	Yes	<25
Trichloroacetonitrile	µg/L	1 (P)	Yes	<0.25
Cyanogen chloride (as CN)	mg/L	0.07	Yes	<0.02
Total Coliform	no. per 100 mL	0	Yes	0
E. coli	no. per 100 mL	0	Yes	0
Cryptosporidium	no./L	-	-	0
Giardia	no./L	-	-	0

*Note:*

(P) - Provisional guideline value

**MR FRED LI** (in Cantonese): *Madam President, according to the findings of the test conducted by the Open University of Hong Kong on the raw water quality of Hong Kong last year, of the 200 samples collected, more than 40% were found to contain Giardia or Cryptosporidia. The WSD also detected the presence of Cryptosporidia in treated and filtered potable water. Such parasites are resistant to chlorine, a disinfectant used by the WSD. May I ask the Government how the problem of the presence of such parasites in potable water could be completely resolved? Could it assure the public that it is still safe to drink from the tap direct?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, it is true that Cryptosporidia would be found in raw water but the most important thing is, the quantity of Cryptosporidia in our treated potable water supply is controlled effectively. During the past three years, the WSD conducted a number of tests on treated potable water and discovered that Cryptosporidia were actually found in three samples only. As a result of the measures taken by the WSD, no further Cryptosporidia were found in the past 17 months. In fact, only a small number of Cryptosporidia were found in our samples, and the number of Cryptosporidia found in the sample with the greatest number of Cryptosporidia was still far lower than the standard set by the environmental protection agency of the United States. The United States authority recommended that announcements should only be made on the need to boil potable water before drinking if 50 Cryptosporidia are found in every litre of water. However, we find that the highest reading of Cryptosporidia in each litre of water is only one tenth of a Cryptosporidium. In other words, only a very small number of Cryptosporidia was found in the samples, therefore, potable water in Hong Kong is safe for direct consumption.

**PRESIDENT** (in Cantonese): Honourable Members, as there are nine Members waiting to ask their supplementary questions, please be as concise as possible when asking your questions.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, will the Government please inform this Council, what is the respective expenditure on treating Dongjiang water and local reservoir water annually? Which is more costly, treating Dongjiang water or local reservoir water? What are the reasons?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, I do not have any data on hand about the respective costs of treating Dongjiang water and local reservoir water. However, very often, when Dongjiang water is imported to Hong Kong, it is channeled into Hong Kong reservoirs and mixed with raw water caught by local reservoirs, so it may not be easy for us to provide separate data.

**MR LAU CHIN-SHEK** (in Cantonese): *Madam President, could the Secretary try to provide the relevant data in writing?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, I would discuss with the WSD and try my best to provide Members with such information. (Annex III)

**IP KWOK-HIM** (in Cantonese): *Madam President, the Secretary said earlier that standards are set in the United States and notices would be issued if 50 Cryptosporidia are found in every litre of water. The situation of Hong Kong is not very serious at the moment, but has the Government ever considered following the examples of other countries by issuing warnings to the public in the event of such happenings in Hong Kong? I understand that the Government completed a relevant review in March and might have drawn up some measures. Could the Secretary give us a reply in this relation?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, the WSD would conduct stringent monitoring and testing of the quality of potable water. The WSD and the Department of Health (DH) have jointly formulated a contingency plan and if the above-mentioned Cryptosporidia or other parasites are found in potable water, the WSD will immediately investigate the cause and notify the DH of the test results. If necessary, it will adopt appropriate measures, such as advising the public to boil the potable water before drinking, in consultation with the DH, for safety purposes.

**DR LO WING-LOK** (in Cantonese): *Madam President, a small quantity of Cryptosporidia was found in the water samples in the year 1999-2000 and 2000-01. May I ask the Secretary whether there was any increase in the number*

*of Cryptosporidia induced illness in Hong Kong in those two years? The Secretary said earlier that some special measures had been adopted in the past 17 months, what were those measures? Are those measures temporary or permanent in nature?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, the Works Bureau does not have detailed information on Cryptosporidia induced illnesses. We may liaise with the DH to see whether it has such information. However, I understand that Cryptosporidia induced illnesses are not serious in nature and Cryptosporidia are usually discharged from the body of healthy people within a few weeks. However, we would liaise with the DH to see whether they have such information.

As regards the measures adopted by us, the WSD has actually conducted an in-depth study on this subject and adopted several long-term measures, including further addressing the issue of raw water treatment. For example, it would monitor the turbidity of raw water in the process of treatment to determine whether enhanced treatment is required or whether filtering facilities have to be replaced. All these are long-term measures.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, according to criteria set by countries like the United Kingdom and the United States, the results of the water quality tests on all water sources are publicized. However, at present, the Government only publicizes the test results of the water quality at the Muk Wu Pumping Station. Has the Government asked the mainland authorities for the test results on the water quality in the regions of Dongguan and Huizhou? If so, will the Government publicize such results? If not, will the Government ask the mainland authorities for such information?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, in order to allow Hong Kong people to have a better understanding of the actual situation, in 2001, the environmental protection agency of Guangdong Province undertook to provide Hong Kong with its results on monitoring the water quality of the Dongjiang water intake, that is, near the Taiyuan pumping station. Starting from 2001, the WSD has also publicized the results provided by the Guangdong

provincial authority on the 2000 Dongjiang water quality on the website of the WSD.

**MISS EMILY LAU** (in Cantonese): *Madam President, I would like to follow up on Mr Fred LI's supplementary question. He said that, according to the findings of the Open University of Hong Kong's survey, parasites were found in 40% of the raw water samples. Though the Secretary said our water is safe for consumption after purification, is the Secretary shocked to find such a large number of parasites in our raw water? Will the Secretary request the Mainland to adopt measures to upgrade its raw water quality?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, in fact, the WSD actually conducts regular tests on the quality of raw water. According to our past experiences, from February 2000 to January this year, Cryptosporidia were actually found only in two samples. Other bacteria were certainly discovered but only in very small quantities. As regards the issue of water quality, we will liaise with the Guangdong provincial authority on a regular basis.

**DR RAYMOND HO** (in Cantonese): *Madam President, will the Secretary please inform this Council whether the testing of water quality is principally carried out by the Government Laboratory presently or is it assisted by university laboratories? And, whether the equipment and technology of such laboratories are up to the world-class standard, and are those laboratories capable of conducting tests on bacteria that should be subject to testing and on the quantity of bacteria in the samples?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, the job of potable water quality testing in Hong Kong is undertaken by the WSD. The Department has at its disposal the most advanced technology, and methods that are up to international standards are used in testing the quality of potable water. Therefore, the WSD could conduct accurate tests in respect of all the parameters prescribed by the WHO.

**MR WONG SING-CHI** (in Cantonese): *Madam President, it is said that the mortality rate of fish in reservoirs has increased. May I ask the Secretary whether this is true? Does it have anything to do with the problem of water quality we just talked about?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, our data does not show that there is a significant increase in the mortality rate of fish in reservoirs. In fact, the death of fish can be attributed to many reasons and we cannot assert that a rise in the mortality rate of fish is due to the contamination of raw water in reservoirs.

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

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary said earlier that testing is undertaken by the WSD. Generally speaking, adjustments, comparisons and trials should be made in the tests. May I ask the Secretary whether random samples of such tests are sent to other international organizations for tests, to verify the accuracy of such tests?*

**SECRETARY FOR WORKS** (in Cantonese): Madam President, I understand that the tests of the WSD were conducted by means of internationally recognized methods. I believe it has not sent such samples to other organizations for tests.

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

### **New Government Complex at Tamar Site**

4. **MR LAU PING-CHEUNG** (in Cantonese): *Madam President, the Government has announced the development of the Tamar site for the new Central Government Complex together with a new Legislative Council building and other community facilities. It has also decided to invite letters of intent and conceptual designs internationally and to award the "design and build" contract*

*to the selected candidate. In this connection, will the Government inform this Council:*

- (a) whether it has sought legal advice on the possibility of the project being exempted from the global bidding requirement under the World Trade Organization Agreement on Government Procurement (the Agreement) for reason that the building of the new government complex involves "state secrets"; if it has, of the legal advice obtained; if not, the reasons for that;*
- (b) given the actual and symbolic significance of the new government complex and the Legislative Council building to Hong Kong, whether it will restrict the participation in the project to local architects and contractors only, subject to the relevant requirements laid down in the Agreement being met; and*
- (c) of the measures to be adopted to prevent the installation of telephone tapping and concealed video-recording devices in the design and construction of the new government complex and the Legislative Council building?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, Hong Kong is a free and open city. We are committed to upholding our international image of fairness, equity and openness. The very success of Hong Kong is underpinned by a level playing ground, which all of us take pride in.

Being one of the World Trade Organization (WTO) members, Hong Kong has been a supporter of free trade, an advocate of the abolition of trade barriers and an anti-protectionist. Our staunch stand has won the praise of other WTO members. As an international exemplar of free trade, we should observe not only the WTO rules, but also the WTO spirit.

The Government's decision to openly invite expressions of interest and conceptual designs from organizations interested in the Tamar project is a clear evidence of our firm belief in free trade and fair competition. Our objective is to select the best design for the whole development at Tamar, including the Central Government Complex, the new Legislative Council Building, related

public facilities and the adjoining waterfront promenade, through a fair, equitable and open manner.

We consider this approach is in the best interest of Hong Kong and most suits our international image. Against such a background, whether we could seek exemption from the WTO rules on the grounds of "state secrets" or any other justifications is not the Government's consideration.

In addition, the local design and building industry is full of talents, and has created enormous works of art, both in Hong Kong and in the world. Taking the "West Kowloon Integrated Arts, Cultural and Entertainment District Concept Plan Competition" for instance, of the 160 or more contesting teams, nearly half of them were led by local professionals; and of the five winning teams, three were local ones. The Government has great confidence in local talents and their designs. We also believe that Hong Kong has a large pool of quality architects who possess a very high level of professionalism. They would be pleased and confident to face up to fair and open competition everywhere in the world including Hong Kong, and to fully demonstrate their capability through competition with overseas contestants.

On the security aspect, the Security Bureau and the concerned departments will be invited to give professional advice and guidance on the security measures, procedures and systems during the design and construction of the new Central Government Complex. Upgraded security installations will be provided where there are special needs. We shall also work closely with the Legislative Council on the design and construction of the new Legislative Council Building. If required, we shall be prepared to give advice on the security aspect.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, in the third paragraph of his main reply, the Secretary said that the Government decided to invite organizations interested in the design and build project to submit letters of intent and conceptual designs. We are, however, worried that this "design and build" method may stifle design ideas and professionals, be they architects or engineers, may not be able to carry out independent monitoring duties as they are all employed by the contractors. Will the Secretary inform this Council what measures are in place to ensure that future design ideas will not be stifled and monitoring will be independent and fair?*



**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, in our selection of submissions from interested parties, an important criterion is the quality of the conceptual designs. If the quality of a design is not up to standard, a participant may not enter the second phase, that is, the tender for contracts. So, we are not worried about that. As regards monitoring, we are equally confident that no particular problems may arise.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, will the Government inform this Council whether it is aware of any countries that have sought exemption from the global bidding requirement on grounds of "state secrets" in the construction of government buildings?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the Government is not aware of any countries using this reason to reject global bidding.

**MR LEUNG FU-WAH** (in Cantonese): *Madam President, part (a) of the Honourable LAU Ping-cheung's main question asked the Government whether it had sought legal advice on the possibility of exempting the project from the global bidding requirement for reason that the new government complex involved "state secrets". The Secretary has not answered this part in the entire main reply given by him. Nevertheless, in the fourth paragraph of his reply, the Secretary said that the Administration considered open bidding was in the best interest of Hong Kong and hence it would not seek exemption from the WTO rules on grounds of "state secrets". In answering the Honourable CHAN Kwok-keung's supplementary question, the Secretary indicated other countries had not cited this reason. Will the Secretary confirm to this Council once more, for the avoidance of doubt, whether other countries use our method to openly invite bids for projects to construct government buildings, including buildings for their Ministries of Defence?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, countries with their own construction teams would certainly not need to invite open bids. The Honourable Member's supplementary question was about whether, in constructing the new government complex, we would refrain

from inviting global bidding on grounds of "state secrets". The fact is that we are not aware of any countries having used this ground to reject global bidding.

**MR JASPER TSANG** (in Cantonese): *Madam President, will the Government inform this Council whether it will stick to the principles of fairness, equity and openness by inviting open bids for the design and construction of any projects irrespective of the fact that they may be projects with special requirements on security and confidentiality, such as a prison or a government complex?*

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

**DR LO WING-LOK** (in Cantonese): *Madam President, we often say the Government uses public funds to invest in infrastructure projects but Hong Kong frequently ends up failing to gain the most from these projects because materials are more often than not imported from abroad, overseas companies are responsible for the construction and design of such projects and they usually reap profits from them. In this connection, will the Government explain to this Council what measures the authorities will take to ensure such projects may realize their full potential in enhancing employment in Hong Kong and in effecting the transfer of technology to Hong Kong permanently through the construction of such projects?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, we expect the project to generate around 5 000 new jobs. We believe most of these jobs will be taken up by local people because the existing policy requires that contractors for local projects must employ local workers, unless contractors can prove that the workers required cannot be recruited locally, in which case they may then apply for imported labour to fill the posts. The Government has been very strict in the scrutiny of applications for importation of labour to ensure that local workers are given priority in employment. Therefore, I believe most of the 5 000 jobs will be taken up by local people.

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

**DR LO WING-LOK** (in Cantonese): *Madam President, the Secretary has not answered the part on technology transfer.*

**PRESIDENT** (in Cantonese): Secretary, Dr LO has asked about technology transfer.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, regarding technology transfer, I believe it will take two possible forms. Firstly, it can be a formal transfer and secondly, through some study by local professionals, who often succeed in understanding the different parts of the projects by studying them. Both may realize technology transfer. I do not believe that construction organizations can keep technologies they use in such a secret manner as to conceal them completely even after the completion of the projects. I do not think this is possible.

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, the Taiwan authorities do not allow companies in Hong Kong or China to take part in government projects. If the Taiwan authorities can do that and it is a member of the WTO, why can Hong Kong not do the same?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, as I pointed out in the main reply, they could do it. However, we have so far not cited "state secrets" as a reason to seek exemption from the WTO rules and therefore this will not factor in the Government's consideration.

**DR RAYMOND HO** (in Cantonese): *Madam President, since the Secretary thinks the local building and engineering industry is full of talents, will the Secretary inform this Council the percentage of global bidding in respect of engineering and building projects? Which part of the Agreement states that all construction projects must undergo global bidding?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I do not have the relevant figures on hand but I will try to provide the relevant information to the Honourable Member. (Annex IV)

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

**DR RAYMOND HO** (in Cantonese): *Madam President, no. The Secretary has not replied as to which part of the Agreement states that all construction projects must undergo global bidding.*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the Agreement does not specify that global bidding must be undertaken. What the Honourable Member asked was about the possibility of the project being exempted from requirements under the Agreement for the reason that "state secrets" were involved. The Agreement does not specify, nevertheless, the percentage of projects that must go through global bidding.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, will the Secretary inform this Council the number of countries with their congressional and government buildings designed by foreign designers?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I do not have the relevant statistics, but I have just returned from Berlin and I understand that the design of its parliamentary building is not done by the Germans.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, will the Secretary provide an answer later in writing?*

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

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I will try to look up the relevant information but this is going to be an enormous "project". (Annex V)

**DR RAYMOND HO** (in Cantonese): *Madam President, as far as assessment committees are concerned, if the number of chairmen and the number of members in it are close, the influence of the chairmen will be great. In assessing major projects, many countries will set up assessment committees with a significant number of members in them. Will the Secretary inform this Council whether he will consider including in the assessment committee for the project more than three members, which is the number of members in the panel for the "West Kowloon Integrated Arts, Cultural and Entertainment District Concept Plan Competition", so that the principles of fairness, equity and openness may be better realized?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, we are considering the membership of the selection committee and have not yet decided on the number of members. But we think members should include government representatives, Legislative Council representatives and members of the construction industry.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, in his main reply, the Secretary stresses principles of fairness, equity and openness and Hong Kong's international image. But many countries basically want local talents to construct or design major buildings and buildings with symbolic significance. Will the Secretary inform this Council whether in his mind he has the concept of localization, in addition to concepts of free trade and considerations of the WTO?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, in drawing up our selection criteria, we have taken various factors into consideration. Firstly, we hope that design concepts and preliminary designs submitted by participants are representative of Hong Kong, in addition to attaining world standards. Secondly, we will consider whether participants have the capability of completing the "design and build" contract to be ultimately granted. Thirdly, we will consider whether participants have sufficient experience to complete the construction project in the special context of Hong Kong and within a very pressing schedule. We will indicate clearly these criteria in our invitation for letters of intent.

**PRESIDENT** (in Cantonese): We have spent more than 15 minutes on this question. This is the last supplementary question.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, in answering Dr HO's supplementary question, the Secretary said it would not breach WTO requirements even if no global bidding was undertaken. Will the Secretary inform this Council whether he will reconsider the idea of not undertaking global bidding when there is a strong call from the public to request the Government to do so?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, it is our usual practice to undertake global bidding. Under the present circumstances, we will not change this practice.

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

### **Transport Services for Mobility-handicapped Persons**

5. **DR RAYMOND HO** (in Cantonese): *Madam President, regarding the difficulties encountered by the mobility-handicapped persons in using public transport, will the Government inform this Council whether:*

- (a) *the MTR Corporation Limited (MTRCL) and Kowloon-Canton Railway Corporation (KCRC) have provided facilities for such persons to assist them in travelling on MTR or KCR trains, including access to and exit from stations above or below ground level; if so, of the details;*
- (b) *apart from the Rehabus service operated by the Hong Kong Society for Rehabilitation, are there any other transport services specially provided for such persons; if so, of the details; if not, whether it will consider providing such additional services; and*
- (c) *travel subsidy has been provided to such persons; if so, of the details?*

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

- (a) All stations of the KCRC and MTRCL have facilities for mobility-handicapped persons to facilitate them to travel on East Rail or MTR trains. Facilities provided include wheelchair aids, stair lifts for some stations, ramps or passenger lifts, wide gates and multi-use space in train compartments. For the Light Rail, the KCRC has provided access ramps at the Light Rail stops and designated space for wheelchair users in Light Rail vehicles.

The two railway corporations are committed to exploring opportunities to improve their facilities to facilitate the use of railways by mobility-handicapped persons. For example, the KCRC will install wide flap gates at East Rail stations and the new railways such as West Rail. It will also progressively introduce gangplanks to facilitate wheelchair users in boarding and alighting trains. For the MTRCL, it has embarked on a station improvement project which will include the installation of new facilities such as lifts to further enhance the accessibility to the stations by mobility-handicapped persons.

- (b) Apart from the Rehabus services run by the Hong Kong Society for Rehabilitation, mobility-handicapped persons also receive transport services and support through centre-based transportation subvented by the Social Welfare Department (SWD). At present, there are 31 non-governmental organizations (NGOs) in the Rehabilitation Sector running altogether 142 centre-based vehicles to provide transportation services to mobility-handicapped persons who are their clients. In addition, the SWD also provides subvention to NGOs to run commercial-hired transport to 276 clients attending day rehabilitation services.

The demand for Rehabus services is now closely monitored by the Rehabus Management Committee and the Users' Liaison Group. If necessary, the Transport Department will look into the situation and bid for fund to procure additional vehicles to meet the increase in demand. In fact, over the past five years, the Rehabus fleet has grown from 74 to 85 vehicles. For 2002-03, two additional vehicles will be procured.

Our policy objective is to develop a transport system which includes provisions to meet the needs of the disabled so as to enhance their mobility and to facilitate their full participation and integration into the community. To meet this policy objective, we have secured the co-operation of franchised operators of different modes of public transport, in particular bus companies, to extend the provision of accessible facilities for the disabled in a progressive manner.

- (c) Drivers with mobility handicap are given concessions including vehicle licence fee concession, exemption of duty on fuel oil up to 200 litres per month and free tickets for government tunnels, and so on.

Apart from that, we do not provide direct travel subsidy to people with mobility handicap. However, disabled persons may apply for disability allowance which is intended to cover their special needs in daily life.

**DR RAYMOND HO** (in Cantonese): *Madam President, a number of KCRC and MTRCL stations do not have any elevator which provides direct access to the ground level, and this causes great inconvenience to a lot of wheelchair users. In this regard, can the Secretary tell us the number of stations which do not have any elevator to make access more convenient for wheelchair users?*

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, according to the information on hand, stair lifts and passenger lifts are provided in all East Rail stations with the exception of Racecourse Station. Since the gap between the platform and the train is rather wide in Kowloon Tong, Mong Kok and University stations, the KCRC would install gangplanks for the convenience of passengers. In addition, all trains of the East Rail already have designated space for wheelchair users. The KCRC also recommends the installation of



wide flap gates in Tai Wai Station and Lo Wu Station by 2004. As regards the Light Rail, at present access ramps are provided at all Light Rail stops and designated space for wheelchair users is also provided in Light Rail vehicles. As to the MTRCL, at present wheelchair aids are provided in 19 stations. Stair lifts are provided in Shek Kip Mei Station; access ramps are provided in 10 stations; passenger lifts in eight stations and wide flap gates in all MTR stations; in addition, multi-use space is provided in the first and the last compartments of MTR trains of the Tsuen Wan, Kwun Tong and Island lines, in MTR trains of the Tung Chung and Airport lines. The two railway corporations will continue to take follow-up actions in stations or train compartments which do not provide these facilities having regard to their operational constraints and conditions.

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

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary has not answered my supplementary. My question is very simple. How many stations of the MTRCL and KCRC do not provide elevators to assist wheelchair users in accessing the platform or the ground level?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I will provide more detailed information in writing. (Annex VI)

**MS MIRIAM LAU** (in Cantonese): *Madam President, it was reported earlier that the Government was studying the idea of subsidizing disabled persons to take taxis by providing a subsidy equal to half the fare through the Octopus system. May I ask the Government what stage the study has reached? Will the scope of the study include issuing taxi vouchers again to disabled persons?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Health and Welfare.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, at present we are examining how to provide transport services to disabled persons in the most cost-effective way, including exploring ways to provide subsidies, for example, for the use of taxis. However, this method of subsidization is rather complicated and we did try to implement similar pilot schemes in the past but without success, because taxis are not suitable for use by wheelchair users. Therefore, the Transport Department is now discussing with taxi companies to see if taxis can be converted in future to make it convenient for wheelchair users to use them.

**MS MIRIAM LAU** (in Cantonese): *Madam President, my supplementary has to do with whether there is any study on subsidizing disabled persons to travel by taxis. I would like to know if there is any; if there is, to what stage the study has progressed; and whether the study includes issuing taxi vouchers, which has been introduced before, to disabled persons again?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, we are exploring options on how we can subsidize disabled persons in using transport services in general. The Government's policy and objective is to enable the disabled to use all modes of public transport. The long-term goal is not to make special arrangements for the disabled or to provide them with special transport services. If most public means of transport can be used by the disabled conveniently, it would no longer be necessary for us to provide special services. For the time being, we are discussing how to make use of some transport services, including taxis, to provide services and to complement our services.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, can the Secretary tell us whether the Government has discussed or will discuss with public transport companies ways to offer fare concessions to the disabled, so that they can have more opportunities to integrate into society? This is because when the disabled use the means of transport, they often have to be assisted by those who accompany them, therefore their transport expenses are higher. As a result, many disabled persons will go out only when it is absolutely necessary and their opportunities of taking part in social activities are reduced. Does the Secretary have any plans to discuss with some of the public transport companies, including the MTRCL, KCRC, bus companies, and so on, to provide half-fare concession to the disabled?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, our established policy is to encourage public transport operators to provide the necessary financial support or subsidies to these people, and we will continue to actively encourage operators to do so.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, what I would like to ask is whether the Secretary can tell us clearly if discussions were held on this issue with the transport companies concerned in the past, and whether there is any intention to discuss this matter with them in the future. Not only has the Government to encourage the companies concerned to provide concessions, it must also take concrete actions to discuss this issue with them.*

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I would like to add a few words. Our policy is to provide encouragement, since the adoption of such measures is after all a commercial decision to be made by the operators concerned. Therefore, we will only encourage operators to do so.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, in the third paragraph of part (b) of the main reply, the Secretary mentioned that the ultimate objective of the Government is to develop a transport system which includes provisions that meet the needs of the disabled. I am not sure of the policy implied by this. Is the Government's emphasis mainly on improving existing public transport services, so that they are suitable for use by the disabled, or is the emphasis both on public transport services and services catering specially for the disabled? What are their priorities? The Secretary did not make this point clearly in the main reply.*

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, our main objective is to enable the disabled in general to use public transport services. Certainly, in special cases in which the disabled cannot make use of public transport services, we will try to meet their needs. Therefore, the main objective is to enable them to use public transport facilities.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, the Secretary mentioned daytime transport services for the disabled in part (b) of the main reply. In fact, disabled persons may have unexpected transport needs or may have to use transport services at night. To the disabled, at daytime there may be a lot of people who can assist them, however, it is difficult to find anybody to help them at night. Will the Secretary consider making special arrangements to meet the transport needs of the disabled at nighttime or their unexpected transport needs?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, in fact many facilities and services are now available to the disabled. Firstly, of course there are transport services provided in daytime to enable them to conduct daytime activities or receive special training, such as training provided to the disabled by day activity centres, and the existing transport services can facilitate them in using such services during the daytime. If disabled persons have to make use of transport facilities in order to use institutional services, we can also make the arrangements for them.

In addition, the Rehabus service runs on fixed routes for use by disabled persons. If it is necessary for disabled persons to travel to places not served by fixed-route services, they can use the telephone booking service by calling the Rehabus service to make an advance booking.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, the Secretary for Health and Welfare said just now that he would consider the conversion of taxis because the existing taxis are not suitable for use by disabled persons. May I*

*ask the Government if it will consider introducing taxis from Britain? This is because British taxis have a wider body and more headroom, so that the whole wheelchair can be pushed into the cabin.*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, at present the Transport Department is carrying out a study in collaboration with a car manufacturer to produce a special vehicle with a ramp and sufficient room to accommodate a wheelchair. We are now at the study stage and some taxi operators have also expressed interest in taking part in exploring this matter. If this is found to be feasible, I hope that the manufacturer concerned can come to Hong Kong and conduct some tests in co-operation with taxi operators. However, for the time being, we are still only at the stage of preliminary study.

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

**MR TAM YIU-CHUNG** (in Cantonese): *No, Madam President. My question is about taxis from Britain, but the Secretary did not give me a reply on that.*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, we have not considered using taxis from Britain. We are now considering using a type of special taxis that allows both the wheelchair and its user to be pushed into the cabin together.

**MR HENRY WU** (in Cantonese): *Madam President, just now the Secretary mentioned booking the Rehabus in advance. I wonder if the Secretary is aware that the success rate at present of booking the Rehabus service within one month in advance is rather low, being 5% only. Will the Secretary consider acquiring additional Rehabuses so that the success rate of booking the Rehabus service within one month in advance can reach 50%?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Health and Welfare or Secretary for Transport?

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I mentioned in my main reply that the Rehabus Management Committee and the Users' Liaison Group would discuss from time to time which Rehabus services should be given priority. Regarding advance booking, of course it would be possible for us to provide unlimited service, however, depending on which service we want to give priority to, we still have to impose a limit on this service. This matter lies within the scope of the Committee above-mentioned, and we will reasonably provide more funding to services that should be given priority.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I am aware that some existing facilities of the two railways will be improved progressively, but as far as the new railway lines including the Ma On Shan Rail Link, the West Rail and the Tseung Kwan O Extension are concerned, will the authorities ensure that the accesses to these rail links are convenient to the disabled?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, when constructing the new stations, the operators concerned will liaise with the Transport Department and the relevant government departments to ensure that sufficient facilities are provided to the disabled. According to my understanding, the relevant facilities are sufficient.

**PRESIDENT** (in Cantonese): We have spent 17 minutes on this question. Last supplementary.

**MISS EMILY LAU** (in Cantonese): *Madam President, Mr Henry WU has said just now that the success rate of booking the Rehabus service is only about 5%. Is the Secretary aware that it takes some people eight months to successfully book the Rehabus service? Concerning the nighttime service mentioned by a Member just now, I believe the people booking it would have die many deaths and still remain unable to get the service. May I ask the Secretary whether these figures will make the authorities more concerned about this matter and whether the Government should formulate some objectives, such as providing more Rehabuses to meet the demands of the public, instead of providing just two additional Rehabuses, as is the case this year?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, Rehabuses run on fixed routes, and the waiting time for services booked in advance vary greatly depending on the trip to be made. Some disabled persons have to wait only for four days before they can use this service, while some others have to wait 10 months. As the Honourable Emily LAU has said, as at April this year, the average waiting time for Rehabus service booked in advance was 34 days. This is the most up-to-date information. As regards the telephone booking service, we will assess the existing service in order to put in place more flexible and cost-effective arrangements, including considering the use of taxis to complement our services. The Rehabus Management Committee will assess the relevant services and conduct reviews to decide which service should be given priority, as well as to make the arrangements for the relevant services more cost-effective.

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

### **Authority of Immigration Officers to Detain Wanted Persons**

6. **MR LAU KONG-WAH** (in Cantonese): *Madam President, it has been reported that the Director of Immigration notified the police early this year that he had learnt after seeking legal advice that immigration officers had no legal authority to detain persons wanted by the Court or the police at control points and he therefore decided that the interception or detention of wanted persons at control points be suspended with immediate effect. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the Director of Immigration seeking legal advice;*
- (b) *of the reasons for the Director of Immigration making the decision to suspend with immediate effect the interception or detention of wanted persons, and whether litigations were involved; how the decision has affected the immediate and long-term planning and deployment of police manpower as well as the previous cases of interception or detention by immigration officers; and*
- (c) *whether it will study the possibility of amending the legislation with a view to empowering immigration officers to intercept or detain wanted persons at control points?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, to address the Honourable LAU Kong-wah's concern, let me explain from the outset the powers of the Immigration Department (ImmD) in respect of arresting suspects or wanted persons and refusing departure of suspects or wanted persons from Hong Kong.

Under section 101 of the Criminal Procedure Ordinance (Cap. 221 of the Laws of Hong Kong), any person may arrest without warrant any person whom he reasonably suspects of being guilty of an arrestable offence. Therefore, immigration officers have the authority to arrest wanted persons reasonably suspected of being guilty of arrestable offences. An arrestable offence is an offence for which the sentence is fixed by law or for which a person may under or by virtue of any law be sentenced to imprisonment for a term exceeding 12 months, and an attempt to commit any such offence.

As for persons who are not allowed to leave Hong Kong while on court bail, a police officer is empowered by section 9K(1) of the Criminal Procedure Ordinance to arrest and detain such persons without warrant if he has reasonable grounds for believing that any condition on which such persons were admitted to bail has been or is likely to be broken.

If any person who is wanted or who is, by court order, prohibited from departing from Hong Kong presents himself for departure clearance at any control point, immigration officers will summon police officers for assistance without delay. Such persons who are prohibited from departing from Hong Kong by the Court will not be permitted to leave Hong Kong by immigration officers. Assistance will be sought from the police in such cases.

Answers to the questions raised by Mr LAU Kong-wah are as follows:

- (a) All disciplined forces, including the ImmD, will review and improve their front-line operational procedures from time to time, and will seek advice as necessary in order to ensure the legality of their operations.
- (b) In the past, when wanted persons or persons not allowed to leave Hong Kong under a court order presented themselves for departure clearance, immigration officers would immediately notify the relevant case officer to follow up, who would then summon police



officers to the scene for assistance. At the beginning of this year, with a view to enhancing the efficiency of this operation, immigration officers will, upon intercepting such persons, immediately notify the nearby police post to deploy officers to the scene as well as the relevant case officer. Since the ImmD and the police maintain close and good co-operation with each other as regards law enforcement, the new arrangement will not adversely affect the immediate and long-term planning and deployment of police manpower. Nor will it affect the previous cases where persons were intercepted or not allowed departure by the ImmD.

- (c) As mentioned above, immigration officers may arrest without warrant any person whom they reasonably suspect of being guilty of an arrestable offence under section 101 of the Criminal Procedure Ordinance. In addition, under the Immigration Ordinance, immigration officers may examine departing passengers. If the person intending to leave Hong Kong is identified as being a wanted person or a person prohibited from leaving Hong Kong by a court order, immigration officers will not allow the person to depart from Hong Kong. Immigration officers will also request the police to attend the scene. As police officers will arrive at the immigration office within minutes, there would be no opportunity for the person to escape. The existing legislation and the liaison between the law enforcement departments are found to be very effective. Therefore, it is not necessary to amend the existing legislation.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, it appears that the Secretary is unclear about part (a) of my main question. Would the Secretary clarify whether the ImmD had notified the police after conducting the study early this year, that they would no longer detain persons wanted by the Court or the police at control points as they used to do in the past? Furthermore, in future, will "not allow the person to depart from Hong Kong" also include detention? Will the ImmD allow the relevant persons to leave? This is a very important point.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I now reply the supplementary of Mr LAU Kong-Wah. At the beginning of this year,

the press had made a similar report, but the report was quite general and there were some misunderstandings, therefore the report was not at all true. The case was not as reported by the press: the ImmD sought legal advice after the emergence of a similar case, but found that they had no legal authority to arrest persons wanted by the Court or the police who intended to leave Hong Kong, and it turned out to be a problem. This is absolutely not the actual situation. Just like other disciplined forces, the ImmD will review the legality of its enforcement from time to time, and will seek legal advice whenever there are queries from operational staff. Actually, staff of ImmD had sought legal advice at the beginning of this year for clarification of some nuances in law. As a result, just as I said earlier, the ImmD had improved their frontline operational procedures.

**MR JAMES TO** (in Cantonese): *Madam President, the Secretary pointed out in part (b) of her main reply that according to the new arrangement, immigration officers will immediately notify the nearby police post to deploy officers to the scene. However, if that person leaves the scene right away within seconds, then would it be just as part (c) of the main reply suggested, immigration officers would be unable to arrest that person by virtue of section 9K(1) of the Criminal Procedure Ordinance?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, under the Criminal Procedure Ordinance, a police officer may without warrant arrest and detain any person admitted to bail if he has reasonable grounds for believing that any condition on or subject to which such person was admitted to bail has been or is likely to be broken. However, the realistic situation is that immigration officers can verify the identity of a certain person and determine whether such person is not allowed to leave Hong Kong while on court bail only through the process of immigration clearance. Under section 4 of the Immigration Ordinance, while the immigration officer is performing the process of departure clearance, of course he has the authority to request the person not to leave. The examination of a person of course includes the authority to direct the person not to leave the ImmD control point and go through examination. The Honourable James TO also knows that it takes only a little more than 10 seconds for the immigration clearance of a permanent resident who has a clean record. However, if immigration officers examine a visitor who holds a foreign passport, or they have doubts about the identity of the persons presenting themselves for

immigration clearance, besides examination at the clearance counter, they may also perform further examination, which is the so-called secondary examination. For this, some people have complained that our immigration clearance took too long to complete. Accordingly, immigration officers have the authority to direct a certain person not to leave a designated area within a control point for examination purpose, and in the course of that process, if immigration officers suspect that the person is a wanted person or the person is prohibited from departing from Hong Kong, they would notify the police immediately. Therefore, after we have reviewed the realistic situation and our legal authority, we consider the existing authority adequate and there is no need to amend the legislation.

**MR JAMES TO** (in Cantonese): *Madam President, the Secretary has not answered my supplementary. If that person turns around and walks away immediately and says he does not wish to leave Hong Kong, can immigration officers still have the authority to detain that person under section 4 of the Immigration Ordinance just as the Secretary has cited? Besides the Criminal Procedure Ordinance, do immigration officers have the authority to do this under the Immigration Ordinance?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, to the best of my understanding, the situation in the legal aspect is that if any person is prohibited from departing from Hong Kong by a court order, the ImmD will surely not approve his departure from Hong Kong, but the authority is limited to prohibiting his departure. Mr James TO should remember that due to the Bill of Rights, the Court has ruled that the ImmD should not restrict a person's freedom of entering or exiting but should only have the authority to prohibit a person's departure. However, if a wanted person causes a sudden upheaval and leaves the scene, I think immigration officers and colleagues from other disciplined forces in the control point will try their best to notify the police to arrest that person.

**DR LUI MING-WAH** (in Cantonese): *Madam President, the Secretary pointed out in part (b) of her main reply that in the period before early this year, when persons not allowed to leave Hong Kong under a court order presented*

*themselves for departure clearance, immigration officers would immediately notify the relevant case officer to follow up, who would then summon police officers to the scene for assistance. Since the beginning of this year, with a view to enhancing the efficiency of this operation, immigration officers will, upon intercepting such persons, immediately notify the nearby police post to deploy officers to the scene as well as the relevant case officer. May I ask the Secretary, what is the difference between the two approaches as far as time is concerned? Why has the change been made?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, as far as time is concerned, there will be differences in different cases. The major difference rests with the fact that the wanted persons or persons prohibited from departing from Hong Kong may not just involve a single government department such as the police, it may be the Customs and Excise Department, the Independent Commission Against Corruption or other government departments such as the Inland Revenue Department; and some of them may involve civil proceedings such as divorce, and there may be a court order prohibiting one party from taking the children out of Hong Kong with them. In such cases, the ImmD will usually notify the relevant department, and the officer in charge of the case would then summon the police for assistance. Certainly it may take a while. After reviewing the matter, we decided to do it the other way round, that is, once immigration officers encounter such cases, they would notify the police immediately before notifying the relevant department or case officer to follow up. Since the police are notified immediately, they should therefore be able to move quicker as far as time is concerned.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, concerning the replies of the Secretary to the supplementaries of Mr James TO and Mr LAU Kong-wah, I hope she can put them in a more explicit way. At present, the Immigration Ordinance is enforced by immigration officers, and when the relevant persons present themselves for immigration clearance, immigration officers will perform immigration examination. However, if immigration officers find anything suspicious and the person turns around and walks away in the course of examination, whilst the police have not reached the scene, then does it mean that immigration officers cannot enforce the law by virtue of the Criminal Procedure Ordinance, and the result is that the person may walk away with a swagger? Will that happen before the police arrive at the scene?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, it depends how well the suspect understands the law. If a person, who had violated conditions of bail or who attempts to leave Hong Kong or who is wanted, is taken aside by immigration officers for secondary examination and thorough interrogation, then by virtue of law, immigration officers have the authority to carry out the examination, and they can make the interrogation as lengthy as they wish. The person may not refuse the examination and walk away, since immigration officers have the power to intercept. However, if that person questions why the interception takes that long and says that he believes immigration officers are just trying to examine him instead of intercepting him and trying to exercise the power under the Criminal Procedure Ordinance to arrest him, and says he has to leave, then immigration officers may have to notify the police as they have no authority to arrest that person on the scene. However, it can be said that this is quite academic, I can see that the Honourable Audrey EU is smiling, perhaps this is a hair-splitting situation. If a person says he has to leave merely because he is frightened by the examination carried out by immigration officers, then immigration officers shall have good reasons not to allow that person to leave, unless he disputes publicly that immigration officers are suspecting him of either being wanted or violating conditions of bail and attempting to leave Hong Kong, and then says the ImmD has no authority to detain him and therefore has to leave immediately. I hope the reply given by me today will not give any hint to the bad elements. *(Laughter)*

**MR ALBERT HO** (in Cantonese): *Madam President, I think the supplementaries of several Honourable Members show a kind of concern. That is, in the course of the examination, there will be a time gap from the minute the suspected wanted person is not yet rejected for departure, or he is officially rejected for departure, to the time the police arrive. During that gap, if the so-called wanted person intends to leave the clearance counter, immigration officers may have no legal authority to enforce the law. Our concern is somewhat founded, and the Secretary has mentioned earlier that the ImmD actually has no authority to do so. In fact, my question is this: Viewing from the policy perspective, is it necessary to review the legislation with a view to giving immigration officers the appropriate and reasonable authority? This is very important indeed, will the Secretary reply this?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Honourable Albert HO has asked a very interesting supplementary, which I have also discussed with the ImmD. Certainly, if a person is wanted by the Court or the police because he is suspected of having committed arrestable offences, the ImmD may intercept that person. For example, there was a case early this year; perhaps Honourable Members still remember it. That is, the ImmD intercepted in the evening a wanted person in the departure hall of the Hong Kong-Macao Ferry Terminal in the wake of a shootout; that person was suspected of having assaulted on police officers. Since that person was suspected of having committed arrestable offences, immigration officers therefore intercepted him immediately and then notified the police immediately. After police interrogation, it was found that two more persons were travelling with the suspect and they had boarded a Macao-bound ferry, and the other two persons were subsequently arrested on the ferry. Therefore, immigration officers are not unauthorized to arrest wanted persons, only if the persons are suspected of having committed arrestable offences, immigration officers may carry out the arrest. As to some other wanted persons who have no involvement in any arrestable offence, the ImmD should not arrest them. I have made an enquiry with the ImmD earlier and they have replied me. They considered very few people, who knew that they were wanted or they were by court order prohibited from departing from Hong Kong, would still want to defy the law by taking boats other than "tai fei" (high-powered speedboat) to leave Hong Kong from control points. The ImmD considered it unnecessary to amend the law at the present stage. However, if Honourable Members consider the legislation has conferred on the ImmD inadequate powers or the powers not clear enough, I am willing to discuss the matter with the ImmD and see whether the legislation should be amended. If there is such a proposal, I hope Honourable Members will support us at that time.

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

## **WRITTEN ANSWERS TO QUESTIONS**

### **Increasing Number of Suicide Cases**

7. **MR AMBROSE LAU** (in Chinese): *Madam President, recently, the incidence of suicide cases shows a rising trend. The Social Welfare Department*

*(SWD) has set up 14 Family Support Networking Teams (FSNTs) to proactively contact families at risk through outreaching efforts to provide early assistance. In this regard, will the Government inform this Council:*

- (a) how the FSNTs would identify families at risk at an early stage and provide them with assistance, given that these families may not take the initiative to seek help;*
- (b) of the estimated number of cases each FSNTs can handle; and*
- (c) of any other measures to prevent the problem of suicide from deteriorating?*

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

- (a) Since 1 January 2002, 14 FSNTs have been set up, in the administrative districts of the SWD, to provide timely assistance to vulnerable families through outreach and networking efforts. Working closely with the SWD's Planning and Co-ordination Teams (which assess and prioritize the welfare needs in a particular district and devise the appropriate follow-up action) and other related organizations/units, the FSNTs identify and target vulnerable families through various proactive approaches. These include visiting families who are potentially in need of services; collaborating with community and neighbourhood organizations, related welfare units and local leaders; distributing service pamphlets; setting up mobile counters, and so on. The FSNTs also mobilize volunteers (who have a similar background to the targeted families) to encourage needy families, especially the unmotivated ones, to receive services and to help develop a mutual support network.
- (b) Initially, we envisage that each FSNT will contact about 480 vulnerable families in its district every year, making a total of about 6 720 families. Individuals or families requiring follow-up services will be referred to the appropriate service units and departments concerned. District Social Welfare Officers also exercise flexibility in deploying resources to meet district service demands, as appropriate.

- (c) A three-pronged, multi-disciplinary and cross-sectoral strategy involving collaboration between the Government, non-governmental organizations (NGOs) and professionals has been adopted. The directions include:
- (i) improving understanding of suicide by enhancing data collection, improving analysis of statistics, undertaking local research and studying overseas experience;
  - (ii) providing a range of preventive, supportive and remedial services, with a view to mitigating the risk factors and strengthening the protective factors, and providing timely intervention and assistance; and
  - (iii) strengthening public awareness through public education and publicity, and enhancing the knowledge and skills of front-line professionals through training.

Generic services as well as dedicated services are available to prevent and reduce suicide:

- (1) Generic services include:
- (i) Apart from the 14 FSNTs mentioned above, integrated family service centres for families; outreach social work teams and integrated teams for young people; support teams for vulnerable elders; family education pilot projects; single parent centres also provide services as required. Under the Adolescent Health Programme of the Department of Health, outreach health teams seek to improve the psychosocial health of students. Community psychiatric teams of the Hospital Authority (HA) provide outreach services to their discharged mentally ill patients.
  - (ii) a Family Crisis Support Centre provides a time-out facility and crisis support to vulnerable individuals and families in distress.



- (iii) the HA has launched a pilot programme to set up four intervention teams to assess 1 400 young persons, with a view to identifying those suffering from psychotic problems for early treatment. This helps tackle one of the risk factors for suicide — mental disorder.
- (2) Dedicated services include:
- (i) various hotlines, including those operated by the SWD and NGOs, to receive calls from persons in need of counselling and assistance.
  - (ii) a Suicidal Crisis Centre provides round-the-clock and intensive counselling/crisis intervention services to persons with high/moderate suicidal risk.
  - (iii) a Suicide Prevention Education and Resource Centre enhances public education and publicity.
  - (iv) a Joint Project on Prevention of Elderly Suicide provides community education services, and a three-tier co-ordinated intervention strategy.
  - (v) the HA's Elderly Suicide Prevention Programme provides for the early detection and treatment of depression; intensive follow-up for attempted suicide cases at fast-track clinics; strengthened support for those at risk following discharge from hospitals; and a hotline and crisis intervention services for urgent cases.
  - (vi) a Resource Package on Student Suicide provides useful reference for schools in the prevention, crisis intervention and postvention of student suicide.

To enhance the interface and co-ordination, a protocol is being drawn up to promote the multi-disciplinary and cross-sectoral approach in the delivery of suicide-related services.

Also, the Government is working towards strengthening the roles of general practitioners in the detection and treatment of persons with depression, which is a risk factor for suicide, through training, and strengthening community awareness and support through public education and publicity.

According to the World Health Organization's resource guide for media professionals, the media can strongly influence community attitudes and behaviour and can play an active role in suicide prevention. The Government is working with the media to promote responsible reporting and portrayal of suicide, as well as to educate the public about suicide prevention.

And, an inter-departmental working group meets regularly to review the overall strategy and examines ways of enhancing the interface between and co-ordination of, the various services available.

### **Wetlands in Long Valley**

8. **MR WONG SING-CHI** (in Chinese): *Madam President, regarding the wetlands in Long Valley, will the Government inform this Council:*

- (a) *of the current number of wells within the wetlands and, among them, the number of those with a greater depth than that proposed for the tunnel of the planned Lok Ma Chau Spur Line (the Spur Line); and*
- (b) *whether any measures have been put in place to ensure that the tunnel will not be damaged by farmers' well-drilling works along the alignment of the Spur Line in the future?*

**SECRETARY FOR TRANSPORT** (in Chinese): Madam President, at present, there are eight wells located within the gazetted boundary of the Sheung Shui to Lok Ma Chau Spur Line in Long Valley. Of these, one well has a greater depth than that proposed for the tunnel of the Spur Line, but that well has been abandoned.

The Kowloon-Canton Railway Corporation (KCRC) will ensure the safe operation of the railway in accordance with the law. Under the Railways Ordinance (Cap. 519), after the Spur Line scheme has been authorized by the Chief Executive in Council, the Government will issue an order for the resumption of land. A notice of resumption will also be published in the Gazette, and a copy of it will be affixed on or near every section of the land affected. The land resumed will include the strata required for the construction of the tunnel of the Spur Line. The ownership of those strata will be vested in the Government and no persons will be allowed to dig into such strata without permission. Besides, under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372), the KCRC may take precautionary measures where necessary to ensure the safety of the railway.

With regard to the design and construction of the tunnel of the Spur Line, the railway tunnel wall will be lined with a 0.4-metre thick reinforced concrete structure. The railway tunnel will thus be very robust structurally, thereby ensuring the safety of the railway.

The KCRC will also require its contractor to carry out a detailed survey of all existing wells located within the gazetted boundary and to submit monitoring and work plans to the Corporation before tunneling begins. The KCRC will, in accordance with such plans, ensure that the construction of the railway tunnel will not be affected. During both the construction and operation of the Spur Line, KCRC staff will keep close and frequent surveillance of ground activities along the railway alignment. They will also carry out inspections within the tunnel to ensure that the tunnel structure is not disturbed.

Besides, the KCRC will maintain close contact with the farmers concerned and arrange meetings with them. The KCRC is willing to provide advice and information on the tunnel to those farmers. The KCRC believes that through the above-mentioned legal provisions and other measures, and their close contact with the farmers, the structure of the railway tunnel will be effectively protected from being damaged by well-drilling works.

### **Protecting Passengers Against Sexual Assault Aboard Public Transport**

9. **MR FREDERICK FUNG** (in Chinese): *Madam President, in respect of protecting passengers against sexual assault aboard public transport, will the Government inform this Council:*

- (a) *of the quarterly number of cases involving passengers being sexually assaulted aboard public transport over the past three years and, among such cases, the number of cases in which prosecution was successfully instituted; and*
- (b) *whether it knows if the public transport companies will formulate specific measures to protect female passengers from sexual assaults, such as assigning "women-only" compartments; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT** (in Chinese): Madam President, the quarterly figures on cases involving passengers being sexually assaulted aboard public transport reported to the police over the past three years are listed at Annex. Since the Judiciary does not maintain statistics on the number of indecent assault cases by months and places of occurrence, prosecution figures relating to indecent assault cases which occurred on public transport are not available. According to the overall number of prosecutions against indecent assault on females in Hong Kong provided by the Judiciary, 437 persons were charged in 1999 and 2000 respectively, and among them 298 and 275 persons were convicted respectively (the figures for 2000 are provisional). The figures for 2001 are not yet available from the Judiciary.

The major modes of public transport including railways, public buses and ferries have put in place appropriate measures to ensure the safety of passengers.

For railways, all stations and train compartments are adequately illuminated. Both Mass Transit Railway (MTR) and Kowloon-Canton Railway (KCR) East Rail stations have staff on duty throughout the day to keep close surveillance on the stations. During peak hours, staff are deployed to assist boarding and alighting passengers. At present, a team of policemen is responsible for patrolling MTR premises to maintain law and order in the stations and on board trains. In addition, emergency alarm devices or communication systems are installed on MTR, East Rail as well as Light Rail trains so that passengers can seek assistance from drivers if necessary. As

effective measures have been put in place to protect female passengers against sexual assault, both railway corporations consider it unnecessary to assign "women-only" compartments or adopt other special measures.

As regards other major public transport operators including bus and ferry companies, the staff concerned, for example, inspectors, bus captains and masters, have been given training on actions that should be taken to deal with incidents including sexual assault. Relevant guidelines have also been drawn up for their staff. Under these guidelines, the staff concerned will keep close monitoring of the situation inside vehicle compartment or cabin and render assistance to passengers or call the police for help when necessary. If the situation warrants, the staff will stop the vehicle or ferry or park it to a safe place, ask passengers to stay aboard, and call their company for reinforcement or the police for help as soon as possible. The major public transport operators believe that the existing measures are adequate for handling incidents such as sexual assault on board and affording effective protection to their passengers.

Annex

Number of cases of indecent assault (against female) which occurred on board public transport reported to the police in the past three years

*Year 1999*

<i>Place of Occurrence</i>	<i>1st Quarter</i>	<i>2nd Quarter</i>	<i>3rd Quarter</i>	<i>4th Quarter</i>
Bus	15	17	8	18
Tram/Peak Tram	2	1	1	0
Public Light Bus	3	5	3	2
Taxi	0	1	1	0
Ferry	0	0	0	0
MTR train	18	21	10	12
KCR train	2	1	0	4
LRT train	0	1	2	1
Total	40	47	25	37

*Year 2000*

<i>Place of Occurrence</i>	<i>1st Quarter</i>	<i>2nd Quarter</i>	<i>3rd Quarter</i>	<i>4th Quarter</i>
Bus	27	23	18	20
Tram/Peak Tram	2	5	0	3
Public Light Bus	2	4	6	2
Taxi	1	0	1	0
Ferry	0	0	0	1
MTR train	11	7	11	14
KCR train	2	0	2	2
LRT train	0	0	1	0
Total	45	39	39	42

*Year 2001*

<i>Place of Occurrence</i>	<i>1st Quarter</i>	<i>2nd Quarter</i>	<i>3rd Quarter</i>	<i>4th Quarter</i>
Bus	17	26	16	13
Tram/Peak Tram	1	1	1	1
Public Light Bus	2	7	3	3
Taxi	1	1	0	1
Ferry	0	0	0	1
MTR train	11	17	16	13
KCR train	1	0	0	2
LRT train	2	4	1	2
Total	35	56	37	36

*Year 2002 (January to March)*

<i>Place of Occurrence</i>	<i>1st Quarter</i>
Bus	16
Tram/Peak Tram	1
Public Light Bus	4
Taxi	2
Ferry	0
MTR train	20
KCR train	3
LRT train	1
Total	47

**Relaxing User Restrictions on Industrial Buildings**

10. **MR HOWARD YOUNG** (in Chinese): *Madam President, the Town Planning Board (TPB) has relaxed the user restrictions on industrial buildings by allowing owners to use them for information technology and telecommunication purposes without requiring applications for changes of their use, or to apply to use them as educational institutions and places of public entertainment. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of applications received and approved so far in relation to changes in user of industrial buildings; and*
- (b) *whether it has examined the feasibility of further relaxing the user restrictions on industrial buildings, such as allowing travel agents operating through computer and information technology to conduct business therein, so as to boost the utilization rate of such buildings?*

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

- (a) The Government has been looking for ways to encourage better utilization of existing industrial buildings. In this connection, the TPB has gradually relaxed the restrictions on the use of industrial premises to provide greater flexibility. A range of uses such as IT industry, telecommunications industry and offices related to industrial purposes are always permitted in industrial buildings. As there is no need to submit planning applications for such uses, we do not have the statistics in this respect. As for educational institutions and places of public entertainment which were included as permissible uses since September 2001, no applications for such purposes have been received so far.
- (b) The Government will continue to monitor market response and, if necessary, consider further relaxation. The Planning Department is studying the feasibility of the "loft" concept to allow greater flexibility for the market to utilize the industrial premises.

As regards offices of travel agents, it has all along been a use that may be permitted in industrial buildings on application to the TPB. The Board will consider individual case on its merits having regard to various factors including fire safety concerns.

### **Outsourcing of Work to Private Architects and Contractors by ASD**

11. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, with regard to the public projects in which the design and supervision work is contracted out by the Architectural Services Department (ASD) to private architects and the construction work undertaken by private contractors, will the Government inform this Council whether, over the past three years:*

- (a) there was incidence of the costs of the projects undertaken by such private contractors exceeding the estimated costs; if so, of the excess amount in each project and its proportion to the estimated cost of the project;*
- (b) there were cases in which the contracted out projects were completed only after the injection of government funds as a result of shortage of funds on the part of such private contractors; if so, of the descriptions and costs of the projects concerned, and the amount of funds injected by the Government;*
- (c) the ASD has instituted civil proceedings against such private contractors, terminated their employment contracts or blacklisted them due to cost overrun, and the Government having to inject additional funds, or unsatisfactory work progress; if so, of the names of such private contractors and the projects undertaken by them; and*
- (d) upon taking over completed projects from such private contractors, the ASD had to deploy staff to follow up or rectify problems in the completed projects; if so, of the number of such staff and their posts?*



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

- (a) Over the past three years, the Government has increased the Approved Project Estimate (APE) for the following three projects which were contracted out to private architects:

<i>Project Title</i>	<i>Original APE</i>	<i>Excess amount</i>	<i>Percentage of increase to the APE</i>	<i>Reasons for increase</i>
Government Quarters at Fanling	\$376.9M	\$14.9M	4%	To provide additional flats and ancillary facilities which were permissible under the new guidelines of the Building Regulations promulgated before completion of the project.
Extension to Hong Kong Chinese Women's Club Hioe Tjo Yoeng Primary School, Shau Kei Wan	\$72.0M	\$6.6M	9%	To construct two lay-bys for schoolbuses and carry out associated geotechnical works in order to meet the Transport Department's new safety requirements.
Hong Ning Road Park (Phase 2)	\$11.42M	\$9.5M	83%	This was a project carried out by the former Provisional Urban Council. The payment was required to settle the outstanding account.

- (b) As explained above, the increases in the APE for these projects were not due to shortage of funds of the contractors involved.
- (c) Since the increases of APE for the above three projects were not due to contractors' poor performance, there were no grounds for the Government to seek remedies from the contractors.
- (d) The ASD did not need to deploy additional staff resources in attending to problems in the above projects after taking over them from the contractors on completion.

### **Queen Elizabeth Hospital Organizing Course Equivalent to Higher Diploma in Nursing**

12. **MR MICHAEL MAK** (in Chinese): *Madam President, the Government informed this Council on 17 April this year that the Hospital Authority (HA) would allocate its existing available resources to fund the training and administration cost incurred by the Queen Elizabeth Hospital (QEH) in organizing course equivalent to Higher Diploma in Nursing, and these non-degree level courses serve only as a bridging over arrangement. In this connection, will the Government inform this Council whether:*

- (a) it knows the training and administrative cost of the training course;*
- (b) it has assessed if the quality of its general medical services would be affected when the HA uses part of their provision to fund the training and administrative cost of the training course; and*
- (c) given that the Government supports the upgrading of basic nursing education to degree level for enhancement of quality health care service, it has assessed the period for which the bridging over arrangement should last and whether this arrangement will affect the quality of nurses?*

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

- (a) Students enrolling in the Higher Diploma Nursing Programme are required to pay a tuition fee to cover the full costs for the components of the teaching by a tertiary education institution in seven subjects (namely, human biology, patho-physiology, applied microbiology, psychology, sociology, ethical and legal aspect of nursing, and theories of knowledge and human nature). The hospital component of the training and administration costs for running the programme will be absorbed by the HA within its existing available resources. In this connection, the HA plans to deploy one senior nurse educator, eight nurse educators, three clerical officers and two workmen to run the Higher Diploma Nursing Programme. The total staff cost is estimated to be around \$8.5 million per year. As the Higher Diploma Nursing Programme will be conducted in the QEH, it would share facilities and administrative resources (such as offices, furniture and equipment, utility services and other administrative support) with other departments of QEH. It is difficult to identify how much of these resources which are currently shared among departments would be expended specifically for running the Higher Diploma Nursing Programme.
- (b) With the upgrading of basic nursing education from a hospital-based nursing education to degree level in tertiary institutions, the HA will phase out its hospital-based nursing programmes by closing its nursing schools in 2002-03. The HA will deploy its resources provided to run hospital-based nursing programmes to cover the training and administration costs for running the Higher Diploma Nursing Programme in QEH, and the provision of clinical services will not be affected.
- (c) The Government supports the upgrading of basic nursing education to degree level for enhancement of quality health care services. The provision of first-year-first-degree (FYFD) nursing places in publicly funded institutions has to take into account factors such as the future development of the health care sector, the training capacity of the institutions, impact on the quality of the programmes,

and the competing demands for FYFD places and resources from other disciplines. All these explain the progressive increase in the intake into the degree level nursing programme over the years. We have progressively increased the FYFD places in pre-registration nursing programme from 140 in 1995-96 to 220 by the end of the 1998-99 to 2000-01 triennium, which would progressively increase from 280 to 395 during the 2001-02 to 2003-04 triennium. Pending a full-scale upgrading of basic nursing education to degree level, we have to rely on other nursing programmes such as higher diploma courses as a bridging over arrangement. The Government will work closely with the University Grants Committee with a view to achieving our goal of full-scale upgrading of basic nursing education to degree level as soon as practicable. As for the HA-run Higher Diploma Nursing Programme, we shall review the continued need for such a programme in 2004.

Over the years, the quality of nurses has been enhanced through our continual effort to upgrade basic nursing education to tertiary level. The HA has phased out its traditional student-nurse training programme which was basically an apprenticeship system. The Higher Diploma Nursing Programme run by tertiary institutions covers nursing arts and science subjects complemented by life sciences and humanities subjects. Supervised field studies are organized to integrate theory and practice. Like similar nursing programmes run by tertiary institutions, the HA-run Higher Diploma Nursing Programme will be subject to both internal and external assessment, validation and accreditation in ensuring quality. All Higher Diploma Nursing Programmes run by the tertiary institutions and HA have to meet the requirements prescribed by the Nursing Council of Hong Kong. Graduates of Higher Diploma Nursing Programme who wish to upgrade their qualifications to degree level may seek to enrol in educational programmes at advanced level upon their graduation.

### **Combating On-Street Defrauding**

13. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, there has recently been a series of cases in which elderly people were cheated of their*

*valuables by swindlers in the streets. The tricks of these swindlers included pretending to pray for luck or remove misfortunes for the elderly or their families. Regarding such "pray-for-luck gangs" and other on-street defrauding cases with various tricks, will the Government inform this Council of:*

- (a) the following in respect of the past three years:*
  - (i) the modus operandi (MO) of the gangs in the reported fraud cases;*
  - (ii) the number of various type of fraud cases; and the number of victims and the loss involved;*
  - (iii) the number of gangs arrested and successfully prosecuted in such fraud cases; and*
  - (iv) the total number of promotional leaflets distributed by the police conveying the message of combating on-street defrauding; and*
- (b) the measures to combat on-street defrauding, in particular those which caution the elderly against such defrauding tricks?*

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

- (a) (i) The common MO of street deception cases include the following:
  - perpetrators persuading the victims to buy fake products, including gold rings, jade bracelets, electronic parts and medicine, claiming that remarkable profits can be gained by reselling the products;
  - setting up a pre-arranged trap in which the offenders claim that a large sum of abandoned money was found in the street. Offenders use excuses to convince the victims to give their own money in order to have a share of the abandoned money, which is subsequently found to be fake or non-existent;

- swindlers asking for money to seek spiritual blessing for removing the misfortune of the victims or their family members; and
- fiddlers using currencies which are not in circulation or foreign exchanges with very low exchange rate to change for local currencies.

(ii) In the past three years, the number of street deception cases in various MO is as below:

<i>Year</i>	<i>Fake gold ring</i>	<i>Fake jade bracelets</i>	<i>Fake electronic parts</i>	<i>Fake medicine</i>	<i>Dropping money</i>	<i>Spiritual blessing</i>	<i>Fake foreign exchanges</i>	<i>Others</i>	<i>Total</i>
1999	109	17	150	106	36	11	N.A.	26	455
2000	151	25	110	107	129	70	N.A.	25	617
2001	14	19	47	20	192	311	16	4	623
2002	18	15	18	12	71	173	19	3	329

(January – April)

Note: N.A. means no figures available.

The amount of money lost (in million dollars) in street deception cases in the past three years is set out below:

<i>Year</i>	<i>Fake gold ring</i>	<i>Fake jade bracelets</i>	<i>Fake electronic parts</i>	<i>Fake medicine</i>	<i>Dropping money</i>	<i>Spiritual blessing</i>	<i>Fake foreign exchanges</i>	<i>Others</i>	<i>Total</i>
1999	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	26.241
2000	4.213	2.758	11.619	9.346	8.024	5.871	N.A.	0.663	42.494
2001	1.232	1.192	4.931	1.385	3.809	21.7	1.576	0.42	36.245
2002	0.289	1.028	1.48	1.044	1.153	14.589	2.218	0.054	21.855

(January - April)

Note: N.A. means no figures available.

Since the police do not maintain statistics on the number of victims involved in street deception cases, the requested information is not available. Analysis shows that for the period from January 2001 to April 2002, a total of 484 females fell into the traps of "spiritual blessing gangs". Out of these, 70% (that is, 340 persons) are aged 60 or above.

- (iii) In the past three years, the number of cases which resulted in arrests and conviction are:

<i>Year</i>	<i>Cases with Arrests #</i>	<i>Cases resulted in Conviction</i>	<i>Cases in which no conviction is resulted/suspects released after investigation</i>	
			<i>Cases pending prosecution or investigation</i>	
1999	24	N.A.	N.A.	N.A.
2000	57	N.A.	N.A.	N.A.
2001	62	29	33	0
2002 (January – April)	30	3	6	21

Note (1): N.A. means no figures available.

Note (2): # As statistics maintained by the police are in the unit of cases, figures on the number of persons arrested or convicted are therefore not available.

- (iv) The police have distributed a total of 831 970 publicity pamphlets with anti-street deception message in the past three years.
- (b) The police take a serious view of street deception. In order to enhance knowledge of the elderly and their family members of the various types of deception cases, the Crime Prevention Bureau passes on relevant information and advice to members of the public, in particular the elderly, through different media, including broadcasting through television and radio and distribution of leaflets. The police also co-operate with the Social Welfare Department (SWD) and non-government welfare agencies in organizing

publicity programmes and briefings for the elderly in their respective regional units, including social centres and hostels for the elderly. The SWD disseminate anti-street deception message in their publication entitled "Support Team for the Elderly Newsletter". Specific advice to the elderly on how to prevent such crime was published in the edition released in April 2002. In addition, the Crime Prevention Bureau has requested tellers at banks to remind the elderly to be cautious about possible deception cases whenever it is found that an elderly person has withdrawn a large sum of money and is acting differently as reflected in his or her past transaction records.

Separately, all Police Regions have designated teams to take specific actions against street deception. Since quite a number of street deception cases were committed by mainland visitors, the police have exchanged intelligence with the mainland security authorities with a view to combating such crimes.

### **Proliferation of Mikania Micrantha**

14. **MR ALBERT CHAN** (in Chinese): *Madam President, Mikania micrantha, also known as "the plant killer", spreads appallingly fast, blocking other plants from sunlight, and strangles many plants which wither as the result. In this connection, will the Government inform this Council:*

- (a) of the locations and the total area where Mikania micrantha proliferates, as well as the regions where it grows densely;*
- (b) whether the country parks in Hong Kong are affected by Mikania micrantha; if so, of the list of the affected country parks and the damage caused by the plant;*
- (c) whether it has assessed the damage done on plants and the number of trees that have withered as a result of the proliferation of Mikania micrantha; if so, of the details; and*
- (d) when it will thoroughly solve the problem concerning Mikania micrantha and whether it has drawn up measures to curb its proliferation; if so, of the details; if not, the reasons for that?*



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

(a) and (b)

*Mikania micrantha* is found mainly at lowlands with ample sunlight and wet soil, such as roadsides, hillsides, derelict fields, bunds of fish ponds and rural areas.

Relevant departments have conducted preliminary studies and assessments of the effects of *Mikania micrantha*. The findings show that *Mikania micrantha* has not affected trees managed by the Leisure and Cultural Services Department (LCSD) in parks and along roadsides, nor has it affected landscaped areas within the jurisdiction of other departments. According to a study and assessment conducted by the Agriculture, Fisheries and Conservation Department (AFCD) earlier this year, only small areas of country parks are affected by *Mikania micrantha*. The areas affected are mainly on the fringes of country parks and along roadsides, with a total area of about 20 hectares, accounting for less than 0.05% of the total area of country parks. The country parks affected include Pat Sin Leng Country Park, Tai Lam Country Park, Shing Mun Country Park and Tai Mo Shan Country Park. The growth of the plant in these areas has already been kept under control and no serious damage has been caused. For areas outside country parks, about 80 hectares of land are affected, including mainly derelict fields, roadsides and hillsides at Tai Po, North District, Yuen Long, Sai Kung and Pokfulam.

(c) *Mikania micrantha* has not caused any damage to our urban trees. As to rural areas, according to the observation of the AFCD, the trees more seriously affected are those relatively isolated ones growing along roadsides, on derelict lands or in fields. On the contrary, woodlands in the countryside have suffered relatively less damage because the trees growing there are taller and the sunlight is weaker within the wooded areas, which are not conducive to growth of *Mikania micrantha*.

- (d) Complete removal of *Mikania micrantha* in Hong Kong would involve enormous resources in terms of manual labour. Further, the removal work is quite dangerous because some of the plants grow on steep slopes. As some of the lowlands in the rural districts where *Mikania micrantha* is found, including derelict fields and roadside and hillside areas, are private lands, the Government does not have the right to remove the plants there unless with the landowners' consent.

At present, the best way to curb the proliferation of *Mikania micrantha* is to take preventive measures at an early stage. In this connection, relevant departments will step up their inspection work in areas under their management. If *Mikania micrantha* is found, they will remove it as soon as practicable. The AFCD will step up the removal of *Mikania micrantha* at sites of high ecological value by deploying more manpower through redeployment and recruitment of staff, contracting-out of services and organization of volunteers. It will also regularly observe the growth of *Mikania micrantha* in those areas so that appropriate follow-up actions can be taken. At the same time, the LCSD will keep on inspecting trees and plants regularly in country parks and along roadsides and undertaking vegetation maintenance work. If trees or plants are found entangled by *Mikania micrantha* or other climbing plants, the LCSD will remove them immediately. Other departments concerned also carry out regular weeding and removal of climbing plants for the landscaped areas within their jurisdiction. To assist other departments in tackling the problem, the AFCD is drawing up relevant technical guidelines on identifying *Mikania micrantha* and on its removal for other departments' reference.

The AFCD and the Afforestation Bureau of Guangdong Province are now conducting a joint study to explore more effective measures for preventing and controlling *Mikania micrantha*. The study is scheduled to be completed by the end of 2003.

**Prevention of E-mail Spamming**

15. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, to prevent e-mail subscribers from frequently receiving unwanted junk e-mails, the State of California of the United States has legislation to regulate senders of e-mail advertisements whilst Korea is currently considering introducing legislation to restrict such acts. In 2000, the Hong Kong Internet Service Providers Association (HKISPA) also drew up codes of practice as guidelines for its members, requiring them to set out, in the conditions of services, terms forbidding their clients to send out junk e-mails. In this connection, will the Government inform this Council:*

- (a) of the number of complaints concerning e-mail spamming received in each of the past 18 months;*
- (b) whether it knows the number of sanctions, such as suspension or termination of services, imposed by Internet service providers (ISPs) on senders of junk e-mails over the past 18 months;*
- (c) whether it will encourage some content providers which offer free e-mail services (such as Yahoo and Hotmail) to observe the codes of practice for prevention of e-mail spamming established by the HKISPA; and*
- (d) whether it will, with reference to the practice in other countries, consider introducing legislation for monitoring spamming of e-mail advertisements; if not, of the reasons for that?*

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

- (a) During the 18 months between November 2000 and April 2002, the Office of the Telecommunications Authority (OFTA) has received a total of 53 complaints about e-mail spamming (that is, an average of three cases per month). The number of complaints received in each month ranges from 0 to seven.

- (b) Since sanctions are enforced by individual ISPs, the OFTA does not have the statistics in this regard. The OFTA will approach the ISPs to collect the statistics for the purposes of conducting a review on the effectiveness of the measures taken against e-mail spamming (please see reply (c) below).
- (c) In February 2002, the HKISPA issued the Code of Practice for Prevention of E-mail Spamming requiring members to introduce terms and conditions which forbid their customers from engaging in e-mail spamming activities. The code is applicable to ISPs only and not content providers. Since content providers also need to rely on services provided by ISPs in order to offer free e-mail services, we consider that regulating ISPs can already achieve our objective.

As to the effectiveness of the code, the OFTA is now working with the Office of the Privacy Commissioner for Personal Data (PCO) and HKISPA in conducting a review. It is expected that the review will be completed by the third quarter this year.

- (d) As mentioned in reply (c), the OFTA is working with the relevant organizations in conducting a review on the effectiveness of the code. We will decide on the need for legislation against e-mail spamming after the review.

### **Modified Land Grant Mechanism for Housing Development**

16. **MISS EMILY LAU** (in Chinese): *Madam President, in his speech during the resumption of the Second Reading debate on the Appropriation Bill 2002 in this Council on 17 April this year, the Chief Secretary for Administration said that the Administration had modified the land grant mechanism for housing development, and would continue to ensure that there would be adequate land to meet our public housing objectives. He also gave an assurance that there was no policy to create ghettos in our community. In this connection, will the executive authorities inform this Council:*

- (a) *whether they had conducted any public consultation when the land grant mechanism for housing development was modified;*

- (b) *of the criteria and procedures specified by the modified mechanism in respect of matters relating to land grant;*
- (c) *when they intend to implement the modified mechanism; and*
- (d) *how to ensure that not all the prime sites will be used for the development of private housing when the modified mechanism is implemented?*

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

- (a) As pointed out by the Chief Secretary for Administration at the Legislative Council meeting on 17 April, the objective of modifying the land grant mechanism is to apply effectively a clear and balanced set of criteria in the allocation of land for housing development. This is not a new policy. We simply formalize the set of criteria used in the past and assign an existing committee to continue to apply the criteria. As the mechanism only relates to operations within the Government, and does not involve any new policy, no public consultation has been conducted.
- (b) The criteria for allocation of land for housing development comprise a number of factors for consideration, mainly:
  - (i) Land Policy — to optimize the utilization of scarce land resources, in order to put land to its best economic and social use.
  - (ii) Planning Policy — to promote an appropriate mix of private and public housing of different densities in urban and new town areas in order to achieve social and visual harmony and variety in urban built form.
  - (iii) Effectiveness Policy — to achieve economies of scale and to provide adequate facilities for the community.

The existing procedures are basically the same as the allocation procedures adopted in the past. After a site has been earmarked for residential use, the committee concerned will recommend whether the site should be used for public or private housing development by applying the criteria. The recommendation will be submitted to another committee for decision before implementation.

- (c) The modified mechanism is already in operation.
- (d) Under the modified mechanism, the Government will consider a number of factors, including the land policy, planning policy and effectiveness policy, so as to strike the right balance in the allocation process in the best interests of the community as a whole. The Government will also continue to ensure that there will be adequate land to meet the public housing objectives.

### **Formation of Harmful Substances During Preparation of Food at High Temperature**

17. **MR FRED LI** (in Chinese): *Madam President, it has been reported that according to a report published by the Swedish National Food Administration (SNFA), a substance known as acrylamide will be formed when carbohydrate-rich foodstuffs are heated at high temperature, and long-term consumption of foodstuffs containing such substance may cause cancer. In this connection, will the Government inform this Council:*

- (a) *whether it has studied the report; if it has, of the conclusion that it has on the report;*
- (b) *whether it will consider following the example of the Swedish authority and employ the method utilizing liquid chromatography coupled to two-stage mass spectrometry or other existing methods, such as gas chromatography coupled to mass spectrometry, to test the concentration of the acrylamide formed when carbohydrate-rich foodstuffs are heated at high temperature; if not, of the reason for that;*

- (c) *whether it has conducted other similar studies to find out if carcinogenic organic compounds or organometallic compounds will be formed when foodstuffs are prepared at high temperature; and*
- (d) *to safeguard public health, whether it will consider formulating guidelines for food premises on preventing the formation of harmful or carcinogenic substances during the preparation of food at high temperature, and strengthening the control of the quality of cooking oils used for frying and metallic cookers used for prolonged cooking or frying at food premises; if not, of the reason for that?*

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

Madam President,

- (a) and (b)

Acrylamide is a substance which may cause cancer in animals. However, up to now, there is still no clear evidence that acrylamide can cause cancer in humans. The SNFA has only released the preliminary findings but not the detailed report of the survey. The preliminary findings reveal that varying concentrations of acrylamide will be formed when carbohydrate-rich food is processed at high temperature by methods such as frying, deep-frying, and baking. Both the World Health Organization (WHO) and the SNFA have pointed out that this survey is the first one which has found acrylamide in food. As the data collected in the study are not sufficient to enable a comprehensive analysis on the subject of acrylamide in food to be conducted, the SNFA will conduct further surveys on this subject.

A WHO expert group will meet by the end of June this year to examine the possible public health risks of acrylamide in food. The scope of the study will include the possible effects of dietary intake of acrylamide on human health and the relationship between food processing and acrylamide concentration in food. The conclusions will facilitate the WHO to decide the direction of future studies and to make recommendations. We will pay close attention

to the latest developments of the subject and take appropriate follow-up actions, including considering whether it is necessary to test acrylamide concentration in food and, if so, which testing methods are to be employed. So far, the WHO has not changed its recommendation on basic food consumption habits in response to the preliminary findings of the above survey.

- (c) The survey on the formation of acrylamide in carbohydrate-rich foodstuffs heated at high temperature conducted by the SNFA is the first of its kind in the world. There have not been similar studies conducted in other countries or in Hong Kong.
- (d) We have produced leaflets to explain the changes in cooking oils upon prolonged cooking and the hazards that may arise from such changes. The leaflets also provide guidelines on the good practices in food production to be observed by the food industry to minimize these hazards. In addition, the quality of cooking oils is monitored under the food surveillance programme. We conduct regular sampling and tests of cooking oils used in food premises and food factories. The contents of degradation products and polymerized materials in cooking oils are also examined to ensure that these oils are suitable for cooking and safe for human consumption. In case any food is found to be unsuitable for human consumption, we will take appropriate action, including prosecution of the persons selling the food, regardless of whether the cause is poor quality of the cooking utensils or of the cooking oils. In 2000 and 2001, the Food and Environmental Hygiene Department had taken more than 300 cooking oil samples for testing. All the samples were found to be suitable for cooking purposes.

### **Cross-boundary Shuttle Bus Fares**

18. **MR LAU KONG-WAH** (in Chinese): *Madam President, it is learnt that on some days in the last month, the company operating cross-boundary shuttle buses between Huanggang checkpoint and Lok Ma Chau charged passengers higher-than-normal fares. In this connection, will the Government inform this Council:*



- (a) *of the days in the last month on which the company charged higher-than-normal fares, and the reasons for that; and*
- (b) *whether it has reviewed this incident with the company, and of the measures to take to prevent the recurrence of similar incidents?*

**SECRETARY FOR TRANSPORT** (in Chinese): Madam President, the operator of the cross-boundary shuttle bus service between Lok Ma Chau and Huanggang charged the fare of \$7.5, instead of the normal fare of \$7.0, for the southbound service (that is, from Huanggang to Lok Ma Chau) on 19 April and up to 1.00 pm on 20 April 2002. The operator explained that the incident was due to poor communication between its front-line staff and management at Huanggang.

The Transport Department (TD) has issued a warning letter to the operator, and also met the operator to follow up on the incident. The operator has expressed regret for causing inconvenience to passengers and, immediately following the incident, posted notices at the bus terminus at Huanggang to inform affected passengers that the extra amount paid by them could be redeemed at that terminus before the end of May 2002. The operator has also informed the TD that it would donate all unclaimed part of the extra amount collected to charitable organizations.

The TD has asked the operator to introduce preventive measures to avoid similar incidents in future. In response, the operator has undertaken to improve its management and communication between management and front-line staff. The TD will also continue to closely monitor the operation of the shuttle bus service.

### **Hygiene Conditions of Public Toilets**

19. **DR RAYMOND HO** (in Chinese): *Madam President, the Administration has contracted out some public toilets cleansing services to private cleaning companies and works are being undertaken to renovate older public toilets. In this connection, will the Government inform this Council:*

- (a) *of the number of public toilets cleansed by private contractors and the criteria for selecting such contractors;*

- (b) *of the daily frequency of toilet cleansing required of private contractors, and whether it knows the measures adopted by such contractors to monitor their staff's performance and frequency of toilet cleansing;*
- (c) *whether a comparison has been made between public toilets cleansed by government departments and those by private contractors in terms of their daily cleansing frequency, cleanliness, hygiene conditions and measures to monitor staff's performance of toilet cleansing; if so, of the results of the comparison;*
- (d) *of the progress of the renovation works on public toilets and the expected completion dates of such works; and*
- (e) *whether it plans to allocate additional resources for renovating public toilets and keeping them clean and hygienic; if so, of the details; if not, the reasons for that?*

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

- (a) Out of the 2 594 public toilets managed by government departments, cleansing services of 2 532 toilets have been contracted out to private contractors.

Government departments have all along been following the established tendering mechanism and procedures. Through a fair, open and equitable tendering system, suitable private companies have been selected to deliver the outsourced services. Tender requirements and marking systems of the tender assessment vary according to the specific needs of each type of public toilets, but the main criteria in assessing tenders are service quality and tender prices. To assess the quality of services, departments will consider the size of the tendering companies, the equipment and the number of workers they can provide, their work experiences and track records, the workers' wages and working hours, the availability of additional manpower in case of emergency, the management of the companies, the allocation of work and contingency plans, and so on.

- (b) The daily frequency of toilet cleansing depends on the location and the usage rate of the toilets concerned. In general, the frequency of toilet cleansing ranges from one to six times each day. If necessary, departments will require the contractor to clean the toilets more frequently. The contractors will also be required to assign in peak hours attendants at toilets with high usage rate to provide instant cleansing services. To ensure that the workers employed by the contractors perform the cleansing duties as required, both the contractor and the departments conduct regular inspections of the toilets and the departments also conduct surprise checks.
- (c) In general, the toilet cleansing services provided by departmental staff and those provided by private contractors are more or less the same in terms of cleansing frequency, cleanliness, hygiene conditions and supervision.
- (d) Since its establishment, the Food and Environmental Hygiene Department (FEHD) has been very active in renovating public toilets. At present, 43 toilets have already been renovated. Of the renovation works projects on public toilets launched in 2001-02, 64 have yet to be completed and 35 will be completed between September and October this year. The Leisure and Cultural Services Department (LCSD) has undertaken seven renovation works projects on public toilets, scheduled for completion in the middle of this year. The Agriculture, Fisheries and Conservation Department (AFCD) has undertaken renovation works projects on 36 public toilets in country parks, scheduled to be completed by the end of 2003. No special renovation works have been arranged for public toilets in the public housing estates managed by the Housing Department (HD). Appropriate maintenance or renovation works will be carried out by the HD depending on the condition and actual needs of individual public toilets.
- (e) In 2002-03, the FEHD will continue to renovate another 60 public toilets at a cost of about \$120 million. The FEHD will allocate, on average, an additional \$6 million to strengthen public toilet cleansing services in each of the coming two years. The AFCD will increase its expenditure on public toilet cleansing by \$1.2 million. The LCSD plans to launch a total of 20 renovation works

projects on public toilets at an estimated cost of \$33 million. The HD does not need to specially allocate additional resources for renovation as public toilets form part of the facilities in the public housing estates. Renovation works will be carried out as and when they are required.

### **Transfer of General Out-patient Clinics to Hospital Authority**

20. **MR AMBROSE LAU** (in Chinese): *Madam President, the Department of Health (DH) has transferred five of its general out-patient clinics to the Hospital Authority (HA) and has planned to transfer all the remaining 59 clinics within three years. However it has been reported that the Government has recently decided to complete the transfer in the middle of next year. In this regard, will the Government inform this Council:*

- (a) *whether it has assessed the effectiveness of the services of the five clinics after their transfer to the HA; if so, of the details; if not, whether it will conduct such an assessment and refrain from transferring the remaining clinics to the HA before a positive assessment result has been obtained;*
- (b) *of the reasons for accelerating the transfer of the remaining 59 clinics; and*
- (c) *of the arrangements for the DH staff who are currently serving in these clinics but are not willing to transfer to the HA?*

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

- (a) As set out in the Consultation Document on Health Care Reform published in December 2000, the objectives of transferring the General Out-patient Clinics (GOPCs) from the DH to the HA is to facilitate the integration between the primary and secondary levels of medical care in our public health care system, and to develop the practice of family medicine in a primary care setting. With the positive feedback received from the community at large during the

public consultation period, we have been formulating plans to arrange for the transfer of all GOPCs in an orderly manner with minimum disruption to the GOPC patients. In May 2001, we launched a pilot scheme to transfer five GOPCs from the DH to the HA. The transfer of these five clinics was completed in March 2002.

The Health and Welfare Bureau has been closely monitoring the progress of the pilot scheme, and has held regular meetings with the DH and the HA to ensure not only the smooth transfer but also the subsequent operation of the clinics under the HA. Performance of the pilot clinics was evaluated in various aspects, such as clinical service improvement, workflow improvement, patient profile, prescription pattern, referral to other HA services and patient satisfaction. It is noted from the evaluation to date, that clinic workflow has been streamlined and enhanced, and that the performance pledges for provision of services to patients were largely met. The management of these clinics by the HA has also served to facilitate seamless flow of information between the clinics and other HA units, hence improving efficiency and service quality. The experience gained in manpower planning, budgeting, operation planning and the transfer logistics of the pilot clinics will provide useful reference in the subsequent transfer of the remaining GOPCs.

- (b) The current arrangement to transfer all clinics to the HA is not an accelerated plan. We are now finalizing the proposals for the transfer of the remaining 59 GOPCs from the DH to the HA. In the planning process, we have considered different alternatives for the transfer of GOPCs, and have arrived at the preferred option after the following consideration:
1. to allow a tidier administrative and logistic arrangements (for example, the realignment of the GOPCs' information systems to meet the HA's standard);
  2. to avoid a situation where staff transferred are perceived to have an unfair advantage over the others to be absorbed by the Government; and

3. to allow all affected GOPC staff to have a longer option period to decide whether to take up the HA's employment or to remain as civil servants after the clinics are transferred.
- (c) As a matter of principle, the transfer of GOPCs should not jeopardize the legitimate claims of all affected staff as civil servants. A set of objective criteria has been developed to facilitate the transfer of staff of different ranks and grades. All affected staff will be thoroughly consulted on the staffing arrangements in a consultation period which will last for a minimum of 12 months prior to the transfer of the clinics. The Government will, in the first instance, endeavour to redeploy the affected staff within the DH or in other departments as appropriate. Staff who cannot be absorbed by the Government at the initial stage will basically continue to perform their duties in the clinics under the management of the HA. Their status will remain as civil servants working in the HA until they are eventually absorbed by the Government or leave the Civil Service due to retirement or other reasons. There is already a well established mechanism under the DH on the personnel management of these staff who continue to maintain civil servant status.

## **BILLS**

### **Second Reading of Bills**

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

**PRESIDENT** (in Cantonese): Bills. We will resume the Second Reading debate on the Hong Kong Court of Final Appeal (Amendment) Bill 2001.

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

#### **Resumption of debate on Second Reading which was moved on 13 June 2001**

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

**MISS MARGARET NG:** Madam President, in my capacity as Chairman of the Bills Committee on the Hong Kong Court of Final Appeal (Amendment) Bill 2001, I would like to report on the main deliberations of the Bills Committee.

The Bill provides for an appeal mechanism, commonly known as "leapfrog appeal", whereby civil appeals may be brought directly from the Court of First Instance to the Court of Final Appeal (CFA). The main provisions of the Bill set out the criteria and procedures for gaining access to the leapfrog arrangement.

The Bills Committee has consulted the Hong Kong Bar Association and the Law Society of Hong Kong on the Bill. The two professional bodies are in support of the Bill. The Bills Committee has been advised that the proposed framework is agreeable to the Judiciary.

In its deliberations, the Bills Committee has taken note of the leapfrog appeal systems in overseas common law jurisdictions. There are no comparable leapfrog procedures in major common law jurisdictions including Australia, Malaysia, New Zealand and Singapore. The nearest equivalent to the proposed Hong Kong leapfrog system is the Canadian "appeals per saltum" system which is available only in a limited situation and is infrequently used. The proposed leapfrog appeal system in Hong Kong is modelled on the leapfrog appeal system in the United Kingdom.

The most important provision of the Bill is new section 27C which specifies the criteria and conditions for the grant of a certificate by the judge before a party to the proceedings may apply to the CFA for leave to appeal. According to the Administration, in considering an application, the judge may issue a certificate if he considers that a sufficient case for appeal to the CFA has been made out and all parties to the proceedings consent to the grant of a certificate. Under this new section, the judge should also be satisfied that the point of law in the case is of great general or public importance. If the point of law does not relate wholly or mainly to the construction of the Basic Law, it must relate wholly or mainly to the construction of the Ordinance or subsidiary legislation and has been fully argued in the proceedings and fully considered in the judgement of the judge in the proceedings.

Alternatively, the point of law must be one in respect of which the judge is bound by a decision of the Court of Appeal or the CFA in previous proceedings,

and was fully considered in the judgements given by the Court of Appeal or the CFA (as the case may be) in those previous proceedings. However, if the point of law relates wholly or mainly to the construction of the Basic Law, it must be one in respect of which the judge is bound by a decision of the Court of Appeal or the CFA in previous proceedings and was fully considered in the judgements given by the Court of Appeal or the CFA in those proceedings.

The Bills Committee is of the view that the drafting of the relevant provisions does not reflect the policy intent as mentioned earlier. The Administration has agreed to introduce amendments to improve the clarity.

Some Members have expressed concern about the requirement under the Bill that an application for a leapfrog certificate shall be made to the judge immediately after he gives judgement in the proceedings. They consider that parties to the proceedings should be given reasonable time to seek legal advice and decide whether an application for a certificate should be made.

While the Administration has assured Members that the new provision should not create any great difficulty in practice, it agrees that the time limits for lodging an application for leapfrog certificate should be stated in more specific terms. The Administration will introduce an amendment to the effect that an application for leapfrog certificate under this section shall be made to the judge within 14 days from the date on which the judgement is given or such other longer period as may be prescribed by rules of court.

The Bills Committee has expressed concern about the situation where a party, whose application for leave to make a leapfrog appeal to the CFA has been refused, might be barred from appealing to the Court of Appeal because the time limit for appeal from the Court of First Instance to the Court of Appeal has expired. It is considered that an express provision should be provided to prevent such a situation from arising. The Administration agrees to amend the Bill to the effect that the time limit for an appeal from the Court of First Instance to the Court of Appeal will not start to run until the date of determination of an application for a leapfrog certificate or the date of determination of an application made to the CFA for leave to appeal.

Madam President, with these remarks, and subject to the amendments to be moved at the Committee stage, the Bills Committee supports the resumption of Second Reading debate on the Bill.



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

(No Member responded)

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

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam President, I am most grateful to the Honourable Margaret NG and other members of the Bills Committee for the careful consideration that they have given to the Hong Kong Court of Final Appeal (Amendment) Bill 2001.

The Administration introduced the Bill into the Legislative Council on 13 June last year. It seeks to enable certain civil cases of great general or public importance to go directly to the Court of Final Appeal (CFA) from the Court of First Instance, leapfrogging the Court of Appeal.

For those civil cases which have satisfied the prescribed criteria and would eventually reach the CFA, the leapfrog arrangement will enhance the efficiency of the litigation process. On the other hand, the proposed arrangement will ensure that the CFA will not be deprived of the benefit of the deliberations of the Court of Appeal in appropriate circumstances.

Under the proposed arrangement, an appeal from the Court of First Instance may be brought directly to the CFA if it meets two conditions. First, a judge of the Court of First Instance has issued a leapfrog certificate, and second, the CFA has granted leave to appeal.

A judge of the Court of First Instance will exercise his or her judicial discretion to grant a leapfrog certificate if there are good and sound reasons as stipulated in the Bill to bypass the Court of Appeal and if all parties to the proceedings consent to the grant of a certificate. Once a leapfrog certificate is granted, any party to the proceedings may apply to the Appeal Committee of the CFA for leave. The Appeal Committee may grant leave if it is expedient for the appeal to be brought directly to the CFA.

It is our policy that questions relating to the construction of the Basic Law should generally be excluded from the leapfrog arrangement, except for the situation where the judge is bound by a decision of the Court of Appeal, or the CFA, in previous proceedings. Our rationale is that, the Basic Law is the paramount legal instrument of the Hong Kong Special Administrative Region under our new legal order and jurisprudence has to be developed over time. The CFA should, therefore, not be deprived of the benefit of the judgements of the Court of Appeal in these cases.

In situations where an appeal involves both leapfroggable and non-leapfroggable points of law, the judge of the Court of First Instance will exercise his or her judicial discretion, having regard to the grounds of appeal and the particular circumstances of the case, to decide whether to grant a leapfrog certificate. Even if the certificate is granted, the appellants are required to obtain leave to appeal. The Appeal Committee of the CFA will consider if it is expedient for the appeal to go directly to the CFA and decide if leave should be granted.

In studying the Bill, members of the Bills Committee have tendered constructive suggestions on both the drafting aspects and operational details of the leapfrog arrangements. Taking into account the Bills Committee's valuable advice, we agree to propose some Committee stage amendments to the Bill. They have the support of the Bills Committee and I shall explain them in greater detail at the Committee stage.

We would like to take this opportunity to express again the Administration's appreciation to members of the Bills Committee for their wise counsel and hard work.

Madam President, with these remarks, I commend the Hong Kong Court of Final Appeal (Amendment) Bill 2001 to Members.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Hong Kong Court of Final Appeal (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

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

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

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Hong Kong Court of Final Appeal (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clauses 1, 2, 6, 7 and 8.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3, 4 and 5.

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam Chairman, I move that clauses 3, 4 and 5 be amended as set out in the paper circulated to Members.

The amendments have the support of the Bills Committee. I would like to explain the main purposes that they seek to achieve.

Clause 3 originally proposes to add a new division heading, namely, "Division 2 - Appeal from Court of Appeal to Court", to the Hong Kong Court of Final Appeal Ordinance, so as to specify that sections 22 to 27 of the Ordinance are to deal with general civil appeals from the Court of Appeal to the Court of Final Appeal (CFA).

The enactment of the Chief Executive Election Ordinance (Cap. 569) last year has, however, introduced consequential amendments to sections 22(1)(c) and 24(3) of the Hong Kong Court of Final Appeal Ordinance, to provide for a mechanism for appeals against a Court of First Instance's determination in relation to the Chief Executive election to go to the CFA direct. To reflect fully the current scope of the new Division 2 of the Hong Kong Court of Final Appeal Ordinance, we propose to add also the reference "Appeal relating to Chief Executive Election" to the heading.

The Bills Committee considered that the originally proposed section 27C(3) may not be sufficiently clear as to the criteria applicable for the granting of a leapfrog certificate in respect of an appeal involving the construction of the Basic Law.

We agree with the Bills Committee and propose to amend the new section 27C(2) and (3), to set out in distinct terms the criteria for granting a leapfrog certificate in respect of an appeal involving a point of law generally and those involving a point of law relating wholly or mainly to the construction of the Basic Law.

Under the originally proposed section 27C(4) and (5), an appellant shall apply for a leapfrog certificate immediately after the judgement is given in the proceedings, although the judge may still entertain an application within 14 days after the judgement is given, or within other period prescribed by rules of court. The Bills Committee suggested that more time should be allowed for making the application.

We accept the views of the Bills Committee and agree to amend the proposed section 27C to the effect that an application for a leapfrog certificate may be made to the judge within 14 days from the date on which the judgement is given, or such other longer period as may be prescribed by rules of court.

The Bill proposes that a leapfrog certificate should be issued by the trial judge who heard the Court of First Instance proceedings. The Bills Committee was concerned that should the trial judge be absent, the appellant will be left with no channel for making a leapfrog application.

We note the views of the Bills Committee and agree to amend the proposed sections 27B(2)(a) and 27C, so that a leapfrog certificate may be issued by any judge of the Court of First Instance, provided that the judge shall, as far as is practicable and convenient, be the trial judge in the relevant Court of First Instance proceedings.

Under the transitional provision originally proposed under clause 5 of the Bill, the leapfrog procedure will not apply to any Court of First Instance judgement given before the commencement of the amending Ordinance. The Bills Committee suggested to extend the application to such judgements.

We have no objection to the suggestion and propose to amend clause 5 of the Bill to the effect that the leapfrog procedure will be applicable to judgements of the Court of First Instance given on or before the commencement of the amending Ordinance, under the condition that the requirements under the amending Ordinance are satisfied.

The rest of the amendments are technical and consequential in nature.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 3 (see Annex VII)**

**Clause 4 (see Annex VII)**

**Clause 5 (see Annex VII)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Chief Secretary for Administration 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 3, 4 and 5 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 before new clause 6A      The Rules of the High Court

New clause 6A      Time for appealing.

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam Chairman, I move that the heading before new clause 6A and new clause 6A be read the Second time.

The proposed new clause 6A seeks to amend order 59, rule 4 of the Rules of the High Court.

The Bills Committee commented that there should be an express provision to allow a party, who has been refused from making a leapfrog appeal from the Court of First Instance to the Court of Final Appeal, to appeal to the Court of Appeal notwithstanding that the time limit for appeal to the Court of Appeal has expired.

We accept the Bills Committee's comments and propose to amend order 59, rule 4 of the Rules of the High Court to that effect. Under the revised provision, if an appeal lies under the leapfrog provisions, the time limit for making an appeal from the Court of First Instance to the Court of Appeal on the same case will not start to run until after the determination of the leapfrog application.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the heading before new clause 6A and new clause 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): Heading before new clause 6A and new clause 6A.

**CHIEF SECRETARY FOR ADMINISTRATION**: Madam Chairman, I move that the heading before new clause 6A and new clause 6A be added to the Bill.

*Proposed additions*

**Heading before new clause 6A (see Annex VI)**

**New clause 6A (see Annex VI)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the heading before new clause 6A and new clause 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.

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

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

Hong Kong Court of Final Appeal (Amendment) Bill 2001

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

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

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Hong Kong Court of Final Appeal (Amendment) Bill 2001.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Gambling (Amendment) Bill 2000.

### **GAMBLING (AMENDMENT) BILL 2000**

#### **Resumption of debate on Second Reading which was moved on 22 November 2000**

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

**MR ANDREW CHENG** (in Cantonese): Madam President, first of all, I would like to speak in my capacity as Chairman of the Bills Committee on Gambling (Amendment) Bill 2000 (the Bills Committee). The Bills Committee has held 18 meetings to discuss with the Administration in detail the policy matters related to the Bill and carefully consider the drafting of the proposed provisions. As the details have been set out in the report of the Bills Committee, I would only highlight a few key points below.

Clauses 4 and 5 of the Bill respectively propose to insert an extraterritorial element into the offence of "bookmaking" and "betting with a bookmaker" as specified under sections 7 and 8 of the Gambling Ordinance, to criminalize the act of receiving a bet placed from Hong Kong by an offshore bookmaker irrespective of whether it is licensed in the jurisdiction concerned, and to criminalize betting with offshore bookmakers, in order to combat unauthorized cross-boundary gambling activities.

Members have divergent views on incorporating an extraterritorial element into the offence of "bookmaking" and "betting with a bookmaker".

Some members who object to the proposal question the justification for the Administration to criminalize activities carried out in another jurisdiction that are lawful. They express concern about the enforcement difficulties when combating Internet gambling, especially when the police have to seek co-operation and assistance from foreign jurisdictions in the course of collecting evidence. However, the offshore bookmakers are licensed in their native countries. So, these members think that, even if the Bill is passed into law, it may not be able to combat gambling activities conducted via the Internet.

Some members object to the proposal because the relevant provisions have not provided exemptions for the following cases: overseas visitors who place bets with licensed offshore bookmakers in their native countries, and local horse owners who place bets on their horses participating in overseas races. They consider that the relevant provisions are unreasonable and may have adverse effect on the tourism industry.

Members who object to the proposal also consider that although illegal gambling has adverse social impact, it may not be appropriate to impose criminal sanctions on all unauthorized gambling activities including those conducted via the Internet. They think that betting via the Internet or telephone with offshore bookmakers may be prevalent among the general public and criminalization of such acts will have substantial implications on personal freedom.

These members have also expressed grave concern that the privacy rights of an individual may be infringed upon as a result of enforcement actions against Internet gambling. Although the Administration has claimed that it will not conduct comprehensive real-time monitoring of online communications on the Internet, the Legislative Council and the public will not be able to monitor the enforcement actions for the Administration has all along refused to disclose the number of interception warrants issued.

In response to the concern expressed by members about enforcement in future, the Administration has agreed to the Bills Committee's request to provide annual statistics on court warrants issued in relation to enforcement against gambling offences to the Panel on Security, after the Bill has come into effect. The Secretary for Home Affairs will give an undertaking in his speech to be

delivered during the resumption of the Second Reading debate on the Bill that, in taking enforcement actions against Internet gambling, the Administration will endeavour to strike a balance between the protection of the privacy rights of an individual and the policy to combat cross-boundary gambling and to adhere to the established practices and guidelines of the police for the purpose of tackling offences involving the use of Internet.

To sum up, members who object to incorporating an extraterritorial element into the offence of "bookmaking" and "placing bets with a bookmaker" are of the view that, it has expanded the scope of the Gambling Ordinance, increases the powers of the police and represents a change of the existing policy.

Some other members agree with the Administration that the Bill only seeks to uphold the integrity of the gambling policy in the light of the technological developments in communications and the increase in cross-boundary gambling activities. They remark that offshore bookmaking activities, like any other unauthorized local bookmaking activities, are not authorized gambling activities in Hong Kong, so the Government should crack down on them. They think that although there are limitations to the effectiveness of the proposed provisions in the Bill, there is a need to plug the loopholes in the existing law to combat cross-boundary gambling which has become prevalent with the widespread use of telecommunication tools.

Concerning the offences to be created under clause 8 of the Bill, in response to members' suggestion, the Administration agrees to move Committee stage amendments (CSAs) to clause 8 to create a revised new section 16A by combining new sections 16A and 16B which originally seek to regulate the maintenance of premises for purposes of illegal betting. The Administration has also agreed to add a subsection (2) to the revised new section 16A to stipulate that the offence provision shall not apply if the bet in question can only be placed or is placed by a person outside Hong Kong. The relevant amendment would streamline the drafting of the Bill and make interpretation easier.

Some members have expressed concern whether owners of pubs, bars and restaurants operating in commercial premises will be caught by the offence of knowingly permitting or suffering their premises to be used as premises where unlawful gambling is promoted or facilitated, if their customers or employees are found betting with one another on these premises. The Administration has explained that betting is lawful if the bet is made between persons none of whom

is committing an offence of bookmaking, that is, gambling on a social occasion in commercial premises not involving bookmaking is not unlawful.

Some members question whether it is necessary to create a strict liability offence to prohibit the broadcast of any forecast, hint, odds or tip in relation to any unauthorized horse or dog racing event via television or radio within the 12-hour period preceding the conduct of that event. They are of the view that other provisions of the Bill are sufficient to combat unauthorized offshore bookmaking and illegal gambling activities. They are also concerned that the new offence may inappropriately infringe upon an individual's right of access to information.

Some members have expressed concern that the scope of the new offence criminalizing "promoting or facilitating bookmaking" may be too broad. Upon members' request, the Administration has agreed to move CSAs to clause 8 to the effect that any person who knowingly promotes or facilitates bookmaking commits an offence. He shall be deemed as "promoting or facilitating bookmaking or betting with a bookmaker".

The Court is empowered under section 21 of the Gambling Ordinance to make an order for the Hong Kong Telephone Company Limited to disconnect any telephone service provided to a person convicted of an offence under section 5, 7 or 8 of the Gambling Ordinance, and to the premises in connection with the commission of the offence and to prohibit the company from providing further telephone service to the convict when the order is in force. Clause 11 of the Bill seeks to replace the "Hong Kong Telephone Company Limited" with "telecommunications service providers (TSPs)".

A member has pointed out that TSPs very often provide service through the sale of prepaid SIM cards and the identity of the customer is neither registered nor recorded, therefore, any measure to prohibit the provision of future telephone services to a convict will not be effective. Upon members' request, the Administration has agreed to delete the existing section 21(1)(c) by amending clause 11 to the effect that the concerned TSP will not be prohibited from providing to the convict any future telephone service.

Another member has suggested that the reference to section 8 in section 21(1) should be deleted. She is of the view that it is unreasonable that the punishment as imposed under existing section 21(1) on the person convicted of

placing a bet with a bookmaker is incommensurate with the seriousness of the offence, given the fact that the bet placed by that person may only be of a nominal amount.

The Administration has explained that bookmakers normally lay off bets to a larger bookmaking syndicate for business or trade reasons every day. On the basis of the evidence seized, it may not be able to distinguish the act of betting and bookmaking. Therefore, the reference to section 8 should be retained in existing section 21(1) so that the disconnection of telephone service may cause inconveniences to bookmaking operation even though the bookmaker has not been convicted of the offence of bookmaking.

Concerning the effective date of the Bill, the Administration has urged that the Bill be enacted as early as possible, given that the 2002 World Cup Finals are scheduled to start on 31 May 2002. Therefore, the Administration proposes to delete clause 1(2) from the Bill so that the Amendment Ordinance shall come into operation on the day on which the Ordinance is gazetted, instead of through a commencement notice to be made by the Secretary for Home Affairs.

As proposed by members, the Administration has agreed to propose CSAs to improve the drafting of the relevant provisions and enhance the clarity of the policy intent. The Administration has also proposed some technical amendments. The Bills Committee has not proposed any CSAs but the Honourable Cyd HO will propose a CSA to clause 5 of the Bill. I believe she will speak on her amendment later.

Madam President, next I would speak on this Bill on behalf of the Democratic Party.

The Democratic Party has stood firm on the importance of regulating gambling activities to society and opposed opening more channels for people to participate in gambling activities lest the gambling trend should spread. However, as the existing Gambling Ordinance can hardly regulate offshore illegal gambling, and with advanced telecommunications and the popularity of the Internet, offshore illegal gambling has become more and more popular, the Democratic Party supports the introduction of this Bill by the Government to combat offshore gambling and perfect the legislation on the regulation of gambling.

During our deliberations over the Bill, some members were concerned about whether effective enforcement would be possible. As prescribed by the Bill, bookmaking in all forms of illegal gambling is illegal. The Government has also stated that if foreign bookmaking syndicates violate the relevant provision, it would request the local government to extradite the persons in charge of the syndicates to Hong Kong for trial. Although the laws of Hong Kong have specified that the above act constitutes a criminal offence, I believe some regions regard overseas bookmaking as lawful and they may refuse to extradite the parties concerned. Would the Macau Jockey Club co-operate with the Hong Kong Police and give the latter information on Hong Kong people who bet with the Macau Jockey Club? Obviously, future enforcement actions would meet a lot of difficulties. The Home Affairs Bureau has also admitted that difficulties would be encountered in the enforcement of this provision. Yet, coupled with other gambling legislation, we hope that the Bill would be able to deal a blow at the scope of illegal offshore gambling to a certain extent.

Recently, there have been comments that illegal gambling can basically not be completely banned. Even after the current amendment to the Gambling Ordinance, there would still be difficulties in enforcement and we would not be able to put an end to illegal gambling. Therefore, the Government should decriminalize gambling and incorporate it into the regular regulatory regime. If the argument "now that it can hardly be completely banned, we might as well decriminalize gambling" is established, we can apply the argument to lifting the ban on soccer gambling before comprehensively lifting the ban on gambling. We may even allow the operation of gambling establishments like what Macao is doing. Yet, we cannot help asking what the bottomline of the Government's gambling policy is. Do we wish to decriminalize soccer gambling and establish gambling establishments? Once the ban on gambling is lifted and gambling decriminalized, law-abiding citizens who used not to participate in illegal gambling would gamble and the number of gamblers would go on increasing. The business would be profitable after the expansion of the market and lawless elements would certainly enlarge the scale of illegal gambling. Since illegal gambling usually offers betting concessions and more attractive odds than recognized bodies, there would still be plenty of room for the survival of illegal gambling syndicates. They may even capitalize on the decriminalization to further expand their illegal operations. Evidently, if we wishfully think that we would be able to combat illegal gambling through decriminalization, we would be making a futile effort and getting just the opposite result.

Madam President, the Democratic Party would like to take this opportunity to respond to the comment made by the Home Affairs Bureau earlier on, that is, if it is still impossible to put an end to illegal gambling after amending the Ordinance, it would more actively consider promoting the regulation of soccer gambling. We in the Democratic Party must express strong dissatisfaction with the comment. In the past, the Government openly consulted the public on soccer gambling in detail, and the result showed that most people opposed decriminalizing soccer gambling. However, the Government neglected the result of the consultation and once again demonstrated its shortcoming of making deliberations but not decisions. This time, the Government has publicized its reserve tactics in advance, which fully shows that it still has illusions about promoting the decriminalization of soccer gambling. The Democratic Party thinks that the decriminalization of soccer gambling would only be contradictory to the existing gambling policy that is better strict than lax. The Democratic Party wishes to warn again that it is shortsighted to decriminalize soccer gambling to increase tax revenue, and society would incur significant losses. Studies conducted by foreign countries clearly indicate that tax revenue from gambling is greatly insufficient to make up for the social costs incurred as a result of lifting the ban on gambling. Society has to put in more resources to deal with the problems of pathological gamblers, worsening family problems, problems of the youth and public order as well as social problems. These expenditures would far exceed the tax revenue generated. Compared to the enormous government expenditure, the estimated tax revenue from soccer gambling of \$600 million to \$800 million a year is basically not enough to reverse the deficit position. Hence, the two should definitely not be lumped together. Further lifting the ban on gambling would only further worsen the family and social problems of Hong Kong and we can definitely not bet on the future of Hong Kong.

I have given an account of our deliberations on the Bill in my capacity as Chairman of the Bills Committee and expressed the views of the Democratic Party. Thank you, Madam President.

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

**MR ABRAHAM SHEK:** Madam President, I am in support of the Gambling (Amendment) Bill 2000 for the benefit of Hong Kong in controlling gambling. However, today is a dark day for the Hong Kong/Macao relationship, as the



passage of this Bill will damage the relationship between Hong Kong and Macao, particularly in horse racing and dog racing. We have not taken the interests of Macao into consideration. So I hope that in future, the two Governments can work out a relationship that they can co-exist, for the benefit of both Hong Kong and Macao.

One of the major areas that has not been touched upon in this Bill concerns those casino ships which leave from Hong Kong every night, taking thousands and thousands of people to a destination of nowhere, engaging in no other activities but gambling. Hence, I recommend that the Government should also attack this kind of gambling activities in future.

With these words, I support the Bill.

**MR TOMMY CHEUNG** (in Cantonese): Madam President, it has been one and a half year since the Legislative Council started scrutinizing the Gambling (Amendment) Bill 2000 in November 2000. During this course, many Honourable Members have put forward many different ideas. After taking the views into consideration, the authorities incorporated the subsequent amendments into today's Bill.

The existing Gambling Ordinance was enacted in the '70s, since when no amendment has been made. The enactment of the Ordinance was meant to deal with illegal gambling activities prevailing in the community at that time. However, in the past two to three decades, we have seen dramatic changes in communication technologies and the emergence of all sorts of gambling activities, the original Ordinance is thus no longer compatible in keeping with the times.

With regards to technology, modernized telecommunication services such as international direct dial, roaming, narrow band and broadband Internet services are becoming more and more popular, and in addition to the significant reduction in service charges in recent years, people in Hong Kong can place bets with offshore bookmakers as convenient as they place bets with local bookmakers, and the cost of placing bets has also been reduced due to the substantial drop in telecommunication charges. Furthermore, offshore bookmakers, motivated by the globalization of all sorts of sports events, have introduced a variety of gambling and betting combinations for Hong Kong residents to gamble. Undoubtedly, illegal cross-boundary gambling has become very popular.

However, the Gambling Ordinance does not regulate the placing of bets by people in Hong Kong with unauthorized offshore bookmakers. The loophole is widely exploited by unauthorized or illegal local and offshore bookmakers who are conducting illegal gambling activities. The loophole has also impacted on the revenue of the Government from betting duty levied on lawful gambling activities. The hundred million-dollar or even billion-dollar income is not a matter of little significance to the Special Administrative Region which is facing a critical budget deficit.

In order to prevent illegal cross-boundary gambling effectively, especially gambling activities such as the placing of bets and bookmaking through the Internet and other advanced electronic means, the Liberal Party considers the authorities should amend the existing legislation. Today's resumption of the Second Reading of the Gambling (Amendment) Bill 2000 clearly extends the scope of regulation to illegal cross-boundary gambling activities conducted through all sorts of media. The Bill prescribes that cross-boundary gambling activities to be illegal and offshore bookmakers cannot make use of the Hong Kong judicial system to recover debts concerning bets placed with them. Moreover, if these investors still consider Hong Kong one of their target markets, they have to bear higher operational risks.

With these remarks, Madam President, the Liberal Party supports the Gambling (Amendment) Bill 2000.

**DR DAVID CHU** (in Cantonese): Madam President, I support the passage of the Gambling (Amendment) Bill 2000 on behalf of the Hong Kong Progressive Alliance (HKPA). The relevant legislation will enable law enforcement agencies to crack down on unauthorized and illegal gambling activities more effectively. There are two major concerns about the Bill, one of them is the criminalization of betting with offshore bookmakers, and the other is whether the actions of law enforcement agencies will infringe upon personal privacy.

First of all, with regard to the issue of whether offshore gambling activities should be prohibited, since it is an offence to place bets with unauthorized bookmakers via local websites or other local media, it is therefore irrational to legalize an illegal activity because the bookmaker or the website is in a location outside Hong Kong. It is not appropriate to adopt double standards for gambling activities.

In fact, a lot of countries have adopted corresponding measures to curb illegal cross-boundary betting activities. For example, France has drawn up legislation to prohibit offshore bookmakers to accept bets by French citizens, and offenders will face heavy fines and imprisonment. In Denmark, the revenue authority has promulgated that people who own and run websites in Denmark would be jailed if they show any hyperlink logo of foreign bookmakers. According to the latest interactive gambling legislation in Australia, Internet service providers would be charged for failure to provide preloaded filter software which prevents users logging on illegal foreign gambling websites. The European Union has also outlawed unauthorized cross-boundary gambling activities. From these examples, it can thus be seen that in principle the approach adopted by Hong Kong has nothing special at all.

Madam President, concerning the issue of protecting personal privacy, I think the police have no methods, and should not monitor personal web-surfing activities of any individual. In fact, just as the Government has pointed out, the Bill would not confer on the police any new or additional powers of enforcement for purpose of combating offshore gambling activities. Moreover, the existing legislation has already imposed restrictions on the operations of law enforcement agencies and afforded personal privacy protection. We simply do not have any reason to believe that the police will monitor communications of the people without good reasons and restrictions.

Lastly, the HKPA opposes the amendment of Miss Cyd HO, because the amendment will undermine the deterrent effect of the Gambling Ordinance, thus impacting adversely on the policy objective of amending the Ordinance.

I so submit.

**MISS MARGARET NG** (in Cantonese): Madam President, the Gambling (Amendment) Bill 2000 seeks to achieve two main objectives, one of which is to criminalize offshore betting, and the other is to expressly regulate Internet gambling activities. Once the Bill is enacted, a lot of existing legal activities would be criminalized. This would not only affect companies or individuals that operate bookmaking as a business, but also restrict the activities and choices of the general public.

One obvious example is that, at present, members of the public can bet freely on soccer matches or horse races outside Hong Kong and offshore bookmakers can accept bets from Hong Kong people, for the existing legislation only governs the taking of bets in Hong Kong. However, once the Bill is passed, it would be an offence to place bets on World Cup soccer matches through offshore bookmakers. Offshore bookmakers that accept bets from Hong Kong people without violating the laws of their own countries will violate the laws of Hong Kong as a result. The authorities even emphasize that they will not rule out the possibility of taking prosecution actions against such offshore organizations or individuals if they get hold of the evidences.

Let me cite another example. Some Hong Kong people may own race horses in overseas countries, and though it is not very common, such cases are not exactly rare. At present, they could bet freely on their own horses in overseas races, but after the Bill is passed, this would immediately become an offence! Some government officers even went so far as to suggest such horse owners to ask their overseas relatives to place bets for them. This is really ironic.

Not only betting and bookmaking are regarded as offences, a series of new criminal offences are also created, such as "promoting or facilitating" such betting or bookmaking and offshore gambling activities, and media reports on such activities are also brought under the control of the Bill.

Madam President, is the Government making a mountain out of a molehill? The basic principle of criminal legislation is to prevent and punish conduct harmful to others or the community as a whole and public freedom must not be infringed upon at will. The Government's major justifications for its action are nothing more than the following two reasons, one of which has to do with horse racing in Macao. It claims that the growing proliferation of offshore gambling activities has created a huge drain on local bets and betting revenue. This reason is actually not valid. Could the decrease in bets received by the Hong Kong Jockey Club (HKJC) be totally attributable to the fact that the public has other choices? If they do not have other choices, will they really have no alternatives but to stay in Hong Kong and bet on local horse races and Mark Six Lottery?

More importantly, could the decrease in tax revenue be an excuse for criminalizing certain acts? It is said that the fact that Hong Kong people going

north for spending has led to a decrease in local spending and this has a direct impact on our profits tax revenue; could the Government criminalize extraterritorial spending on such grounds?

The issue of public revenue should be resolved through fiscal policies and the proper way is to establish a regulatory system, to levy betting duties on offshore gambling. To create criminal offences for purposes of bringing in more revenues basically violates the principle of criminal legislation.

The other reason cited by the Government is that the Gambling (Amendment) Bill 2000 actually does not seek to expand the scope of criminal liability. It only seeks to plug the loopholes and maintain the objective of the original legislation, and that is, all forms of gambling are illegal unless expressly approved.

Madam President, I have gone over the existing Gambling Ordinance many times and failed to find any chapter or clause in the existing legislation that can support the Government's stance. It is very obvious that offshore gambling has not taken advantage of a loophole in the law which does not outlaw it. It is really shocking to find the spirit of "not expressly approved means prohibition" in criminal law.

If it were said that the existing legislation is outdated and fails to keep up with the modern modes of gambling and there is a need for modernization, then a comprehensive consultation and review exercise should first be conducted, to gauge whether the public is in favour of expanding the scope of criminal liability. To infringe upon freedom by expanding the scope of criminal liability beyond Hong Kong without consultation and justifications, and in violation of principles, would make us a laughing stock. I really could not support such actions.

I do not merely object to the provisions but also to the policy as a whole. The policy to be forcibly implemented by way of the Bill is not only half-baked but also in contradiction of the consultation exercise on legalizing soccer betting conducted during the same period. If the result of the consultation exercise shows that the public supports the legalization of soccer betting, then what is the Government going to do? Is it going to tighten its policy by banning offshore soccer betting today and relax it by legalizing local soccer betting tomorrow? Is soccer betting so immoral that it should constitute a criminal offence?

I do not agree that gambling is so immoral that it should constitute a criminal offence. There is no such standard in today's society. If our objective is to prevent the prevalence of gambling, then we should do so through family, school and social education.

Moreover, as regards Internet gambling, logically, I agree that illegal local gambling should not become legalized just because it is conducted through the Internet. However, the problem is both offshore and local gambling are banned, and the price of enforcing this may give the police extensive powers to intrude into private communications, then it is unacceptable. Of course, the Government emphasizes that there would be no such problems, but in the absence of a clearly feasible and acceptable enforcement guidelines, I think the balance lies in objecting to the Bill because the prohibition of gambling is not a very major issue after all.

Madam President, I am not a member of the Bills Committee, but I have attended some of its meetings and participated in discussions outside the meetings. I could not help making references to public opinions. Some government officers accused this Council of slow progress in our scrutiny and even went so far as to say that we were stalling the process on purpose. The fact is the Government had not really considered the matter thoroughly. It only hurriedly "embarked" on the exercise because a deadline had been set on the enactment. Therefore, its policy had to be revised and the draft Bill amended as we proceeded with the scrutiny. Members would appreciate the scope of the exercise just by comparing the gazetted blue bill with the final version of today's amendment. In fact, not only was the scope of amendment extensive, the process had also taken many twists and turns. Despite making huge efforts, members of the Bills Committee have still failed to convince the Government to relinquish certain obvious problematic provisions. The Government accepted members' views and introduced thorough changes only at the eleventh hour.

Madam President, since I oppose the main objectives of the Bill and the related policies, it stands to reason that I object to the Second Reading. If the Second Reading of the Bill is passed, I am not going to be involved in the Committee stage that deals with certain parts of the Bill and its technical issues.

I so submit.

**MS AUDREY EU:** Madam President, I am very relieved that the Gambling (Amendment) Bill 2000 has finally reached its Second Reading. The Bills Committee held no less than 18 meetings and the Bill went through no less than 18 drafts. Some of the earlier drafts were totally unacceptable as well as unworkable. I am happy to note that the final draft with the numerous Committee stage amendments are great improvements upon the original. However, I regret to say that I am still unable to support the Second Reading for the following reasons.

The Administration says that the objective of this Bill is to uphold the integrity of the Government's long-standing gambling policy, that is to restrict gambling opportunities to a limited number of authorized and regulated outlets only. I find the policy inconsistent and difficult to understand. What is the underlying rationale? If the objection to gambling is on moral grounds, then no gambling should be permitted at all, be it the Hong Kong Jockey Club horse racing or the Mark Six. If the objective is for fiscal reasons, the current Bill is not really going to improve the revenue position either. By criminalizing any other form of gambling, the Government is not going to force people to spend more on the authorized or regulated outlets. If the objective is to protect the revenue from the Hong Kong Jockey Club, the current law already bans all forms of illegal off-course betting in Hong Kong. I will certainly support a move to extend the ban to illegal offshore betting on the Hong Kong Jockey Club races. But this Bill does much more than that. It bans all forms of offshore betting, whether or not it has anything to do with the races of the Hong Kong Jockey Club. I should first declare that I have never and have no intention to bet on races of the Macao Jockey Club, nor do I have any interests whatsoever in that organization. But I disagree with the Government banning offshore betting on the Macao Jockey Club races (or indeed any other jockey clubs) as a means to help the Hong Kong Jockey Club. I see no reason why there cannot be competition and Hong Kong people cannot have a choice.

The Bill raises a number of concerns.

Contrary to the usual rule, the Bill creates criminal offences with extraterritorial effect. There should be good justification for extending jurisdictional limits. On a personal basis, I do not see gambling as a crime of such serious criminality and repugnance that we should make it an offence with extraterritorial effect.

Many people in Hong Kong do bet with offshore bookmakers, many of which are, to use the Administration's terminology, authorized and regulated outlets in their own jurisdictions. The Government has not consulted these people and has offered no cogent reason as to why Hong Kong people's rights and freedoms should be cut down. Neither has the Government presented enough evidence to show that this is a social evil which merits criminal sanctions.

As the Government says, many offshore bookmakers which are licensed in their own countries will not, as a matter of corporate policy, receive bets from any jurisdictions where such gambling activities are prohibited by law. I also note from the newspaper reports that these offshore bookmakers are pulling out from Hong Kong after this Bill comes into effect. This leaves the less reputable bookmakers. Thus, one possible outcome of this Bill is to drive the Hong Kong bettors, who are prepared to take the risk, to place their money with the less reputable bookmakers. This may be one of the unintended ill effects of the Bill.

The Bill extends to cover gambling activities on the Internet and home computers. Although the Administration says that it will seek to balance the protection of privacy with the policy to combat gambling activities, it is almost inevitable that in trying to investigate reports of suspected gambling activities, personal freedom and privacy will have to be compromised. All we have to go on is the word of the Administration that it will act with restraint. Should it fail to do so, there is little or no redress.

As for the amendment proposed by the Honourable Cyd HO, I have much sympathy with her intentions. However, I do not think that it offers the right answer. The problem lies in the Government's policy to ban all offshore gambling, and simply reducing the severity of the penalty for bettors is not going to help much.

For those reasons, Madam President, I oppose the Second Reading of the Gambling (Amendment) Bill.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, soccer betting has become rampant in recent years. International soccer matches taking place all over the world bring in enormous profits for Hong Kong bookmaking syndicates that thrive on soccer. When the Euro Cup 2000 matches were taking



place, the police in their operations geared at cracking down on soccer gambling seized soccer betting slips that were worth \$200 million-odd, but this amount did not include bets that were not uncovered. At the beginning of this month, betting slips worthy of \$6 million, \$32,000 in cash and some tools for gambling on soccer matches were seized in one single police operation.

To avoid being tracked down by the police, the bookmakers of some soccer gambling syndicates station themselves overseas and control some people called "agents" in Hong Kong from there. These Hong Kong "agents" then use mobile phones and pagers to accept bets and they make payments through money transfer by bank accounts. Moreover, overseas Internet gambling companies cash in on the zest of Hong Kong people for soccer gambling by recruiting Hong Kong bookmakers and investors to work in partnership with them. These Hong Kong bookmakers and investors would solicit customers who will bet through the Internet. These activities can be so rife because such illegal syndicates make use of a loophole in the law, which has not outlawed local gambling activities carried out on the Internet or outside the territory.

An objective of the amendment proposed by the Government is to plug the loophole in the existing law by incorporating an extraterrestrial element into the offence of "bookmaking" to make it explicit that unauthorized bookmaking will be illegal even when the bet is solicited or received outside Hong Kong, as long as the person who places the bet is in Hong Kong. It is also an offence for people in Hong Kong to place bets with an offshore bookmaker.

The Democratic Alliance for Betterment of Hong Kong (DAB) hopes that the Bill, when passed into law, will deter cross-boundary gambling activities. At present, the law allows no other gambling activities than the Mark Six Lottery and horse races of the Hong Kong Jockey Club. Our gambling policy does not encourage the people of Hong Kong to place bets with offshore bookmakers. However, the absence of an extraterrestrial element in the existing law has given, overseas gambling companies a loophole to cash in on it. There are also Hong Kong people who make use of the loophole to set up companies overseas for the sole purpose of accepting bets from Hong Kong gamblers. Thus, failure to pass the amendment tabled before this Council would mean a tacit agreement to condone such activities. The law cannot restrict Hong Kong people to place bets on the one hand but allow overseas gambling companies to accept bets from Hong Kong gamblers on the other. Thus, Amendment Ordinance would ensure that our policy on gambling is consistent and would become more comprehensive.

With technology fast advancing, the Internet is capable of bringing people from all over the world together. Transactions, including gambling transactions, may take place on the Internet. Already, quite a number of overseas companies and local people are accepting bets from Hong Kong people through the Internet. Since it is illegal for Hong Kong people to carry on gambling or bookmaking activities through local websites, local people and overseas companies stationed overseas but accepting bets placed by Hong Kong people should also come under the purview of the law.

Another amendment that upholds the integrity of the gambling policy is the prohibition of "promoting or facilitating bookmaking". After this amendment is passed, it would mean that accepting bets illegally from Hong Kong people would become more tedious than before because the gambling companies would have more difficulties in promotion, the broadcast of odds, bookmaking and paying dividends.

In fact, there is abundant information in the newspapers about odds for soccer gambling and there are information and advertisement about overseas gambling companies, making it easy for the people to gain access to such information. Failure to check the dissemination of such information would be tantamount to encouraging such illegal gambling activities. Moreover, the law as amended would make it an offence for overseas gambling companies to set up service centres in Hong Kong if they are proved to serve the purpose of promoting or facilitating bookmaking.

In addition, in view of the "facilitating" element added in the provisions to clearly prohibit any intermediary from assisting gambling companies to accept bets, some banks have indicated that if the amendments are passed and banks are aware that certain clients are using their accounts to conduct transactions in respect of illegal gambling, they will cease to provide services for the transactions. Therefore, the DAB believes that the amendments would uphold the integrity of our gambling policy and the police may combat offshore betting by Hong Kong people on a more comprehensive scale.

In the course of scrutinizing the Bill, some Members were worried that the new law might pose some difficulties in enforcement. They had doubts as to whether the law can effectively combat illegal gambling on the Internet and other gambling activities. Certainly, no law designed to combat illegal gambling may fully eliminate it, but that does not mean the new set of amendments would not

serve as a deterrent and a tool of crackdown on illegal gambling. Indeed, enforcement is always a difficult task. Even the \$600 fixed penalty notices to be issued to litter bugs under the Fixed Penalty (Public Cleanliness Offences) Regulation soon to take effect will experience difficulties and I trust disputes will arise, but that should not be a reason for opposition to the amendments. By the same token, banks have indicated that they would abide by the law so that Hong Kong gamblers cannot make transactions through credit card accounts. In addition, some Internet service providers have indicated that they are willing to assist the authorities in interrupting clients as they try to connect to gambling websites. There are also provisions in the law to prohibit newspapers from publishing unauthorized information on gambling. Hence, we trust these arrangements may achieve the purpose of limiting illegal gambling and causing greater difficulties to bookmaking activities.

With these remarks, I support the amendment and the Committee stage amendments.

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, the Gambling (Amendment) Bill 2000 seeks to plug the existing loopholes in the legislation by making both offshore and local unauthorized gambling activities illegal acts.

Madam President, the passage of the Gambling (Amendment) Bill 2000 today will give the police powers to take enforcement actions against members of the public participating in various offshore gambling activities. Though, the Government may later say that it has not enhanced the power of investigation and monitoring in relation to the Internet, the Government had never taken any enforcement action against offshore gambling in the past. At present, most people participate in the above activities by making international calls and through the Internet. The Government has openly stated that the Bill is targeted at bookmakers and it would not conduct real-time monitoring on the online activities of the public. However, let us think about this. Most gambling websites are located outside Hong Kong and the police would not be able to obtain information on bettors through such websites. Then, how could the police tell that bettors have visited those websites and placed bets while surfing the web in their own homes? I believe the answer is very obvious, and that is, the police could only do so through monitoring online activities. The police have only promised that it would not conduct real-time monitoring, but no promise has been as to conducting no monitoring at all.

In reply to our questions, Secretary LAM Woon-kwong only said in his letter that a set of guidelines and principles would be drawn up and mentioned what methods would be adopted in monitoring the Internet.

As a member of the Bills Committee, I would like to remind the public that they should not naively believe that the Government would only target at bookmakers and that bettors would not be prosecuted. Once it gets hold of sufficient evidence, both bookmakers and bettors are charged for breaking the law. I certainly hope that the Government will strictly adhere to the relevant principles and codes when it takes law enforcement actions. On the other hand, I urge the Government to take follow-up actions in relation to the findings in the Inter-departmental Working Group on Computer Related Crime Report of October 2000. It should establish a more specific mechanism that could effectively combat Internet-related activities and at the same time ensure that the enforcement agencies would not abuse powers, so as to deal with the growing number of computer crimes.

How can the police monitor the Internet? In fact, there are not many ways. To put it simply, the Internet is just like a covered pedestrian access network that connects the homes of different people and we could not see what is happening inside those homes when we look at them from the outside or from afar. Simply, there are only three ways: Firstly, keeping watch at the accesses that the suspect must definitely pass through under surveillance; secondly, sneaking into the homes of the suspects to install monitoring devices or software to peek at their data; and thirdly, staking out places where the suspects may visit, that is, the websites of bookmakers, to watch for their appearance.

The first way is to put the Internet under surveillance. A packet sniffer (封包監聽器) could be installed at the passageways that the suspects must pass when going online to monitor all incoming and outgoing communications. The theory of communicating online is that data would be stored separately in packets like envelopes and the source and destination of such data could be found in each packet, like the address and return address on an envelope. Sniffers are generally used by Internet service providers (ISPs) to monitor network operations and detect failures. With some adjustments, sniffers could be used to collect data on a packet, such as the source and destination of the packet, or even the contents of the packet. If sniffers are installed at a suitable location, for example near the suspect's server, then it could intercept all online activities

of the suspect, such as the destinations and contents of e-mails, websites visited or even the personal code and password used by the suspect on the Internet.

The second way is to seek necessary information by gaining access to computers by means of hacking technology, or to follow the example of the Greek in the story of "Fall of Troy" by using the Trojan Horse (特洛伊木馬) to install a programme in the target computer by means of e-mails, thereby sending information stored in the suspect's computer such as documents or records on the use of computers through the Internet to other places on a continuous basis.

The third way is to stake out at the other end, that is, the situation under discussion today. Sniffers are installed at illegal local websites or offshore websites to record visits to such websites and information on people who have visited those websites, so as to catch all culprits.

Madam President, I am not talking about what may happen in theory. The fact is the law enforcement agencies of many countries are monitoring the Internet. Today, I would like to talk about the monitoring system, the Carnivore software — used by the Federal Bureau of Investigation (FBI). The FBI started to monitor the electronic communications of its suspects by means of the Carnivore in February 1997. Carnivores are installed in the offices of ISPs to intercept the e-mails of suspects and to conduct real-time monitoring.

Like packet sniffers (封包監聽器) mentioned earlier, the Carnivore operates with the help of ISPs by duplicating information on the suspect's communication at the interception point on the Internet to collect useful evidences after analysing the information. The Carnivore monitors the sources and destinations of the suspect's e-mails and compiles a list on servers visited by the suspect and conducts searches on all visitors to specific websites. The Carnivore can also do what ordinary packet sniffers fail to do, that is, trace the communication records of those dialing online.

Under the pressure of the public, the FBI commissioned the Graduate School of the Industrial Institute of the Illinois University to conduct a study on the Carnivore. Though it was pointed out in the report that the Carnivore is doing a more effective job than commercial packet sniffers in safeguarding privacy and allowing for legal monitoring, it was also mentioned that the Carnivore does not maintain records on individual users and does not request users to confirm that its use has been approved under court order. The report of

the Industrial Institute of the Illinois University clearly pointed out that the design of the Carnivore might be abused for unauthorized online monitoring purposes.

The use of Carnivore has drawn the attention of a privacy concern group, the Electronic Privacy Information Center (電子私隱資訊中心). In July 2000, the Centre applied to the Supreme Court in accordance with the Freedom of Information Act to request the FBI to disclose relevant documents on the Carnivore. However, so far, the FBI has refused to disclose all information on the Carnivore and the public have no means to tell whether the FBI has gathered certain information without the Court's approval.

Worse still, the FBI has obtained information on the suspects and gained access to the suspects' computers to copy information by making use of the keystroke logging software (鍵盤輸入追蹤及記錄軟件).

It was reported that the Regulation of Investigatory Powers Act, passed by the United Kingdom in 2000, has greatly enhanced the powers of law enforcement agencies in intercepting public communications. ISPs in the United Kingdom must install a black box to monitor all communications and transmit relevant information to the Government Technical Assistant Centre of the MI5 headquarters.

The System for Conduct of Investigations and Field Operations (SORM) of Russia requires all ISPs to first transmit all communications to the FSB (Federal Security Service) (formerly known as the KGB), so the public actually does not enjoy any privacy.

Madam President, my worries over the fact that the police are secretly monitoring network communications are not entirely unnecessary. The information mentioned by me earlier in regard to the Internet monitoring activities of various overseas governments shows that the movie plot-like situation of network monitoring in real life has gone beyond the imagination of ordinary people.

Today, we are not only faced with the problem of whether illegal gambling should be combated. What we are now facing is the dilemma of choosing between combating Internet crimes and the protection of personal privacy. In September 2000, an inter-departmental working group of the Government issued

a report on computer-related crimes and the views of the public were consulted. However, so far, we have not seen any follow-up actions, such as the formulation of a set of publicly accepted procedures to deal with Internet monitoring activities, on the part of the Government. We are now faced with a dilemma. If the Government follows the example of the United Kingdom in enacting a draconian law, the privacy of Hong Kong residents would be further undermined. However, if Hong Kong does not enact any legislation, then even the most basic monitoring would be lacking. Thus, we would be worrying whether the Government has abused its powers. At present, there is no legislation in Hong Kong to restrict the procedures and powers of law enforcement agencies and officers in monitoring the Internet. The passage of the Gambling (Amendment) Bill 2000 today would criminalize online gambling activities on the Internet. It is like opening the city gates to let the Trojan Horse into the city and give the police another excuse for monitoring and intercepting public communications.

Madam President, the topic under discussion today is in fact a very important subject and this could give the Government another excuse to monitor the activities of the public. So how can we strike a balance? Going over past government records, we find that the former Legislative Council passed the Interception of Communications Bill as early as in 1997. This was a Private Members' Bill introduced by Mr James TO to restrict the powers of law enforcement officers in intercepting communications. However, to date, the Government has yet to decide its effective date. This is obviously placing the power of the law enforcement agencies in intercepting communications over the privacy rights of the public and we could not help worrying that the Government would abuse its powers.

As such, I urge the Government to implement the Interception of Communication Ordinance as soon as possible and put it into effect. I also hope the Government will understand that even if it has to conduct monitoring activities, it must strictly adhere to some important principles, so as to protect the privacy of the general public.

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

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, I would like to take this opportunity to thank members of Bills Committee on Gambling

(Amendment) Bill 2000 (the Bills Committee) for their labour. They spent a lot of time scrutinizing the Gambling (Amendment) Bill 2000 and made sure that it was submitted to the Legislative Council before the commencement of the World Cup Finals, so that the law enforcement agencies can be given a legal base to go all out on combating fervent offshore betting activities that may arise as a result of the World Cup Finals.

The most important amendment to this Bill is to add an element on prohibiting offshore gambling. In fact, offshore betting has existed for a long period of time, but has only become more extensive with the rapid development of the Internet and the drastic drop in long distance phone call charges. It is estimated that the total sum of offshore bets amount to around several tens of billions of dollars per year. As web surfing has already become a major pastime for youngsters, Internet gambling would significantly increase their chances of acquiring a gambling habit, and society would have to pay a great price if our youngsters should cultivate a mentality of greed and trusting to luck, instead of relying on their own hard work. If adults were addicted to gambling, it would be even harder for them to turn over a new leaf and this would also have negative impact on their families. Recently, as the overall economy is in a downturn and families are facing a lot of problems such as negative assets, extramarital affairs, family violence, and so on, the new amendments would help prevent family problems from worsening.

As there are loopholes in the original Gambling Ordinance, many transnational gambling companies have regarded Hong Kong as one of their main targets of promotion. They provided a wide variety of gambling opportunities, such as online betting (casino), major soccer matches in overseas countries, horse races, motor races and boxing matches over the world. Recently, a transnational gambling company even tried to persuade Members to relax the amendments so that it could make Hong Kong its Asian base. Of course, its wish did not materialize. In order to demonstrate to these transnational companies the Government's determination in combating illegal gambling activities, it is imperative to amend the relevant Ordinance to make up for inadequacies in the original Ordinance.

Some other Members are worried that the imprisonment provision in the newly amended section 8 would be too harsh on "bettors". Though the Government indicated that this provision is targeted at "agents" that collected bets and then place them with bookmakers, there is no clear distinction between



"bettors" and "agents" in the Ordinance. Thus, some Members are worried that even bettors would be prosecuted. We certainly do not wish to see members of the public being sentenced to imprisonment for placing bets of several hundred dollars. However, it is undeniable that bettor is one of the causes for fostering illegal gambling. If the imprisonment provision were removed, it would greatly undermine the deterrent effect of the law.

On the other hand, it is disputable that whether the police will be given extra powers to monitor the phone calls of the public or the contents of online activities as a result of the new amendments. While water can keep a boat afloat, it can also turn it over. Though the legislation might allow the police to collect criminal evidences more effectively, it would make us worried whether the legislation would be abused or the privacy rights of the public might be infringed upon. However, the police have stated that no additional corresponding measures will be taken in this relation and its appreciation that it is difficult to maintain extensive surveillance on a long-term basis. Therefore, I believe that the police will not take any actions lightly unless with sufficient evidence on hand.

Regardless of whether soccer betting would be legalized in the future, in order to prevent the illegal gambling trend arising from the World Cup Finals from flourishing again, the relevant amendments should be passed as soon as possible.

Finally, according to a recent newspaper report, the Home Affairs Bureau would set up an inter-departmental working group around June or July to conduct a study on ways to help pathological gamblers, and consider allocating funds to research institutions such as universities to follow up cases on a long-term basis. It would also enhance school education and publicity efforts to discourage youngsters from participating in illegal gambling activities. I welcome this plan and hope that it can be implemented as soon as possible.

Madam President, I so submit.

**MISS CYD HO** (in Cantonese): Madam President, I rise to speak against the resumption of the Second Reading of the Bill.

Although gambling activities are not healthy or enlightening and they will not jeopardize other people's life, property or safety, so it may not be necessary

for us to legislate to prohibit gambling or make it a criminal offence. Small bets cannot cheer us up and large bets beyond one's financial affordability are even foolish. But should we legislate to punish foolishness? In fact, it is a very personal choice as to how a person spends his money and time and it is not worth our while to legislate on regulation, and we should not do so. Concerning the gambling policy as a whole, I would only agree to legislate on regulation from the angle of public revenue. However, the regulatory provisions should not be as prescribed in this Bill, instead, we should safeguard our tax revenue through a licensing system. Under the existing provisions, the Hong Kong Jockey Club (HKJC), as the sole statutory bookmaker in Hong Kong, has the public responsibility and obligation to pay betting duty and to allocate some of its revenue to social services. Therefore, if the Government is unwilling to incorporate other bookmakers into the public revenue network through a licensing system, just like the existing situation, it would have no alternatives to safeguard the sole operation by the HKJC other than legislation and expanding the Government's power to safeguard the status of the HKJC through a draconian law. As a result, Members who support the Bill against gambling would not achieve their objectives because the public can still bet with the HKJC and they can still engage in pathological gambling.

If this Bill is passed, the Government would be given greater powers in the interception of communications and monitoring the Internet and it may also invoke this Ordinance to make authorized entry into premises to make arrests when no life, property or safety is being jeopardized. In extending the powers of the Government and increasing criminal offences to safeguard the generation of public revenue through the HKJC, our loss would outweigh our gains. During the scrutiny of the Bill, Members expressed worries about a few subjects. Firstly, it might make a joke of offshore enforcement. Secondly, the definition of "promoting or facilitating" was so broad that the analysis of a race in the sports section might also constitute a criminal offence. Fortunately, the Administration has narrowed down the definition of "promoting or facilitating" and it is stated very explicitly that such an analysis would constitute a criminal offence only if it guides a reader to place bets at a certain place.

Members were also very much concerned about monitoring of the Internet and the interception of communications, but the Government has so far failed to dispel their worries. It has only said that it would negotiate with the departments concerned after the passage of the Bill. During the meetings of the Bills Committee and the Question Time at a Council meeting, officials only

replied that monitoring would not be conducted on a person if an officer did not reasonably suspect or did not have preliminary reasons to believe that he was betting illegally. But if monitoring was not conducted, how could an officer reasonably suspect or have preliminary reasons to believe that the person was betting illegally? This is a sheer chicken and egg issue. Yet, in respect of such a chicken and egg issue, I do not understand why the Secretary could reply so explicitly and assertively that there could be eggs without chickens or that chicks could be hatched without eggs.

Madam President, Members were indeed worried about the enforcement difficulties after the passage of the Bill but we failed to find any evidence to prove that enforcement might not be possible. So with all good intentions we have made the assumption that the Government would not arbitrarily intercept communications or infringe upon privacy. But if the Administration is indifferent to these issues and wholeheartedly and fully exercise the powers conferred by law in high morale, and conduct monitoring of the Internet and interception of communications, it would be able to enforce the legislation despite seriously injuring the rights and privacy of citizens.

I have listened very carefully to the remarks made by the Honourable SIN Chung-kai. He has cited a lot of examples of monitoring in foreign countries. Actually, it is impossible for us to effectively protect personal privacy and if the Bill is passed, it would give the Government justification to abuse its powers. Instead of asking the Government to discipline itself and not to abuse powers, we might as well vote against the Bill today so that the Government would not be given the powers. Then, we do not have to believe that the Government would not abuse the powers or ask it not to abuse the powers. If the Bill were not passed, the Government would simply not have the authority at all. The bill on public security that we recently examined is a very good example that tells us that, no matter how inconsistent a bill is with justice, so long as it is passed, the Government can exercise the power in a very high profile. Now that we have seen such examples, we cannot rest assured and allow the Government to expand its powers while asking it to discipline itself.

Madam President, legislating to ban gambling is not the only or best way to put a stop to gambling, and education is certainly better. Throughout our discussions, the most positive thing we did was bringing out the issue of pathological gambling. Some people with psychological disorder really need outside counselling and assistance to get rid of certain behaviour. Punishment

does not have deterrent effect on them and are not helpful to them. Only counselling, education and treatment would be helpful. Hence, whether the Bill is passed or not, I invite Members to follow up the subject together and monitor whether the Government will follow up or adhere to the agenda in the next six to seven months.

Lastly, Madam President, I would like to reiterate that pathological gambling could be treated and addressed. If the Government were willing to allocate funds for counselling and education, the people concerned would have an opportunity for full recovery. Yet, the Government has recently sought to expand its powers in different policy areas through legislation. The Public Security Ordinance that suppresses the freedom of assembly is one example. Now, the Government wants to expand its power of intercepting communications by amending the Gambling Ordinance. It has also proposed legislating on the pay cut of civil servants for it even wants to block the channel for staff to initiate proceedings. Such pathological expansion of power by the Government is more worrying than the pathological gambling of the public. Thank you, Madam President.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, we are not living in a utopia and it is impossible to ban all forms of gambling. In order to contain gambling activities at an acceptable level, so that it would not spread unchecked and cause catastrophes, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the Government's existing policy on restricting gambling activities to a few authorized and regulated outlets. The Gambling (Amendment) Bill 2000 adds an extraterritorial element to the two existing offences of "receiving bets" and "placing bets". In order to tie in with these provisions, the Government has created a new offence to criminalize "promoting or facilitating bookmaking" in Hong Kong, in order to combat illegal cross-boundary gambling activities. The DAB is of the opinion that the Bill is in line with the established gambling policy of the Government, and the Government can enforce the established gambling policy more effectively once the Bill is passed.

Some Members are worried that in combating Internet gambling activities, the authorities will encounter difficulties in investigation, evidence collection and satisfactorily producing those evidences in court, and they doubt whether the Bill could be effectively enforced even if it is passed. The DAB agrees that there are certain limitations in the effectiveness of the Bill. However, being a

responsible government, the Government should not relinquish its responsibility plugging the loopholes in law for this reason. It should combat activities that violate the spirit of the law and harm the overall interest of Hong Kong through legislative means, otherwise, it will be shielding the illegal elements. In fact, we believe the Government's Bill could serve to create obstacles on the operation of people who accept bets illegally and force them to employ more circuitous means of operation. In addition to increasing their costs, it would also reduce the appeal of cross-boundary gambling activities, thus to a certain extent, the objective of the Bill is achieved.

Some Members are worried that the police may be given excessive powers in combating online gambling activities and they argued that personal privacy would be compromised or arguments on online monitoring would be induced. In fact, under the existing Gambling Ordinance, all unauthorized gambling activities, be they online or otherwise, are unlawful. Moreover, the authorities indicated that actions would be taken in accordance with the same guiding principles of the existing Gambling Ordinance and there were no plans to take additional measures specifically for the purpose of cracking down on Internet gambling offences, after the enactment of the Bill. Furthermore, if the police need to apply for a search warrant to request local Internet service providers to provide records on their targets' online activities, it must first seek approval of the Court, and the Government has also promised that after the legislation comes into effect, it would provide statistics on court warrants issued in relation to enforcement against gambling offences, so that the public would know whether the police have conducted extensive online monitoring after the enactment of the legislation. The DAB thinks that the Government has already struck an acceptable balance between the combat of illegal cross-boundary gambling and protection of personal privacy through such arrangements.

As regards Miss Cyd HO's proposed amendment to delete the imprisonment clause on bettors who participate in illegal gambling to the effect that the relevant penalties are even lighter than those imposed before the Gambling Ordinance is amended, the DAB thinks that it would not only undermine the deterrent effect of the Bill on illegal gambling activities but also send people a wrong message and lead them to believe that the Government has adopted a more lenient attitude towards the above-mentioned offenders. This will indirectly encourage members of the public to defy the law. Moreover, the reduction of penalties on offences is against the objective of the Bill in striving to

combat illegal gambling and maintaining the established policy objective. This would also cause confusions and lead people to wrongly believe that the Government encourages gambling. Therefore, the DAB will oppose the amendment.

Madam President, in the course of scrutinizing the Bill, some Members pointed out that the Bill is closely related to the consultative document on soccer gambling and to the Government's gambling policy. They, therefore, suggested that the scrutiny of the Bill should be deferred until the results of the consultation exercise are released. However, the DAB thinks that the two exercises could certainly be dealt with separately and no matter whether Members are in support of legalizing soccer betting or not, it is necessary for the Bill to be passed as soon as possible to combat rampant cross-boundary gambling activities. If the community turns out to be in full support of the legalization of soccer betting in the future, the Government can still submit other legislative proposals to this effect.

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

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

Will those Members who wish to speak please press the "Request-to-speak" button to indicate their wish, otherwise, I would not know that you wish to speak.

**MR ANDREW WONG** (in Cantonese): Madam President, I did not wish to speak originally, but I think I have to state my position and I will claim a division when we vote later.

First of all, I would like to congratulate the Government on getting the support of the three biggest political parties. So, it seems that this Bill would certainly be read for the Second time. Although the deliberation of the Bill has taken very long since its introduction in 2000, members have failed to discuss the most fundamental questions of principle and they have repeatedly discussed certain details and the position of the Government. In my view, members have merely focused on elaborating the arguments but not discussions, thus, failing to

address some issues which I consider of paramount importance. I fully agree with the points just made by Miss Margaret NG and Ms Audrey EU. Not only the two of them oppose the Second Reading of the Bill; Miss Cyd HO also opposes it. However, they have made some very good arguments; for instance, Ms Audrey EU and Miss Margaret NG have pointed out the roles that the Government should play.

When the Bills Committee started working, I asked why we could not conduct a comprehensive review as the two issues were so closely related. The Bill seeks to prevent offshore gambling activities. Since the offshore activities might seriously infringe upon certain legal principles, it might have been better for us to take even longer to deliberate over the matters. The Democratic Party adopted the same position at the very beginning, but they were later persuaded to handle the two matters separately. If we have to handle the two matters separately, I must say I am sorry, for I think the legislation would only be enacted to deal with the 2002 World Cup Finals. I cannot help asking if it is worthwhile for us to do so.

In my view, we should seriously consider whether we should take some so-called moral issues into account. As the Honourable Andrew CHENG said when we started debating over the Bill, soccer betting and gambling problems had become more and more serious and we should not allow the gambling trend to continue to flourish. The principal problem concerns social moral. Would the moral problems be most possibly solved by moral standards or legislation? If we think that it would be easier and more convenient to solve all problems by legislation, our society would soon be similar to a theocratic state that rules by moral doctrines, which would be very dangerous. All theocratic countries in the past did that.

Modern societies and countries are divided into small governments, societies and countries with certain boundaries that cannot be crossed. The law may only permit gambling on horse races, playing mahjong, running mahjong schools and betting on Mark Six Lottery but it does not outlaw gambling. Actually, it does not outlaw gambling and it has not regulated the acts of gambling by the public. They can still gamble after their departure from Hong Kong. Thus, the restrictions under the law have not solved the moral problems. It seeks to regulate gambling activities within the territory only to prevent people from bending on gambling. For example, horse race meets would not be held

every evening so that people would not gamble on horse races without working every day. The Bill may target this, but it has not dealt with moral issues.

In that case, we must consider carefully what we wish to regulate. If we wish to solve the problems of individuals through moral regulation, we have to be tolerant. We can set standards to regulate our activities in this community. If other communities like to gamble, gambling among them should be allowed or tolerated. Otherwise, if people who oppose gambling became antagonistic to people who support gambling, the case would be similar to that of countries split up for religious reasons. For instance, Israel, Palestine and the Catholics in North Ireland had similar problems. Lastly, society would crumble if we legislate on the implementation of all moral standards.

I find it regrettable that the Government has not taken my advice on conducting a comprehensive review beforehand. Therefore, I cannot support the Second Reading of the Bill. For the same reason, though I initially promised Miss Cyd HO that I would support the technical amendments she would propose during the Committee stage, I think it is best for me to follow the advice of Miss Margaret NG. I am going to withdraw from the meeting and I would not participate in the discussions during the Committee stage. Thank you, Madam President.

**MR JAMES TO** (in Cantonese): Madam President, perhaps let me respond briefly to the remarks made by the Honourable Andrew WONG. Actually, I think his train of thought is very clear and several Honourable Members' views on this issue are quite similar to his; hence, I believe their fundamental views are consistent.

However, the view of the Democratic Party is a little bit different from theirs. In our opinion, we are in fact dealing with not just a moral issue but also a social issue. We do not intend to prohibit gambling by way of law, and that is why we do not urge the Government to ban all gambling activities; we just want to maintain the *status quo*. Why do we oppose further "legalizing football gambling"? It is because we believe the present practice is already enough. There are enough social problems and problems like "pathological gambling" and so on will most probably proliferate following the legalization or rationalization of gambling. That is why I say what we are dealing with is a social issue rather than just a moral issue.



With regard to the remarks made by Ms Audrey EU earlier, I am aware that she has opposed the Bill with very clear arguments; nevertheless, I am afraid there are in fact many points she does not understand and I should like to share with her my views on them. What has she failed to understand? Why is her argument self-contradictory? The reason is in fact very simple: the Government intends to give the people some kind of freedom in the second stage, but such freedom is subject to limitations. Since the Government still wishes to keep the freedom to regulate or legalize gambling, it will only give a certain degree of but not 100% freedom to the people. So, after banning all kinds of freedom as a first step, the Government will give back a limited degree of freedom to the public later on. If Members should see only what the Government does at the present stage or its present step, they would not appreciate that the Government actually has a second step waiting to be launched.

Here, I wish to make it clear once again why we support the Bill. We oppose "legalizing soccer betting" because we believe the existing measures are adequate to achieve our objectives. I should also like to respond to the remarks made by Miss Cyd HO. She considers actions like monitoring very horrifying. During the process of deliberation, we also mentioned many possible forms of monitoring; however, our view is that we can still have a role to play as far as monitoring action is concerned. I do not think we are totally at a loss as to how this matter can be handled. Apart from this soccer betting issue, we may have to deal with even graver problems in these next few years. Why do I say that we may put aside the monitoring issue for the meantime but devote, instead, our energy to pressing the Government every year to formulate legislation or following up the actions taken by law enforcement agencies to handle the money concerned? Actually, the Government will certainly propose resolutions to these problems in the near future (in a year or two) and inform the public what measures it is going to employ. The Government just has no other choice. The reason for that is very simple. At present, the Government has to apply to the Court for warrants relating to Internet gambling in order to take actions (section 33 of the Telecommunications Ordinance can be invoked only to monitor placing of bets via telephone). It must therefore regularize certain actions taken to monitor activities relating to the Internet and specify clearly in law that it is conferred with direct powers to take such actions. When the Government submits to this Council the relevant empowering legislation, we will have a very good chance to discuss the issue in great detail.

Lastly, I would like to speak on the Bill. In my view, if all forms of gambling should be banned as suggested by Ms Audrey EU, the soccer bettors would then place their bets with the even more unscrupulous bookmakers. This is because while bookmaking companies of comparatively larger scale (there are very large-scale or even listed bookmaking companies in some countries) will respect the laws of Hong Kong and refrain from receiving bets placed from Hong Kong, those so-called "vice-business" operators or triad societies will just continue to do so. In that case, the situation can become even more dangerous. I hold that banning all forms of gambling will certainly give rise to an indirect effect; I will be lying if I say there is no such indirect effect. Further still, I believe this will also cause the income of the Hong Kong Jockey Club to increase slightly, albeit we certainly have to measure the rate of increase concerned. I think double effects will certainly be resulted.

In my opinion, there would still be plenty of loopholes even if this Bill should be passed, and it may not be possible to plug these loopholes instantaneously. One most simple result — or a situation I can imagine after doing some simple analysis — is that the legislation cannot be expected to achieve very significant results. As I have pointed out in the Bills Committee, people can bet with any offshore bookmakers so long as they can find an agent to place the bets on their behalf and the Government is unable to find any evidence proving that the persons placing the bets have any monetary or personal links with the bookmakers concerned. These bettors will then become gamblers, small and big, in offshore countries.

If a gambler in Hong Kong wants to participate in any offshore gambling activities like soccer betting, so long as he can contact the overseas intermediary acting on his behalf, he can place bets with the offshore bookmakers concerned regardless of where the gambling activities are held. In which case the overseas intermediary is his agent responsible for placing bets with offshore bookmakers on his behalf.

Many people have emigrated overseas from Hong Kong, albeit many of them have also returned; hence, people will still have some relatives living in places like Vancouver, London or even every corner of the world. For these people, they can place bets with offshore bookmakers through their relatives overseas. Insofar as I understand it, many people bet regularly on the "mark six" operated in the United Kingdom. They place their bets through family members, relatives and friends living there. Certainly, whether or not they can

collect the dividends when they win is another story, and this is the risk they have to bear. Indeed, before their overseas intermediaries have established a good reputation, people placing bets this way may have some worries at first. However, once a good reputation is established, an overseas intermediary can then act as an agent or even the agent of many people, only that it is the agent of bettors rather than bookmakers.

So, the regulation effected by the legislation can actually be undone with this simple method. Apart from that, we also need to take into consideration the fact that the legislation, upon implementation, may probably affect Macao and thus cause even stronger responses. I do not know under what circumstances Macao will be forced to respond, but we do need to take this factor into account and keep a close watch on the situation as we implement the legislation. In my view, the most probable response Macao will make is to appeal to the people of Hong Kong by offering concessions like organizing "one-day tours" providing such activities as casino gambling, soccer betting, cuisines, massage, and so on all in one day. I really wonder whether it would be in the interest of Hong Kong if Macao should be forced to take this step. Certainly, if conflicts should arise between these two sister cities, Hong Kong and Macao may have to go to Beijing together to seek a solution to the problem eventually.

In the meantime, we nevertheless believe that the Government should still be conferred with more power to enable it to do more work. The view we hold in this respect is in line with our stance against legalizing soccer betting, and it is on the basis of this stance that we support this Bill introduced by the Government. However, I must remind the Government that we will still raise our strong objection to legalizing soccer betting.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, to start with, I am very grateful to Mr Andrew CHENG, Chairman of the Bills Committee, and members of the Bills Committee, for holding a total of 18 meetings over the past 18 months and completing the difficult scrutiny of the Bill to enable its resumed Second Reading debate today.

Now I will give a summary of the major concerns of this Council and members of the community since the introduction of this Bill in November 2000. I will also explain why the Government objects to the Committee stage amendments (CSAs) to be moved by Miss Cyd HO. Furthermore, a series of

CSAs will be moved in response to the suggestions made by members of the Bills Committee. I will explain the objectives and contents of the CSAs *seriatim* at the Committee stage later.

First of all, I would like to say a few words on certain basic principles and problems. The Government has no intention to draw up any moral standards on gambling in society. Our gambling policy has always been realistic. What I mean is, we acknowledge there are a lot of people in the general community who oppose gambling. Nevertheless, quite a number of people in the community have a genuine need to engage in gambling activities. Therefore, our existing gambling policy seeks to confine gambling activities to a limited number of regulated outlets. This policy has struck a suitable balance between satisfying the community's gambling need and minimizing the drawbacks of gambling.

The public was in general supportive of this policy when a public consultation on gambling was held last year. Is gambling pure personal behaviour that should not be subject to government intervention? It is a matter of personal opinion. At present, our policy is indeed aimed at maintaining a suitable balance. Therefore, to a certain extent, it is necessary for us to intervene in gambling acts conducted within Hong Kong. The Gambling Ordinance, enacted more than two decades ago, reflects and enforces this policy. Why is it necessary for us to amend it now? A very important reason is that this policy is now being seriously challenged as a result of advancements in technology.

With these advancements, it is now possible for unlawful gambling activities to be conducted within Hong Kong, though these activities could only be conducted outside Hong Kong in the past. For instance, we have never tried to interfere with the freedom of people living in Hong Kong who chose to make a ferry trip to Macao to gamble. We will also not interfere or intervene in the freedom of those who choose to fly to Las Vegas to engage in the gambling activities they like. This is purely a matter of personal choice. Nevertheless, local policies must be enforced within the territory. The objective of our gambling policy is to ensure that this balanced policy will not be rendered unenforceable as a result of the merciless challenges brought about by technological changes. Failure to amend the Gambling Ordinance will precisely lead to such consequences. Should that happen, our gambling policy will become only an empty title.

Therefore, Madam President, the current amendment is essential, for we must maintain the continuity of the existing gambling policy. It is mainly attributed to the fact that a growing number of offshore bookmakers are now taking advantage of conveniences made possible by technology to receive bets placed from Hong Kong. Moreover, they are able to diversify their gambling activities and offer services related to betting constantly. For instance, service centres are openly set up to attract the people in Hong Kong to place bets. Subsequent to technological development, particularly the growing popularity of mobile phones and Internet, these offshore bookmakers are now able to provide convenient services comparable to those provided by local unlawful bookmakers. Insofar as bettors are concerned, there is essentially no difference between placing bets with an offshore bookmaker and with a local one.

From the angle of the gambling policy, however, all unauthorized gambling activities are considered unlawful and must not be conducted within Hong Kong. As local bookmakers are not authorized to receive bets placed within Hong Kong, they should not be considered, policy-wise, exempted bookmakers. As regards the fact that they are actually being exempted, it is mainly attributed to the fact that the Gambling Ordinance was drafted in the '70s when cross-boundary gambling activities were not popular and practicable. Furthermore, according to the interpretation of the provisions of the existing law, this Ordinance might not be able to tackle offshore gambling activities containing an extraterritorial element. Grey areas in the law have not only been exploited by offshore bookmakers from across the world to accept bets in Hong Kong, but also provided a number of local unlawful bookmakers who are trying to evade legal constraints room for survival. As a result, revenue from betting duty is being seriously drained. In conclusion, the Government is duty-bound to safeguard the integrity and efficacy of its gambling policy. In order to combat offshore bookmakers targeting Hong Kong, ambiguities must be removed from the Gambling Ordinance through this Bill.

During the debate, some Members criticized that it is inappropriate for the Government to amend the law to curb cross-boundary gambling transactions since they are mostly conducted via the Internet and are supposedly considered an act concerning personal freedom. Actually, Internet is, like mails and telephone calls, a medium for conveying messages. If illegal gambling itself is inappropriate and should be prohibited by law, why should we not prohibit placing bets with illegal bookmakers or receiving bets via the Internet? What is the difference between receiving bets or placing bets via the Internet and

conducting similar illegal gambling activities through telephone, telegraph or by other means? Our gambling policy and the Gambling Ordinance have along adhered to the principle of "technology neutral". We consider it groundless to alter this principle. Furthermore, with the growing popularity of on-line gambling, relaxing restrictions on on-line gambling activities will be almost tantamount to relaxing all illegal gambling activities and fully legalizing them. I believe the majority of the public will definitely not accept this.

A number of Members are concerned whether the contents of on-line communications will be monitored by the Government for the purpose of enforcing the Bill. I would like to make it clear once again that the Government has absolutely no intention to keep the contents of on-line communications under real-time surveillance for the purpose of law enforcement. In fact, the Bill has not conferred on the police any new or additional power of enforcement for purposes of cracking down on cross-boundary gambling activities. We appreciate Members' concern in this connection. The Government undertakes that it will, should the Bill be passed, strive to strike a reasonable balance between the protection of personal privacy and the efficacy of the policy to combat cross-boundary illegal gambling activities.

According to the original intent of the Gambling Ordinance, all unauthorized gambling activities, regardless of the media through which they are conducted, are considered criminal offences. In other words, unauthorized gambling activities conducted via the Internet are currently considered criminal offences. Actually, lawless elements can make use of the Internet to conduct various criminal activities such as theft, fraud, forgery, and so on. Gambling is just one of these criminal activities. The police have always adhered to its established practices and strict procedures for the combat of Internet crimes in combating on-line gambling offences under the Gambling Ordinance. After the relevant provisions of the Bill take effect, the police will strictly adhere to the same principle in enforcement. In response to members' concern, we undertake that we will, after the passage of the Bill, provide relevant statistics on court warrants issued in relation to enforcement against gambling offences.

Miss Cyd HO has proposed to move a CSA to delete section 8 of the Gambling Ordinance with respect to the provision concerning imprisonment, the maximum penalty for betting offences. The Government opposes this CSA mainly because it will not only severely compromise the deterrent effect of the proposed amended section 8, but also compromise the efficacy of the entire Bill.

While the objective of the Bill is to combat illegal gambling, the proposal made by Miss HO runs counter to this objective. Let me briefly explain the Government's arguments here.

First, the offence of "bookmaking" and the offence of "betting" are actually two sides of the same coin. The majority of cases show that bettors are, more often than not, the parties responsible for inducing the incidence or completion of an illegal bookmaking transaction. Therefore, putting in place an effective means to deter bettors is integral to the regulatory system.

Second, it is very important to preserve the imprisonment penalty for betting offences because this will help prosecute illegal bookmakers. More importantly, it provides the authorities with a more effective tool to identify prosecution witnesses testifying against bookmakers.

Third, our enforcement experience has shown that most illegal bookmakers and their agents usually commit betting offences concurrently. This is because they will transfer part of the bets they have received to other bookmaking syndicates to diversify their operational risks. Such betting activities are an important component of bookmaking transactions. They are integral to ensuring the profitability of the transactions.

The deterrent effect of the Bill on illegal betting will be compromised should Miss HO's CSA be passed. This will in turn encourage illegal gambling and criminal activities related to bookmaking, including loan-sharking, fraud, and so on.

Since the Gambling Ordinance came into effect in the '70s, imprisonment was included in the maximum penalty for betting offences. The raising of the maximum penalty for betting offences from "a fine of \$10,000 and three months' imprisonment" in 1990 to the present level did reflect the aspiration of the community at that time to enhance deterrence against these offences. Given the growing public concern over the proliferation of unauthorized gambling and the derivative social problems, it is even more unjustified to take away the imprisonment provision from the maximum penalty since that will reduce deterrence against betting.

The deletion of the imprisonment penalty from betting offences under the Bill will also send a confusing and self-contradictory message to the public. If

we tighten the Gambling Ordinance to deter the public from engaging in unauthorized cross-boundary gambling activities on the one hand, and relax the maximum penalty for betting offences on the other, we will be seen as taking a less stringent attitude towards bettors placing bets with unauthorized bookmakers.

Madam President, some Members expressed their concern over the effectiveness of enforcement earlier on in the debate. I would like to respond to their concern here.

In the course of scrutiny, some Members and interested parties raised the point that it might be difficult to enforce the Bill effectively as a growing number of cross-boundary bookmaking activities are now conducted via the Internet and many offshore bookmakers are based in foreign countries. The Government is convinced that the Bill can be enforced effectively mainly for the following reasons.

First, receiving and placing bets via the Internet is just one of the many cross-boundary criminal activities making use of computer or Internet. We will combat cross-boundary gambling by various means employed currently for the purpose of detecting other computer crimes.

Second, cross-boundary gambling involving offshore bookmakers is not merely confined to placing or receiving bets online. A series of associated activities are often involved as well. They may include the opening of an account for the receipt of a deposit paid for the purpose of betting, settling of a bet, awarding of dividend, and conduct of publicity activities in Hong Kong. There are numerous means to place bets with bookmakers. Internet is merely one of such means. Gambling transactions can be conducted via telephone or other channels. We have various ways to detect cross-boundary gambling activities, which are made possible by modern telecommunications technology.

Third, we will also make use of the present arrangement whereby investigation of cross-boundary crimes is carried out in conjunction with overseas authorities for the enforcement of the provision related to extraterritoriality under the Bill. Insofar as enforcement against cross-boundary crimes is concerned, the police in Hong Kong have received more and more assistance from overseas law enforcement authorities.



To evaluate the effectiveness of the Bill, we should not merely look at the possibility of technical problems encountered in the enforcement of certain provisions of the Bill. As in the case of combating other cross-boundary criminal activities relating to Internet or other modern telecommunications technology, we must not refrain from enacting specific legislation to combat cross-boundary gambling simply because it is technically difficult to investigate and prosecute cross-boundary gambling activities. We should also note that the combined effect of all provisions of the Bill should effectively deter and reduce illegal gambling. The main reasons are as follows:

First, we believe the public are generally law-abiding. As it is stated clearly in the Bill that cross-boundary gambling is illegal, the public will generally not challenge the law personally by taking part in illegal gambling activities.

Second, it has been stated clearly in the company policies of many offshore bookmakers licensed in their respective countries that they must not receive bets from bettors of jurisdictions where such gambling activities are prohibited. It is therefore believed that these offshore bookmakers will quit and stop targeting Hong Kong as their market after the passage of the Bill.

Third, as it is stated clearly in the Bill that cross-boundary gambling is illegal, offshore bookmakers will be unable to recover any debts related to betting in Hong Kong courts.

Fourth, a new offence in relation to "promoting or facilitating bookmaking" is created in the Bill which stipulates clearly the related activities. These activities include mainly: exhibit of advertisements on illegal bookmaking activities, provision of accounts for receipt of deposits paid for the purpose of betting, transmission for a bet and dividend, and so on. It has been the practice of most offshore bookmakers to promote their activities in Hong Kong through advertisements. Transactions related to betting are also handled through bank accounts or accounts of other financial institutions, as well as credit card services. Offshore bookmakers will therefore find it harder to make use of these services after the Bill takes effect. It will also be much more difficult for them to continue with their bookmaking activities in Hong Kong. Moreover, they have to bear greater risks and pay a higher price.

The proposals listed in the Bill in relation to combating cross-boundary gambling are actually not as laughable as some Members have suggested.

Similar legislation is in place in certain overseas jurisdictions for the purpose of combating similar activities. The practice of Hong Kong is similar to those adopted in many overseas jurisdictions whereby only authorized or exempted gambling activities are allowed to exist. Some countries, including Australia and certain states in the United States, have made legislation to make it illegal for unauthorized bookmakers, including offshore bookmakers, to receive bets from people living in territories under their jurisdiction. Unauthorized bookmakers will also be arrested and prosecuted according to the law if they enter the above-mentioned territories.

Madam President, the proposed amendments in the Bill seek to deter the activities conducted and services provided by offshore bookmakers in Hong Kong on the one hand, and undermine their attractiveness and the convenience they offer on the other. This will help maintain our strict gambling policy and ameliorate the prevailing gambling trend, thereby reducing the incidence of associated social problems and minimizing revenue losses.

I would like to urge Honourable Members to vote in support of the Bill and the CSAs to be moved by the Government later. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Gambling (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.

(Members raised their hands)

Mr Andrew WONG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Andrew WONG 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.

Mr James TIEN, Dr David CHU, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Eric LI, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr Michael MAK, Mr Albert CHAN, Dr LO Wing-lok, Mr WONG Sing-chi, Mr Frederick FUNG, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Dr David LI, Miss Margaret NG, Mr LEUNG Yiu-chung, Mr Andrew WONG and Ms Audrey EU voted against the motion.

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

THE PRESIDENT announced that there were 54 Members present, 47 were in favour of the motion and six 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): Gambling (Amendment) Bill 2000.

Council went into Committee.

**Committee Stage**

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

**GAMBLING (AMENDMENT) BILL 2000**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Gambling (Amendment) Bill 2000.

**CLERK** (in Cantonese): Clauses 6, 7, 9 and 12.

**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 1, 2, 3, 8, 10, 11, 13 and 14.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

*Clause 1*

I propose to amend clause 1 by deleting subclause (2), so as to enable the Gambling (Amendment) Ordinance 2000 to come into operation on the day it is

gazetted (which is 31 May 2002), rather than on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette. The purpose of this amendment is to enable the Amendment Ordinance, upon passage of the Bill, to come into effect as soon as practicable, so as to more effectively curb the particularly prevalent cross-boundary soccer betting activities during the World Cup Finals scheduled to start by the end of the month.

### *Clauses 2 and 13*

The amendment to clause 2 includes several items. Firstly, under the present provision, the definition of "bookmaking" means the soliciting, receiving, negotiating or settling of a bet by way of letter, telephone or telegram or by any other means. We propose to add "on-line medium (including the service commonly known as the Internet)" as one of those means. The reason for adding this medium is that in view of the increasingly popular on-line gambling activities, we consider it necessary to specify clearly in the legislation that soliciting, receiving, negotiating or settling of a bet by way of the Internet and other on-line medium shall be regarded as "bookmaking" and subject to the relevant provisions under the Gambling Ordinance. I wish to particularly point out that since the existing legislation makes reference to "any other means", the relevant definition has in fact included bookmaking by on-line medium. Hence, rather than extending the coverage of the meaning of "bookmaking", the amendment only renders the relevant definition clearer, thereby enabling the provision to reflect the actual situation more effectively.

As regards other items of amendment proposed to clause 2, the objective is to delete any amendments proposed to the definitions of "bookmaking", "gambling" and "gambling establishment" under the Bill. The reason is that upon examining very carefully the overall effect of the Bill as amended by other proposed amendments, we believe the policy objective of the Bill can still be achieved without making the originally proposed amendments concerned.

With regard to the amendment proposed to clause 13, which is related to the provisions regarding the forfeiture of properties used in unlawful gambling, it is a consequential amendment made as a result of the aforementioned amendment to clause 2.

*Clauses 3 and 14*

The amendment to clause 3 seeks to retain the provisions, which were originally proposed to be deleted, relating to any persons assist in either directly or indirectly, the operation or in the management or control of a gambling establishment (that is, the provisions under section 5(c) of the existing Ordinance). The purpose of the Bill's original proposal is to reinstate in the provision the concept of "aiding, abetting, procuring or counselling" in common law. Having taken into consideration the views of the Bills Committee, we believe it is necessary to retain the provisions relating to assisting in the operation, management or control of gambling establishments on the grounds that as far as the operation of premises is concerned, the word "assist" is more suitable and has a more extensive coverage than the concept of "aiding and abetting" used in common law.

Consequential to the amendment to clause 3, we propose to amend clause 14 relating to "saving as to aiding and abetting" by deleting the reference to section 5 of the Gambling Ordinance.

*Clause 8*

The amendments proposed to clause 8 seek to re-draft and re-arrange the provisions of the Bill on offences relating to "promoting or facilitating bookmaking", as well as permitting the use of premises for such purposes. The re-drafted provisions set out the activities subject to the Gambling Ordinance and the scope of application of the Ordinance in a clearer and more systematic manner. The major amendments include the following:

First, the amended section 16A stipulates that no person shall knowingly operate, manage or otherwise have control of any premises or place where unlawful gambling activities are promoted or facilitated. The amended section 16B specifies the offences relating to "promoting or facilitating bookmaking". We also propose to provide for an exclusion clause to provide exemption for activities promoting or facilitating betting activities which can only be conducted outside Hong Kong, and for premises kept for such purposes.

Second, we have accepted the Bills Committee's suggestion to add a new section 16C to set out the activities regarded as promoting or facilitating bookmaking or betting with a bookmaker, so that members of the public can

understand more clearly what kind of activities will constitute offences. These offences cover the major activities of unlawful and offshore bookmakers in Hong Kong and the services they provide, such as advertisements promoting such businesses, receipt of a bet as an agent, receipt of a deposit paid for the purpose of betting, arrangement for opening or maintaining of an account for the purpose of betting, and so on.

Third, we also propose to amend section 16C proposed under clause 8 of the Bill and rename it as section 16D. This proposed new section prohibits the owners of any premises from knowingly permitting or suffering the use of their premises for promoting or facilitating unlawful gambling activities. A typographical error is identified in the relevant provision under the Bill: we have mistakenly set the maximum fine for the offence at \$5 million. Actually, the maximum fine for this offence should be in line with the maximum fine set out under section 15 of the existing Gambling Ordinance, as it provides for the criminal liability of owners of premises permitting their premises to be used as gambling establishments. Thus, the amendment proposes to correct the maximum fine set out under new section 16D as \$500,000.

As regards the remaining amendments proposed to clause 8, they are either technical amendments or consequential amendments made as a result of the aforementioned amendments.

### *Clause 10*

The amendment proposed to clause 10 (which is related to admissibility of evidence) is a technical amendment.

### *Clause 11*

The amendment to clause 11 is proposed in response to the suggestion of the Bills Committee to delete section 21(1)(c) from the existing Gambling Ordinance. Under section 21(1)(c), the Court is empowered to issue an order to prohibit the Hong Kong Telephone Company Limited from providing further telephone service to any persons convicted of offences of operating unlawful gambling establishments, bookmaking or betting with a bookmaker when the order is in force. Clause 11 of the Bill proposes to amend the reference to the "Hong Kong Telephone Company Limited" to enable the relevant provisions to be applicable to other institutions providing telecommunications service to the

convict. The Bills Committee considers the deterrent effect of the relevant order to be very limited because even if the telecommunications service provider previously providing services for the defendant ceases to provide him with any further telephone service, the defendant can still obtain such service easily from other telecommunication service providers in the liberalized telecommunications market. We accept this view and thus propose to amend the clause accordingly.

With these remarks, I urge Honourable Members to support the passage of the aforementioned amendments. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 1 (see Annex VIII)**

**Clause 2 (see Annex VIII)**

**Clause 3 (see Annex VIII)**

**Clause 8 (see Annex VIII)**

**Clause 10 (see Annex VIII)**

**Clause 11 (see Annex VIII)**

**Clause 13 (see Annex VIII)**

**Clause 14 (see Annex VIII)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)



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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1, 2, 3, 8, 10, 11, 13 and 14 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): Clause 4.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to clause 4, as set out in the paper circularized to Members.

The amendment seeks to rewrite clause 4 of the Bill in simpler and clearer language of the same effect and insert an extraterritorial element into the offence of "bookmaking", so as to stamp out unauthorized offshore gambling activities. The clause as amended states clearly that bookmaking will be illegal even when the "receipt", "negotiation" or "settlement" parts of a bookmaking activity are conducted offshore, as long as the bet is paced from inside Hong Kong, or the person who places the bet is in Hong Kong at the time of betting.

With these remarks, I implore Members to pass the amendment. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 4 (see Annex VIII)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 5.

**CHAIRMAN** (in Cantonese): Both the Secretary for Home Affairs and Miss Cyd HO have separately given notice to move an amendment to clause 5 of the Bill.

**CHAIRMAN** (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Home Affairs to move his amendment, as he is the Public Officer in charge of the Bill.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to clause 5, as set out in the paper circularized to Members.

The amendment seeks to rewrite clause 5 of the Bill in simpler and clearer language and insert an extraterritorial element into the offence of "betting with a bookmaker", so as to stamp out unauthorized offshore gambling activities. The clause as amended states clearly that betting with a bookmaker will be illegal even when the bet is solicited or received outside Hong Kong, as long as the person who places the bet is in Hong Kong.

Miss Cyd HO's amendment to clause 5, apart from covering the amendment proposed by the Government, also proposes to delete the imprisonment penalty for the offence of "betting with a bookmaker". The Government strongly opposes Miss HO's amendment, because it will not only reduce the deterrent effect of the provision in question, but also weaken very significantly the overall effect of the Bill in respect of implementing the established gambling policy and combating illegal gambling. Miss HO's amendment may lead to an increase in illegal gambling activities and is thus inconsistent with the interests of society as a whole.

The two offences of "bookmaking" and "betting with a bookmaker" have all along been found in the Gambling Ordinance since its implementation in the 1970s. There is a general view in society that these two offences are but two aspects to the same offence. In all illegal gambling transactions, the bookmaker and the bettor are both direct participants. And, as a matter of fact, the bettor is often the party that makes an illegal bookmaking transaction possible. A person who bets with an unauthorized bookmaker has all along been regarded as partaking in and financing an illegal transaction that impacts negatively on society. Since the implementation of the Gambling Ordinance, the maximum penalty for "betting offences" has always included imprisonment. In 1990, with a view to increasing the deterrent effect of the relevant provisions, the then Legislative Council amended the Gambling Ordinance, raising the maximum penalty from "a fine of \$10,000 and imprisonment for three months" to the existing levels — a fine of \$10,000 and imprisonment for three months on first conviction, a fine of \$20,000 and imprisonment for six months on second conviction and a fine of \$30,000 and imprisonment for nine months on third or subsequent conviction. Given the prevalence of illegal gambling and the increasing public concern over it in recent years, we fail to see any reason why we should reduce the penalty for illegal betting in the Bill and remove imprisonment from the maximum penalty. Frankly speaking, there is no evidence to show that the public now wish to treat illegal betting offences with more leniency.

Our aim of amending the Gambling Ordinance in the current exercise is to stamp out unauthorized cross-boundary gambling activities. If, while doing so, we also reduce the penalty for illegal betting, we will inevitably deliver a very confusing message to the public, leading to doubts about the Government's determination to combat illegal gambling activities. Besides, any lowering of the penalty for illegal betting will surely reduce the deterrent effect in respect of this offence, thus causing a surge of illegal betting activities and indirectly aiding the development of illegal bookmaking and other related crimes. The various social problems connected with unauthorized gambling, such as pathological gambling and usury, will in turn increase.

Retaining imprisonment as a penalty for betting offences and an appropriate deterrent are extremely important to the crackdown on illegal bookmaking. For instance, in some cases, whether or not an offender of illegal betting is willing to become a prosecution witness and testify against the illegal bookmaker will often depend on what penalty for illegal betting he is facing. Besides, our experience in enforcement shows that most illegal bookmakers will

usually commit betting offences, because they will frequently place bets with other illegal bookmakers with part of the betting money received, so as to reduce their risks. This kind of betting activities is an integral part of illegal bookmaking, as they play a very important role in ensuring profitability. If betting offences with sufficient deterrent effect are not set down, this kind of activities will only become more rampant.

Finally, it must be pointed out that the deletion of imprisonment as the maximum penalty for betting offences will lead to a lack of consistency between the penalty for this type of offences and that for similar offences under the Gambling Ordinance. "Gambling in a gambling establishment" and "gambling in any place not being a gambling establishment or in a street", dealt with respectively under sections 6 and 13(2) of the existing Gambling Ordinance, are also offences related to betting with illegal gambling operators, and the maximum penalty in each case is the same. In 1990, the maximum penalty for the offences stated in sections 6, 13(2) and 8 were raised altogether, from "a fine of \$10,000 and imprisonment for three months" to the current levels. If Miss Cyd HO's amendment is passed, a person convicted of betting with an illegal bookmaker will be subject to a lighter penalty than a person convicted of betting in a gambling establishment or in a street. This seems illogical. Besides, if an act of illegal betting is covered by more than one offence provision, as in the case of a person betting with an unauthorized bookmaker in a gambling establishment or in a street, the prosecution will face difficulties in choosing which offence provision to invoke. Miss HO's amendment will also give the Court inconsistent sentencing authority in respect of similar offences.

To sum up, the existence of betting offences with appropriate penalty and sufficient deterrent effect is extremely important to the maintenance of an effective regulatory system on gambling in Hong Kong. I implore Members to support the Government's proposal and oppose Miss Cyd HO's amendment. Thank you, Madam Chairman.

### *Proposed amendment*

#### **Clause 5 (see Annex VIII)**

**CHAIRMAN** (in Cantonese): I will call upon Miss Cyd HO to speak on the amendment moved by the Secretary for Home Affairs as well as her own

amendment. Whether Miss Cyd HO will be able to move her amendment will depend on the Committee's decision on the Secretary for Home Affairs' amendment.

**MISS CYD HO** (in Cantonese): Madam Chairman, there are really many fundamental problems with this Bill and we should oppose the entire Bill. I already voted against the Second Reading of the Bill. In fact, we should defer a decision until after the Government has conducted a comprehensive review on the gambling policy of Hong Kong. I have proposed an amendment to section 8 of the Ordinance to repeal the provisions on penalties on bettors. My objective is to make a simple amendment before a comprehensive review, so that the law would not be too harsh on the acts and choices of certain individuals. This is actually in line with the actions of Members who voted against the Bill earlier. They made a lot of efforts during the deliberation of the Bill and questioned repeatedly the rationale of the Administration. As a result of their efforts, the Administration eventually went through 18 drafts and the final result is the entire Ordinance has become less harsh and hideous.

The Government has restricted acts of gambling by amending the Gambling Ordinance, but so far, it has failed to occupy the "pedestal" of ethics, because from the objective of amendments proposed in this Bill, we could clearly see that it has nothing to do with ethics. After the Ordinance is amended, everyone can still bet on horse races, though the bets must be placed with the Hong Kong Jockey Club (HKJC). Therefore, the most important function of the Ordinance is to safeguard the monopoly status of the HKJC. However, to those who refuse to place their bets with the HKJC, the Ordinance will subject them not only to fines, but also imprisonment. This is really a very harsh punishment.

On the issue of penalty, since the Secretary has already talked about it earlier, I am not going to repeat her points. However, as there are provisions on imprisonment in the penalties and such provisions are too harsh, I have proposed an amendment to repeal the part on sentencing to imprisonment.

Madam Chairman, during the Second Reading of the Bill, I pointed out in my speech that the purpose of this Ordinance is firstly, to directly protect the commercial interest of the HKJC; and secondly, to indirectly protect public

revenue. I would like to cite two examples to compare the penalties for similar activities.

Firstly, the Copyright Ordinance. Under the Copyright Ordinance, any organizer who engages in copyright piracy activities for the purpose of seeking commercial interests commits a criminal offence and is subject to a fine and imprisonment. However, a person who is in the possession of pirated copyright products for personal use only commits a civil offence. Though this is also a copyright-infringement act, only the copyright owner (that is, an individual or organization whose interests have been injured) has the right to initiate civil proceedings against pirates. However, under the Gambling Ordinance, even if no commercial interests are involved, individual bettor who bets with unauthorized organizations commits a criminal offence and is subject to imprisonment.

Madam Chairman, the second example that impacts on public revenue is contraband tobacco. The existing penalty on bringing in excess duty-free tobacco from outside Hong Kong is a fine of \$2,000 plus five times the value of duty-not-paid tobacco. Though it similarly impacts on public revenue, there is no provision on imprisonment. The penalty provision in the Gambling Ordinance is obviously more severe.

In the course of our deliberation, officers of the Home Affairs Bureau repeatedly indicated at the Bills Committee meetings that the Government had no intention of punishing "gamblers". However, they are now adopting an entirely different line. In fact, they also repeated the same argument in radio programmes. If what the officers said was true and the Government did not seek to punish "gamblers", then there is really no need for the penalties in section 8 to exist. However, when the authorities were faced with Members' proposed amendment on reducing the maximum penalty, the government officers then made an about turn and said that: it is not chiefly aimed at punishing "gamblers", and so it is necessary to retain the penalties. I really find it hard to accept the inconsistent arguments adopted by the Administration in lobbying support for the Bill. Why could the Administration not explain clearly what will happen after the Bill is passed and its impact on each member of the public right at the outset?

It is no surprise that the Administration will oppose Members' amendments on reducing penalties. I certainly appreciate that it would be self-

contradictory for the Administration to accept the proposal on amending the entire Bill and on reducing penalties. However, the argument advanced by the Government really makes us very worried about its practice of constantly seeking power through legislation.

In the course of organizing illegal gambling activities, bookmakers usually rely on the assistance of intermediaries, commonly known as "agents", to collect bets. The Administration also indicated that past experiences had shown that it was very hard to gather sufficient evidence to convict these intermediaries, but it was very easy to prove that such persons were gamblers. Therefore, it is necessary to retain this "heavy" penalty to punish gamblers because this provision can be applied to force the persons concerned to turn into tainted witnesses or to similarly impose heavy sentences. I am really very worried about two points in this explanation. Firstly, if there is insufficient evidence to prove that those involved in such cases are guilty, then they are innocent in principle, and should therefore be released. If the Administration wishes to impose appropriate sentences on an "agent", the proper channel is to do a thorough job by gathering sufficient evidence and laying a charge against that person. It should not increase the penalty on "gamblers" just because it believes that a certain person is an "agent", an intermediary who is engaged in collecting bets, and there is no evidence to lay charges against the intermediary. If it were said that laws that impose penalties incommensurate with the offences were enacted for the purpose of allowing the authority to retain "flexibility" in enforcement, then I could not support it.

The second point that calls for our attention is that the Administration said it rarely targeted at individuals. Under most circumstances, it would only target at intermediaries (agents) who are involved in organizing illegal gambling activities, so if the penalty were reduced, it would not have deterrent effect on the intermediaries. I could not help wondering whether this means that the Administration is trying to adopt a provision, whereby proof can be more easily found to catch more people, so that it can enforce the law selectively?

Madam Chairman, I know that some Members are worried that if penalties were reduced, members of the community would be given the impression that the control over gambling has been relaxed. However, after weighting the pros and cons, we have to ask whether we should agree to adopting severe penalties or even implicitly agree that the Administration should apply the law selectively just



for the purpose of stopping acts that are basically not harmful to others? I hereby urge Members to think about this question.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I seldom rise to speak against Miss Cyd HO's motions. Today, I must however indicate on behalf of the Democratic Party that I cannot support Miss HO's amendment to delete the imprisonment penalty imposed on illegal gamblers.

Madam Chairman, there are three reasons for our stance. Firstly, we in the Democratic Party have been insisting that the policy on gambling should be tightened rather than relaxed. We think that when the measures and monitoring in respect of our betting policy on offshore bookmakers are being tightened through legislative amendments, it would be confusing to the public if the penalty imposed on participants in illegal gambling were at the same time reduced. The public may find it difficult to tell whether the Government is trying to tighten control over gambling or to relax the policy on gambling. The community may even get the wrong message and become confused by the gambling policy of the Government. Therefore, the first point we want to make is that the amendment is inconsistent with the legislative spirit of the current policy on gambling and is hence not to be supported.

Secondly, as regards imprisonment, it is a penalty that has existed for many years. The Ordinance has not undergone any substantial changes since it came into effect in the '70s, except the amendment currently proposed. In fact, in a vast majority of the cases, the Court will fine rather than imprison people convicted of illegal gambling. Only very rarely does the Court penalize offenders by imprisonment. Despite this, we think the imprisonment provisions have a deterrent effect and so we think they have to be retained.

Thirdly, we think operators of illegal gambling activities, as pointed out by the Secretary and Miss Cyd HO, will often place the betting money collected to other groups or persons (some may become so-called "agents") involved in illegal gambling as bets so as to spread the risks. Miss Cyd HO quoted the Copyright Ordinance a short while ago for comparison. Let me state the views of the Democratic Party on this subject. The Copyright Ordinance relates to the buying and selling of pirated goods, which is an activity that is distinctly different from gambling. In the buying and selling of pirated goods, it seems a

middleman like an "agent" does not exist. It is exactly owing to the existence of "agents" that we are convinced, to a certain degree, by the police and the Administration. The reason is that very often if the Administration fails to collect sufficient evidence to charge an "agent" for organizing illegal gambling activities, it may still charge him or her for taking part in betting in illegal gambling. We agree that the policy should be tightened rather than relaxed. We also agree that there are "agents" in the course of gambling. If Miss Cyd HO's amendment was passed, illegal gambling by "agents" would become more and more rampant. Thus we do not think penalties contained in the Bill can be weighed against those contained in the Copyright Ordinance for the purchase of pirated goods.

Madam Chairman, owing to the three reasons given, we in the Democratic Party cannot support Miss Cyd HO's amendment. Thank you, Madam Chairman.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam Chairman, on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB), I oppose the amendment proposed by Miss Cyd HO. We have four reasons. The first reason is that under the Gambling Ordinance, there have always been penalties for fines and imprisonment for the offence of "betting with a bookmaker". For many years, the community does not contest that. Nor have there been any strong calls for reduced penalties. Therefore, we fail to understand why Miss HO intends to amend this particular section in this amendment exercise of the Gambling Ordinance. Of course, Miss HO may say that if there is a defect in the law, why do we not rectify it? I wish, however, to stress that this is the personal view of Miss HO that has not gone thorough consultation or discussion in the community.

Secondly, a major aim of the amendment by the Administration this time is to tackle offshore bookmakers who utilize various channels of communication such as the telephone or the Internet to accept bets from Hong Kong residents. Thus, after the amendment has been passed, it will be an offence for Hong Kong residents to engage themselves in unauthorized local gambling activities or in betting with offshore bookmakers and the penalties are the same in both cases. Hence, Miss HO's amendment may be regarded as a deviation from this aim.

Thirdly, a question that arises is: Is imprisonment too heavy a penalty for illegal gambling? Some people say this is a matter of opinion. Well, we may compare with parallel cases. A while ago, Miss HO said gambling is a choice of act, hoping to dilute the offence. We may look at other ordinances. For example, in the Road Traffic (Safety Equipment) Regulations, which regulates the use of safety belts by drivers, Regulation 7 thereof stipulates that it will be an offence for drivers and passengers not to fasten themselves to seat belts and they will on conviction be liable to a fine of \$5,000 and imprisonment for three months. One may ask: Is it too heavy a penalty to punish people who fail to use seat beats with imprisonment terms? Thus, a parallel comparison would show that criminalizing illegal gambling is not too harsh a measure.

Fourthly, a basic principle for the amendment is to tighten rather than relax the policy on gambling. Relaxing the penalties would only give the community the impression that we are changing our views on illegal gambling. An even more serious consequence is that it will indirectly encourage illegal gambling. Relaxing the punishment will undoubtedly send a wrong message that when a gambler is convicted, all he or she has to do is to pay fines instead of serving any prison terms. Thus, the community will gradually make light of illegal gambling as an offence and, to all intents and purposes, gamblers will be encouraged to take part in illegal gambling.

The DAB will not support the relevant amendment due to the fact that Miss HO's amendment would send a negative message and would obviously run counter to the present policy on gambling which is strict.

Thank you, Madam Chairman.

**MR TOMMY CHEUNG** (in Cantonese): Madam Chairman, the views of the Liberal Party are very easy to explain. As far as making laws, especially those about commercial activities and licensing, are concerned, we often think we should make as few laws as possible, in particular laws that impose criminal sanctions on proprietors of small businesses and members of the business community. Nor do we think they should be imprisoned. So, the Liberal Party understands why the proposal was made in Miss Cyd HO's amendment to delete the imprisonment term from the maximum penalty and retain the criminality.

Since the enactment of the Gambling Ordinance 30 years ago, however, illegal gambling has been a criminal offence, carrying penalties that include imprisonment. The Liberal Party accepts the explanation given by the Government earlier and, as we do not wish to give the public the impression that we support relaxing the regulation on illegal gambling, the Liberal Party will oppose Miss HO's amendment.

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

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Home Affairs, do you wish to speak again?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I wish to make a point of clarification about the speech delivered by Miss Cyd HO just now. According to Miss HO, by allowing people to bet legally on the horse races organized by the Hong Kong Jockey Club (HKJC) and on the Mark Six Lottery, the Government actually aims to protect the HKJC's commercial and monopolistic interests in this form of gambling. I totally do not agree to such a view.

The HKJC is in fact nothing but an organization licensed by the Government to operate legal gambling. The existence of the HKJC as the sole legal gambling operator in Hong Kong owes itself entirely to the policy of the Hong Kong Special Administrative Region Government, and through this measure, the Government aims to realize the beliefs and principles underlying our gambling policy. Hong Kong differs from many other places and countries in terms of the attitude towards gambling. We do not think that gambling is anything like ordinary commercial and economic activities, activities that should be encouraged. Instead, we think that it is an activity that must be subject to strict regulation. For this reason, our long-standing policy has been to restrict gambling opportunities to a limited number of authorized channels only, and we do not support the idea of boosting gambling demand through business competition. In addition, the HKJC has been serving as Hong Kong's sole

agent of legal horse betting in a non-profit-making manner. The problem of "monopolization of commercial interests" is simply irrelevant here.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendment moved by the Secretary for Home Affairs has been passed, Miss Cyd HO may not move her amendment to clause 5, which is inconsistent with the decision already taken.

**CLERK** (in Cantonese): Clause 5 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.

<b>CLERK</b> (in Cantonese):	New clause 6A	Selling lottery tickets
	New clause 11A	Search of suspected gambling establishments
	New clause 11B	Section added
	New clause 13A	Obstruction of police officers.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move that new clauses 6A, 11A, 11B and 13A, as set out in the paper circularized to Members, be read the Second time.

New clauses 6A and 11A are technical amendments to make the meaning of the Chinese text of section 10 (selling lottery tickets) and section 23(2)(e)(ii) (search of suspected gambling establishments) of the Gambling Ordinance more consistent with the meaning in the English text. This amendment is similar to the proposals contained in the technical amendments to clause 3, just passed, of the amendment to section 5 of the Gambling Ordinance relating to the operation of unlawful gambling establishments.

New clause 11B proposes to add section 23A to the Gambling Ordinance to enable a police officer of or above the rank of superintendent to authorize any police officer to enter and search the premises or place if he reasonably suspects that illegal gambling is being carried out, promoted or facilitated thereat. The relevant police officer is also empowered to arrest and search persons in the premises and seize and detain any money or article in question. Under the new clause, the powers conferred on the police and conditions relating to the exercise of such powers are essentially the same as those contained in section 23 of the Gambling Ordinance relating to entering and searching premises suspected to be gambling establishments. We propose to add the provision to the Bill because we have created in the Bill an offence of promoting or facilitating illegal gambling. As clause 2, just passed, has excluded from the definition of "gambling establishments" those premises that suffer, promote or facilitate unlawful gambling, the existing Gambling Ordinance relating to the search of suspected illegal gambling under section 23 will not apply to the premises. Thus, we have to make another provision to empower the police to enter and search such premises.

New clause 13A adds the expression "Subject to section 23(4) or 23A(4), any" to section 27 of the existing Gambling Ordinance regarding obstruction of police officers in the exercise of the powers conferred upon them under the Ordinance because offences under section 23(4) or 23A(4), though relate also to obstruction of police officers in the discharge of their duties, are different in nature and the maximum penalty thereof is not the same as that under section 27. Therefore it is necessary to specify this in section 27.

With these remarks, Madam Chairman, I recommend the above new clauses to Members.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 6A, 11A, 11B and 13A 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 clauses 6A, 11A, 11B and 13A.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move that new clauses 6A, 11A, 11B and 13A be added to the Bill.

*Proposed additions*

**New clause 6A (see Annex VIII)**

**New clause 11A (see Annex VIII)**

**New clause 11B (see Annex VIII)**

**New clause 13A (see Annex VIII)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 6A, 11A, 11B and 13A 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.

**GAMBLING (AMENDMENT) BILL 2000**

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

Gambling (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 Gambling (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): Gambling (Amendment) Bill 2000.

**MEMBERS' MOTION**

**PRESIDENT** (in Cantonese): Members' motion. A motion with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debate. Since Members are already very familiar with the relevant time limits, I shall not repeat them here. I only wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

Motion: Review of civil service pay policy and system.

**REVIEW OF CIVIL SERVICE PAY POLICY AND SYSTEM**

**DR LO WING-LOK** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

It has never been the practice of private enterprises, regardless of their size, to have unchangeable rules on employees' pay and benefits. These pay and benefits can be increased or reduced as long as both employers and employees agree. If both parties fail to reach an agreement after bargaining, either party can take the last resort by terminating the employment relationship in accordance with law and the employment contracts. In the final analysis, pay levels in a free economy can be adjusted at any time in accordance with the market and actual circumstances. Unnecessary disputes seldom arise so long as the handling procedures are clear and specific.

Nevertheless, the factors need to be considered by the Government, as the biggest employer in the territory, and its worries are just too many and too complicated. As a result, civil service pay has failed to respond to the social situation and development. It also lacks flexibility to cope with changes in the economic cyclical and thus fails to respond quickly to the aspirations of the community. What the community is worried about is that the so-called "Review of Civil Service Pay Policy and System" will eventually turn into another "political struggle" and "end up without concrete result".

Faced with last year's huge deficit of more than \$60 billion, equivalent to 5.2% of Gross Domestic Product, and estimated deficits in the next few years,

the Government must take prompt action to curb public expenditure growth, particularly civil service pay, which accounts for more than 60% of public expenditure, and staff-related expenses such as pension. The interim report of the first-phase review by the Task Force on Review of Civil Service Pay Policy and System released last month, can be seen as the starting point of the upcoming pay reform and the basis for finalizing the relevant details.

The Task Force has studied and analysed the latest developments in civil service pay in five selected countries, namely Australia, Canada, New Zealand, Singapore and the United Kingdom. Five key areas were studied to examine whether they are applicable to Hong Kong. They include:

- (a) the pay policies, pay systems and pay structures commonly adopted;
- (b) the experience of replacing fixed pay scales with pay ranges;
- (c) the pay adjustment system and mechanism;
- (d) the experience of introducing performance-based rewards to better motivate staff; and
- (e) the experience on simplification and decentralization of pay administration.

One of the nails hit right on the head in the interim report is that the civil service system of Hong Kong is, similar to Australia, Canada, New Zealand and Singapore, modelled on the British system. However, these countries, including the United Kingdom, have one after another reformed their civil service pay systems including that of public bodies. And yet Hong Kong is still using the system introduced several decades ago.

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

Of course, Hong Kong is unique. Its slow progress in reforming civil service pay can be attributed to its history and unique position. To start with, the reunification in 1997 is one of the major events. Civil service stability is of

paramount importance to a smooth transition. For this reason, the civil service pay review was slowed down naturally. Second, Hong Kong started to enjoy economic prosperity since the beginning of '70s. There was a dramatic increase in our reserves as a result of the decade-long bonanza experienced by Hong Kong in the '80s and '90s. Financial abundance enabled the Government to offer handsome pay and remuneration to civil servants very easily. There was simply no urgent need for financial officials and the community at large to address the thorny issue of reviewing the civil service pay system. The situation has now fundamentally changed in the sense that the Government is suffering from a structural deficit. As a result, it may no longer be possible for the Government to meet the huge remuneration expenditure. The Government must therefore not delay the review and reform any more.

With reference to the civil service pay reforms carried out by the five countries, we note that two common features warrant our attention:

- (1) the Government's affordability as the major consideration; and
- (2) to link pay with performance.

These two points are indeed sensible, and can be considered as key principles for future reform.

Actually, the reforms carried out by these five countries to their civil service pay systems were initially and directly attributed to their financial pressure.

I believe all countries, and even private companies or organizations, must determine their employees' pay and remuneration levels on the basis of their own financial affordability. Under the current financial situation, can the Government maintain a civil service pay system that is beyond its affordability?

It is also pointed out in the report that the five countries have already or have started progressively to link pay with performance. All of them, with the exception of Singapore, have fully or partially replaced the automatic yearly incremental system with a flexible pay range system. Actually, pay should be seen as a form of reward and recognition of staff performance. Pay systems "not linking with performance" have become obsolete a long time ago. We

have always condemned and ridiculed the system whereby individuals are rewarded equally regardless of their performances. It is obvious that our civil pay system has failed to keep pace with the times and fully mobilize the initiative and proactiveness of government employees under the principle of "deciding on awards on the basis of merit". I believe it is hard to reverse the reform direction of linking pay with performance because it is fairer, more reasonable and flexible, and more in keeping with the realistic need.

We must understand that the civil service pay review is very important to Hong Kong. It has a direct bearing not only on the internal affairs and interest of the Civil Service, but also on the utilization of public resources and the stable and long-term development of society. The Special Administrative Region Government is indeed facing a thorny problem and a tall challenge in balancing the aspiration of civil servants against the overall interest of the community and coming up with a proposal that is in line with the long-term development of society and capable of withstanding the test of time.

I believe many people in Hong Kong will agree that a sound civil service system is a key cornerstone for maintaining the stability and prosperity of Hong Kong. The Civil Service is still one of our most valuable assets. The entire community will definitely incur great losses should this asset be injured. Unfortunately, sentiments were often involved when views were exchanged on the relevant review. As a result, some civil servants have found themselves in opposition to the public.

I hope the department responsible for implementing the review and reform and public opinions can refrain from holding the attitude that circumstances have changed with the passage of time. Before the reunification, civil servants in Hong Kong were honoured as the top civil service team in the world for their excellent performance. Under severe social pressure, the same group of people is now suffering from abject humiliation. They are being twisted and branded as the most useless redundant staff. This is not conducive to reform. At the same time, I would like to urge government officials not to "adopt the delaying tactic" by using excessive official rhetoric and jargons or making such remarks as "to act with caution and in a progressive manner", "to seriously consider views from all sides", and so on, in order to further delay the civil service pay policy and system reform.

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

**Dr LO Wing-lok moved the following motion: (Translation)**

"That this Council notes the interim report of the first-phase review by the Task Force on Review of Civil Service Pay Policy and System."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr LO Wing-lok be passed.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Deputy, the review of the civil service pay policy and system involves major changes and I think it is imperative that the Government seriously considers two key issues: what the best time for a review is and whether or not civil servants have any chance to hold talks with the Government on an equal basis.

Madam Deputy, at a time when civil servants are threatened by pay cut and when the accountability system is about to impact on the Civil Service, the launching of a review of civil service pay policy and system by the Government is in my opinion an extremely untimely move. The review will not only add to the anxiety and unrest among civil servants, it may also affect the administration of the territory. At the beginning of this year when Mr TUNG Chee-hwa ran for his second term, he admitted on a public occasion that when reforms were launched over the past few years, the timing and priorities had not been set properly. However, at the present moment, the same problem of a lack of co-ordination can still be seen and reforms are being carried out on many fronts at the same time. It seems that Mr TUNG and the top officials have not learnt a lesson from the past experience.

Although the review of civil service pay policy and system is being carried out in phases, the way it is being done seems to be rather odd to me. Why did the review of the civil service pay system which affects the existing 180 000 civil servants not start by consulting the civil service groups and the civil servants who are most affected? Rather, it started by examining the experience of five overseas countries and releasing the findings for public consultation, with the preliminary round of consultation being as short as only one month. I think a better option would have been to have the task force to discuss the matter with the civil service groups first and then to consult the entire Civil Service.

When considerations are made on this review of civil service pay policy and system, I think there are two major principles to which the Government must address.

First, the civil service system must stay stable.

Irrespective of the political system before the 1997 transition and that of the period since the founding of the Special Administrative Region (SAR), the Civil Service is the major force behind the administration of the territory. It is also a major force which stabilizes the political and social fronts of Hong Kong. Most people of Hong Kong did not want to see a traumatic and revolutionary change in 1997, all they wanted was a smooth transition. A stable civil service is stressed both in the Sino-British Joint Declaration and the Basic Law. And in the latter which is the "mini constitution" of Hong Kong, it is stipulated expressly that the pay and benefits of civil servants should be no less favourable than before and are to be maintained. So please do not remove the bridge after crossing the river.

The political system of Hong Kong is unique when compared to other countries or places. When we draw reference from the civil service pay systems in the five countries mentioned in the report, we must bear in mind that the governments of Britain, Canada, Australia, New Zealand and even Singapore are all returned by democratic elections. The stability in society and the credibility and acceptance of the governance of these governments all depend on their democratic election system. Moreover, most of the civil servants in these countries are protected by the right to collective bargaining. On the contrary, there is no system of collective bargaining in Hong Kong and the existing political system is lacking in the element of democratic election. But the civil servants here enjoy a relatively higher degree of support and confidence of the people and so it can be said that the Civil Service plays an indispensable and pivotal role in government administration and in stabilizing society. For this reason, the maintenance of a stable and clean Civil Service with high morale is so vital to Hong Kong. Therefore, I would think whether overseas experience in civil service reform can be applied to Hong Kong is still open to question.

Another major consideration which should be made in the review is that before any reform proposal which may affect the rights and interests of civil servants is to be put into practice, discussions must be made with the civil service groups and the support of civil servants must be secured.

Many Honourable colleagues from the business sector are well aware of the importance of recognizing the contractual spirit and respecting it. The civil service pay policy which is being discussed today involves the contract between civil servants and the Government and that is not an ordinary contract as such, but a social contract forged with the consensus of the entire community and it is vital to maintaining the stability of the Civil Service.

The two issues being discussed are: First, can the civil service pay system be changed? Second, can there be a pay cut for civil servants?

On the first question, I agree that there can be changes to the civil service pay system, but the prerequisite must be that there must be a guarantee that discussions are made with civil service groups on an equal footing. As to the question of whether or not the pay of civil servants can be cut, I think from the point of view of contract practices, the Government should not cut the pay unilaterally, for there is no precedent for this. Even the example cited by the Government, that is, what happened in 1936, was only a one-off levy of part of the salary of civil servants in the form of tax. It was not a pay cut. So from the perspective of contract practices, the Government is not justified in effecting a pay cut unilaterally. It remains of course that civil servants can be asked to accept a pay cut voluntarily to tide over the hard times with the public. But a resort to legislation to compel civil servants to accept a pay cut is absolutely unreasonable. The Government should discuss the matter with civil service groups in a frank and open manner, for if not, it will be very damaging to staff morale and it will only serve to ruin the spirit of contract.

Madam Deputy, I believe that civil service trade unions are willing to discuss the review of civil service pay policy and system with the Administration. The unions are willing to discuss the issue of pay adjustments and to tide over the difficulties with the people. But I must stress that the prerequisite for this is there must be discussions on an equal footing and due respect should be paid to all the parties involved.

Madam Deputy, I so submit.

**MR NG LEUNG-SING** (in Cantonese): Madam Deputy, the review of civil service pay policy and system is still underway. That the civil service pay cut has recently become a focus of public concern further underlines that the existing



civil service pay system, not governed by specific legal provisions, has become stiff and outdated. Moreover, it can easily trigger off various institutional conflicts and controversies. As a result, civil service pay is unable to tide in with the socio-economic and public finance changes and needs. The public is dissatisfied with the growing disparity between the public sector and private sector in terms of pay and benefits brought about by historical changes. At the same time, there are growing grievances among civil servants because of the Government's failure to answer their aspirations under the present system. Being trapped in a dilemma, the Government is blamed for whatever it does. In such a difficult situation, such attempts to rationalize government income and expenditure as widening the tax base, exercising reasonable control over social service expenditure, and so on, will naturally encounter difficulty in securing unanimous support from the community. What is more, the Government's power of administration will be challenged. If this situation is allowed to continue, the community will no longer be able to bear. As the saying goes, as for change, when one process of it reaches its limit, a change from one state to another occurs. As such, change achieves free flow, and with this free flow, it lasts forever.\* The SAR Government must demonstrate its determination and resolve to introduce changes in administration by making more substantial reform to the civil service pay policy and system. Otherwise, it will not be able to extricate itself from the difficult situation and genuinely take the first step towards healthy public finance.

One of the components of the review of civil service pay policy and system is to review the existing incremental pay scale system. The interim report of the Task Force on Review of Civil Service Pay Policy and System indicates that throughout the long development period of the civil service pay policy and system, the pay scale system has never been reviewed and reformed. Though it might not be too appropriate to describe this system, which has been in existence for decades, as rustic for we cannot rule out the possibility that certain private organizations are still using it, most wage earners working in private organizations definitely find this incomprehensible and inconceivable. The Government is of the view that increments should link to performance, and increment should be awarded only to those with satisfactory performance. However, according to the information provided by the Government, only 57 out of 180 000 civil servants were ranked as having performed poorly and had their increments suspended last year. It can actually be said that save in extreme and

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\* *A New Translation of the I Ching* by Richard John Lynn, Columbia University Press, New York, 1994

individual cases, civil servants see annual increments as entitlement unless they have reached the maximum point of their pay scale. This entitlement is based on seniority, not on appraisal that can really motivate performance. Public finance or the overall socio-economic situation will have no bearing on it. The existence of the pay scale system has also made the entire civil service pay system more complicated and difficult for the public to understand. It may even mislead the expression of public opinions and monitoring by the public. For instance, civil service pay adjustment should in general base on the findings of the pay trend survey, after deducting the increment factor. Faced with the current economic downturn and the need to freeze pay because of financial difficulties, the increment is nevertheless still implicitly retained. In other words, civil servants will still receive a pay rise if they have not reached their maximum point. In the midst of recent disputes over pay cut, some civil service bodies made a counter-proposal of freezing the salary to the Government. I am afraid the so-called "salary freeze" still embodies the increment element. Eventually, civil servants will still get a pay rise.

The direction of review of the civil service pay system should include, among other things, strengthening the performance-based reward system, and simplifying and decentralizing pay administration. Starting from this direction, the Government obviously lacks justification to retain the former seniority-based system. Specifying a pay range for individual ranks is obviously more desirable for the Government can thus adjust salary according to performance. Moreover, this can better enable the Government to make general adjustment to civil service pay in the light of the economy and its financial position in a more flexible manner. Reforming the pay scale system is, relatively speaking, simple and direct since not much of the pay policy and system will be involved. I think it is better for us to put our proposals into implementation than to continue with our discussion here. I also hope the Government can, in the context of the Basic Law, expeditiously come up with a concrete proposal and accord priority to reforming the pay scale system.

With these remarks, I support the motion.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam Deputy, the civil service reform after the reunification may be summed up in the following: fires on all fronts, controversies incessant, damage at all places and grievances from all sides.

Insofar as the Civil Service is concerned, an important feature is stability. This is the foundation established by the Basic Law for the policy on the Civil Service. So, the civil service reform must proceed on the basis of stability and with the times. The civil service reform since the reunification has however taken a route that deviates from the spirit enshrined in the Basic Law. The route is too fast and, though it cannot be said it is heading for self-destruction, it has nevertheless hurt the Civil Service. That is a blunder for the governance of Mr TUNG Chee-hwa in his five years of administration.

Today, as the Government proceeds to review civil service pay and conditions of service, it must bear in mind the lessons learned from past failures in the civil service reform and avoid repeating its mistakes. We can still recall that when Mr TUNG Chee-hwa raised the issue of civil service reform in his policy address, civil servants adopted a wait-and-see attitude. The sentiments of civil service bodies began to stir when Mr Donald TSANG put forward proposals for privatization and corporatization in his Budget, which, if implemented, would jeopardize the rice bowls of civil servants. Civil servants took to the streets and a two-year long struggle thus ensued. The bickering left a wound that has not healed up to this day and the mutual trust between the Government and the civil servants has disappeared. As a result, both sides have suffered greatly.

What lessons can the Government learn from the resistance put up by civil servants? First, the civil service reforms must not lead to a loss of jobs for civil servants and must not break the backbone of the system. Civil servants are just human. It is reasonable to require that they be loyal and serve the people well. It is absolutely legitimate to punish according to the appropriate regulations those among them who are found to be bad apples in the bunch. To make them lose their jobs that have been their livelihood for decades can never be reasonable. When their livelihood is at risk, it is only natural that they put up a fight, unless they are incapable of doing so or they do not have to support their families.

Civil servants do not necessarily resist reforms, as long as they are reasonable, subject to negotiations, proceed with the suitable priority and keep to the conventional orderly progress. This was why civil servants adopted a wait-and-see attitude at the start of the reform. But the Government should not bad-mouth the entire service with public opinion by citing a few bad apples as examples. The SAR Government since the reunification attracted severe

criticism when it applied the strategy of "help one group and hurt another". It has resorted to all means possible in order to achieve its ends, thus injuring many people in the process. Consequently, without knowing why, civil servants, teachers, social workers, doctors, recipients of Comprehensive Social Security Assistance and new immigrants to Hong Kong all became victims at different stages. Their wounds have not healed to date. The Government hurt the people and then proceeded with the reforms. In the end, it also hurt the people's trust in it. It is a main reason why the Government has lost the support of the people. If the Chief Executive is returned by universal suffrage, I am afraid Mr TUNG Chee-hwa may have stepped down. Hence, the second lesson is that reforms have to be justified but not high-handed or destructive; otherwise, both sides will suffer at the end of the day.

Since the reunification, I have witnessed two major reforms: the education reform and the civil service reform. For me, both have been profound and painful experiences. When the education reform was launched, slogans and major directions were chanted. Everybody was talking about dreams and the reform proceeded amidst applause and hopes. When the reform was pushed forward into full swing, however, it became too varied, capricious and out of proportion. People could experience not the advantage of reform but confusion and dissatisfaction. Then, came the civil service reform which took a turn similar to the education reform. Fifteen major issues, ranging from enhanced productivity programme, pay and allowance cuts, corporatization and contracting out, retrenchment, principal officials accountability system, merging of departments and bureaux and finally the review of civil service pay policy and system before us today. As the backbone of the Civil Service is affected, the five years in the second term of Mr TUNG Chee-hwa's office will see internal unrest or even the lack of energy to accomplish the blueprint he has designed for his administration. Madam Deputy, I do not oppose reforms, but reforms must be prioritized and focused. They cannot be expected to be achieved instantaneous success. The level of tolerance of the Civil Service must be considered. Thus, the third lesson regarding the civil service reform that I wish to mention is: Do not repeat the mistakes made in the education reform.

At the moment, Hong Kong is experiencing an economic downturn. Employment should be at the top of the list of priorities. So, the SAR Government should focus its energy on employment to achieve the best results with minimal efforts. Going in for grandiose projects and wishing to be

crowned with eternal glory in history will only result in a disaster. The "purple sand tea pot theory" of Mr LI Ruihuan, Chairman of the Chinese People's Political Consultative Conference can be applied to the Civil Service. I suggest Mr TUNG make himself some tea from a purple sand tea pot and carefully taste the wisdom of history. That should benefit him and Hong Kong.

Madam Deputy, Mr Albert HO will explain in detail the views of the Democratic Party on whether a civil service pay cut should be established by way of legislation and on how legislation should proceed. In summary, the Democratic Party considers it necessary for the pay cut to be made according to the pay trend survey mechanism. The Democratic Party also maintains that if legislation is made to recognize the broad principles of the pay review mechanism, we will support it. We will, however, refuse to support legislation that deals with the specific rate for the pay cut this year or even with some technicalities in administration, because we do not think the law should be used as an ad hoc tool of administration for the short term or even for a year and then discarded. On behalf of the Democratic Party, Mr Albert HO will speak in detail on the issue of legislation for civil service pay cut in the context of legal interpretation.

Madam Deputy, I so submit.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, the Civil Service in Hong Kong has been making great contribution to the prosperity and stability of Hong Kong over the years. The existing civil service pay policy and system, as described in the interim report of the first-phase review by the Task Force on Review of Civil Service Pay Policy and System, are to "offer sufficient remuneration to attract, retain and motivate staff of a suitable calibre to provide the public with an efficient and effective service". In view of the fact that the existing pay policy and system have been effective, the authorities concerned should conduct extensive consultation before launching any reforms in pay policy, system and structure. The views of the civil servants must be heard in particular and reforms should be carried out in a gradual and orderly manner, they should never be too drastic.

Take one of the proposals found in the interim report to replace fixed pay scales with pay ranges as an example, the report points out that the five countries studied have all introduced a flexible pay range system with different extents of

application. Some of these are applicable to most of the civil servants, some are only applicable to senior officials while other officials are using the fixed pay scales. Since Hong Kong does not have experience of this kind, even if the pay range system is to be introduced later, it is advisable that the system should only be applied to senior civil servants, such as those in the directorate grade. Then a review should be made to see if the system can be introduced to other grades.

As for the pay adjustment system and the related mechanism for it, the five countries covered in the study do not have a similar direction of development, and their situations are different from ours and so their experience may not be applicable to Hong Kong. I think the Government should continue to adhere to the principle that the pay of civil servants should be broadly comparable with the private sector so that persons of a suitable calibre can be attracted and retained. Moreover, we do not have experience in streamlining and decentralizing pay administration. As Hong Kong is a small place, differences in salary may lead to some departments encountering difficulties in recruiting and retaining persons of a suitable calibre and may increase staff mobility. These will result in a wastage of resources in the Government on staff recruitment and training.

On the question of introducing performance-based rewards, the concept does merit exploration. However, we must be careful with the implementation of such a system, for if not, a culture of flattery may develop in the Civil Service and that will undermine the moral integrity of the civil service and hence defeating the purpose of such a proposal.

The issue of affordability in the government has become a more important factor of consideration in the five countries mentioned and studied in the interim report. As a result, comparability with the salaries in the private sector has ceased to be a factor of great importance. Similar to the assumption made by the Financial Secretary earlier in the Budget to slash civil service pay by 4.75%, the impression we have of the interim report is that the focus is on the financial affordability of the Government.

It is because of this reason that civil servants are worried that they will become the scapegoats of government efforts in reducing its deficit. As a matter of fact, the Government has been dropping hints recently that there is a possibility of a civil service pay cut. The Government should not merely adhere to the findings of the pay trend survey and propose to adjust the pay of

civil servants. For there are past examples in which the Government did not raise the salaries of civil servants according to the extent of pay increases as obtained in the findings of the pay trend survey. Figures show that in the year 1989 to 1990, the amount of shortfall between the results of the pay trend survey and the actual pay increase for middle-level and senior civil servants accumulated to 1.61% and 2.91% respectively. When pay adjustment is to be decided, the Government should consider not only the accumulated shortfall in pay increase, but also factors like the increase in efficiency and workload of civil servants as a result of the Enhanced Productivity Programme that has led to savings for the Government, and that civil servants are subject to immense pressure at work as well.

In addition, a pay cut will deal a further blow to the morale of civil servants, hence affecting the quality of public service delivered. A reduction in the salaries of civil servants will also affect overall consumption in Hong Kong and this will be very damaging to the economy.

Madam Deputy, I hope to make use of this opportunity to urge the Government not to effect a civil service pay cut by resorting to legislation. For not only will it set a bad example, but it will undermine the cordial relationship between the Hong Kong Government and the civil servants. Moreover, the possibility of litigation in this connection may not be necessarily avoided. Many people have made the comment that legislating for a pay cut does not comply with the provisions of Articles 103 and 106 of the Basic Law. The Government must therefore think twice about this.

I so submit.

**MR IP KWOK-HIM** (in Cantonese): Madam Deputy, the interim report of the first-phase review by the Task Force on Review of Civil Service Pay Policy and System released last month has aroused widespread concern and discussions in society. I would like to present the views of the DAB on the following four issues.

First of all, on the issue of whether there should be a complete overhaul of the Civil Service in replacing the existing automatic pay increase system with the bonus system. The issue has aroused much public concern. The civil service

pay system as adopted by the SAR Government is not lacking in flexibility as alleged, nor is it in theory a so-called automatic pay increase system. Staff in the departments have to be assessed by their superiors each year and that in fact has encompassed the factor of performance-based rewards. Some civil servants with excellent performance may have more than one incremental jumps a year and that is not rare or exceptional. As for those who have poor performance or have breached the discipline, they should be subject to a pay freeze under the civil service pay system. This is rarely done because a lot of time and administrative work are involved, adding to this the fact that the appeal mechanism will also make the procedure time-consuming and it is likely that a number of years are required before the procedure can complete, so in order to avoid inviting trouble, the senior staff are inclined not to write the appraisal reports of their subordinates too badly and so the so-called automatic pay increase comes into being.

In view of the above, the DAB suggests that the authorities should strive to implement the staff appraisal system in earnest, streamline and improve the existing appeal procedure and minimize the unnecessary administrative work involved. The Government should also formulate a more concrete staff appraisal reference system and performance indicators and in such a process, conduct adequate consultation with the staff side.

The DAB agrees with the principle that good performance should be rewarded. We are glad to see some departments have adopted a team performance system. Although the reward is not given in the form of a cash bonus, the incentive also serves to boost staff morale and stabilize the organization. The DAB thinks that the team reward system should be extended, but we oppose the proposal of giving bonus as a form of reward.

Second, the question of the suitability of linking civil service pay to that in the private sector. The existing civil service system and policy in Hong Kong are basically handed down from the British colonial government, with quite a number of changes made over the years. In my opinion, the present pay adjustment system in Hong Kong can be considered quite satisfactory, for it makes reference to factors like the pay trend survey, the prevailing price index at that time, the affordability of the Government, civil service morale, the state of the local economy and the staff side pay claims and so on.



But why is the system still being criticized so severely? The reason is that some of the factors are not comprehensive enough and there is much room for improvement, in particular the factor of the pay trend survey report which takes into account the situation in the private sector. It is suggested that some small and medium enterprises which are representative enough should be included in the survey. In determining the actual pay trend of these companies, the actual operation of the companies should also be taken into account, especially events like layoff, the increase or reduction in the total expenditure on staff remuneration, and so on. In order that transparency be increased, the Government should make public all quantifiable factors and the weight of each of these factors.

The interim report also raises the question of whether government resources should be made an important factor which is decisive to the pay of civil servants. The example of the United Kingdom is cited in the report. The system of departmental head is practised in the United Kingdom. The head can draw up a pay system for his staff. To prevent departmental heads from getting out of control, the means of imposing restrictions on funding is used. In the end, this system has caused a linking of government resources to civil service pay. In the view of the DAB, the affordability of the government does have a link relationship with civil service pay. When a government is faced with huge deficits or when public coffers are empty, there is no justification at all to raise the salaries of civil servants. So in our opinion, the affordability of the Government should be a major factor of consideration in pay adjustment.

Lastly, on the issue of whether or not existing benefits should be abolished or should they be given in the form of cash, the DAB is of the view that many of the numerous benefits enjoyed by civil servants now can be traced back to some past tradition and so these cannot be changed in a matter of days. If drastic changes are made, anxiety may be caused among the civil servants to the disbenefit of stability of the Civil Service. Nowadays, many of the benefits have become outdated and no longer applicable, so they should be abolished as soon as possible. Although a review has been made of the various work-related allowances and that various departments have put the recommendations into practice, those allowances which are not directly related to work, such as those for air-conditioners, furniture and utensils, and so on, were not included in the review. It is hoped that work should begin in this aspect as soon as possible.

As to the question of whether existing benefits like housing allowance should be paid out in cash, the DAB is of the view that if any change is made,

that may cause the enjoyment of double benefits by certain civil servant households, hence causing a grave financial burden on the Government. Moreover, changes in pay and benefits will cause corresponding changes in subvented organizations and it would be better if no changes are made.

The interim report outlines the experience of civil service reform in five countries. Despite the fact that each of these countries has its own perspectives and system, there is one commonality among them, and that is, reforms must meet the needs of the people. So any proposal to reform our Civil Service should be drawn up with reference to our own realistic conditions.

Madam Deputy, I so submit.

**MR ABRAHAM SHEK:** Madam Deputy, the Government has released its interim report on the first phase of the review of civil service pay policy and system. This report has highlighted the need for change in the civil service pay policy and system in Hong Kong after taking into account existing civil service pay policies in five other countries (the United Kingdom, Canada, Singapore, New Zealand and Australia). It has not, however, made any concrete proposals to reform the existing civil service pay policy and system. Instead, it awaits the public's feedback on the subject.

Introducing reform in the civil service pay policy and system is always a sensitive issue. The Government and the civil servants have had debates over the subject for the past few decades. The current interim review was conducted during the post-Asian financial turmoil period, in the midst of economic restructuring and downward movement of pay adjustment in the private sector, and under the clouds of huge budget deficit. Although the Government is determined to reform the existing civil service pay policy and system, the report lacks substance and does not contain any proposals.

Madam Deputy, Hong Kong is facing a structural type of fiscal deficit. Without successful economic restructuring, any slight economic growth will not guarantee the long-term financial stability of the Government. Introduction of new taxes and tax increases are no solutions as they will constrain economic recovery. Reducing public expenditure, on the other hand, will affect the provision of government services and hence people's livelihood. At present, civil service pay takes up about 70% of government expenditure. There is,

therefore, an urgent need to reduce civil service expenditure, streamline civil service pay structure and enhance civil service productivity. In March this year, the Financial Secretary made an assumption that a civil service pay adjustment, on the basis of a 4.75% cut, would save the Government about \$6 billion every year. The Financial Secretary clearly pointed out that this would be one of the principal measures that the Government needs to take to restore fiscal balance in the next few years.

Nobody wants to have a pay reduction and it is difficult to make civil servants accept a pay reduction, even though the Government has stressed that the result of this year's private sector pay trend survey was the reason for the civil service pay adjustment. However, the result of the survey showed a much smaller adjustment than the Financial Secretary has envisaged. The Government's plan to restore fiscal balance in the next five years will, therefore, be delayed, and we will be seeing heavier and heavier budget deficits. The civil service unions have strongly rejected this modest pay reduction and now vowed to take the Government to court. I urge them to think carefully before they take any drastic measures, and they should place the interests of the people of Hong Kong before those of their unions'.

Civil service pay adjustments are decided by the result of the private sector pay trend survey. This mechanism has been adopted by the Government since 1968. However, the result of this year's private sector pay trend survey has revealed a number of problems, since adjustments could mean increases as well as decreases in salaries, and the civil servants are reluctant to accept a reduction in salaries. Some people have also opined that the smaller decrease than the Financial Secretary envisaged does not show the real pay trend situation in the private sector. Factors such as layoffs and closures of companies have not been taken into consideration in the survey. The survey has also not taken into consideration the private sector's cost-saving measures like manpower reduction and so on. With these factors, I think that the present civil service pay policy and system is outdated and should be improved.

Since the Asian financial turmoil in 1997, there has been a downward trend in salary adjustments in the private sector. However, there has never been a downward adjustment of civil service pay. In fact, civil servants have enjoyed annual pay increments under the provisions of the existing pay mechanism.

The Government has recognized the increasingly widening salary gap between the Civil Service and the private sector over the last few years. As a result, the Government introduced a downward adjustment of pay for recruits in April 2000.

The entry pay for the majority of the civilian grades was lowered at a rate ranging between 6% and 31% while that for the disciplined services was lowered at a rate between 3% and 17%.

The adjustment exercise was limited to recruits only. All serving civil servants continued to enjoy their original benefits and conditions. The Government is reluctant to cut the salaries of serving staff as the Basic Law states that their employment terms should be "no less favourable than before".

Madam Deputy, the current pay trend survey has been in place for three decades. Is the same survey capable of meeting the rapid changes resulting from economic restructuring in the past few years?

The answer to this question is obviously "No". The existing pay mechanism runs counter to economic developments. It will erode the incentives for self-improvements and productivity of civil servants, thereby gradually weakening the quality of public service. In the long run, it will adversely affect the efficiency of the Government and Hong Kong's competitiveness in the global economy.

The central question is: What way and direction should changes be conducted?

In my view, the key is to strike a balance between reform and stability. On the one hand, the Government should strive to uphold the morale and stability of the Civil Service. On the other hand, the Government should introduce a performance-based merit system to provide incentives for better performance. Those who could not adapt to changes should be allowed to leave the Civil Service. A new culture should be established to ensure more effective and efficient use of public resources.

Madam Deputy, in managing its finances, a government should abide by the principle of "living within its means". Civil service pay reform is essential and should be imminent, as the existing mechanism has really strained the public purse. With these remarks, I support the motion.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, with regard to the contents of the interim report of the review by the Task Force on Review of Civil Service Pay Policy and System, there are two areas which in my opinion warrant our attention. At the outset, the interim report states five specific areas related to civil service pay.

These five specific areas are related not only to civil service pay, but also very much related to the civil service structure. For example, the interim report stresses repeatedly that pay reform should be coupled by streamlining of the Civil Service. The report cites the fact that the number of core posts in Canadian the civil service has been reduced by 40% over the past 10 years or so. In the United Kingdom, there is an annual reduction of the size of the civil service by about 4%. Apparently, the citing of these examples is intended to show that discussion is confined not only to the issue of civil service pay, but also reform of the civil service system and its size. If the report does not discuss the issue of civil service pay alone, I hope the Government can tell the civil servants and the public in a frank and open manner its purposes. Does the report aim at a reform of the civil service system or is it a review of the pay system? If no explanation is offered, then I would think that it is not reasonable and fair to both the civil servants and members of the public.

On the other hand, the report also stresses the need to gain the consent and commitment to change from key stakeholders. I am very much in agreement to this idea and I hope that the Government will really take steps to see that this is done. But will the Government really do such a thing? What has happened today has told us whether the Government will do so — today the Executive Council has decided to legislate for the pay cut of civil servants. This shows that there is a total breakdown of communication and consultation between civil servants and the Government. The Government intends to resort to such a forceful action as legislating to compel civil servants to accept the proposal of a pay cut. Has this move gained the consent of these key stakeholders? Today's decision to cut civil service pay has set a bad example, for it would be very hard for us to believe that the results of the pay review and their implementation later would be able to gain the support of the parties concerned. I have no confidence in this at all. I very much hope that the Government will not be bent on having its own way and turn a deaf ear to the views of the parties concerned.

Madam Deputy, I must stress that I am not resistant to changes. In fact, over the past years, we have been advocating for more reforms in society. But the key lies in the results and impact of the reforms and whether or not the reforms will discard in totality the existing sound and proven system.

The interim report cites five examples and the major reforms proposed include a pay system composed of basic salary plus a bonus; the integration of allowances into the salary; abolishing the centralized pay adjustment system; devolution of the power of pay adjustment; linking to the state of public finance; and the introduction of a performance-based reward system. If these proposals are really put into practice as recommended in the report, then I would be very worried, for these reforms will serve to take away and undermine those factors like cleanliness, stability and loyalty which have been the cornerstones of the success of the Civil Service over the years.

There is no denying that the pay and conditions of service of civil servants are somewhat better than those offered in the private sector, the reason for this being the aim of offering competitive pay and conditions of service to ensure that the Civil Service is clean. If the bonus system is introduced, the income of civil servants may become unsteady, or it may be greatly slashed. Then it may not be able to achieve the objective of ensuring a clean Civil Service. Some people may query that the offering of competitive salary to ensure a clean Civil Service is only a myth, for there has been a great surge in the number of corruption cases involving civil servants over the past few years. However, we should also realize that this rise in corruption cases is probably associated with the deterioration of the economy. We cannot therefore say that this policy has failed. Even if this policy proves to be a failure and if it is replaced, I am worried that the situation after reform may be even worse than the present.

Moreover, the stability of the Civil Service is very important. If civil servants do not have a stable income, then a steady source of consumption from this sector in society will be gone and that is detrimental to social development. Also, if civil service pay is unstable and it has to be brought on par with that in the private sector, it would lead to worries that the wastage rate of civil servants will rise and hence cause instability to the Civil Service as a whole. In the end, the effectiveness of policy enforcement will be undermined.

The loyalty factor used to be so much stressed in the Civil Service may be carried away by the tide of reform. As the performance-based reward system may be introduced, and the power for making pay adjustments may be devolved, and so a culture of flattery or favouritism may develop between staff and their seniors. The tradition of offering views in good faith may be gone forever.

Madam Deputy, I must reiterate that the system can and should be changed, but that must be done properly and at the right time. One cannot launch a massive and sweeping reform all of a sudden and at a time which is simply not right. I am worried that the reform this time is not really a reform, but a revolution. It would not matter so much if it is a revolution, for after all, if it is really a revolution, then it should be one which is total and all-embracing. It should include a revolution of our democratic system. For if it only touches on the civil servants, then it is meaningless. If our social system can have a complete overhaul and when it is coupled by a civil service reform, then the efforts made would not be piecemeal and fragmented.

Today we are discussing the interim report of the review by the Task Force on Review of Civil Service Pay Policy and System, I hope the Government can tell us what are the real motives of this review. Is a full-scale reform of the Civil Service intended, or is it only directed against civil service pay?

Madam Deputy, I so submit.

**MISS LI FUNG-YING** (in Cantonese): Madam Deputy, the Task Force on Review of Civil Service Pay Policy and System published the interim report of the first-phase review last month for public consultation. Whether in the report or when attending meetings of the relevant panel of the Legislative Council, members of the Task Force have emphasized that the Task Force has no predetermined position. However, I do not think so after reading the interim report.

I have no intention to question the independence of the Task Force. But when I tried to respond to the questions raised in the report, I found that I was reading a stupid detective story. The author had pre-set the details of a case, and through asking different questions, attempted to guide readers to arrive at the

same conclusion as his. The 28 questions in the interim report are hints dropped by the Task Force to the public, prompting the latter to make inferences and finally fall in with the implicit position of the interim report.

These 28 questions can broadly be divided into two categories. The first is about the need for changes to the civil service pay system. The answer can be found in paragraph 1.2 of Chapter 1 of the interim report, which reads "..... it was proposed that the existing pay policy/system be reviewed, as a two-phase study, with a view to modernizing it ....." . Moreover, paragraph 3.11 of Chapter 3 of the report stated that "This need for change is borne out by recent public discussions over the cost of the Civil Service."

No one would dispute the need for the civil service pay system to keep abreast of the times. The question is when this review should be conducted, and how the Government will reach a consensus with civil service organizations and civil servants. The Government should not bring pressure to bear on the Civil Service through the media and the public, and abandon the proven mechanism, forcing reforms down the throat of civil service organizations.

As to whether the civil service pay policy should be changed, a key question is: "Should the 'principle of broad comparability with the private sector' continue to be adhered to?". The answer is in paragraph 3.17 of Chapter 3 of the report, that is, "Affordability has become a more prominent factor in the countries studied. Less importance is also being given to formal pay comparability with the private sector." Is this not the Government's explicit position?

Indeed, this answer is nothing new to civil servants in Hong Kong. Earlier on when the results of the civil service pay trend survey were announced and the indicators were found to be less than the 4.75% pay cut envisaged by the Financial Secretary in the Budget, the Financial Secretary stated that the pay trend survey was not the only factor for determining the pay level of the Civil Service, and that other factors, including the Government's financial status, would also count.

Recently, the Financial Secretary has also stressed that if the level of reduction in civil service pay falls short of the target, the Government may have



to cut staff and increase tax. Let us not look at whether these threatening remarks will help ease the tension between civil servants and the Government. The Financial Secretary's remarks have reflected that the Government has long decided to use its financial status as a basis for adjusting the pay of civil servants. This has cast doubts on the meaning of consultation.

The second category of questions in the interim report is about the direction of changes to the civil service pay system. For most of the questions in paragraphs 3.30 and 3.51 of Chapter 3 of the report, such as "Do we see the merit for Hong Kong to incorporate elements of performance pay in civil service salaries?", we can also find their answers in the report. Performance-based pay system was already proposed by the Government a few years ago when the Enhanced Productivity Programme was implemented in the Civil Service. So far, we have yet seen a quantifiable performance-related pay system that can be applied to the Civil Service. I am worried that if the objectives of public services are quantified, emphasis would then be laid only on quantity and not quality, which is undesirable. More importantly, the effectiveness of public services relies not only on the support of the executive departments. The decision-making process is also vitally important. In the event of policy blunders resulted from wrong decisions, would the executive departments not be held responsible? Is it fair?

The answer desired by the interim report cannot be more obvious. But I must ask: Apart from the answer desired by the interim report, do we have other options? Over the past few years, new initiatives in relation to the Civil Service have sprung up in an endless stream. Releasing at this point in time an interim report on the review of the civil service pay system that takes a pre-determined position and view will only further dampen the morale of civil servants. I hope that the Government, in carrying out reforms to the civil service system, will not bent on having its own way any more, so as not to further widen the divergence between the public and civil servants; and I hope that it will not resort to unscrupulous means in order to achieve its purpose. The Government must fully consider the acceptability of society and civil servants, particularly as the morale and stability of the Civil Service will definitely have a bearing on the efficiency of the Government's administration and social stability. I urge the Government to think twice before taking any action.

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

**MR ALBERT HO** (in Cantonese): Madam Deputy, the Government has all along handled pay adjustments for the Civil Service with its executive powers in accordance with the contracts and rules as applicable. As to how the Government deals with the pay adjustment mechanism, this is also entirely within the ambit of the executive authorities. The Government has never consulted the Legislative Council on or sought its approval for the rate or timing of the pay adjustments under an established mechanism.

Perhaps the Government has revelled in an overly easy life for too long and so, it has never thought that Hong Kong will ever face a continued deflation and therefore, it cannot but consider the possibility of adjusting downwards the pay of civil servants. In March this year, the Financial Secretary revealed in his Budget speech for the first time that the Legislative Council would be asked to support, by legislative means, the executive decision of the Government to effect a pay cut for civil servants.

Later, government officials even disclosed that without the support of legislation, the Government's decision of a pay cut may put the Government at risk in that it might be taken to court by civil servants and face claims for compensation. It is learnt that the relevant civil service regulations and contracts in force do not have express provisions empowering the Government to cut the pay of civil servants unilaterally. Therefore, civil servants may have the reasonable expectation that their pay will not be subject to any cut. So, this is a reason why the Government must ask the Legislative Council to support the pay cut, so as to save the Government from being taken to court.

Indeed, the Pay Trend Survey Committee is a time-honoured and proven mechanism which has operated for many years. Obviously, although the pay had always been adjusted upwards or sometimes frozen in the past, we all know that if there is inflation, then there is also deflation, and logically, the pay naturally stands the chance of going downwards. But anyhow, if the Government is worried that the pay cut would constitute a breach of contract and eventually cause it to be sued, it should conduct a comprehensive review of the mechanism to see how it can mend the fold after a sheep is lost, rather than sending out all the people to find one missing sheep. So, the Government should not rashly ask the Legislative Council to support a single executive decision of the Government and shift all the legal and political liabilities of this decision onto the Legislative Council.

Certainly, the Legislative Council absolutely should not evade its political or legal responsibilities. We will surely do what we are supposed to do. But the question is Members, and the Democratic Party as well, respect the operation of the pay adjustment mechanism, and we even hope that civil servants will also respect it. That said, it does not mean that we must support the passage of a piece of legislation in the Legislative Council to throw weight behind one single and specific executive decision which, among other things, specifies the rate of the pay cut, made by the executive authorities. This obviously violates some fundamental principles of making legislation. The making of legislation or the legislation itself is absolutely not instant noodles. Nor is it a readily-made or readily-available tool that is disposable after use.

Legislation should serve to formulate principles and policies for general application, or establish permanent systems and mechanisms, as well as their powers and operational procedures. Legislation should target at a group or individual executive acts. The separation of powers between the executive and the legislature should be clearly seen from this point.

Of course, some may point out that we have actually made legislation to address some issues before, for example, the merger of banks. However, we must understand that the merger of banks does not involve policies of administration of the Government. It is just a facilitation of the reorganization of some banks by means of a legal framework. Some may say that there are laws made for the establishment of public bodies. But the purposes of these laws are to establish a system, define the terms of reference and draw up procedures for settling problems for the public bodies concerned. Certainly, there are examples that concern individual incidents. I remember we had enacted legislation after the collapse of the C.A. Pacific to enable the Government to make provisions to the Securities and Futures Commission and at the same time increase the compensation for claimants up to \$150,000 each. But we must bear in mind that increasing the amount of compensation on that occasion was also a change in policy that would take effect as a standing practice, but not on a one-off basis. Furthermore, in that incident, or in any case that may arise in future, what we can support or what we are more inclined to support is legislation that serves to establish certain rights; and it is quite unlikely for us to support making legislation in a one-off manner to give effect to executive decisions that will reduce rights.

So, with regard to the Government's proposal to effect a pay cut by way of the legislative process, if that would immediately result in some rights being reduced, then even if such an act is not in breach of Article 103 or other provisions of the Basic Law, its passage would be deemed inappropriate. To resolve this problem, the Government should propose a more comprehensive bill on the civil service pay adjustment mechanism in order to deal with such issues as pay rise or pay cut in future. That would be the proper way to address this issue. Certainly, the Legislative Council would examine the constitutionality and rationality of the entire mechanism and safeguard the rights and interests of both sides.

Even if it is considered that making a comprehensive piece of legislation to this end would let slip a good chance of effecting a pay cut, and would not be conducive to easing the huge budget deficit of the Government, we still consider it unacceptable to resort to the legislative means rashly to meet a transient objective. I so submit.

**MR HOWARD YOUNG** (in Cantonese): Madam Deputy, before I express my views on this topic today, I wish to declare an interest. I am a member of the Task Force on Review of Civil Service Pay Policy and System.

However, I wish to discuss this topic in my capacity as the Liberal Party's spokesman on matters relating to civil servants and employees of subvented organizations first. I believe the Liberal Party is always as concerned as Members in this Chamber about whether public money is well spent. While it is our wish to see stability in the Civil Service, we are also concerned about the motivation of civil servants, as well as the rationality of the civil service pay and welfare system.

In fact, since the financial turmoil in 1997, the Hong Kong economy has experienced a slump twice, or a "double dip". To employees in the private sector, their salaries have generally been adjusted downwards considerably in line with the market trend. But the salaries of civil servants have consistently been on the rise since the reunification. Even though they will face a pay cut this year, the rate of reduction is only about 1.5% for civil servants of the middle and lower ranks, a far cry from the reality in the private market.

I think the crux of the issue is not how much their salaries should be increased or cut annually, but the fact that civil servants are paid far more generously than their counterparts in the private sector. According to a survey conducted by the Liberal Party earlier, the salaries of civil servants are generally higher than the private market by nearly 40% at least, and as much as 57% on average. Of course, it is best for a comparison to be drawn using a broader base granting sufficient manpower in the Government. Yet, I believe the results of the comparison would still show a rather big gap between the salaries of civil servants and those of employees in the same ranks in the private sector. The Task Force on Review of Public Finances chaired by the Secretary for the Treasury submitted its final report to the Financial Secretary in February this year, sounding warnings against a huge budget deficit faced by the Government and stating categorically that the Government should, as a first step, control the real growth in government expenditure. However, it just turns out that the salaries of civil servants and employees of subvented organizations account for almost 70% of the recurrent expenditure, and thus become a form of "hard expenditure", so to speak.

Recently, international credit rating companies and even some authoritative financial magazines have expressed concern in various degrees about the huge budget deficit that will continue to loom over Hong Kong in future. I believe we will no longer consider that the need to review our policy of public finance management is purely borne out of groundless worries. What is before us now is a real problem that needs to be tackled urgently.

Next, I wish to share with Members some of my observations on and expectations of the report recently completed by the Task Force in my capacity as a member of the Task Force. As Members who have read the consultation paper will have noticed, the Task Force has studied the systems in five countries and found that these countries have all implemented large-scale institutional reforms in the last two decades, which included abolishing automatic annual increments, implementing a performance-based pay system, and determining the civil service pay not on the basis of the level of pay in the private sector. Affordability of the government has also become a major consideration for civil service pay adjustments in these five countries.

Nevertheless, the system currently in force in Hong Kong conversely follows what other countries have long abandoned; and it was 16 years ago when the pay system was last reviewed. It shows how badly our system is lagging behind.

I, therefore, very much hope that we can actively express views during the consultation period which has now been extended for one month. Particularly, the silent majority should express their views on whether government expenditure should be allowed to increase unchecked. I think the public also hopes that the Task Force, after collating the views received in the first phase of the consultation, can come up with practicable proposals in respect of the five major areas covered in the review. I hope the Government will not take a slapdash and equivocal attitude, or act hesitantly, or say that a conclusion could be drawn only after another two years of studies of the results. Otherwise, the expenditure on the Civil Service would be ever expanding, in which case the resources that the public could otherwise enjoy would eventually be eroded; and this would only give the impression that the Government is utterly irresponsible.

Certainly, I think it is the wish of every member of the Task Force to draw on collective wisdom and to make suggestions for the reform, in order to expeditiously reverse the undesirable situation now. Let me reiterate here that the Liberal Party hopes that civil service organizations will have regard for the broader interest of society and adopt an attitude of going through the hard times together with the people by accepting possible changes in future, because over the last couple of years, the private sector has generally accepted drastic pay cuts necessitated by economic restructuring.

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

**MR HUI CHEUNG-CHING** (in Cantonese): Madam Deputy, the review of civil service pay policy and system is a thankless and yet difficult task. In the first place, if the review and reforms are carried out in a reasonable and serious manner, it will certainly result in some civil servants losing some of their vested interests. All civil servants, whether they are good or mediocre, and whether their service deserves credit or otherwise, enjoy not only "iron rice bowls", but also annual pay increments that are almost guaranteed, and they can benefit from the across-the-board pay rise for the Civil Service. Even if they are suspected to have integrity problems and ordered on long-term interdiction, some civil servants can still draw their salaries, take their holidays, or receive a handsome pension. It is difficult indeed to make civil servants formulate and implement reforms that will injure their vested interests. Moreover, even if we do not factor in employees of other public bodies and family members of civil servants, the Civil Service alone has a strength of 180 000 civil servants whose bargaining

power cannot be overlooked. Therefore, the review of civil service pay and system involves not only administrative reforms, but also requires political skills to strike a balance among the interests of all sides.

The Government stated in the consultation paper that the existing civil service pay policy is to, and I quote, "offer sufficient remuneration to attract, retain and motivate staff of a suitable calibre to provide the public with an efficient and effective service". Apart from the expertise of staff, factors such as loyalty, experience and social responsibility are rated high in the policy. Ironically, however, some of the existing policies and systems run counter to all these principles in operation:

- (1) The terms of employment of civil servants only stipulated pay rise for civil servants, but there is no express provision on a mechanism for pay cut. Nor is the management empowered to dismiss civil servants who refuse to accept a pay cut or even redundant staff. While such protection can help prevent the outward drain of talents from the Government to the private sector when the economy is thriving, and ensure that civil servants remain neutral and set their mind at ease in performing their duties, flexibility is completely lacking in operation. Any private company that operates in this manner would have been folded long ago;
- (2) Save in exceptional circumstances, civil servants can enjoy automatic annual pay increments until they reach the maximum point of the pay scale of their respective grades and ranks. While such a reward can attract talents to work in the Government for a longer period of time, its implementation nonetheless gives more weight to the years of service of the staff rather than their actual work performance;
- (3) The Government's pay adjustment mechanism is neither neutral nor objective. At present, 98% of companies in Hong Kong are of a small to medium scale, but the targets surveyed under the existing mechanism are large enterprises, many of which are quasi-government bodies that enjoy inherent market domination and make colossal profits every year. Even if companies surveyed recorded a decline in their profits, the situation where these companies may have resorted to retrenchment in lieu of a reduction in salaries or

giving the remaining staff a pay rise subsequently cannot be gauged under the mechanism still. So, how can the results of the survey fully and accurately reflect the reality? and

- (4) Although the expenditure on the remuneration for civil servants accounts for nearly 70% of total government expenditure, the Government has not made its own financial status a prime consideration in the civil service pay policy over the years. Is this bad habit of asking taxpayers for money whenever it is short of money to the neglect of whether taxpayers have money or not the same as a prodigal son who knows only to squander his father's money?

It is of course a good thing if the Government can take the lead to be a good employer. But being a good employer does not mean having to provide staff with a pay system that only aims to build in stability but attaches no importance to rewards and punishment or competition. The Government must bear in mind that the large employer of civil servants is actually the people of Hong Kong. The Government should, with the use of public money, employ talents of a suitable calibre to properly govern Hong Kong under an appropriate system and at a suitable level of salaries. It is not the wish of the people to see the Government treating civil servants in an overly generous or mean manner. For example, with regard to the brewing reforms to the pay system, my view is that we should not seek to abolish all the allowances. Nor should we include extraneous allowances, such as the allowance for dangerous and obnoxious duties, housing allowance, and so on, in the pay. The Government should review them one by one to see what allowances remain necessary on top of the pay and what are obsolete and thus have to be abolished. This is what the Government should do. Otherwise, if all the allowances are consolidated in the pay indiscriminately, the mentality of getting the same pay anyway whether they do any work or not will surely develop over time. In that case, how can the more diligent civil servants be rewarded?

I hope that the Government's affordability will be made the prime consideration in its civil service pay policy and system, which should be linked to such indicators as economic growth, inflation or deflation. In the meantime, a performance-based pay range system can be implemented to replace the existing pay scale underpinned by fixed increments. The pay adjustment mechanism



should also be thoroughly reviewed. The targets of the survey should cover small and medium enterprises, taking into account the employment situation and the actual average working hours of different industries, in order to reflect the reality more accurately.

Madam Deputy, what we have in Hong Kong is a brilliant Civil Service which compares favourably with all advanced countries in the world in terms of administrative and work efficiency. But as technology advances and given the drastic changes in the Hong Kong economy, the civil service pay policy and system should be reviewed and revised expeditiously to give it greater flexibility, equity and rationality, in order to prevent the Civil Service from becoming fossilized and out of place. Madam Deputy, I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Deputy, with regard to the interim report of the Task Force on Review of Civil Service Pay Policy and System, the position of the Hong Kong Confederation of Trade Unions (CTU) is that consultation should be consulted among civil servants first rather than the public, just as some Members have said earlier. Conducting public consultation is in itself a great peril in that the civil service pay, which is originally a labour issue, will be politicized and publicized, and it appears that the aim is to suppress civil service pay by means of public opinion. This is neither agreeable nor acceptable to us. The CTU strongly opposes the approach adopted by the Government recently to deal with the issue of civil service pay, that is, employing political means to discredit civil servants first, then frame them up, and induce the public to besiege civil servants by the public.

A credit rating agency has recently expressed concern over Hong Kong becoming more and more like China. There are indeed signs indicating this. The Government of the Hong Kong Special Administrative Region has a full grasp of the tactics of political struggles with Chinese characteristics, in that people considered eyesores of the Government are invariably labeled as the five vice elements, and I think civil servants are surely one of these five vice elements now. As to who belong to the five good elements, I am not going to give an answer here. I will further elaborate on this point next week in the debate on the accountability system for principal officials. At present, civil servants are certainly considered one of the five vice elements and they are particularly singled out for suppression.

Just now I spoke of the Government discrediting civil servants. What has the Government done to discredit them? I remember that Miss Denise YUE once said that the pay of civil servants had increased by over 20% in real terms — fortunately, the Secretary for Civil Service, Mr Joseph WONG, had refuted this point. In making this statement, she had forgotten that this "increase in real terms", so to speak, has actually factored in deflation. So, to civil servants, these remarks are a means to smear their reputation. Now, another tactic used is to frame civil servants up. As a first step, the Financial Secretary made the assumption of a 4.75% pay cut in the Budget. He kept on saying then that this was purely an assumption, but this assumption eventually created an effect, an anticipation effect in the community. When the results of the pay trend survey fell short of this target, the public was threatened with an increase in fees and charges and in tax to make up for the budget deficit; and even a sales tax was mooted. Madam Deputy, this is what you fear most. I am not sure if my mention of this tax has scared you or not. All these proposals of the Government have made the public think that civil servants are a burden constituting the budget deficit and that civil servants are the cause of the hikes in fees and charges and in tax. What is it if not a frame-up? This is extremely unfair to civil servants.

To make the reform of the civil service pay system a success, the prerequisite is mutual trust between the Government and civil servants. Regrettably, the Government is only exerting itself to make civil servants the public enemy, treating civil service organizations as rivals rather than partners and thus wrecking the mutual trust. This review of the pay system is almost destined to be a replica of the civil service reform in 1999, which is doomed to fail.

Back to this report. I think the most important line is in paragraphs 3.23(d) and 3.23(e) of Chapter 3. I think the 28 questions raised in the report are all bogus questions, perhaps with the exception of this one. Which one do I refer to? That is, should we continue to conduct regular pay level, pay structure and pay trend surveys to ensure that civil service pay remains comparable with that of the private sector; or should the Government's affordability be an "overriding" — and I stress "overriding" — factor of consideration in pay adjustments? In asking this question, the purpose of the Government cannot be more obvious. Its purpose is to kill the entire pay system and change the objective mechanism underpinned by pay trend surveys to

a centralized system, under which the Financial Secretary can use the Government's affordability as an "overriding" — and I stress overriding — factor of consideration.

We have no objection to using the Government's affordability as a factor of consideration. But the Government now intends to make it an "overriding" factor. If the Government makes it an "overriding" factor of consideration, then the purpose of the Government in conducting the review cannot be clearer: To restrain the growth of government expenditure. The Financial Secretary has revealed to the media that he would only impose a ceiling on the annual overall government expenditure. Each Policy Secretary would be given a fiscal envelope and the Policy Secretaries would have to decide on how the money should be used. To make this proposal work, the first step is to do away with the existing civil service pay system and introduce the above reform proposal. Otherwise, Policy Secretaries would not be in a position to decide on the utilization of most of the money. Nor would the Financial Secretary be able to so smugly hit the target of achieving fiscal balance within a period of five years. So, there is only one objective, that is, to restrain fiscal expenditure. It is indeed unfair to shift onto civil servants the responsibility to reduce the deficit. This is similar to the Pacific Century CyberWorks laying off its staff to repay its debts, which is grossly unfair too. There are numerous reasons causing the fiscal budget. It may be due to the low return of the Exchange Fund; it may be due to tax reductions; and it may be due to a growth in expenditure or excessive construction works. But it is absolutely unfair to make civil servants bear the consequences of financial fluctuations irrespective of the reasons and wreck the stability of the entire civil service system.

The interim report has raised another issue. It has given an account of the situation of the civil service pay systems in five countries, without assessing the implementation and effectiveness of their systems. So, it has no reference value at all, since the results are not mentioned save a description of the systems. After taking into consideration all the studies and analyses conducted by the Organization for Economic Co-operation and Development (OECD) and some academics in public administration, it is found that the civil service pay systems in foreign countries only allow the government to control expenditure easily. They merely target at making improvements to the government, but are totally useless to improving government services and heightening the morale of civil servants, and they sometimes will even create a negative impact.

Another key point in this report is the performance-based pay system. I do not wish to say here that it will give rise to a "shoe-shining and subservient culture", as already pointed out by many people. I just wish to cite some live examples. The OECD interviewed a total of 965 government managers in Australia, Denmark, Ireland, the United Kingdom and the United States in 1994 to 1995. Results showed that a majority of the interviewees considered the performance-based system ineffective and unfair. Given that the system mainly focuses on ways to restrain expenditure, the government has not made sufficient provisions for giving extra rewards to staff. As a result, the reform has only punishments but not rewards. If financial affordability is a factor of consideration, how possibly can the pay be pegged to performance? Once affordability is used as a factor of consideration, it would be necessary to restrain fiscal expenditure. In that case, how can civil servants with good performance be rewarded? There would be no reward at the end of the day. In some countries, measures are taken to enable civil servants to take turns to be rewarded. That is, 25% for this year and another 25% for next year at four-year cycles.

Thank you, Madam Deputy.

**MR TAM YIU-CHUNG** (in Cantonese): Madam Deputy, the Task Force on Review of Civil Service Pay Policy and System published the interim report of the first-phase review last month, providing an analysis of the latest development in civil service pay administration in five countries and announcing some initial findings and highlights of its observations. I am a member of the Task Force. At this stage, the Task Force has not taken a stance on the matter, and we mainly aim to listen to the views of various sectors of the community, including civil service organizations. Based on these views, we will proceed to decide on the methodology and scope of the next phases of the review.

The civil service pay and system in Hong Kong has all along been able to absorb talents in different fields to provide a diversity of services for the public. The civil service system has been stable, efficient and clean, and these merits have long been praised. The current civil service pay administration system has also played an important role. But no doubt the economy of Hong Kong has been booming in the last two decades and the existing civil service pay administration system is a product of the then economic environment. Given adjustments in the socio-economic structure in recent years, coupled with the

economic recession, there have been many changes in the pay administration practices of the private sector. Against this backdrop, there have been many views in the community that the civil service pay is substantially out of line with the private sector and that the civil service pay adjustment mechanism can no longer meet the needs of society. The review of civil service pay and system was precisely born out of this background. I support the review for the purposes of enabling the civil service pay and system to keep abreast of the times and to tie in with changes, and enabling civil servants with outstanding performance to be rewarded, so that all levels of civil servants will be of one mind in serving the public. A review certainly does not mean dynastic changes to the system.

As we can see in the interim report, the pay systems in foreign countries are reformed slowly through a process of evolution spanning over a decade. From their experiences, it is most important that the reforms must have the consent of the civil servants. The purpose of determining the level of pay is to find out a level agreeable to both the management and staff, and any adjustment relating to the pay scale or the pay will certainly involve various comparative studies. However, it is impossible for the results of these studies to be absolutely reliable, and they can merely serve as an important basis for decision-making. It is precisely because of the absence of an absolutely scientific and objective procedures for drawing comparisons that any methodology used for determining the level of pay must be accepted by both the management and staff before it can be brought into proper play.

In the United Kingdom, for example, the central grades/ranks began to be gradually abolished in 1995, and the system of common grades or ranks no longer exists in the Civil Service. Each department/unit has its own system, and this has allowed the Government a greater degree of flexibility in determining the pay level and the pay adjustment rate for civil servants. That this practice has been operating effectively is attributable to a framework for pay consultations. Except the pay of senior civil servants, the pay systems of all departments/units are devised through consultation between the finance authorities and trade unions. There are now 170 pay consultative units in government departments in the United Kingdom, and each such unit can freely work out a suitable system through consultations.

On the question of comparability with the private sector, views are diverse in the community. But I think this question cannot be considered in isolation.

The pay in the private sector can be changed very quickly, but it is impossible for the civil service pay system to undergo constant changes. Moreover, the regulatory requirements for civil servants and employees in the private sector are different in many ways. So, we cannot pay attention only to the comparison of their salaries. We can also note from the interim report that in most countries, less importance is attached to the comparison with the private sector in determining the pay of civil servants.

To implement reforms to the civil service pay system, the Government must learn from the experiences and lessons of past reforms. But very often, even if reforms go in the right direction and can secure support from various sectors of the community, many problems will still arise in the course of implementation. Therefore, insofar as this review of the civil service pay and system is concerned, the Government must endeavour to ensure that civil servants are aware of the need for the review and must obtain their support. The pay and the pay system are by no means an isolated framework. Rather, they are inextricably linked to the culture, management model and the various interests of the Civil Service. To respond to social aspirations, there must be a comprehensive package of proposals to be implemented in a gradual and orderly manner. Therefore, we must be careful and prudent, allow full and extensive consultation, and show respect to the views of civil servants. These attitudes and measures are simply indispensable. The reform should aim at making everyone understand the essence of reform and working for a consensus among all quarters, so that the public will throw full weight behind the reform, rather than dampening the morale of civil servants and undermining their devotion and enthusiasm.

Madam Deputy, this motion proposed by Dr LO Wing-lok has given this Council an opportunity to express views on the interim report. I will try my best to convey the opinions of Honourable colleagues to the Task Force for consideration by its members.

With these remarks, I support the motion.

**MR JAMES TIEN** (in Cantonese): Madam Deputy, Hong Kong's present-day achievements and the prosperity and stability it has attained have won high ratings from many experts in the international community, and I totally agree that this is attributable to the efforts made by the general public and the

commercial and industrial sectors towards the development of Hong Kong. Moreover, I also totally agree that civil servants in Hong Kong have made contribution to Hong Kong over many years. The Civil Service in Hong Kong is clean and highly efficient. However, regarding how much salary civil servants should get and how many civil servants should be recruited, I think members of the public should also express their views. Even though the performance of civil servants is good, it is not desirable to let their salaries increase unchecked or let them become out of touch with the market.

The present consultation paper describes the civil service systems in five countries. Some of them have abolished the mechanism of giving annual increments and the salaries are pegged to those of private companies. One of the reasons cited is that problems in the affordability of the governments in these countries have occurred, therefore such a solution was adopted. Today some Honourable colleagues have also mentioned this point, however, I do not look at the matter this way. I think that this should not be the motive of this exercise. Some Honourable colleagues said that the Government may incur a deficit of \$60 billion this year. If no action is taken to address this, our financial situation will run into serious trouble in five years. In fact, if such a deficit is to recur in the next two or three years, bringing our reserve down to \$200 billion or \$300 billion, it will not take five years before we find it difficult to maintain the linked exchange rate system. What Honourable colleagues have mentioned is certainly one of the reasons, but in my opinion, I do not think we should allow the civil service establishment to increase unchecked simply because the Government has money. When the Government is well-off, the salaries of civil servants can be increased substantially, but I do not think that when the Government is short of funds, the salaries of civil servants have to be cut drastically at the first opportunity. I believe that at such a time, the Government should assess how much in salary it should pay to a well-established Civil Service which has high integrity, without which the stability of society will be undermined

With this major consideration in mind, let us look at the present situation in Hong Kong. The salaries of private companies can either go up or down. If private companies want to cut their employees' salaries, of course they have to do so according to the law and also in a fairly reasonable manner, since they have to obtain the consent of their employees. If the employees do not agree, employers cannot cut their employees' salaries. Of course, employers also have their rights. If an employee does not accept a salary cut, the employer can

dismiss the employee as long as he pays the long service payment, severance pay, and so on. However, as far as civil servants are concerned, it is not possible to do so. Civil servants say on the one hand that their salary cannot be reduced, and yet on the other they say that they want to retain the pension system. In other countries, if the financial situation of the government is straitened, what can be done? I have also conducted a survey regarding such a situation. I believe no civil servants in any country of the world can insist that neither their number nor their salaries can be reduced. Many countries simply have no money, so how can they pay the salaries of civil servants? If neither the number nor the salaries of civil servants can be reduced but the treasury has no money, then what can be done? It is impossible for such a system to exist. In view of the present circumstances, it is absolutely necessary for the Government to conduct a review. Therefore, I fully agree with today's motion which proposes to examine the interim report.

Concerning the interim report, the view of the Liberal Party towards the pay trend survey has always been as follows: the small number of 14 questions contained in the questionnaire of five pages all ask private companies about the number of lower rank employees with a salary of less than \$15,500, their salary structure, the changes that have taken place, and so on. The questions that ask about middle rank employees with salaries ranging from \$15,000 to \$47,000 and high rank employees with salaries ranging from \$47,000 to \$97,000 are also the same, but the companies concerned are not asked about the number of employees who have been dismissed or who have left, the savings made, nor about the amount that the company has saved as a result of enhanced productivity achieved by existing employees (for example, work that used to be done by four employees are now done by three employees). Furthermore, the questionnaire does not ask how many new employees have been hired this year, or how the newly offered salaries compare with former ones, and so on. All questions are related to the remaining employees and only changes in the number of employees are taken into account and then the figures are then calculated. This is the so-called proven pay trend survey which has been in use for more than 20 years. I think that in a society which experiences inflation and deflation, this survey is simply removed from the reality.

Why is it removed from the reality? The Liberal Party also conducted a crude survey on only 100-odd companies several months ago and yet found that



it was easy to make comparisons. For example, the present salary of a clerical assistant requiring Secondary Four standard in a private company is about \$8,200, but the pay offered by the Government is \$12,700. Another plain example is the post of computer operator requiring five passes in the Hong Kong Certificate of Education Examination and one year of working experience. The salary is \$12,000 in private companies, but that paid by the Government is \$17,000. As regards professionals, I can also cite a few examples. For example, the salary of an auditor is \$28,000 in a private company and \$59,000 in the Government; that of an estate surveyor is \$32,000 in private companies and \$59,000 in the Government; that of an architect is \$37,000 in private companies and \$60,000 in the Government; that of an electrical and mechanical engineer is \$33,000 in a private company and \$60,000 in the Government. From this series of examples, it can be seen that the salaries in the Government are 50% to 60% higher than those in private companies.

Certainly, with our limited ability to carry out surveys, this is what we could come up with. However, we believe the Government should definitely conduct a pay level survey, because there are now more than 400 grades in the Government. If comparisons are made with regard to these 400-odd grades, we cannot tell what the outcome will be, but we think society should be allowed to know what the actual situation is. If the outcome indicates that the salaries of civil servants are indeed too high, the Government should consider what it has to do and of course, the problem that has to be dealt with will be much larger.

Perhaps I have to mention one lesser problem, that is, the Government recently intended to take some action based on a survey which I think is also not very accurate. If the differences in salary between the Government and private companies are indeed so great, then what should the Government do? We think that the Government should do whatever has to be done; if it is not necessary to introduce any legislation, then so be it, but should any legislation be called for, then we will support it. Of course, after hearing what Mr Albert HO has said, I felt it odd why the effect of the legislation will last just one year. There are very few laws in Hong Kong with an effect of just one year. We can legislate to stipulate that salaries can be increased as well as reduced, and the matter can be dealt with once and for all. After putting in place this piece of legislation, a legal basis will be provided for the future. If Mr Albert HO has any views on this, we can talk about it further in the future. Thank you, Madam Deputy.

**DR TANG SIU-TONG** (in Cantonese): Madam Deputy, since the civil service system and performance is an important force driving the continuous stability and prosperity of Hong Kong in the long run, there are specific articles in the Basic Law dealing with matters of the Civil Service. For instance, Articles 100, 102 and 103 ensure the stability of the pay and conditions of service of civil servants. Therefore, a review of the civil service pay policy and system should be made on the premise of maintaining the stability of the Civil Service.

The main agenda of the Consultation Paper on the Review of Civil Service Pay Policy and System is how to reasonably link performance to pay, such as replacing fixed pay scales with flexible pay ranges and promoting performance-based rewards. Fixed pay scales have operated for a long time. During economic prosperity, it reduced staff wastage, retained the expertise and experience of civil servants and ensured that the Civil Service was clean and had a sense of belonging. However, the premise of the implementation of the system was that the Government must be financially capable in the long run. Our economy took off and prospered throughout the past 30 years and the Government had sufficient revenue, thus, it could bear the burden of automatic pay increments of civil servants regardless of their actual performance. The times have changed and even civil servants who are paid on time have to scrimp and save. The Government as their employer has to spend and save what it should and it gives no cause for much criticism for it to make performance-based considerations and introduce flexibility into the civil service pay system.

Promoting the trial implementation of team-based performance rewards, gradually introducing performance-based rewards for individuals and extending the application of the rewards system from senior civil servants to junior civil servants are ideas that merit trial. But the Government must note that the implementation is not easy because it would inevitably increase the power of supervisors in respect of the advancement and pay adjustment of their subordinates, which may give rise to a "shoe-shining culture" or produce various kinds of yesmen. The results of the reform would then be just opposite to the desired outcome. The Government must ensure that the relevant evaluation is objective and impartial. It has to enhance the training of heads of departments so that they would learn management skills and absorb the latest management knowledge, thus enabling them to more effectively supervise and evaluate the discipline and performance of their subordinates. The evaluation should be suitably transparent, for instance, the evaluation reports should be suitably disclosed and a few supervisors or different departments could conduct the

evaluation. Since linking performance to pay involves significant changes in civil service management, it is not appropriate for the reform to be made rapidly. Instead, pilot schemes should be systematically conducted to implement the reform in a gradual and orderly manner.

As stated in the consultation paper, pay and grading reform cannot and should not be implemented in isolation from the broader civil service reform agenda. To get twice the result from the reform in pay and grade with half the effort, the Government must continuously simplify organizational structures and eradicate bureaucracy. The multifarious, excessive and overly elaborate forms of allowances should also be regularized. For instance, since the Government thinks that tree sawing and planting, handling dead bodies and human waste are hard, obnoxious or very dangerous, it may allow the application for special allowances but these allowances should be considered as a whole rather than separately. I do not object that civil servants should have suitable allowances but the Government should rationalize the relevant system to make it in keeping with the times. It should also stringently check the expenditures on various allowances to prevent some civil servants from continuing to claim allowances arbitrarily.

Changes in the civil service pay policy and system would inevitably impact on the conventional values and service culture of the Civil Service, and it would be more difficult for the Government than the private sector to implement such a reform. But there would be incentives, for instance, the government pay structure would emphasize fairer award and punishment and competition, and it would avoid shirking the huge financial burden onto the younger generation. Thus, the reform may be bitter medicine but it will do good, and it meets the general expectation of the public. Even though it usually takes foreign countries more than a decade to implement such reforms, since Hong Kong can learn a lesson from others' mistakes and we have a small government, the progress of our reform should be faster and we are more assured of success. Indeed, I do not wish that the reform would ultimately fail to find any way out or have a fine start but poor finish.

Civil servants are both the target and driving force of the reform, and their understanding and support is crucial to the success or failure of the reform. The Government must regard civil servants as its partner in the reform and hold frank negotiations and discussions with various civil service bodies in advance. Granting this, the Government and civil servants would then be of one mind and

the pay policy and system of the Government would advance with the times. Madam Deputy, I so submit.

THE PRESIDENT resumed the Chair.

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

(No Member responded)

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I am grateful to Dr LO Wing-lok for moving this motion on the comprehensive review on civil service pay policy and system today. This subject has been widely discussed in the community recently and received considerable attention from members of the public. In my view, the subject is of particular concern to all civil servants, regardless of whether they belong to the "five categories of red elements" or "five categories of black elements". I have listened carefully to the views expressed by Members on this topical subject and I am pleased to note that Members in general recognize the contribution of civil servants to the community. I welcome the opportunity offered by this debate to set out the Administration's position on this matter.

Let me state at the outset that this is not the forum for a debate on the size of this year's civil service pay adjustment, which is a debatable issue this year and which I look forward to discuss with Members in more detail on other occasions in the coming one or two months. I shall confine my response to matters that pertain to the comprehensive review on civil service pay policy and system.

As Honourable Members are well aware, our present civil service pay system is a centrally administered system which, on the one hand, seeks to maintain broad comparability with the private sector pay and, on the other, places emphasis on maintaining internal relativities among different grades and ranks. This system has evolved over the years to suit our particular needs and requirements. While the system may not be perfect, it is fair to say that by and large, it has played an important role in the development of a clean, efficient, trustworthy and quality Civil Service in Hong Kong.

We recognize, however, that there have been significant economic, social and political developments in Hong Kong in the past decade, with a rapidly changing external environment. It is essential that our Civil Service keeps pace with the developments in the community it serves, striving all the time to improve itself both in terms of service quality as well as its efficiency and productivity. Concurrent with this, we need to consider whether our present civil service pay policy and system, with central administration and internal relativities as its distinguishing features, continues to support our overall objective of developing a performance-focused Civil Service that is sufficiently flexible to respond to the changing needs of the community.

Apart from these broader, conceptual issues, we have also taken note of the concerns expressed by the public, as reiterated by some Members today, about a growing perceived disparity in the pay levels between the Civil Service and the private sector as well as the inadequacy of the existing annual civil service pay adjustment mechanism to reflect the pay adjustment trends in the market. We recognize that the annual civil service pay adjustment mechanism, on its own, is unable to fully reflect the pay level movements in the private sector. It is also a fact that we have not conducted any service-wide pay level comparisons with the private sector for over a decade. The review we conducted on starting salaries in 1999 is a step in the right direction to ensure that civil service pay at the entry level does not fall significantly out of line with private sector pay. But the perceived disparity in the pay levels between the Civil Service and the private sector beyond the entry level is a matter we need to address, as a matter of priority.

The review we have embarked on is a full-scale root-and-branch review. Apart from a review of the fundamental principles underpinning our present civil service pay policy, we shall also review all the constituent elements of the civil service pay system, including the methodology for determining civil service pay levels, an improved and more flexible salary system to better motivate staff, rationalization of the grading structure and salary structure as well as the annual pay adjustment mechanism.

The Task Force has recently published the interim findings on the latest developments in civil service pay administration in Canada, the United Kingdom, Singapore, New Zealand and Australia for public consultation until the end of June. The debate today is therefore most timely.

The interim findings on the experience in other administrations have given us insights on how other governments have tackled a similar challenge as the one we are now facing and the outcome of their efforts. Such information provides a solid basis for the public and civil servants to consider and discuss possible directions for the future development of our own system. I should, however, emphasize that there is no off-the-shelf solution. Every society is unique and we need to work out a solution that best suits our circumstances and requirements. Thus, in studying the experience of the other governments, we are not seeking to follow the footsteps of others indiscriminately. But we hope to draw on such experience, whether successful or not, in working out a better solution for ourselves. I therefore appeal to colleagues in the Civil Service as well as members of the public to study the interim findings of the Task Force carefully and to contribute to the ongoing discussion on the future development of our civil service pay system.

Based on the findings of the analytical study and taking account of the ensuing discussions with the concerned parties, the three advisory bodies will make recommendations to the Administration on the scope of the comprehensive review to be conducted in phase two, the factors which may need to be taken into account in conducting this exercise, the methodology to be adopted, as well as the timeframe for completing the review. Noting public concerns on the comparison of pay levels between the Civil Service and the private sector, we have, in particular, asked the advisory bodies to advise us on the methodology and timing for conducting a comparability study between civil service pay and private sector pay, with regard to the differences in job nature and in the measurement of output/performance.

Following the extension of the consultation period on the interim findings of the Task Force's phase one study and the consequential postponed submission of the final report on the phase one study, we hope that the Task Force will be able to advise us on the conduct of the phase two study by late 2002. I can assure this Council that the Administration will aim to make a decision on how to take forward the second phase of the review exercise as soon as possible after we have received the recommendations from the three advisory bodies.

While I would not wish to comment on this occasion on the pay offer we have just made to the staff side for this year's civil service pay adjustment exercise, it is noteworthy that following the announcement of the results of this year's pay trend survey, concerns have been raised in some quarters as to

whether the results fully reflect the pay adjustment trends in the private sector. Criticisms have been made about various aspects of the current survey methodology. For instance, the survey field, which covers only companies with at least 100 employees, has completely excluded small and medium enterprises which are the mainstay of the local economy. The survey does not take account of the reduction in the total payroll costs of the survey companies through layoffs and other measures.

We have taken note of these comments. As I have mentioned earlier, we have intended to look more closely at the annual pay adjustment mechanism under phase two of the comprehensive pay review. In the light of the views expressed recently on this matter, we shall invite the three advisory bodies to examine the various comments made on the existing annual civil service pay adjustment mechanism including the pay trend survey and other factors, and make recommendations on possible changes.

Now, I would like to share with you some of my personal experience in civil service reform. First, like democracy and human rights, reform is something no one would object to, but when it comes to specific proposals, there are bound to be a lot of diverse opinions and advice. Certainly we need to have adequate consultation with the staff unions. The question is how long the consultation process should last to be regarded as adequate without being criticized as a process of "discussing without deciding" or a deliberate stalling technique. Second, it is generally considered that reform should proceed on a step by step basis but actually what steps should be taken to make things happen in order to avoid "being bureaucratic and insincere", as Dr LO Wing-lok just criticized, is another question. Third, there is a general view that we must not jeopardize the interests of the Civil Service or put them on tenterhooks, and that stability should be our primary concern. The question is, as reform means to change, how are we going to carry out a reform on the one hand and ensure that the conditions of service of every civil servant ranging from the working environment to the remuneration package will never change on the other? While we can promise that reasonable and rational arrangements would be made as far as possible, we certainly cannot guarantee that everyone affected would be happy and satisfied with the arrangements. I may cite more examples to illustrate that it is easier to understand the need of reform than actually carrying it out. The pieces of advice offered, when examined separately, may sound valid and convincing. However, when considered as a whole, they may lead us to nowhere because of the intricacies involved.

Nevertheless, we firmly believe that there is a general consensus in the community on the need for a leaner and more efficient Civil Service, for a more flexible pay structure and management system, and for a more direct linkage between pay and performance. I also believe that there is a consensus on the need for upholding and consolidating the merits, including integrity and stability, of the Civil Service. As long as our objectives are clear, the reform will eventually materialize. We do not consider that to reform is to place the Civil Service and the public in antagonistic positions, rather a successful reform would better serve the interests of both the Civil Service and the community at large. My experience is that, when drawing up specific measures of a reform, we have to be fair to the civil servants while being accountable to the public. In the reform process, we must seek to improve amidst stability and maintain steadiness amidst changes.

Before I close, let me thank Honourable Members again for the views and comments they have put forward in this debate. The Task Force on Review of Civil Service Pay Policy and System and the Administration will take them fully into account in taking forward the review, and I look forward to a continued dialogue with Honourable Members in the course of this important review exercise. I also look forward to Members' support and co-operation in the civil service pay adjustment exercise this year.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Dr LO Wing-lok, you may now reply and you have up to five minutes 18 seconds to speak.

**DR LO WING-LOK** (in Cantonese): Madam President, I am very grateful to the 15 Members who have spoken. I must also thank the Honourable TAM Yiu-chung, who was generous enough to allow me to table the motion, which he intended to table.

After listening to the speeches of Honourable colleagues, I think that to put forward a neutral motion for debate at this stage has been very appropriate indeed because colleagues holding different positions are concerned about different issues. The discussion affords Members a wonderful opportunity to fully express their views and to set the scene for reforms in future.



As the discussion proceeded, I could feel that there were conflicting demands. For example, how can we discuss pay cuts, diminished welfare and streamlining and at the same time maintain the confidence of the civil servants and let them feel they are properly respected? How can we keep the "rice bowls" of civil servants and maintain their income level in the face of an economic downturn, decreased government revenue and diminished financial capability of the Government? Where comes the money needed? How can we make opportune changes and maintain the confidence of civil servants? How can we refrain from adopting seemingly high-handed measures by creating, through legislation, a mechanism for civil service pay adjustment and at the same time avoid expending enormous resources to negotiate annually for adjustments in civil service pay? How can the Government avoid applying the strategy of "helping one group but hurting the other" as it attempts to cultivate mutual understanding between civil servants and non-civil servants so that the community as a whole may make decisions that can cater to the interests of both individual members of the community and those of the community. It is the Government that is wholly responsible for coming up with a plan that is in the interest of Hong Kong among conflicting demands. No individual or group can take the place of the Government in this.

To accomplish this colossal task, I trust one needs to have the wisdom of King Solomon and extraordinary determination and drive. I believe Secretary Joseph WONG has what it takes to accomplish the task, but I would not envy him for his job because if he ever became a Secretary for the Civil Service under the accountability system for principal officials, he would probably be one of the Secretaries charged with the highest degree of accountability. Let me wish him the best of luck and urge colleagues to support the motion. Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 29 May 2002.

*Adjourned accordingly at three minutes to Nine o'clock.*

**Annex I****WRITTEN ANSWER****Written answer by the Secretary for Housing to Mr Fred LI's supplementary question to Question 1**

The Housing Department (HD) has thoroughly investigated the matter after getting more details from the Honourable Member. The fact was, in June last year, the HD had on one hand just approved the conversion of a supermarket in Yau Oi Estate of Tuen Mun into a superstore to satisfy the needs of the estate residents, and was, on the other hand, introducing a trade widening policy in all its shopping centres and markets to allow operators to expand their trades for enhancing competitiveness. The coincidence of the two events might have misled the market stall operators of Yau Oi Estate to believe that the HD has imposed a prerequisite of not objecting to the conversion of the supermarket in that estate into a superstore before their trade expansion applications would be approved. There was indeed no relationship whatsoever of the two events. In fact, as the HD had assessed before approving the setting up of the new superstore that the change should not have much implications on the other operators, the HD did not make any special arrangement to consult the stall operators on the change.

From the above, I believe that the incident was just an unfortunate misunderstanding. I understand that the HD already met the stall operators last year to clarify the HD's position to the satisfaction of the operators.

**Annex II****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Miss CHOY So-yuk's supplementary question to Question 2**

I would like to inform Members that according to the Hospital Authority, we do not have the requested information.

**Annex III****WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Mr LAU Chin-shek's supplementary question to Question 3**

The unit costs of treatment for Dongjiang water and water from local reservoirs are about 1.41 per cu m and \$1.37 per cu m respectively.

**Annex IV****WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Dr Raymond HO's supplementary question to Question 4**

In regard to the percentage of construction works awarded through tendering whereby both domestic and overseas suppliers/contractors can participate, since Hong Kong's accession to the Agreement on Government Procurement of the World Trade Organization in 1997, 96%<sup>1</sup> of the construction services contracts are awarded through open tendering<sup>2</sup> or selective tendering<sup>3</sup>, both of which allow participation of domestic and overseas suppliers/contractors.

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<sup>1</sup> Based on statistics as at 31 December 2001.

<sup>2</sup> All interested suppliers/contractors may submit tenders in opening tendering.

<sup>3</sup> All qualified suppliers/contractors may submit tenders in selective tendering. Suppliers/contractors not yet qualified may submit tenders, provided that they complete the qualification procedures within the prescribed time.

## Annex V

## WRITTEN ANSWER

**Written answer by the Secretary for Housing, Planning and Lands to Miss CHOY So-yuk's supplementary question to Question 4**

Below are some parliamentary and government buildings in other countries which are constructed/completed in recent years and designed by non-domestic architects:

<i>Building</i>	<i>Location</i>	<i>Nationality of Lead Architect</i>
Parliament of Edinburgh	Edinburgh, United Kingdom	Spain
Dome of the Reichstag Building	Berlin, Germany	Britain
Centre of Security Politics	Geneva, Switzerland	France
Government Office Building "Torre Entel"	Santiago, Chile	Belgium
Parliament House	Canberra, Australia	United States

**Annex VI****WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Dr Raymond HO's supplementary question to Question 5**

As the then Secretary for Transport mentioned at the Legislative Council meeting on 22 May, passenger lifts are available at all East Rail stations of the Kowloon-Canton Railway Corporation (KCRC) except Racecourse Station. The KCRC is now studying the feasibility of installing lifts at Racecourse Station.

The MTR Corporation Limited (MTRCL) currently provides internal and/or external passenger lifts in 37 MTR stations. Lifts have not been installed in 12 stations. The MTRCL plans to have at least one internal lift between concourse and platform in all MTR stations by 2008.



## Annex VII

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

## COMMITTEE STAGE

Amendments to be moved by the Chief Secretary for Administration

<u>Clause</u>	<u>Amendment Proposed</u>
3	In the proposed Division heading, by adding "; <b>Appeal relating to Chief Executive Election</b> " at the end.
4	(a) In the proposed section 27B(2)(a), by deleting "the trial" and substituting "a".  (b) In the proposed section 27C -  (i) in the heading, by deleting " <b>by trial judge</b> ";  (ii) in subsection (1) -  (A) by adding "hearing the application for a certificate" before "is satisfied";  (B) in paragraph (a), by deleting "his decision" and substituting "a decision of the judge";  (iii) by deleting subsections (2) to (5) and substituting -  "(2) For the purposes of subsection (1)(a), the relevant conditions are fulfilled in relation to a decision of the judge in any proceedings if a point of law of great general or public importance is involved in that decision and -

ClauseAmendment Proposed

- (a) where that point of law does not relate wholly or mainly to the construction of the Basic Law, it must -
  - (i) relate wholly or mainly to the construction of an Ordinance or subsidiary legislation, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings;  
or
  - (ii) be one in respect of which the judge is bound by a decision of the Court of Appeal or the Court in previous proceedings, and was fully considered in

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the judgments given by the Court of Appeal or the Court (as the case may be) in those previous proceedings;  
and

- (b) where that point of law relates wholly or mainly to the construction of the Basic Law, it must be one in respect of which the judge is bound by a decision of the Court of Appeal or the Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Court (as the case may be) in those previous proceedings.

(3) An application for a certificate under this section shall be made to a judge within -

- (a) 14 days from the date on which the judgment is given; or

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(b) such other longer period as may be prescribed by rules of court.

(4) The judge before whom an application for a certificate under this section is made shall, as far as is practicable and convenient, be the trial judge in the proceedings to which the application relates."

(c) In the proposed section 27D(1), by deleting "the judge" and substituting "a judge".

(d) In the proposed section 27F -

(i) in subsection (1), by deleting "the judge" where it secondly appears and substituting "a judge";

(ii) in subsection (3), by deleting "the judge" where it secondly appears and substituting "a judge".

5

By deleting the clause and substituting -

**"5. Transitional**

An appeal may, subject to the provisions of this amending Ordinance, lie to the Court from a judgment of the Court of First Instance given on or before the commencement of this amending Ordinance."

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New By adding immediately after clause 6 -

**"The Rules of the High Court****6A. Time for appealing**

Order 59, rule 4 of the Rules of the High Court (Cap. 4 sub. leg.) is amended by adding -

"(2) In the case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the following period of time shall be disregarded in determining the period referred to in paragraph (1) -

- (a) where an application has been made under section 27C of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined; or
- (b) where an application has been made under section 27D of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined."."

**Annex VIII****GAMBLING (AMENDMENT) BILL 2000****COMMITTEE STAGE**Amendments to be moved by the Secretary for Home Affairs

- | <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
| 1             | <p>By deleting the clause and substituting -</p> <p><b>"1. Short Title</b></p> <p>This Ordinance may be cited as the Gambling (Amendment) Ordinance 2002."</p>   |
| 2             | <p>By deleting everything after "(Cap. 148) is" and substituting "amended, in the definition of "bookmaking", by adding "or on-line medium (including the service commonly known as the Internet)" after "telegram"."</p>              |
| 3             | <p>By deleting the clause and substituting -</p> <p><b>"3. Unlawful gambling establishments</b></p> <p>Section 5(b) and (c) is amended by adding "以其他方式" before "控"."</p>  |
| 4(b)          | <p>By deleting the proposed section 7(1A) and substituting -</p> <p>"(1A) Any person who engages in bookmaking, whether on one occasion or more than one occasion, by receiving, negotiating or settling outside Hong Kong a bet -</p> |

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(a) which is placed from Hong Kong;  
or

(b) placed by a person who is in Hong Kong when the bet is placed,

commits an offence and is liable -

(c) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or

(d) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years."

5

By deleting the clause and substituting -

**"5. Betting with a bookmaker**

Section 8 is amended -

(a) in paragraph (c), by repealing the full stop and substituting a comma;

(b) by adding "whether the bet is received within or outside Hong Kong." after paragraph (c)."

New

By adding -

**"6A. Selling lottery tickets**

Section 10(a) and (b) is amended by adding "以其他方式" after "或".

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8 By deleting the proposed Part IIIA and substituting -

"PART IIIA

OPERATING PREMISES OR PLACES FOR PROMOTING OR  
FACILITATING BOOKMAKING, ETC., PROMOTING  
OR FACILITATING BOOKMAKING, ETC. AND  
RESTRICTION ON BROADCASTING OF  
TIPS, ETC.

**16A. Operating premises or place for  
promoting or facilitating  
bookmaking, etc.**

(1) No person shall knowingly operate, manage or otherwise have control of or assist in the operation, management or other control of any premises or place where, whether on one or more than one occasion, bookmaking or betting with a bookmaker (except bookmaking or betting which is lawful by virtue of section 3(8)) is promoted or facilitated.

(2) Subsection (1) shall not apply if the bet in question -

(a) can only be placed; or

(b) is placed,

by a person outside Hong Kong.

(3) Any person who contravenes subsection (1) commits an offence and is liable -



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- (a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

**16B. Promoting or facilitating bookmaking, etc.**

(1) No person shall knowingly promote or facilitate bookmaking or betting with a bookmaker (except bookmaking or betting which is lawful by virtue of section 3(8)).

(2) Subsection (1) shall not apply if the bet in question -

- (a) can only be placed; or
- (b) is placed,

by a person outside Hong Kong.

(3) Any person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

ClauseAmendment Proposed**16C. General provisions relating to sections 16A and 16B**

(1) For the purposes of section 16A(1), bookmaking or betting with a bookmaker is promoted or facilitated if -

- (a) advertisements to promote bookmaking or betting with a bookmaker are exhibited, disseminated or distributed; or
- (b) service in any of the following forms is made available -
  - (i) receipt of a bet as an agent whether the bet is ultimately received by the bookmaker within or outside Hong Kong;
  - (ii) transmission of a bet;
  - (iii) receipt of a deposit paid wholly or partly for the purpose of betting;
  - (iv) transmission of a deposit referred to in subparagraph (iii);
  - (v) transmission of winnings on a bet; or
  - (vi) arrangement for opening or maintaining of an account wholly or partly for the purpose of betting,

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and in section 16B(1), "promote or facilitate bookmaking or betting with a bookmaker" (推廣或便利收受賭注或向收受賭注者投注) shall be construed accordingly.

(2) A person may be convicted of an offence under section 16A or 16B in relation to a set of facts notwithstanding that no person is convicted of an offence under section 7 or 8 in relation to the same set of facts.

**16D. Responsibilities of owners, tenants, etc. for act prohibited under section 16A**

(1) No person shall -

- (a) being the owner, tenant, occupier or person in charge of any premises or place, knowingly permit or suffer such premises or place or any part thereof to be used as premises or place mentioned in section 16A(1); or
- (b) let or agree to let, whether as principal or agent, any premises or place with the knowledge that such premises or place or any part thereof is to be used as premises or place mentioned in section 16A(1).

(2) Any person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years; or

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- (b) on conviction on indictment to a fine of \$500,000 and to imprisonment for 7 years.

**16E. Restriction on broadcasts of forecasts, hints, odds or tips as to results of horse, pony or dog races**

(1) No person shall, for the purposes of dissemination or distribution in Hong Kong to the public or a section of the public, broadcast any forecast, hint, odds or tip relating to guessing or foretelling the result of, or contingency regarding any horse, pony or dog race at any time within 12 hours before the conduct of that race.

(2) Subsection (1) -

- (a) shall apply whether the race in question is or is to be conducted within or outside Hong Kong;
- (b) shall not apply in relation to any race on which totalizator or pari-mutuel betting is conducted with a permission given under section 3 of the Betting Duty Ordinance (Cap. 108);
- (c) shall not apply in relation to any race which is or is to be conducted as part of any event which is specified by notice published in the Gazette by the Secretary for Home Affairs for the purposes of this paragraph.

(3) Any person who contravenes subsection (1) commits an offence and is liable -

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(a) on summary conviction to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years.

(4) A notice published under subsection (2)(c) is not subsidiary legislation.

(5) In proceedings for an offence under this section, it shall be a defence for the accused to show that he used all due diligence and took all reasonable precautions to avoid the commission of the offence.

(6) In this section, "broadcast" (廣播) means -

(a) broadcasts by means of a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562); or

(b) broadcasts by transmitting sound for general reception by means of radio waves under and in accordance with a licence granted under section 13C of the Telecommunications Ordinance (Cap. 106),

but does not include broadcasts, by any means, of news or any remarks, observations or comments in relation to such news.

ClauseAmendment Proposed**16F. Consent to prosecution under this Part**

(1) No prosecution for an offence under this Part shall be instituted without the consent in writing of the Secretary for Justice.

(2) Subsection (1) shall not prevent -

- (a) the arrest of a person for;
- (b) the issue of a warrant for the arrest of a person for; or
- (c) remand in custody of a person charged with,

any offence under this Part."

10(b) In the proposed section 20(2), by adding "曾" before "參加該".

11 By deleting the clause and substituting -

**"11. Disconnexion of telephone service**

Section 21 is amended -

- (a) by repealing subsection (1)(c);
- (b) in subsections (1) and (2), by repealing "Hong Kong Telephone Company Limited" wherever it appears and substituting "telecommunications service provider";

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- (c) in subsection (2), by repealing "the Company" and substituting "the telecommunications service provider";
- (d) in subsection (3), by repealing "Company" and substituting "telecommunications service provider";
- (e) by adding -

"(4) In this section, "telecommunications service provider" (電訊服務提供者) means a licensee as defined in section 2(1) of the Telecommunications Ordinance (Cap. 106).".

## New

By adding -

**"11A. Search of suspected gambling establishments**

Section 23(2)(e)(ii) is amended by adding "以其他方式" before "控" where it twice appears.

**11B. Section added**

The following is added -

**"23A. Search of premises or place for promoting or facilitating bookmaking, etc.**

(1) A police officer of or above the rank of superintendent may, if he reasonably suspects that -

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- (a) an offence under section 16A is being or has been committed in relation to; or
- (b) an offence under section 16B is being or has been committed in,

any premises or place, authorize in writing any police officer to enter and search the premises or place.

(2) A police officer to whom an authorization is issued under subsection (1), and any other police officer acting under his direction, may -

- (a) enter, by force if necessary, the premises or place specified in the authorization and search the same;
- (b) arrest any person who is found in such premises or place or who escapes from such premises or place;
- (c) search any person who is found in such premises or place or who escapes from such premises or place;
- (d) seize and detain any thing found in such premises or place or found on any person in such premises or



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place or found on any person who escapes from such premises or place, which is being or has been used in connexion with an act prohibited by section 16A or 16B;

(e) seize and detain any money

-

(i) being -

(A) money paid pursuant to a bet with a bookmaker;

(B) winnings on such a bet; or

(C) a deposit paid wholly or partly for the purpose of such a bet;

(ii) found on any person operating, managing or otherwise controlling such premises or place or on any person assisting in the operation, management or other control of such premises or place; or

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(iii) found on any person found in such premises or place where entry under paragraph (a) is prevented, obstructed or delayed.

(3) No person shall be searched under this section except by a person of the same sex.

(4) Any person who obstructs any police officer authorized under subsection (1) or any other police officer acting under his direction from entering the premises or place specified in the authorization commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(5) Where a person delays the entry of any police officer referred to in subsection (4) into any premises or place so referred to, he shall be presumed, until the contrary is proved, to have delayed entry for the purpose of obstructing such police officer from entering such premises or place."."

13

By deleting the clause and substituting -

**"13. Forfeiture**

Section 26 is amended by adding "or is or represents the proceeds of or is derived from" after "with"."

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New

By adding -

**"13A. Obstruction of police officers**

Section 27 is amended by repealing "Any" and substituting "Subject to section 23(4) or 23A(4), any".

14(1)

(a) By deleting paragraph (a).

(b) By deleting "5,".